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Private Law: Prescription

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PRESCRIPTION

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ACQUISITIVE PRESCRIPTION

Possession as Owner

In *Poole v. Continental Can Co.*[1] the successful plaintiff had good record title to the property in dispute, and the defendant's plea of acquisitive prescription was dismissed because "the only act of possession was the cutting of the timber in 1966."[2] It is, of course, necessary to examine the question of adequacy of possession in the particular facts of each case (and there may well have been other circumstances here), but there is no discussion or citation of authorities, and it would be regrettable if in later decisions this case were cited as authority for the proposition quoted above.

LIBERATIVE PRESCRIPTION

Starting Point for the Running of Time

Prather v. Massey-Ferguson, Inc.[3] presented a question de novo and on first reading appears to reach a fair and just result. On more careful examination, a number of points warrant further inquiry. A rice combine was purchased in November, 1967, but delivery was not made until February, 1968. A redhibitory action (for latent defects) was instituted in January, 1969. Civil Code article 2534 provides: "The redhibitory action must be instituted within a year, at the farthest, commencing from the date of the sale," but the court held that in this case the prescription did not start to run until the date of delivery. The court found support in the Planiol treatise on the French civil law and in the general principle of *contra non valentem agere non currit praescriptio*,[4] and while both of these approaches are highly commendable, their application in the present case is open to question.

On the first issue, it must be pointed out that the corresponding provision in the French Civil Code, article 1648, differs

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1. 232 So.2d 832 (La. App. 2d Cir. 1970).

2. *Id.* at 833.

3. 232 So.2d 80 (La. App. 3d Cir. 1970), *cert. denied*, 234 So.2d 195 (La. 1970).

4. Prescription does not run against one who cannot act.

substantially from ours in its statement: "The action resulting from redhibitory vices must be instituted by the buyer, within a short time, according to the nature of the redhibitory vices, and the custom of the place where the sale has been made." Planiol's discussion about the discretionary power thereby vested in the judge appears inappropriate as authority for the interpretation of our codal provision which stipulates a fixed maximum period and an expressly stated starting point.

More intensive investigation into the sources of our own code text reveals very distinct Spanish and Roman influences on the point in question. The Moreau-Lislet and Carleton 1820 publication of *The Laws of Las Siete Partidas Which Are Still in Force in the State of Louisiana* shows a fixed prescriptive period in the Spanish law (6 months for redhibition; one year for reduction of price) with an express starting point on the day of the sale.[5] Especially significant is a footnote concerning the prescriptive period for a reduction of price: "The time of one year is reduced to six months by the Civil Code [La. 1808], art. 75, p. 358."[6] With the Partidas text stating that the period runs from the day of the sale, the footnote is "C. art. 75 and 77, p. 358."[7] Other Spanish and Roman authorities likewise contain a fixed prescriptive period with express provision for it to count from the day of the sale.[8] For the Louisiana Civil Code of 1825, the Commissioners stated: "This section is remoulded entirely, and although the principles contained in it remain the same, and there are few additional provisions, yet we think that the matter is here presented with more order and clearness."[9] In the process, the six month period of the redhibitory action was changed to one year[10] and that text has been carried forward into our present Civil Code.

With reference to the court's second ground of decision in the general principle of *contra non valentem*, it is open to question whether this general principle is applicable *contra legem* where there is an express and specific legislative rule as in our Civil Code article 2534.

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5. LAS SIETE PARTIDAS bk. 5, tit. 5, l. 65 at 707 (Moreau-Lislet & Carleton transl. (1820)).

6. *Id.* at 707 n. (b).

7. *Id.* at 708 n. (1).

8. FEBRERO, LIBRERIA DE ESCRIBANOS 2.7.1.56 (1789); Curia Philipica no. 26 at 316 (also identical with LA. CIV. CODE art. 2534, par. 2); DIGEST 21.1.19(6).

9. PROJET OF CIV. CODE OF 1825, 1 LA. LEGAL ARCHIVES 308 (1937).

10. *Id.* at 310.

On the basic policy issue concerning the period for bringing the redhibitory action, the protection of the purchaser against latent defects is counterbalanced not only by the protection of the vendor against uncertainty in his affairs but also by the interest of society in the stabilization of transactions. Under both the French and Spanish laws, there is the basic idea that this period should be short, and in the present case the difference between 13 months after the sale and 11 months after the delivery hardly seems to support an interpretation *contra legem.*

Another aspect of the prescription against the redhibitory action is brought out in *Mid-City Finance Co. v. Coleman*[11] which held that the period starts to run from the moment the vendor abandons his attempts to repair the defects. This matter was well discussed in the earlier case of *Brown v. Dauzat*[12] and in previous symposium comments[13] to the effect that the attempt to make repairs is an acknowledgment of responsibility and therefore constitutes an interruption of the prescription.

MINERAL RIGHTS

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THE LANDOWNER'S RIGHTS IN MINERALS

Unauthorized Removal of Minerals

White v. Phillips Petroleum Co.[1] is to be noted by a student in a later issue. However, this writer desires to express the view that the decision should be read with extreme care and limited to its specific facts. The case raises the question of the right of a landowner to recover for unauthorized removal of minerals. Without delving into details, it is safe to say that the law recognizes at least two remedies for such conduct: one in delict under which damages are measured by the value of the thing taken and the other in quasi-contract for the amount by which the defendant has been enriched as a result of the taking.[2] Early cases also applied the old "theory of the case" doctrine

11. 232 So.2d 918 (La. App. 4th Cir. 1970).
12. 157 So.2d 570 (La. App. 3d Cir. 1963).
13. *The Work of the Louisiana Appellate Courts for the 1963-1964 Term—Prescription*, 25 LA. L. REV. 352, 358-59 (1965).

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1. 232 So.2d 83 (La. App. 3d Cir. 1970).
2. Liles v. Producers Oil Co., 155 La. 385, 99 So. 339 (1924); Liles v. Barnhart, 152 La. 419, 93 So. 490 (1922); Martin v. Texas Co., 150 La. 556, 90 So. 922 (1921).