Louisiana Law Review

Volume 39 | Number 3
The Work of the Louisiana Appellate Courts for the 1977-1978 Term: A Faculty Symposium
Spring 1979

Ten Year Acquisitive Prescription: Good Faith and Interruption

Paul Slocomb West

ment in the Sunshine Act[56] provide broad access to substantial governmental information. Additionally, all states have enacted laws which in varying degrees minimize governmental secrecy.[57] And the saga of Watergate has reminded the American public that even without a constitutionally mandated right of access, the press can and will continue to perform its vital function as the watchdog of democracy.[58]

Dian Marie Tooley

TEN YEAR ACQUISITIVE PRESCRIPTION: GOOD FAITH AND INTERRUPTION

Defendant in a petitory action asserted ownership to certain lands under claims of ten[1] and thirty[2] year acquisitive prescription.[3] The Supreme Court of Louisiana recognized

accessibility of much governmental information, Congressional intent in amending the Act was to narrow the exemptions. *See,* Sen. Conf. Rep. No. 93-1200, 93d Cong., 2d Sess. 12 (1974).

See generally R. GORDON, THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT (1977); GOVERNMENT INFORMATION: FREEDOM OF INFORMATION ACT, SUNSHINE ACT, PRIVACY ACT 77 (1978); LITIGATION UNDER THE AMENDED FEDERAL FREEDOM OF INFORMATION ACT 3 (3d ed. 1977); S. THURMAN, THE RIGHT OF ACCESS TO INFORMATION FROM THE GOVERNMENT (Legal almanac series, no. 71. 1973).

In addition to legislative intent that the exemptions be narrowly construed, Attorney General Griffin Bell has advised federal agencies to comply with requests for information, adding the caveat that "the Justice Department will defend Freedom of Information Act suits only when disclosure is demonstrably harmful, even if the documents technically fall within the exemptions in the Act." Bell, *supra* note 51.

But see PRIVACY AND PUBLIC DISCLOSURES, *supra* note 3, at 107, where it is argued that the press often does not benefit from FOIA inasmuch as government has ten days to comply with requests. Thus the press may not receive the information in time to publish it. *See also* Nader, *Freedom From Information,* 5 HARV. C.R.-C.L. L. REV. 1, 2 (1970), where it is charged that the FOIA has been "forged into a shield against citizen access."

56. Pub. L. No. 94-409, 90 Stat. 1241 (1976).

57. Statutory references are compiled in S.THURMAN, *supra* note 55, at 67-84.

58. In lieu of the present free press clause in the first amendment, James Madison's proposed amendment would have read: "[T]he freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." I ANNALS OF CONG. 451 (Gales & Seaton eds. 1789).

1. LA. CIV. CODE arts. 3478-98.

2. LA. CIV. CODE arts. 3499-3505.

3. The plaintiff had already lost a possessory action brought by the defendant

plaintiff's title and, with respect to defendant's claim of prescription, *held*: (1) since defendant bought the property under a single deed in which part was transferred with full warranty of title[4] and part was transferred only by quitclaim deed,[5] the defendant lacked the good faith required to sustain ownership based on a claim of ten year acquisitive prescription; and (2) construction of a pipeline and maintenance of a twenty-foot wide servitude across the property, under a grant from the plaintiff, interrupted the defendant's possession as to the entire 106 acre tract.[6] *Board of Commissioners of the Caddo Levee District v. S.D. Hunter Foundation*, 354 So. 2d 156 (La. 1978).

Article 3479 of the Louisiana Civil Code lists four conditions which must be met in order to acquire ownership of an immovable through ten year acquisitive prescription.[7] They are (1) good faith, (2) just title, (3) possession during the time required by law, and (4) an object susceptible to acquisition through prescription. While *Hunter* involves each of the four criteria to a certain degree, this note deals primarily with good faith and possession during the time required by law.[8]

---

and this petitory action was brought within the time allowed by the judge in that case. *S. D. Hunter Foundation v. Board of Comm'rs*, 286 So. 2d 525 (La. App. 2d Cir. 1973). However, the court in the instant case held that the decision in the possessory action was not res judicata with respect to the petitory action and found plaintiff to be in possession of part of the land.

4. The defendants in this case were the S. D. Hunter Foundation and the widow of Hunter. Hunter acquired all the property and left it to his wife and the Foundation. Both the defendants and Hunter himself will be referred to as defendants in this note.

5. A quitclaim deed is defined as one intending "to pass on any title, interest, or claim the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or convenants of title." BLACK'S LAW DICTIONARY 1417 (rev. 4th ed. 1968).

6. LA. CIV. CODE art. 3517.

7. LA. CIV. CODE art. 3479 states:

> To acquire the ownership of immovables by the species of prescription which forms the subject of the present paragraph, four conditions must concur:
>
> 1. Good faith on the part of the possessor.
> 2. A title which shall be legal, and sufficient to transfer the property.
> 3. Possession during the time required by law, which possession must be accompanied by the incidents hereafter required.
> 4. And finally an object which may be acquired by prescription.

8. The *Hunter* case also dealt with the effect of a 1938 statute which made it impossible to acquire levee board lands by acquisitive prescription. 1938 La. Acts, No. 76, *repealed by* 1944 La. Acts, No. 247. The issue confronted was whether this statute

Article 3451 defines the good faith possessor as one 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."[9] This good faith is always presumed and he who denies it must rebut the presumption.[10] A blend of both objective and subjective factors must be examined when determining the issue of good faith.[11] Therefore, in order for a party to be in good faith, he must not only subjectively believe himself to be the owner, but this belief must be reasonable under the circumstances. This two-pronged examination mandates that each case be decided on its own facts, making it very difficult, if not impossible, to generalize that any one set of facts will always result in a finding of good or bad faith.[12]

---

interrupted or merely suspended prescription. The subject is quite complex and demands an in-depth analysis, making this note an improper forum for its resolution. Thus, the topic will be treated only briefly and in this footnote only.

The *Hunter* court held that the statute interrupted defendant's prescription and thereby nullified the accumulation of all previous years of possession. The majority felt that the articles concerning suspension of prescription, Civil Code articles 3521-27, deal with an existing inability to enforce a right, such as minority, interdiction or marriage. Finding no such inability present here, the court felt that the only alternate solution was that the statute interrupted prescription.

However, if one applies the same reasoning to the articles dealing with interruption of prescription, Civil Code articles 3516-20, it becomes obvious that a statute's repeal is not contemplated there either. The articles deal with two major ways by which prescription may be interrupted: 1) by an actual deprivation of possession of the prescriber, or 2) by a suit filed against him. Obviously, neither of these occurred. Thus, using the court's reasoning, prescription was not interrupted either.

The solution seems to be found in Civil Code article 3521, which is under the heading of suspension, saying that prescription runs against all unless excepted by law. The articles following give examples of groups excepted by law such as minors and those discussed above. Under the scheme of the Code, once the handicap is removed from these groups, prescription runs again at the point at which it was suspended. Therefore, the levee board could not be prescribed against because it was excepted by law. Once this exception was removed, the Code seems to state that the time should be treated as a suspension and not an interruption.

9. LA. CIV. CODE art. 3451. *See also* LA. CIV. CODE art. 503.

10. "Good faith is always presumed in matters of prescription; and he who alleges bad faith in the possessor must prove it." LA. CIV. CODE art. 3481.

11. Johnson, *Good Faith as a Condition of Ten Year Acquisitive Prescription*, 34 TUL. L. REV. 671, 673 (1960); Comment, *The Ten-Year Acquisitive Prescription of Immovables*, 36 LA. L. REV. 1000, 1002 (1976).

12. Comment, *The Ten-Year Acquisitive Prescription of Immovables*, 36 LA. L.

The courts of Louisiana did attempt just such a generalization when determining the effect of a quitclaim deed on the good faith of the vendee. Early jurisprudence held that a claim of ten year acquisitive prescription could not be based on a quitclaim deed because these deeds were indicative of bad faith.[13] However, in 1930, this line of jurisprudence was overturned in *Perkins v. Wisner*[14] which held that one may not automatically impute bad faith to a vendee who buys through a quitclaim deed. The *Perkins* court relied extensively on a United States Supreme Court opinion which rebutted the argument that a vendor would not sell by quitclaim unless he had doubts about the validity of his title.[15] The Supreme Court pointed out that there may be many reasons why a vendor would refuse to warrant his title even though he has no doubts about its validity; he may be a trustee, a corporate executive, or a guardian, and thus understandably reluctant to warrant title, or he may refuse for reasons known only to himself.[16]

REV. 1000, 1002 (1976).

13. *See, e.g.*, Hughey v. Barrow, 4 La. Ann. 248 (1849); Avery v. Allain, 11 Rob. 436 (La. 1845); Thomas v. Kean, 10 Rob. 80 (La. 1845); Reeves v. Towles, 10 La. 276 (1836).

14. 171 La. 898, 132 So. 493 (1930).

15. *Id.* at 495. The Supreme Court case relied on was *Moelle v. Sherwood*, 148 U.S. 21 (1892).

16. 148 U.S. at 28-29. The court stated:

> The doctrine expressed in many cases that the grantee in a quitclaim deed cannot be treated as a *bona fide* purchaser does not seem to rest upon any sound principle. It is asserted upon the assumption that the form of the instrument . . . indicates that there may be other and outstanding claims or interests which may possibly affect the title of the property, and, therefore, it is said that the grantee . . . cannot be a *bona fide* purchaser . . . . This assumption we do not think justified . . . . There may be many reasons why the holder of property may refuse . . . to execute a conveyance in such form as to imply a warranty of any kind even when the title is known to be perfect. He may hold the property only as a trustee or in a corporate or official character, and be unwilling for that reason to assume any personal responsibility as to its title . . . or he may be unwilling to do so from notions peculiar to himself; and the purchaser may be unable to secure a conveyance of the property desired in any other form than one of quitclaim . . . . *It would be unreasonable to hold that, for his inability to secure any other form of conveyance, he should be denied the position and character of a bona fide purchaser, however free, in fact, his conduct in the purchase may have been from any imputation of the want of good faith.* (Emphasis added.)

Id.

Thus, the automatic imputation of bad faith to a vendee who could obtain no more than a quitclaim deed is unreasonable according to the Court.

The question of quitclaim deeds and their effect on good faith reappeared in a different context in 1931. In *Nugent v. Urania Lumber*,[17] a circuit court was faced with determining the good faith of a vendee who bought property in a single deed, part warranted as to title and part by quitclaim, and who was asserting ownership through ten year prescription. The court refused to find this set of circumstances automatically indicative of bad faith.[18] However, in 1973, the same operative facts were present in *Board of Commissioners of Port of New Orleans v. Delacroix Corporation*,[19] and a different circuit held that such facts *were* necessarily indicative of the vendee's bad faith because he was put on notice that "something was wrong." This "something," the court explained, was that the vendor must have had doubts about the quitclaimed property or he would not have transferred it by quitclaim only.[20] Thus, at the time of *Hunter*, the courts were consistent in holding that deeds transferring either with a complete warranty or completely by quitclaim provided no automatic obstacle to a finding of good faith; however, when the two circumstances were combined in one act of sale, the circuits were in disagreement as to the effect on good faith.

The law dealing with the second major issue in *Hunter*, that of adverse possession sufficient to interrupt possession and therefore prescription, has had a less confusing history in Louisiana. *Hunter* forced the court to discuss two main issues in this area: (1) the ability of constructive possession to interrupt corporeal possession and (2) the determination of what conduct constitutes possession sufficient to actually interrupt, as opposed to merely disturb, possession so as to interrupt prescription.

The doctrine of constructive possession is defined in Civil Code article 3437 which states that possession of part of a tract

17. 16 La. App. 73, 133 So. 420 (2d Cir. 1931).
18. *Id.* at 422.
19. 274 So. 2d 745 (La. App. 4th Cir. 1973).
20. *Id.* at 748.

of land will constitute possession of the whole if this is the intention of the possessor.[21] However, the courts have not given this article the broadest possible interpretation and have held that the doctrine is inapplicable if another party is corporeally possessing the property or any part of it.[22] Thus, in *Robertson v. Morgan,*[23] the circuit court restricted the use of the doctrine by holding that plaintiff's constructive possession was lost when interrupted by defendant's corporeal possession. Later, in *Souther v. Domingue,*[24] another circuit held that in a factual situation involving the opposite circumstances, "mere constructive possession was . . . insufficient to oust . . . corporeal possession."[25] Thus, while corporeal possession is sufficient to oust constructive possession, constructive possession is not strong enough to interrupt or oust corporeal possession.

The most clear and concise discussion of this entire concept of adverse possession interrupting existing possession is found in *Liner v. Louisiana Land and Exploration Co.*[26] There, as a defense to a possessory action, it was argued that since plaintiff had not enjoyed possession quietly and *without interruption* for a year prior to the disturbance, as required to bring a possessory action,[27] he had no cause of action. Justice Tate, in a well reasoned concurrence denying an application for

21. LA. CIV. CODE art. 3437 states: "It is not necessary, however, that a person wishing to take possession of an estate should pass over every part of it; it is sufficient if he enters on and occupies a part of the land, provided it be with the intention of possessing all that is included within the boundaries."

22. Souther v. Domingue, 238 So. 2d 264 (La. App. 1st Cir. 1970); Robertson v. Morgan, 116 So. 2d 141 (La. App. 3d Cir. 1959).

23. 116 So. 2d 141 (La. App. 3d Cir. 1959).

24. 238 So. 2d 264 (La. App. 1st Cir. 1970).

25. *Id.* at 266. Interestingly, Justice Tate, the author of the instant opinion, earlier wrote the apparently conflicting *Souther* opinion while serving on the First Circuit Court of Appeal.

26. 319 So. 2d 766 (La. 1975)

27. One of the requirements for bringing the possessory action under Louisiana Code of Civil Procedure article 3662 is that the plaintiff has been in quiet and peaceful possession for a year prior to the disturbance complained of. Although *Liner* dealt with a possessory action, it is relevant to *Hunter* for two reasons: (1) the one year of undisturbed possession required to bring the possessory action was equated with the one year of undisturbed possession necessary to interrupt prescription, and (2) *Liner* dealt with the issue of what amount of adverse possession is necessary to interrupt, as opposed to disturb, possession.

rehearing, clarified the concept of interruption of possession "for what aid [it] may be in study for future applications of the article."[28] This explanation is pertinent to the instant case since *Hunter* held that the defendant's possession was interrupted by the maintenance of the servitude. Justice Tate explained that possession is not interrupted when merely disturbed, but is only interrupted when it is lost. The reasoning behind this statement was developed as follows: Article 3449 lists two ways in which possession can be lost without the consent of the possessor: (1) the possessor may be expelled and not allowed to re-enter, or (2) a third party may usurp the possession and hold it for a year without the possessor attempting to regain it.[29] The question which is raised by this article is whether it actually establishes two modes of loss of possession or just one. Tate pointed out that if article 3449(1) defines a mode of losing possession, then article 3449(2) becomes superfluous because the first mode will always be satisfied before the second. Thus, he states article 3449(1) is a mode of losing physical possession while 3449(2) is a mode of losing the right to possess.[30] This interpretation resulted in the conclusion that only article 3449(2) is a mode of interrupting, as opposed to disturbing, possession. This conclusion is bolstered by the fact that this time limit of one year coincides with the time necessary to commence the right to possess[31] and with the time necessary to interrupt prescription.[32] Therefore, the right to possess is not lost and prescription is not interrupted by adverse possession unless a possessor is evicted *and* remains out of possession for over a year.

---

28. 319 So. 2d at 779 (Tate, J., concurring).

29. LA. CIV. CODE art. 3449 states:

> A possessor of an estate loses the possession against his consent:
>
> 1. When another expels him from it, whether by force in driving him away, or by usurping possession during his absence, and preventing him from re-entering.
>
> 2. When the possessor of an estate allows it to be usurped and held for a year, without, during that time, having done any act of possession, or interfered with the usurper's possession.

30. The right to possess differs from the mere physical possession in many ways—*e.g.*, the right to bring a possessory action and the right to keep the fruits if the possession was in good faith.

31. *See, e.g.*, LA. CODE CIV. P. art. 3662(2).

32. LA. CIV. CODE art. 3517.

The facts of the *Hunter* case lent themselves to a thorough examination of article 3479 and more particularly, to the issues discussed above. Defendant had obtained two separate plots of land from two different vendors, both under acts of sale which transferred part with warranty and part by quitclaim deed. One tract, the disputed George Tract, was purchased in 1951 and therefore was insusceptible to a defense of thirty year acquisitive prescription. Thus the defendant relied on a defense of ten year prescription which the court rejected, holding that the defendant lacked the necessary good faith to sustain such a defense since the property had been acquired under a single deed containing both a warranted sale and a quitclaim deed.

The court decided that a reasonable person under the circumstances would have been put on guard that his vendee lacked ownership and therefore could not be found to have been in good faith. In this regard the court held, "this circumstance [part warranted, part by quitclaim] *alone* should have been sufficient, under the jurisprudence cited, to raise doubt in the purchaser's mind as to the vendor's title to the non-warranted . . . [tract], so as to defeat his good faith at the time of acquisition."[33]

The other tract, the Powell Tract, was acquired in 1948. Again, the land was acquired through one act of sale transferring part in warranty and part by quitclaim deed. Although plaintiff took note of this fact and argued absence of good faith, the court found it unnecessary to answer the question of good faith. Instead, the court opted to journey into another cloudy area of Louisiana property law, that of interruption of prescription by adverse possession. In 1951, plaintiff granted a pipeline servitude to a third party who built the pipeline in the same year and maintained the twenty-foot wide servitude up to and during the trial. The court reasoned that the maintenance of the servitude had interrupted defendant's possession under article 3449(2),[34] thereby interrupting prescription as to that area. Next, the court reasoned that under the doctrine of constructive possession[35] the construction of the pipeline and

33. 354 So. 2d at 162 (emphasis added).

34. For the text of article 3449, see note 29, *supra*.

35. LA. CIV. CODE art. 3437. For the text of this article, see note 22, *supra*.

maintenance of the servitude interrupted the possession and thereby the prescription as to the entire 160 acre tract. Thus, the court held defendant was not in legal possession at the time of the trial.[36]

An analysis of the reasoning of the court in *Hunter* discloses a plethora of problems and unresolved issues. Exemplary of these problems is the court's analysis of good faith. The court seemed to deny the presumption of good faith granted to all possessors by article 3481;[37] it never addressed the subjective good faith of the defendant and stated instead that, "where a deed itself indicates that a seller may not own the entirety of the property conveyed, the buyer is not presumed . . . to be a purchaser in good faith."[38] For this proposition, the court cited *Bel v. Manuel,*[39] in which a claim of ten year prescription based on a deed conveying an undivided interest in certain property was denied for want of good faith.[40] The court in *Bel* not only held that the deed alone put the vendee on notice but was also swayed by the fact that the vendee had already purchased an undivided interest in the property from a separate vendor and, therefore, must have been aware that he was not purchasing the entire tract.[41] This examination and recognition that the vendee lacked subjective good faith in *Bel* distinguishes it from *Hunter,* since in the latter, the court refused to investigate the subjective good faith of the defendant relying solely on the opinion that any good faith under this deed would be unreasonable.[42]

---

36. See note 3, *supra.*

37. See note 10, *supra,* for the text of article 3481.

38. 354 So. 2d at 162.

39. 234 La. 135, 99 So. 2d 58 (1958).

40. The *Bel* court was reluctant to allow a claim of ten year acquisitive prescription to be based on a title which transferred only the vendor's undivided interest. However, feeling bound to follow prior jurisprudence, the court chose to deny the claim on another ground. The court's lack of conviction would seem to weaken the strength of the case as authority concerning good faith.

41. 234 La. at 138, 99 So. 2d at 61.

42. The dissent of Chief Justice Sanders considered the subjective good faith of the defendant and argued that the acts of sale alone did not constitute bad faith. Thus, the Chief Justice would have held that the defendant owned both tracts through ten year prescription. 354 So. 2d at 156 (Sanders, C.J., dissenting).

The *Hunter* court, quoting from *Boyet v. Perryman*,[43] went on to state that "if a deed gives the purchaser any fact which should 'put a reasonably prudent person on guard, it then devolves upon him to pursue every lead and ferret out all the facts to the end that he may not purchase until he has complete information before him'."[44] The quoted case dealt with a vendee who had bought property through a deed which contained a legally deficient description of the land it purported to transfer. Therefore any relevancy the case has to the instant case is by analogy only. Further, the court lifted the quote out of context and altered its meaning. In its original form the quote read, "if the deed . . . contains a vague . . . description . . . *and* [if] it is necessary for the vendee to institute an investigation . . . *and* [if] such examination reveals facts and conditions which should put a reasonably prudent person on guard,"[45] then one must search and ferret out the facts. Even if one interprets *Boyet* as controlling in any case involving a deed which should put a reasonable person on notice, its relevancy to the instant case is still dependent on the basic premise that this deed is one which should have put defendant on notice. Reliance on this premise is a weakness in the court's logic which is readily apparent if the premise is examined.

The *Hunter* court felt that the deed alone destroyed the good faith of the defendant simply because it contained a warranted transfer and a quitclaimed transfer. In other words, the court felt that even if defendant had believed in his title, an issue the court never addressed, the claim would still have failed since this would have been unreasonable under the circumstances.[46] To strengthen this view the court called attention to and approved of two circuit court cases, *Delacroix* and *Board of Commissioners for Lafourche Basin Levee District v. Elmer*.[47] In *Delacroix*, the court concluded that the vendor "was aware of some deficiency in title for otherwise a portion of the property would not have been conveyed without war-

43. 240 La. 339, 123 So. 2d 79 (1960).
44. 354 So. 2d at 162.
45. 240 La. at 351-352, 123 So. 2d at 83. (emphasis added).
46. See text at note 11, *supra*.
47. 268 So. 2d 274 (La. App. 4th Cir.), *cert. denied*, 268 So. 2d 675 (1972).

ranty of title."[48] By imputing this doubt of the vendor to the vendee, the court found an absence of good faith.

This argument has two basic flaws: (1) the assumption that the vendor's bad faith should automatically be imputed to the vendee, and (2) the assumption that the deed is necessarily indicative of the vendee's doubts. That a vendor lacked confidence in his title should be totally irrelevant to his vendee's confidence in the title, unless that lack of confidence is conveyed to the vendee by the deed itself or by some other means which would put the vendee on notice that the title was invalid. Since the *Hunter* court never addressed the area of subjective good faith (notice by some other means) the only way the court could have found bad faith was through objective bad faith (notice in the deed itself).

In so holding, the court relied upon and approved *Delacroix*. The reasoning employed in *Delacroix* and followed in *Hunter* embodies the exact argument which was termed unreasonable by the United States Supreme Court in 1892[49] and rejected by the Louisiana Supreme Court in *Perkins v. Wisner* in 1930.[50] Nevertheless, the *Hunter* court adopted the *Delacroix* reasoning over that of *Nugent*.[51] The only possible method of reconciling the entire line of cases is to distinguish *Hunter* by the presence of the mixed warranties in one deed.

Thus, the second flaw in the court's argument becomes evident. Why does this circumstance alter the reasoning that a quitclaim deed is not necessarily indicative of bad faith? The court failed to give reasons why it should and it seems clear that it should not. Had the land passed by two separate acts, one warranted and the other a single quitclaim deed, the court could not, without reverting to pre-*Perkins* jurisprudence,[52]

48. 274 So. 2d at 748.

49. Moelle v. Sherwood, 148 U.S. 21 (1892). *See* note 16, *supra*.

50. See text at note 14, supra.

51. The court also made reference to Board of Comm'rs. for Lafourche Basin Levee Dist. v. Elmer, 268 So. 2d 274 (La. App. 4th Cir.), *cert. denied*, 268 So. 2d 675 (1972). This case, like *Bel* and unlike *Hunter*, investigated the subjective good faith of the vendee and remanded the case to determine whether the price of the sale was so low as to put this vendee on notice. The case does not support the proposition that the *Hunter* deed alone put the defendant on notice because the *Elmer* court went further and investigated the subjective good faith of the vendee.

52. See text at note 12, *supra*.

have held defendant in bad faith on the contents of the deed alone. The court would have been forced to look at the subjective good faith of the vendee to see if his belief was reasonable under the circumstances, just as the court should have done here.

Thus, the illogic behind the good faith determination is apparent. The premise that the deed alone could put the vendee in bad faith has no justification in the jurisprudence or the Code. Furthermore, the decision is inconsistent with the basic policy behind ten year acquisitive prescription of protecting a good faith vendee by finalizing his title. A good faith vendee may assert a claim of acquisitive prescription after a much shorter time of possession because he is unaware of the flaws in his title. This difference in time can, and very often does, mean the difference between retaining the property against an adverse claimant and losing it. Therefore, the courts should be very reluctant to find a vendee in bad faith and deny him this protection on the contents of his deed alone. Only in the most obvious cases should a court hold that under a certain set of circumstances any belief in one's title is totally unreasonable. That this is not such an obvious case should be apparent once one realizes that had the defendant purchased through two separate acts, the court would have been forced to examine subjective good faith.

When the court addressed the issue of interruption of possession of the Powell Tract, it embarked on another course of questionable logic.[53] The court was clearly correct when it held that the defendant had lost its possession of the twenty-foot strip. The area was corporeally possessed by the plaintiff's grantee for over a year without the defendant attempting to

53. One problem with the discussion of the interruption of possession was ever discussing it at all. The court stated that since the possession was interrupted, there was no need to discuss the question of good faith. It seems clear that it would have been more judicially efficient if the court had used the bad faith argument set forth in discussing the George Tract since the acts of sale were identical in both transactions. Having had the ten year defense destroyed by this bad faith argument, the defendant could have resorted only to a defense of thirty year prescription. With the court's determination of the issue of interruption by the statute (see note 8, *supra*), this defense also would have failed and the same result would have occurred without venturing into this cloudy area.

regain it. Thus possession and prescription were both interrupted.[54] On the other hand, there is no justification for the holding that this possession by plaintiff interrupted the defendant's possession as to the entire tract. As was stated in Justice Tate's concurrence in *Liner*, possession is only interrupted when it is lost.[55] Since plaintiff was not physically possessing any of the remainder of the tract, the only argument to sustain the court's conclusion is the doctrine of constructive possession.[56] However, as explained above,[57] the jurisprudence has held that constructive possession cannot outweigh corporeal possession. This is so because the adverse claimant must actually put the possessor on notice that he is intending to take possession of his land.[58] When one party is corporeally possessing land, the party wishing to usurp the possession must do so with a type of possession that is at least as strong as the current possessor's. In *Hunter*, defendant had corporeal possession whereas plaintiff was constructively possessing, at best. There is no evidence that defendant ever lost corporeal possession as to the remainder of the tract. On the contrary, the evidence showed that defendant continued to possess by erecting fences, posting signs and leasing the land for grazing purposes.[59] Certainly, this corporeal possession was enough for defendant to retain possession even if the initial construction of the pipeline disturbed it and plaintiff's constructive possession should have been insufficient to interrupt it. Thus, the *Hunter* court has allowed a clandestine possession[60] to interrupt an open and corporeal possession.

The above discussion should suffice to point out the problems one encounters in *Hunter*, but two potential fact situa-

54. Possession was interrupted under Civil Code article 3449 and prescription was interrupted under article 3517.

55. See text at notes 26-32, *supra*.

56. See text at note 21, *supra*.

57. See text at notes 22-25, *supra*.

58. Comment, *Elementary Considerations in the Commencement of Prescription on Immovable Property*, 12 TUL. L. REV. 608, 611 n.14 (1938).

59. Board of Comm'rs of the Caddo Levee Dist. v. S.D. Hunter Foundation, 342 So. 2d 720, 727 (La. App. 2d Cir. 1977).

60. 1 M. PLANIOL, CIVIL LAW TREATISE, pt. 1, at 346 (1st ed. La. St. L. Inst. Transl. 1959).

tions may help to further emphasize the dangers that have been created by the holdings. After *Hunter*, if a vendor sells in a single act of sale, two tracts of land, one owned by him personally and fully warranted and the other owned by a trust of which he is the trustee and sold by quitclaim, his vendee will always be found to be in bad faith. Since this will be decided on the deed alone, it will make no difference if the vendee was fully confident that the title was valid and the property his. The court in such a case can cite *Hunter* and never question the subjective good faith of the vendee—he will be in bad faith as a matter of law.

Secondly, assume that a person corporeally possesses a 1,000 acre tract of land. Does *Hunter* support the proposition that the holder of title need only possess a twenty-foot strip of land across one corner in order to interrupt possession of the entire tract even though the first possessor still retains corporeal possession of the remainder? It seems that *Hunter* holds precisely that. In both of these hypothetical situations, the inequitable results that may arise from future applications of the court's holding become readily apparent.

Paul Slocomb West