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Private Law: Obligations

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to the proportionate share of the stock which formed part of the forced portion of the plaintiff, and rejected the defendant's contention, based on article 1921 of the Louisiana Code of Civil Procedure, that no interest was due. Of course, the reason for article 1515 of the Civil Code is that the forced portion descends to the forced heir in full ownership *ab intestato* and he is therefore entitled to it with all the fruits accruing thereto since the death of the *de cuius*.²⁵

OBLIGATIONS

*Saúl Litvinoff**

In *Minyard v. Curtis*,¹ the Housing Authority of New Orleans (HANO) entered into a contract with Pittman Construction Company for the construction of a certain section of the Desire Street Housing Project. For this purpose Pittman entered into a subcontract with Minyard whereby the latter undertook the obligation of applying caulking materials according to the terms of the general contract between Pittman and HANO. Under this subcontract, Minyard was to receive \$3,000 for the work and for furnishing the materials; it is noteworthy that this agreement restated the portions of the general contract which were pertinent to the required application of caulking materials.

In order to comply with the terms of the subcontract, Minyard chose a caulking compound manufactured by Plastic Products, Inc., and distributed by a subsidiary corporation, Plastoid Products Company. A sample of this material was submitted to HANO's architects, and in transmitting to Pittman the results of the chemical and physical analysis of the compound, Minyard endorsed the properties of it and guaranteed it would comply with the specifications.²

Upon approval of the sample, Minyard started the caulking work, but the chosen compound did not behave according to expectations. On January 26, 1955 the clerk-of-the-works complained in writing to Pittman that "the caulking used is pulling away from wood, brick, aluminum and iron and does not

25. LA. CIV. CODE art. 1515: "The donee restores the fruits of what exceeds the disposable portion only from the day of the donor's decease, if the demand of the reduction was made within the year; otherwise from the day of the demand."

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1. 251 La. 624, 205 So.2d 422 (1967).

2. *Id.* at 631, 205 So.2d at 425.

appear to be elastic underneath,"³ in other words, the compound was not in compliance with the specifications. A laboratory test conducted at HANO's request revealed that the shrinkage rate of the compound was considerably higher than the one certified by the manufacturer and endorsed and guaranteed by Minyard. Upon this and other findings conducive to the realization that the compound was not suitable, HANO, in compliance with the provisions of the general construction contract, caused the caulking applied by Minyard to be removed and replaced with suitable material, at a cost of \$16,994.42.

On November 15, 1955, Pittman, the general contractor, instituted suit against HANO for materials furnished and work performed in the construction of the Project. A reconventional demand was filed by HANO against Pittman for the cost incurred in replacing the defective caulking material. In a third party proceeding, Pittman prayed for judgment against Minyard, as subcontractor, for the amount Pittman might be held to pay to HANO under the reconventional demand. The district court decided in favor of HANO for the cost of correcting the defective caulking work, and Pittman, although held liable to HANO, was given judgment against Minyard, the caulking subcontractor. The court of appeal affirmed the judgment,⁴ and writs were refused by the Supreme Court.⁵ It is noteworthy that there was no question of improper workmanship on the part of Minyard, the subcontractor; his liability was grounded by both courts upon his endorsement and guarantee of the chemical and physical analysis and properties of the caulking compound which failed to meet the required specifications.⁶

Minyard, as ordered in the judgment, paid Pittman the sum of \$24,100 and about eight months later, on November 17, 1965, filed suit against Curtis, the successor of Plastic Products, manufacturer of the caulking compound, in order to recover the amount paid to Pittman, the costs and expense incurred in that suit, attorneys fees and the sum of \$20,000 for loss of reputation and business. This petition was cumulated with a claim against Curtis Products, as the successor of Plastoid Products. Plaintiff termed his claim "Petition for indemnity." The defendant in-

3. *Id.*

4. *Pittman Constr. Co. v. Housing Authority of New Orleans*, 169 So.2d 122 (La. App. 4th Cir. 1964).

5. 247 La. 344, 170 So.2d 865 (1965).

6. 251 La. 624, 633-34, 205 So.2d 422, 426 (1967).

terposed the pleas of prescription of one and ten years "based upon the theory that Minyard's claim, although labeled a petition for indemnity, was in fact a suit for redhibition prescribed in one year under Articles 2534 and 2546 of the Civil Code. Alternatively, it is asserted that it is a suit for breach of contract and, as such, is a personal action prescribed in ten years under Article 3544 of the Civil Code."⁷

The trial court asserted that the action instituted was one in redhibition between buyer-plaintiff and the seller, Curtis, as the successor of Plastoid Products. Consequently, the remedy was prescribed in one year from the date of the sale according to Article 2534 of the Louisiana Civil Code, or, at latest, from the discovery of the redhibitory vice, according to Article 2546. To this effect January 26, 1955, was found to be the date when the defect in the caulking compound was definitively brought to plaintiff's knowledge, as it was on that date that the clerk-of-the-work complained in writing. The court of appeal affirmed the judgment, further announcing that as the suit was instituted on November 17, 1965, more than ten years had elapsed since the cause of action accrued on January 26, 1955. Thus the recovery was also barred on grounds of the ten-year prescription under Article 3544 of the Louisiana Civil Code.⁸

The Supreme Court pointed out that defendant, Curtis, is actually the successor of two different entities, Plastoid Products, distributor of the compound and seller to plaintiff, and Plastic Products, manufacturer of it. No express contractual relation existed between plaintiff and the manufacturer of the product; therefore the pleas of prescription advanced by defendant as to the action in redhibition, although operative when defendant's capacity as successor to the seller is taken into account, are not applicable where defendant's capacity as successor to the manufacturer is involved, since the action for redhibitory vices can be contemplated only in connection with the contract of sale.⁹

Focusing on defendant's capacity as successor to the manufacturer, the Supreme Court seemed to find that it was because of the latter's fault in making the defective compound that plaintiff was held liable to the general contractor in the suit instituted by HANO. This being the case, the court seems to

7. *Id.*

8. *Id.*

9. *Id.* at 635-36, 205 So.2d at 426-27.

think, the manufacturer, now represented by defendant, appears to enrich himself at the plaintiff's expense. Consequently, the action in indemnity intended by plaintiff can be regarded as grounded on unjust enrichment, and the plaintiff is granted recovery only in the amount of the judgment paid by him to Pittman. In the court's contention, the prescription applicable to a situation of this kind is the ten-year term provided by Article 3544 of the Louisiana Civil Code which, in such circumstances, only runs from the moment the party entitled to indemnity has been condemned by judgment of court to pay the damage out of which his cause of action arises. Thus, the Supreme Court reversed the judgment of the trial court and the court of appeal.

The case, according to the court, is similar to a situation where one not actually at fault—such as a party in good faith—is made to answer for the injury sustained by another; under such circumstances, the party not actually at fault has a cause of action to recover against the party whose fault caused the injury.¹⁰ Thus, the “action in indemnity” founded on unjust enrichment appears to the court as performing the same function as the civil law action *de in rem verso*, which is founded on the same grounds. In the same connection the court recalls that where two persons are liable to another for injuries received, the one because of his fault or negligence, and the other only because of a statutory duty but without actual fault on his part, the latter, upon paying for the injury so inflicted, may recover of the actual tortfeasor the sum so paid, as indemnity upon an *implied or quasi contract*.¹¹

Thus, in an effort to revise its own doctrine on “action in indemnity” and to clarify this terminology, the court resorts to instances where one party is held liable for the fault of another, that is, instances of vicarious liability, clearly within the realm of tort.¹² However, in this case the plaintiff, Minyard, had been held liable to HANO not because of a tort—whether committed by himself or the liability for which he could be charged with—but because of the contract existing between himself and Pittman.¹³ In other words, the basis of his liability was the defective

10. See *Meunier v. Duperron*, 3 Mart. (O.S.) 285 (La. 1814); *Brannan, Patterson & Holliday v. Hoel*, 15 La. Ann. 308 (1860); Note, 7 LA. L. REV. 592 (1947).

11. See *Foster & Glassell Co. v. Knight Bros.*, 152 La. 596, 93 So. 913 (1922), cited by the court in this case at 251 La. 624, 644, 205 So.2d 422, 430 (1967).

12. On imputed negligence in general, and vicarious liability, see W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 470-505 (3d ed. 1964).

13. See 251 La. 624, 630, 205 So.2d 422, 424 (1967).

performance of his contractual duty to the general contractor. This relevant fact may call for a different characterization of the action instituted in this case.¹⁴

Indeed, from this perspective it seems quite clear that Minyard was contractually responsible for another, since any party to a contract is liable for those he calls to aid him or substitute for him in the performance of the contractual duty.¹⁵ Defendant's role as manufacturer of the caulking compound was, precisely, that of an aid to plaintiff as the latter was bound not only to apply the caulking but also to furnish it. Now, whenever such a contractual liability for another materializes in the payment of damages for nonperformance or defective performance, the party forced to pay has an action against the one for whose deed he has been found to be at fault.¹⁶ This action will be contractual where the party held responsible was, in his turn, bound by a contract to his aid or substitute, or delictual where there is no contract between the party and his aid or substitute and the latter's conduct falls within the purview of Article 2315 of the Louisiana Civil Code.¹⁷

This availability of a normal or regular action, whether contractual or delictual, prevents the exercise of the action *de in rem verso* which is exceptional and should be allowed only where there is no other remedy at law, as the court points out very clearly.¹⁸

14. This should not be taken to mean that where a tort and not a contract is involved, the action of the party not a fault in order to recover what he paid to the victim from the real tortfeasor is an *action de in rem verso*. At civil law at least there is sufficient authority in support of the contention that such an action is simply quasi-delictual. See 1 MAZEAUD ET TUNC, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVILE 841-45 (5th ed. 1957); 1 SAVATIER, TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS 363-67, 509-10 (2d ed. 1951). However, this particular aspect is not comprised within the specific scope of this Comment.

15. See 1 MAZEAUD, MAZEAUD ET TUNC, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVILE 1018-35 (5th ed. 1957) A clear example of this can be found in LA. CIV. CODE art. 2768.

16. "The undertaker is responsible for the acts of the persons employed by him." For an account of the grounds for an adequate generalization of this and similar principles, see 1 MAZEAUD, MAZEAUD ET TUNC, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVILE 1031-35 (5th ed. 1957). See 6 Demogue, Traité des obligations en général n° 589, at 535 (1923).

17. See 1 MAZEAUD, MAZEAUD ET TUNC, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVILE 1045 (5th ed. 1957); 1 SAVATIER, TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS 365 (2d ed. 1951) for a discussion of the problem in French law.

18. See 251 La. 624, 651, 205 So.2d 422, 432 (1967). For the importance of this requirement and a discussion of what is meant by the "subsidiary" character of the *action de in rem verso*, see David & Gutteridge, *The Doctrine of Unjustified Enrichment*, 5 CAMBRIDGE L.J. 204, 220 (1934). See also 3 DEMOGUE, TRAITÉ DES OBLIGATIONS EN GÉNÉRAL n° 756, at 285-88 (1923).

Where there is a normal remedy for the impoverished party, the action *de in rem verso* should not be allowed for the sole reason that the regular action is prescribed, because in such a situation the exceptional remedy appears incompatible with a rule of positive law.¹⁹ It seems clear that in every case of acquisitive or liberative prescription one party is enriched by the right prescribed in his favor and another is impoverished by the loss of the same right prescribed against. However, neither the enrichment nor the impoverishment can be there termed "unjust" since they take place by the operation of rules of law the enactment of which responds very much to public policy.²⁰ It is with grounds on this and similar principles that French courts have decided that there is no room for the action *de in rem verso* where it is brought by a party in substitution of a contractual action that he cannot invoke because the contract is absolutely null;²¹ or where a party seeks recovery through this exceptional remedy because he cannot produce the writing necessary to prove the existence of the contract alleged in his complaint;²² or where the exceptional action is brought in an attempt to circumvent the operation of the *res judicata* principle.²³ By the same token, it was decided that the action *de in rem verso* cannot be allowed to the party that can recover his property by exercising revendication;²⁴ nor to the holder of a check rejected by the bank for lack of funds, who brings this action in order to avoid the short prescriptive period of six months which has already run.²⁵ These decisions seem clearly grounded on the assumption that neither the validity nor the enforceability of rules belonging to the proof of juridical acts, prescription and *res judicata* can be indirectly challenged through an unchecked recognition of the action *de in rem verso*.²⁶ It is perfectly possible for the legal order to envisage change or suppression of the laws of prescription and written evidence, but this should not be done indirectly through the granting of an exceptional remedy.²⁷

19. See 7 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS no 756, at 57 (2d rev. Esmein 1954). See also David & Gutteridge, *The Doctrine of Unjustified Enrichment*, 5 CAMBRIDGE L.J. 204, 220 (1934).

20. See 3 DEMOGUE, TRAITÉ DES OBLIGATIONS EN GÉNÉRAL 242-48 (1923); 7 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 65-66 (2d rev. ed. Esmein 1954).

21. See Civ. Nov. 3, 1930, D.H. 1930, 603, GAZ. PAL. 1930, 2.2.839.

22. See Civ. May 12, 1914, S.1918.1.41.

23. See Trib. com. Seine, March 27, 1926, GAZ. PAL. 1926.1.23.

24. See Trib. Caen, June 9, 1936, GAZ. PAL. 1936.2.394.

25. Villefranche-sur-Saône, December 1, 1949, GAZ. PAL. 1950.1.89.

26. See 7 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 67 (2d rev. ed. Esmein 1954).

27. *Id.*

It has to be conceded that it seems unfair to allow the one at fault to remain immune by the mere passage of time—especially in the case of short prescriptive periods such as the one year established by Article 3534 of the Louisiana Civil Code—while another who is only technically responsible has to bear the consequences. However, in this case, plaintiff cannot be regarded as entirely free from fault since he did not properly perform his contractual duty towards Pittman.²⁸ Here it should be remembered that the civilian notion of *inexécution de contrat* is based on the idea of contractual fault, as opposed to the common law notion of breach.²⁹ Therefore he was more than technically responsible, although it cannot be denied that his contractual fault originated in the quasi-delictual fault of the manufacturer of the compound.

But even so, a fair balance could have been restored by different means. Indeed, in *South Arkansas Lumber Co. v. Tremont Lumber Co.*³⁰ it was clearly decided that the claim of a party entitled to indemnity does not come into existence until he has been condemned by judgment of court to pay the damage out of which his cause of action arises; consequently the prescriptive period for this action cannot start running before this moment.

The importance of this principle, insofar as the problems here discussed are concerned, became manifest in *Edward Levy Metals, Inc. v. New Orleans Pub. Belt R.R.*³¹ In this case plaintiff and defendant were bound by contract for the transportation of certain merchandise; due to mistake or mishandling, the goods were delivered to a third party, the Southern Scrap Material Company, in whose hands the goods perished or disappeared. On the suit filed by plaintiff, defendant filed a third party complaint against Southern Scrap praying judgment against it for any amount which it may be cast to pay the original plaintiff. Presented with the problem of determining whether the third party action was in quasi-contract or in tort the court said: "Inasmuch as this action is one for indemnity it is unimportant whether that indemnification is based upon tort or a quasi contractual theory of unjust enrichment since prescription does

28. See *Pittman Constr. Co. v. Housing Authority of New Orleans*, 169 So.2d 122 (La. App. 4th Cir. 1964).

29. For a detailed discussion of this very important point, see CONSTANTINESCO, *INEXÉCUTION ET FAUTE CONTRACTUELLE EN DROIT COMPARÉ* 23-132, 217-285 (1960). See LA. CIV. CODE art. 1933 (2).

30. 146 La. 61, 83 So. 378 (1919). This decision is cited by the court in the instant case at 251 La. 624, 641, 205 So.2d 422, 428 (1967).

31. 243 La. 800, 148 So.2d 580 (1963).

not commence to run against a party seeking indemnification until it has been cast. . . ."³² What the court meant is that since the third party plaintiff had not yet been cast in judgment, not even the shorter prescriptive period for the action in tort had run; moreover, it had not even commenced.

In spite of obvious procedural differences,³³ the *Edward Levy Metals* case and the one here discussed have in common the fact that in both instances the party seeking indemnity was held liable to the wronged party by virtue of a contract, and not by virtue of the doctrine of vicarious liability in quasi delict.³⁴ If the same reasoning had been applied to the instant case, it would have been easily realized that plaintiff's action in quasi delict against defendant-manufacturer was not prescribed since this action did not come into existence until February 5, 1965, when the same court refused writs in *Pittman v. HANO*,³⁵ and plaintiff filed his suit on November 17, 1965.³⁶ No other conclusion can be reached under Article 2167(2) of the Louisiana Code of Civil Procedure. In this way, plaintiff would have been granted relief without characterizing his action as one *de in rem verso*, which is questionable under the circumstances of the case.

Finally, it should be added that the action *de in rem verso* is not quasicontractual. Moreover, it cannot be allowed where the plaintiff has a quasicontractual remedy at his disposal.³⁷ This is so because at Roman law, where this doctrine has its roots, and this terminology its origin, only *negotiorum gestio* and *condictio indebiti* were recognized as giving rise to obligations *quasi ex contractu*, hence: quasi-contract. In each of these cases the

32. *Id.* at 807, 148 So.2d at 584.

33. In the *Edward Levy Metals* case the third party action was filed under the Third Party Practice Act, LA. R.S. 13:3381 (1950), while in the instant case the suit was filed after judgment was rendered against the party plaintiff in *Pittman Constr. Co. v. Housing Authority of New Orleans*, 169 So.2d 122 (La. App. 4th Cir. 1964).

34. In the instant case the court cites the decision in *Edward Levy Metals*; however, the cited paragraphs are not the real *ratio decidendi* in the precedent. See 243 La. 800, 807, 148 So.2d 580, 584 (1963).

35. 247 La. 344, 170 So.2d 865 (1965).

36. See 251 La. 624, 634, 205 So.2d 422, 426 (1967).

37. See 7 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 50 (2d rev. ed. Esmein 1954); 3 DEMOGUE, TRAITÉ DES OBLIGATIONS EN GÉNÉRAL 287 (1923); NEWMAN, EQUITY AND LAW: A COMPARATIVE STUDY (1961); CIV. 12.5.1914, D.1918-19.1.41; 2.3.1915, D.1920.1.102. But see David & Gutteridge, *The Doctrine of Unjustified Enrichment*, 5 CAMBRIDGE L.J. 204, 220 (1934). Of course, this should not be taken as an attempt to revive forms of action which do not exist in modern civil law, mainly because of the universality of the principle *jura curia novit* (the court can recognize any right, irrespective of the one invoked by the party). The requirement means, simply, that no alternative remedy should be given to the party who had one but neglected to use it. In other words—a principle of order.

action the party could bring was a specifically designated one, while the *actio de in rem verso* could be brought only where neither the *actio negotiorum gestorum contraria* nor the *condictio indebiti* could be allowed.³⁸ The fact that *obligationes quasi ex contractu* were considered an independent category at Roman law sufficiently explains the separation between quasi-contract and enrichment without cause at civil law. Although in the case of payment of the thing not due the action for recovery can be said to be ultimately grounded on the resulting enrichment without cause for the party who receives the thing, this is not the case with *negotiorum gestio* where such an enrichment is not relevant. It is true that for many years civil law courts have tried to remedy situations of enrichment without cause by stretching in an almost limitless fashion the quasi-contractual figure of *negotiorum gestio*; however, the revival of the action *de in rem verso* by the French *Cour de Cassation* obeyed to the clear realization that the *notion* of quasi-contract could no longer be stretched beyond certain conceptual limitations.³⁹

It is different at common law where the Roman *negotiorum gestio* was never present. For this reason, the technique of implying a contract in law—where the questionable terminology of quasi-contracts at common law originates—was recurrently employed in an attempt to find some grounds on which to allow the original action of *assumpsit*.⁴⁰ As a consequence, the remedy for unjust enrichment is regarded as being eminently quasi-contractual in this system.⁴¹

However, it should be recognized that because of the general terms of Article 3544 of the Louisiana Civil Code, this problem

38. See BUCKLAND & McNAIR, *ROMAN LAW AND COMMON LAW* 329-337 (2d rev. ed. LAWSON 1952); NEWMAN, *EQUITY AND LAW: A COMPARATIVE STUDY* 225-27 (1961).

39. Reg. June 15, 1892, D.1891.1.596, S.93.1.281.

40. See DAVID & GUTTERIDGE, *THE DOCTRINE OF UNJUST ENRICHMENT*, 5 CAMBRIDGE 219-24 (1961).

41. Thus, according to the common law doctrine of waiver of tort, plaintiff may disregard his action in tort and elect to sue for restitution; in other words, a choice between a tort remedy and a quasi-contractual (unjust enrichment) one is given. See W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 643-48 (3d ed. 1964). The same choice is possible at civil law—provided that the alternative quasi-contractual remedy is strictly so—since the situation does not differ very much from the well-known problem of the option between delictual and contractual liability. See MARTINE, *L'OPTION ENTRE LA RESPONSABILITÉ CONTRACTUELLE ET LA RESPONSABILITÉ DÉLICITUELLE* 8-118 (1957); 1 SAVATIER, *TRAITÉ DE LA RESPONSABILITÉ EN DROIT FRANÇAIS* 192-203 (2d ed. 1951). However, no choice would lie at civil law between a delictual action and *action de in rem verso* (strictly based on unjust enrichment alone) since the latter cannot be allowed where there is another remedy. The fact that quasi contract does not exhaust the notion of unjust enrichment at civil law sufficiently explains this point.

of classification may be regarded as one of only academic importance.⁴²

PARTICULAR CONTRACTS

*J. Denson Smith**

The decisions of the First Circuit Court of Appeal and the Supreme Court in *McCauley v. Manda Brothers Provisions Co.*¹ do not dissipate the obscurity that surrounds the theory on which recovery may be based in products liability cases. The court of appeal found a retailer of a hot sausage sandwich wrapped in cellulose and stapled not liable to the purchaser because of the absence of a showing of negligence or of knowledge of its unwholesomeness. The manufacturer of the sausage who sold to a preparer of sandwiches was also held not liable because the evidence precluded a finding of responsibility on its part. Finally, the preparer was held liable to the purchaser from the retailer apparently on the theory that a preparer of food is presumed to know its condition and warrants its wholesomeness. The Supreme Court granted certiorari at the request of the preparer, who did not complain of being cast but was seeking merely to enforce contribution against the retailer. The plaintiff did not apply for certiorari. The Supreme Court affirmed the holding of the court of appeal, which had reversed the district court's judgment insofar as the retailer was concerned for lack of a showing of negligence on the retailer's part. It also rejected the preparer's claim in contribution because of the retailer's freedom from negligence. In passing, it noted that the judgment of the district court had not cast the preparer and retailer as joint tortfeasors but that each was cast on the basis of warranty. In a concurring opinion, Judge Sanders observed that since 1911 a manufacturer has been held liable for damages

42. It is noteworthy that in France both delictual action and action *de in rem verso* are subject to the long prescriptive term of thirty years. See FRENCH CIV. CODE art. 2262; 3 DEMOGUE, *TRAITÉ DES OBLIGATIONS EN GÉNÉRAL* 290 (1923); Cass. Civ., July 18, 1910, D.1911.I.355. However, in some instances the running of the prescriptive term for the criminal action—which is always shorter—will preclude the civil action. For a discussion of this delicate problem see 2 SAVATIER, *TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS* 227-37 (2d ed. 1951). In Louisiana, instead, there is an important difference between the prescriptive periods of articles 3536 and 3544 of the Civil Code which seems to be the real reason why the court felt inclined to allow the exceptional remedy in the instant case on grounds of the general principle contained in Article 1965, which has no equivalent in the French Civil Code.

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1. 202 So.2d 492 (La. App. 1st Cir. 1967) *affirmed* 252 La. 528, 211 So.2d 637 (1968).