Prescription - Ten-Year Acquisitive Prescription Founded on Wife's Conveyance of Community Immovables

H. D. Salassi Jr.
form Commercial Code\textsuperscript{32} have affirmed this position. The latter states the rule in terms of a warranty extended by any person who obtains payment or certification to the person who pays or certifies that the instrument has not been materially altered; but this warranty is not given by a holder in due course to the acceptor with respect to an alteration made prior to the certification, if the holder took the instrument after the acceptance. Further, in accord with the instant case, any customer who obtains payment of an uncertified check warrants to the payor-drawee that the instrument has not been materially altered, no matter whether he is a holder in due course or not. Thus the decision that the drawee may recover money paid on an uncertified materially altered check from the person who received payment, which places Louisiana in the apparent majority as stated by the \textit{Restatement of Restitutions,}\textsuperscript{33} seems eminently correct.

\textit{Richard B. Wilkins, Jr.}

PRESCRIPTION — TEN-YEAR ACQUISITIVE PRESCRIPTION FOUNDED ON WIFE'S CONVEYANCE OF COMMUNITY IMMOBILIÉS

In concursus proceedings to ascertain the proper parties to whom mineral royalties should be paid, the primary issue for the appellate court was whether the purchaser of community property\textsuperscript{1} from a married woman by an act of sale, which on

\footnotesize{\textsuperscript{32} See \textit{Uniform Commercial Code} \S 3-417, which provides, in part: "(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that \ldots (c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith \ldots (iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided ‘payable as originally drawn’ or equivalent terms; or (iv) to the acceptor of a draft with respect to an alteration made after the acceptance."


1. The vendor had acquired the property during her marriage by an act of sale from her father, the act reciting a cash consideration. The lower court agreed with the vendee's position that the sale was in reality a donation and that, therefore, the property was her separate property and not community property. The
its face showed her marital status, could plead ten-year acquisitive prescription. Held, although the property conveyed by the wife was community property, the title conveyed was a “just title,” and the vendee, having met all the requirements of ten-year acquisitive prescription, had acquired the ownership of the property.\(^2\) Monsanto Chemical Co. v. Jones, 160 So. 2d 428 (La. App. 2d Cir. 1964).

Under Louisiana Law, acquisitive prescription is a mode of acquiring the ownership of property.\(^3\) In order to acquire immovables by ten-year prescription, the possessor must possess for ten years in good faith under just title.\(^4\) A possessor in good faith is one who, although not actually the owner, has just reason to believe himself master of the thing which he possesses.\(^5\) The courts have distinguished between “moral” good faith, whereby a possessor believes himself to be owner without just reason, and “legal” good faith whereby a possessor believes himself to be owner with just reason. Thus, a person may honestly believe himself to be master of the thing he possesses, but if he does not have just reason for so believing, he is not in “legal” good faith, though he may be in “moral” good faith. It has been consistently held that only “legal” good faith is sufficient to support ten-year acquisitive prescription.\(^6\) The courts have distinguished the error under which the possessor in good faith may operate as either error of fact or error of law.\(^7\)

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2. “There is no evidence in the record that Eudoxie Jones was not in good faith in acquiring the property. She acquired the land from the person she believed to be the owner of the property. She made no examination of the records, but accepted the deed from Martha Goldsmith at ‘face value.’” 160 So. 2d at 431.

3. LA. CIVIL CODE art. 3457 (1870): “Prescription is a manner of acquiring the ownership of property . . . .”

4. Id. art. 3474: “Immovables are prescribed for by ten years when the possessor has been in good faith and held by a just title during that time.” Id. art. 3478: “He who acquires an immovable in good faith and by just title prescribes for it in ten years . . . .” See also id. arts. 3479, 3484.

5. Id. art. 3451: “The possessor in good faith is he who has just reason to believe himself the master of the thing which he possesses, although he may not be in fact; as happens to him who buys a thing which he supposes to belong to the person selling it to him, but which, in fact, belongs to another.”

6. See Holley v. Lockett, 126 So. 2d 814 (La. App. 2d Cir. 1961); LaFleur v. Fontenot, 93 So. 2d 285 (La. App. 1st Cir. 1957); Dinwiddie v. Cox, 9 So. 2d 68 (La. App. 2d Cir. 1942).

7. See Jackson v. Shaw, 151 La. 795, 92 So. 339 (1922); Heirs of Dohan
Code provides that an error of law cannot be the basis of acquisitive prescription. The jurisprudence indicates that "legal" good faith for purposes of ten-year acquisitive prescription cannot exist where the possessor had knowledge of the pertinent facts, but acted under these facts in error of law; but if the possessor is ignorant of the facts, good faith possession may be established. The Civil Code also provides that good faith is presumed, and he who alleges bad faith must prove it. The courts have adhered to this rule.

In LaFleur v. Fontenot, the court held that, regardless of "moral" good faith, if a person purchases and possesses only under an error of law regarding the legality of title, he cannot be regarded as a good faith possessor under the Code, and ten-years acquisitive prescription is not available to him. The court reasoned that it is not sufficient to characterize a possessor as being in good faith simply because he believes he is acquiring a good title. Further, the court found that while a
title investigation is not necessary to support good faith, one who has cause to inquire and fails to avail himself of the means and facilities at hand to inform himself of the true facts cannot be a possessor in good faith. This rule was extended in Juneau v. Laborde, where the court held that if the purchaser has information sufficient to excite inquiry, a duty devolves upon him to investigate the title before purchasing, and if he fails to do so, he is chargeable with knowledge of such facts as would have been available to him had he investigated.

In the instant case the court found that, although the act of sale was a nullity, it was regular on its face, transitive of ownership, and constituted a "just title" for ten-year prescription. In considering the element of good faith, the court concluded that there was no evidence that the purchaser was not in good faith, since she acquired the property from the person she believed to be the owner. The court further found that she made no examination of the record, but accepted the deed at "face value," although the vendor's marital status was reflected on the deed.

Undoubtedly defendant thought her vendor was the true owner of the property, but she apparently purchased under an error of law. The laws of this state preclude the wife from alienating community property under these circumstances. Defendant, being the stepmother of the vendor and wife of vendor's ancestor in title evidently knew that the vendor was married and that she had acquired the property during marriage. Knowledge of these facts should have been sufficient to excite further inquiry into the matter in an attempt to determine the vendor's capacity to alienate the property. Failing to make

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16. 93 So. 2d 285, 289 (La. App. 1st Cir. 1957); see Martin v. Schwing, 228 La. 175, 81 So. 2d 852 (1955); Giddens v. Mobley, 37 La. Ann. 417 (1885); Dinwiddie v. Cox, 9 So. 2d 68 (La. App. 2d Cir. 1942).
18. 219 La. 921, 54 So. 2d 325 (1951).
19. Appellant attacked the deed by which defendant acquired the property as not conforming to the requirements of just title. See LA. CIVIL CODE arts. 3484-3486 (1870). Detailed consideration of this contention is beyond the scope of this Note, but it appears that the holding of the court on just title was sound. See, e.g., Clayton v. Rickerson, 160 La. 771, 107 So. 569 (1926).
20. See LA. CIVIL CODE art. 2404 (1870); Bywater v. Enderle, 175 La. 1098, 145 So. 118 (1933). The Bywater court held that when title to community property is in the name of the wife, she can neither mortgage or sell the property without the authority and consent of her husband, since he is still head and master of the community. Accord, Ducasse v. Modica, 224 La. 318, 69 So. 2d 358 (1953); Roccaforte v. Barbin, 212 La. 69, 31 So. 2d 821 (1947).
such inquiry, the defendant should be precluded from claiming
good faith under the error of law. The result would thus be
that she was in "moral," but not "legal," good faith and thereby
prevented from acquiring the property by the ten-year acquisi-
tive prescription.

In view of the established jurisprudence the case seems un-
sound, and it should not be indicative of a change of rule, since
the issue of good faith apparently was not litigated or brought
to the attention of the court. It is submitted that a person at-
ttempting to purchase immovable property from a woman should
have a duty to determine the marital status of the woman and
her ability to alienate such property.22 Failing to make an ap-
propriate investigation into the matter, the purchaser would be
precluded from invoking his good faith under a plea of ten-year
acquisitive prescription.

H. D. Salassi, Jr.

SALES—THE AUTHORITY TO SIGN FOR ANOTHER IN CONVEYING
IMMOVABLE PROPERTY

The Louisiana Civil Code requires transfers of immovable
property to be in writing, and prohibits the introduction of parol/
evidence to vary the terms of a written conveyance or to prove
an oral sale of real estate.1 The sole exception to this rule is that
an oral conveyance of immovables may be proved by confession
under oath in answer to interrogatories, but only if there has
been actual delivery.2

Under the French Civil Code parol evidence is admissible
to prove a sale if there is written evidence, emanating from the
person against whom the claim is made, which makes probable
the facts alleged.3 French doctrine declares the following writ-
ings to be among those sufficient to form a basis for "beginning
of proof": books of commerce; domestic papers; letters, whether
addressed to the person who is beginning the proof or to a third

22. Ibid.
1. LA. CIVIL CODE arts. 2275, 2276, 2440 (1870).
2. Id. arts. 2275, 2276.
3. FRENCH CIVIL CODE art. 1347.