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A Riddle of Solidarity: The Release of One Solidary Obligor

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A RIDDLE OF SOLIDARITY: THE RELEASE OF ONE SOLIDARY OBLIGOR

Act 331 of 1984, effective January 1, 1985, amended and reenacted Titles III and IV of Book III of the Louisiana Civil Code.[1] One area of the law affected by this revision concerns the riddle of solidarity embodied in OA 2100, 2101, and 2203.[2] When these articles were read in conjunction with one another, they generated great confusion in our courts.[3]

The confusion arose where a creditor, upon receiving the proportionate share of one solidary obligor, renounced the solidarity in this obligor's favor without expressly reserving the debt *in solido* against the remaining obligors. Similar difficulties arose where the creditor granted a partial remission of the debt in favor of one solidary obligor without reserving his claim against the remaining obligors. In most cases, the creditor's intention was to merely make a personal discharge as to one of the solidary obligors, not to discharge the debt in its entirety. Louisiana courts consistently held, however, that according to OA 2203, the release of one solidary obligor operated to release all solidary obligors in the absence of an express reservation by the creditor. This was based upon the legal presumption that the creditor who discharged one solidary obligor obviously sought to discharge the entire debt. As a result, the riddle was: how could the obligee renounce solidarity in favor of one solidary obligor and accept his partial performance, in accordance with OA 2100 and 2101, without losing his right of action against the remaining solidary codebtors for the balance of the debt?[4]

This confusion stems from the wording and substance of the old articles.[5] OA 2100 and 2101 made no mention of the necessity of a reservation where the creditor renounced solidarity and released one of

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1. Articles 1756-2291 of the Louisiana Civil Code of 1870 [hereinafter cited as OA (old articles)] were repealed and replaced by new articles 1756-2057 [hereinafter cited as NA]; see 1984 La. Acts, No. 331, § 1.

2. Solidarity exists in solidary obligations, also called obligations in solido. See NA 1794 which restates the rule of OA 2091: "An obligation is solidary for the obligors when each obligor is liable for the whole performance. A performance rendered by one of the solidary obligors relieves the others of liability toward the obligee." See also 1 S. Litvinoff, Obligations § 21, at 41, in 6 Louisiana Civil Law Treatise (1969).

3. The text of these articles is set out in the text accompanying notes 29-37 infra.

4. For some cases where OA 2100 and 2101 should have applied, see, e.g., Fridge v. Caruthers, 156 La. 746, 101 So. 128 (1924); Irwin v. Scribner, 15 La. Ann. 583 (1860); compare Billeaudeau v. Lemoine, 386 So. 2d 1359 (La. 1980) (where the court applied OA 2100 and later inconsistently applied OA 2203); Hemphill v. Strain, 371 So. 2d 1179 (La. App. 1st Cir. 1979); Sly v. New Orleans T. & M. Ry., 142 So. 276 (La. App. 2d Cir. 1932).

5. For the text of these articles, see infra text accompanying notes 29-37.

the solidary obligors. OA 2203, on the other hand, contained the blanket assertion that in the absence of an express reservation, a discharge in favor of one solidary obligor operated as a discharge of all the other solidary obligors. The difficulty and uncertainty created by these articles can be traced back to the Louisiana Supreme Court's decision in *Irwin v. Scribner*.[6]

In *Irwin*, the plantiff brought an action against five tortfeasors bound *in solido* for damages caused by a battery on the plantiff and an injury to one of his slaves.[7] Soon after the trial began, the plantiff settled with two of the solidary obligors without expressly reserving his rights against the others.[8] The court in *Irwin* stated:

> The discharge of one debtor in solido . . . in general discharges all the co-obligors, for the reason that there is but one debt, although due by several; and hence, there can be but one satisfaction of the same. In this class of obligations, the Code has made an exception in the single case where the creditor, releasing one of his debtors, has expressly reserved his right against the other debtors in solido, and then he is obliged to credit the other co-debtors with the amount so remitted.[9]

Thus, the plantiff's claim against the three remaining solidary obligors was dismissed. Neither the court nor the plantiff acknowledged articles

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6. 15 La. Ann. 583 (1860).

7. Apparently, the court found that all five of the defendants were joint tortfeasors bound in solido under Civil Code article 2304 (1825), which became Civil Code article 2324 (1870). See La. Civ. Code art. 2324 (1972 Comp. Ed., in 17 West's La. Stat. Ann.—Civ. Code). Otherwise, the court would not have been able to justify the application of articles concerning solidary obligors. The record is devoid of any reference to this issue.

8. The court's interpretation that the plantiff failed to reserve his rights in the receipt is questionable. The receipt read:

> Irwin v. Scribner et al.-No. 5951. In this case it is agreed that John Webb and Theodore H. Scribner are to pay each eighty dollars, their share of the costs accrued up to this date, and they are to pay this sum whether there be judgment for or against defendant. And the plantiff pledges himself and hereby promises to exact no more than the aforesaid sum from said Webb and Scribner, under any circumstances; and should there be judgement against defendant for damages, plantiff hereby remits all damages and additional costs which may be recovered against the said Webb and Scribner.
>
> It is not the intention of the parties to this agreement, to prejudice or favor the trial against the other defendants, but merely to fix the amount required of said Webb and Scribner, as all the defendants are supposed to be liable in solido.

15 La. Ann. at 584. This receipt, read as a whole, is easily susceptible of an interpretation that the plaintiff was merely dividing the debt in favor of these two solidary obligors in order to receive a payment for their share. He intended to leave the balance of the debt and the remaining obligors unaffected. The second paragraph of the receipt should have satisfied the requirement of an express reservation.

9. 15 La. Ann. at 584.

2096 and 2097 from the Civil Code of 1825, the predecessors to OA 2100 and 2101.[10]

In *Fridge v. Caruthers*,[11] the plantiff pointed out to the court that, "there is a conflict between article 2100 and article 2203,"[12] and he asked the court to follow 2100. To this end, the court replied:

> If there be such a conflict, then it clearly behooves us to choose which of the two articles we should follow; and having once so chosen, consistency would then require us to adhere to that choice, to the end that there may be some certainty about the law on the subject.
>
> But our predecessors have uniformly chosen to follow article 2203, and not article 2100.[13]

In each of these cases, the creditor's intention was to merely remit the solidarity in favor of one solidary obligor and accept his payment, while reserving the creditor's right against the other solidary debtors. Under the proper interpretation of OA 2100 and 2101, these creditors would have retained their rights without the necessity of an express reservation. Instead, Louisiana courts have consistently chosen to apply OA 2203 which operated to discharge all solidary obligors.[14] When did OA 2100 and 2101 apply? To solve this riddle we must consider the two distinct principles which were encompassed by these former Code provisions—renunciation of solidarity and remission of the debt.[15]

Renunciation of Solidarity

The first of these, renunciation of solidarity or "conventional discharge," is in essence the division of the debt.[16] Where the creditor renounces solidarity as to all of the debtors, the solidarity is extinguished and each debtor becomes liable only for his share.[17] The effect of this

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10. The texts of Civil Code articles 2096 & 2097 (1825) are identical to those of OA 2100 & 2101. See La. Civ. Code arts. 2100-2101 (1972 Comp. Ed., in 16 West's La. Stat. Ann.—Civ. Code).

11. 156 La. 746, 101 So. 128 (1924).

12. Id. at 752, 101 So. at 130.

13. Id.

14. See cases cited supra note 4.

15. For a good discussion of these principles, see Comment, Remission in the Civil Law, 2 La. L. Rev. 365 (1940).

16. See OA 2100 & 2101, set out in the text accompanying note 29 infra; 4 C. Aubry & C. Rau, Droit Civil Francais, § 298(b) at 34 (E. Bartin 6th ed. 1942) in 1 Civil Law Translations (A. Yiannopoulos ed. & trans. 1965); 2 M. Planiol, Treatise on the Civil Law pt. 1, no. 772, at 415 (11th ed. La. St. L. Inst. trans. 1959); 1 M. Pothier, A Treatise on the Law of Obligations, or Contracts no. 277, at 235-36 (W. Evans trans. 3d ed. 1853).

17. Planiol calls this a general remission, see 2 M. Planiol, supra note 16, no. 773, at 416; see also 4 C. Aubry & C. Rau, supra note 16, § 298(b)(5), at 34.

is to transform the obligation from solidary to joint.[18] Where the creditor divides the debt only as to one of the debtors, the remaining debtors continue to be liable *in solido* for the balance. They may, however, deduct the portion of the obligor in whose favor solidarity was remitted.[19] Should one of the remaining debtors become insolvent, the obligor in whose favor solidarity was remitted becomes indebted for his share of that portion owed by the insolvent debtor.[20]

The creditor in whose favor solidarity has been established may assent to a division of the debt either expressly (by mentioning it in the receipt) or tacitly (by giving a receipt to the obligor which states that it is "for his share").[21] There is nothing sacramental about the form in which this remission must be made as long as the creditor's intention is clear. Where the receipt fails to reveal any such intention, however, the obligor remains solidarily liable for the balance.[22]

Remission of the Debt

In contrast to renunciation of solidarity, a remission of the debt occurs when the creditor discharges the debt in part or in its entirety.[23] The creditor may do this regardless of whether he is transacting with one or all of the solidary obligors. When the creditor discharges the entire debt, the natural result is the discharge of all the debtors. The obligee's cause in remitting the debt may be gratuitous or onerous.[24] In

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18. See NA 1789 which reproduces the substance of OA 2085, 2086, 2087, and 2113. This article changes the law insofar as it distinguishes between divisible and indivisible joint obligations. See, NA 1789 comment (a) in 1984 La. Acts, No. 331, § 1; see also 1 S. Litvinoff, supra note 2, § 22, at 41.

19. See OA 2100 & 2101, the text of which is reprinted infra text accompanying note 29; 4 C. Aubry & C. Rau, supra note 16, § 298(b)(5), at 34; 2 M. Planiol, supra note 16, no. 774, at 416.

20. See NA 1806 which reproduces the substance of OA 2104 and 2105. "A loss arising from the insolvency of a solidary obligor must be borne by the other solidary obligors in proportion to their portion. Any obligor in whose favor solidarity has been renounced must nevertheless contribute to make up for the loss." See also 2 M. Planiol, supra note 16, no. 775, at 416; contra 4 C. Aubry & C. Rau, supra note 16, § 298(b) at 34; 1 M. Pothier, supra note 16, no. 275, at 235.

21. Accord Baldwin v. Gray, 4 Mart. (n.s.) 192 (La. 1826). See OA 2100, the text of which is set out infra text accompanying note 29. See also OA 2101; 4 C. Aubry & C. Rau, supra note 16, § 298(b), at 35; 2 M. Planiol, supra note 16, no. 776, at 416; 1 M. Pothier, supra note 16, no. 277, at 236.

22. See Bank of Winnfield v. Red Bayou Oil Co., 2 La. App. 466 (2d Cir. 1925); 1 M. Pothier, supra note 16, no. 277, at 237.

23. See NA 1888-1892; 4 C. Aubry & C. Rau, supra note 16, § 323, at 223; 1 S. Litvinoff, supra note 2, § 369, at 632; 2 M. Planiol, supra note 16, nos. 604-619, 749(4), at 329-35, 403.

24. The French call the gratuitous discharge a remission of the debt. See 1 S. Litvinoff, supra note 2, § 360, at 626. An onerous discharge is more properly termed a transaction

either case, the intent of the obligee is to discharge the entire debt, not merely to divide it.

Under the old law, difficulties arose where the obligee sought to make only a partial remission of the debt in favor of one solidary obligor. Assume, for example, that A, B, and C are liable *in solido* to Z for $3000. Since A is Z's favorite nephew, Z renounces the solidarity in favor of A and tells him to forget about paying his share of the debt. Z intends to leave the balance of the debt and the remaining obligors unaffected. If Z failed to reserve his right against B and C, however, OA 2203 caused them to be released.[25] The result is the same as if Z had remitted the debt in its entirety.

Compare this with the situation where the obligee accepts one solidary codebtor's proportionate share. Assume the situation is the same as above, except Z now decides to divide the debt in favor of A in exchange for A's payment of his share. Subsequently, Z executes a receipt for A which acknowledges that A has paid "his part." According to OA 2101, Z has renounced the debt in solido only with regard to A. He should still have a right to proceed against either B or C for $2000. In the absence of a reservation of this right, however, Louisiana courts consistently have held that Z's discharge of A would result in the release of B and C also.[26] Again, the result is the same as if Z had remitted the entire balance.

As these examples demonstrate, the problem in remitting a debt surfaced where the obligee desired to discharge only one solidary obligor, yet failed to reserve his claim against the others. The obligee's intention was to make a personal discharge to a certain codebtor, not to discharge his claim in its entirety. This appears to be exactly the situation which arose in *Irwin* and *Fridge*, and it is this expression of intent as governed by OA 2203 which forms the crux of the riddle. If the creditor who released one solidary codebtor failed to reserve his right to proceed against the others, this right was extinguished. This was the result called

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or compromise. See La. Civ. Code art. 3071 (Supp. 1984); 1 S. Litvinoff, supra note 2, §§ 372-379, at 636.

25. See Fridge v. Caruthers, 156 La. 746, 101 So. 128 (1924). While defining the effects of OA 2203, the court in *Fridge* stated:

> This article of our Code is a literal translation of article 1285 of the French Code. The French commentators are unanimous in holding that the article means just what it says: From the fact that the creditor renounces his right as to one (of the solidary debtors) the law concludes that he intends to renounce his right as to all. Each of the solidary obligors is liable for the whole debt as the principal debtor to the creditors and is only liable as surety to his codebtors, and that is why the creditor may not discharge one without discharging the others.

156 La. at 752, 101 So. at 130.

26. See cases cited supra note 4.

for by OA 2203, which established an artificial presumption that the creditor had renounced his property right in the absence of an express reservation.[27]

The concept of solidarity originated as a means of assisting the contractual obligee or innocent tort-victim in securing his entire claim from any one of the debtors.[28] Yet the operation of OA 2203 proved to be a trap for the unwary creditor, as well as a deterrent to transactions and compromises particularly since the requirement of a reservation probably would not be apparent to a layperson. Many solidary obligors were released because of this presumption that the creditor had renounced his right. Additionally, because of the confusion created by the old articles, many cases remained on the docket which could have otherwise been settled or in which the creditor no longer had a right of action.

The inequity and confusion which arose as a consequence of this riddle have plagued civil law jurisdictions for over a century.[29] But now the drafters of the Revision solved the riddle with the adoption of new articles (NA) 1802 and 1803.

The Revision

Old Law	New Law
OA 2100. Creditor's division of obligation as to one debtor The creditor, who consents to the division of the debt with regard to one of the codebtors, still has an action *in solido* against the others but under the deduction of the part of the debtor whom he has discharged from the debt *in solido*.	NA 1802. Renunciation of solidarity Renunciation of solidarity by the obligee in favor of one or more of his obligors must be express. An obligee who receives a partial performance from an obligor separately preserves the solidary obligation against all his obligors after deduction of that partial performance.
OA 2101. Creditor's acceptance of proportionate share from one debtor	

27. See, e.g., Johnson v. Ford Motor Co., 707 F.2d 189 (5th Cir. 1983). But cf. Cowley Corp. v. Shreveport Packing Co., 440 So. 2d 1345, 1351 (La. App. 2d Cir. 1983) ("While the remission of a debt cannot be revoked by the creditor, remission is never presumed unless it clearly appears that the creditor intended it."); Meadow Brook Nat'l Bank v. Massengill, 285 F. Supp. 55, 58 (E.D. La. 1968), aff'd, 427 F.2d 1055 (5th Cir. 1970) ("One is not presumed to waive his rights against debtors in solido unless such intent is clearly manifested.").

28. For a cursory review of the development of this concept, see Comment, Prescribing Solidarity: Contributing to the Indemnity Dilemma, 41 La. L. Rev. 659, 663 (1981).

29. See Irwin v. Scribner, 15 La. Ann. 583 (1860); 1 M. Pothier, supra note 16, no. 278, at 239.

The creditor, who receives separately the part of one of the debtors, without reserving in the receipt the debt *in solido* or his right in general, renounces the debt *in solido*, only with regard to that debtor.

The creditor is not deemed to remit the debt *in solido* to the debtor when he receives from him a sum equal to the portion due by him, unless the receipt specifies that it is for his part.

The same is to be observed of the mere demand made of one of the codebtors, for his part, if the latter has not acquiesced in the demand or if a judgment has not been given against him.

Article 1802 of the Revision is a change in the law which displaces the confusing wording of OA 2100 and 2101. NA 1802 eliminates the presumption of a renunciation of solidarity in favor of a solidary obligor who partially performs, unless a receipt specifies that it is for his portion. This is consonant with the principle that a party should not be presumed to have given up a right in the absence of a clear intent to do so.[30]

The first sentence of NA 1802, while explaining that the renunciation must be express, should not be taken to imply that it must be made in solemn form.[31] A tacit remission by the giving of a receipt specifying that the obligor has performed "his part" would be a clear expression of the obligee's intent sufficient to renounce solidarity.[32] The remaining obligors continue to be solidarily liable for the balance.

The second sentence contemplates the situation where the obligee receives the partial performance of a still undivided debt. In the absence of an express renunciation, all of the obligors remain solidarily liable for the balance after deducting the partial performance—regardless of whether the partial performance equaled the performing obligor's portion or was less or more than that portion.[33] Should one of the solidary

30. See 1 M. Pothier, supra note 16, no. 277, at 237.

31. See NA 1802, comment (b). Cf. Baldwin v. Gray, 4 Mart. (n.s.) 192 (1826).

32. Baldwin v. Gray, 4 Mart. (n.s.) 192, 194-95 (1826); Benton v. Roberts, 1 Rob. 101, 105 (La. 1841); see also NA 1802, comment (b).

33. See 1 M. Pothier, supra note 16, no. 277, at 237, where the author states:

> When the creditor has given one of his debtors in solido an acquittance purely and simply for a certain sum, which is precisely the amount for which he is liable with respect to his codebtors, without expressing that it is *for his part*,

obligors prove insolvent, the others must make up his share regardless of any division of the debt in their favor. Although there are conflicting views on this point, this seems to be the most equitable solution since the law should not deter the obligee from dividing the debt.[34]

Assume again that A, B, and C are liable in solido to Z for $3000. A tenders $1000 to Z. Under the new law, A is still solidarily liable for the balance, unless Z gives him a receipt which expressly mentions the renunciation of solidarity or which states that his payment is "for his part." Z separately preserves the solidary obligation against B and C without the necessity of an express reservation. Under the old law, as interpreted by our courts, unless Z expressly reserved the debt in solido against B and C, he could lose $2000. In the absence of such a reservation, Louisiana courts had presumed that the obligee intended to discharge all of the solidary obligors despite his pleas to the contrary.[35] It seems clear that in many cases, the obligee intended only to divide the debt and receive the performance of one obligor, while reserving his claim for the balance of the debt in solido against the remaining obligors.

Old Law	New Law
OA 2203. Remission as to one codebtor in solido The remission or conventional discharge in favor of one of the codebtors *in solido*, discharges all others, unless the creditor has expressly reserved his right against the latter In the latter case, he can not claim the debt without making a deduction of the part of him to whom he has made the remission.	NA 1803. Remission of debt to or transaction or compromise with one obligor Remission of debt by the obligee in favor of one obligor, or a transaction or compromise between the obligee and one obligor, benefits the other solidary obligors in the amount of the portion of that obligor Surrender to one solidary obligor of the instrument evidencing the obligation gives rise to a presumption that the remission of debt was intended for the benefit of all the solidary obligors.[36]

The first paragraph of NA 1803 contains one of the most dramatic changes in the law incorporated into the Revision. It establishes that the gratuitous remission of the debt in favor of one solidary obligor

is the creditor presumed to have released his right of solidity? I think it ought not to be so presumed . . . .

34. For conflicting views, see authorities cited supra note 20.

35. See cases cited supra note 4.

36. The second paragraph of this article reproduces the substance of OA 2200. It does not appear to change the law since it is doubtful that the legislature intended to create an irrebutable presumption in this provision by the elimination of the phrase: "But proof may be adduced to the contrary."

does not extinguish the entire debt, but merely reduces the solidary obligation by the remitted share. No particular form is required for a remission to be effective.[37] The authentic act requirement for donations *inter vivos* is not necessary when the donation takes the form of a remission of a debt.[38]

The result is the same where the obligee compromises his claim with one of the solidary obligors. The remaining debtors continue to be liable for the balance after deducting the virile share of the released debtor.[39]

The wording of the first paragraph clearly indicates that although there has been a remission or compromise in favor of one solidary obligor, the creditor need make no express reservation in order to retain his rights against the others. This is the antithesis of the first paragraph of OA 2203 and the 150 years of corresponding jurisprudence. This article eliminates the uncertainty which arose where the obligee discharged one solidary obligor without an express reservation of his rights against the other solidary obligors. Under the old law, Louisiana courts declined to distinguish between the situation where the obligee intended a renunciation of solidarity in exchange for the proportionate share of one solidary codebtor and the situation where he intended a remission of the entire debt.

Using the previous example, assume again that A, B, and C are solidarily liable to Z for $3000. A is still Z's favorite nephew, so Z settles for $400 as A's portion of the debt. Does Z still have any rights against B and C? Under the new law, Z may proceed against either B or C for $2000. These remaining solidary obligors benefit from the partial remission in the amount of A's portion ($1000).[40] Under the old law, however, B and C would have been discharged along with A if Z had been unaware of the necessity of an express reservation.

Specificity of the Receipt

While the new law will remedy much of the confusion of the past, difficulties remain when one of the solidary obligors is insolvent.[41] The

37. There is nothing sacred about the form in which a remission must be made. See Gulf States Fin. Corp. v. Moses, 56 So. 2d 221 (La. App. 2d Cir. 1951); see also 4 C. Aubry & C. Rau, supra note 16, § 323, at 220; 2 M. Planiol, supra note 16, no. 607, at 330; 1 S. Litvinoff, supra note 2, § 371, at 634. It has been held, however, that where the remission of the debt involves a disposition *mortis causa*, it is ineffective unless the requisite testamentary form has been observed. See Succession of Mathews, 158 So. 233 (La. App. Orl. 1935).

38. See 4 C. Aubry & C. Rau, supra note 16, § 323, at 222-23; 2 M. Planiol, supra note 16, no. 608, at 331; 1 S. Litvinoff, supra note 2, § 371, at 634-35.

39. Cf. Landry v. NOPSI, 177 La. 105, 147 So. 698 (1933); Middleton v. Rheem Mfg. Co., 34 So. 2d 271 (La. App. Orl. 1948).

40. Cf. New York Life Ins. Co. v. Palermo, 30 So. 2d 228 (La. App. Orl. 1947). The settlement inures to the benefit of the codebtor whose debt was reserved.

41. For an excellent discussion on the effects of the insolvency of a solidary obligor, see Chamallas, Comparative Fault and Multiple Party Litigation in Louisiana: A Sampling of the Problems, 40 La. L. Rev. 373, 387-96 (1980).

second sentence of NA 1806 states that any debtor in whose favor solidarity has been renounced must nevertheless contribute his portion when there is an insolvent among the remaining debtors.[42] Meanwhile, comment (d) to NA 1803 states: "In case of insolvency of a solidary obligor after the obligee has remitted the debt in favor of another, the loss must be borne by the obligee."[43] Difficulties will arise because, logically, any partial remission of the debt in favor of one solidary obligor must necessarily involve a division of the debt as well. The obligee can not release one solidary obligor for his portion, with the intent of retaining his claim for the balance, unless he first renounces solidarity as to that obligor. Otherwise, the obligee would be remitting the entire debt. Thus, the partial remission in favor of one solidary obligor is a two-step process.

Though not as harsh, this could also prove to be a trap for the unwary creditor. While neither a renunciation of solidarity nor a remission of the debt need be made in solemn form, it is still crucial that the obligee clearly specify his intent in any type of release given to a solidary obligor.[44] Using the same example as above, A approaches Z and offers to pay his virile share if Z will agree to renounce solidarity in A's favor. Z, who sincerely desires to recover the total debt, agrees to accept A's proportionate share. To insure a complete recovery, Z must carefully word A's receipt; the receipt which Z executes in favor of A should state that Z has merely renounced the solidarity in favor of A in order that he may pay "his part." Any reference to releasing A from any further liability must be avoided in order for A to remain liable for his portion, should B or C prove insolvent, since comment (d) to NA 1803 would place a loss due to insolvency upon Z. If the court is unable to perceive clearly the intent of the obligee, it could presume that the creditor intended a final discharge of the obligor in whose favor solidarity was renounced.[45]

Assume now that Z wants to make a partial remission of the debt in favor of his nephew A. Z executes a receipt in favor of A which states that A is released form all further liability. Under the new law, Z no longer need make an express reservation of his claim against B and C. Should B prove insolvent, however, Z may only recover $1500 from C.[46]

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42. For the text of NA 1806, see supra note 20.

43. 1984 La. Acts, No. 331, § 1.

44. NA 1802, comment (b); see supra notes 37-38.

45. It seems likely that when confronted with such a situation, Louisiana courts would be influenced by their interpretation of the old law and favor a complete discharge of the obligor.

46. Although Z could seek the balance of $2000 against C, C would be able to claim the deduction of A's portion of B's share.

Conclusion

Apparently, the fundamental difference between the new and old articles dealing with the release of one solidary obligor is how the new articles facilitate the true expression of the obligee's intent. No longer is an affirmative act on the part of the creditor required to defeat an artificial presumption of the law. With the obvious exception of liberative prescription, it is generally an undesirable law which extinguishes a person's property right in the absence of an affirmative act on his part. Such a law would be contrary to the principle that no one is presumed to give up a right. The solidarity which was established to strengthen the obligee may now fulfill its purpose without at the same time placing the obligee in a precarious situation. Our legislators and drafters have taken a giant step toward injecting clarity and consistency in the law, where confusion and uncertainty once prevailed.

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