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Revival of Judgments

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(4) The Louisiana law of default is reconcilable with the doctrine.

(5) Article 2052, while on its face presenting some objection to the doctrine, can be reconciled with the doctrine by reading the article in conjunction with Articles 2053 and 1932.

There are, however, certain areas of the Louisiana law which may well require some modification in the anticipatory breach doctrine.

(1) Article 2047 of the Code may well overcome the common law rule that a repudiator may not retract his repudiation after suit is brought by the repudiatee in reliance on the repudiation.

(2) It is possible that the Louisiana rule as to the calculation of damages will cause some qualification of the anticipatory breach doctrine.[80]

David W. Robertson

Revival of Judgments

Following the rendition of a favorable judgment, the plaintiff looks next to execution thereon. Often, however, there are reasons which prevent successful execution at that time. For example, if the judgment is one for money, immediate execution may be deterred by reason of the defendant's insolvency. Therefore, in those legal systems which place a limitation on the life of a judgment there must be some means provided to extend this period if execution is not to be barred by the mere lapse of time. The purpose of this Comment is to compare the procedure permitting extension of the life of a judgment at the common law, in France, and in Louisiana. Major emphasis is placed on the revival of judgments in Louisiana and the contributions of the proposed Louisiana Code of Civil Procedure in this area.

Revival of Judgments at Common Law

At common law, if execution was not issued upon a judgment within a year and a day, the judgment became dormant. After this period it was presumed that the judgment had been satis-

80. For another discussion of the anticipatory breach doctrine in Louisiana see Comment, *Anticipatory Breach in Louisiana*, 7 TUL. L. REV. 586 (1933).

fied and the judgment creditor could not obtain execution without further resort to the courts.[1] In personal actions the judgment creditor was obliged to bring an original action of debt if execution had not been issued timely.[2] In real actions an original action of debt would not lie.[3] However, since any execution issued on real actions was required to be entered upon the judgment roll, the judgment creditor could resort to the writ of *scire facias* to obtain execution if the roll showed that there had been no prior execution within a year and a day.[4] The writ of *scire facias* was a summary proceeding in which the judgment debtor was cited to show cause why execution should not issue on the dormant judgment.[5] In 1285 *scire facias* was made available by statute to revive dormant personal judgments.[6] The major advantage of this summary proceeding was to relieve the judgment creditor from the tedious and intricate pleadings at common law.[7] Apparently there was no time limit within which a judgment could be revived.[8]

The problems presented by the "eternal judgment" with its accompanying lien upon the debtor's property are self evident. Certainty of title to real property could never be assured under such a system. It was also felt that the unlimited life of a judgment placed an onerous and undesirable burden on the judgment debtor.[9] Such considerations prompted early remedial legislation in the American states.[10] Statutory periods of limitation on execution and revival of judgments have now largely replaced or drastically modified the early remedies of *scire facias* and action of debt in this country.[11]

1. See 3 BLACKSTONE'S COMMENTARIES 421 (1766); 2 TIDD'S PRACTICE 1101 et seq. (1840).
2. COKE, SECOND INSTITUTES 469 (1797); GILBERT, EXECUTIONS 92 (1763).
3. COKE, SECOND INSTITUTES 469 (1797).
4. 2 TIDD'S PRACTICE 1101 (1840).
5. See note 1 *supra*.
6. Statute of Westminster II, 1285, 13 EDW. I, c. 45.
7. COKE, SECOND INSTITUTES 469 (1797). Since the statute making the writ of *scire facias* available in personal actions was couched in affirmative language, it did not preclude the common law remedy of an original action of debt on the judgment. Therefore the remedies were cumulative. *Id.* at 471.
8. The Statute of Limitations, 21 Jac. 1, c. 16, § 3 (1623), excepted actions of debt upon a specialty and therefore did not apply to judgments. BALLANTINE, STATUTE OF LIMITATIONS 83, 86 (1810).
9. See Riesenfeld, *Collection of Money Judgments in American Law — A Historical Inventory and a Prospectus*, 42 IOWA L. REV. 155 (1957).
10. *Ibid.*
11. Fed. R. Civ. P. 81B abolished the writ of *scire facias* in federal courts and substituted an appropriate motion therefor. See Michael v. Smith, 95 App. D.C. 186, 221 F.2d 59 (1955). In Minnesota it is provided that: "No action shall be maintained upon a judgment or decree of a court of the United States, or of any

The French System

There is no specified procedure for the revival of judgments in France. This is probably due to the process of "substitution of prescription" which prevails in that country. If a judgment is definitive the thirty-year prescription under Article 2262 of the French Civil Code[12] is substituted for the shorter prescriptive period which was applicable before institution of the suit.[13] For example, Article 189 of the French Code of Commerce provides in part that all actions relative to letters of exchange which have been underwritten by bankers are prescribed by five years if there has been no condemnation of the debtor.[14] However, if a definitive judgment has been rendered thereon, the thirty-year prescription of Article 2262 of the French Civil Code is substituted for the shorter prescription of five years provided for by the Commercial Code.[15] The thirty-year prescription which is substituted for a shorter prescription by a definitive judgment may be interrupted by any of the methods provided for the interruption of any prescriptive period.[16] According to the French Civil Code the methods of interrupting prescription are citation, a writ of demand or attachment served upon the debtor,[17] or his admission of the debt.[18]

Contrasted with present Anglo-American statutes of limitation on judgments, which generally range from five to ten years,

state or territory thereof, unless begun within ten years after the entry of such judgment." MINN. STAT. ANN. § 541.04 (1945). In Pennsylvania it is provided in part that: "The lien of a judgment may be revived by the indexing of (1) a judgment of revival by agreement between the plaintiff and defendant, or of (2) a writ of scire facias, if such judgment by agreement is entered of record in or such writ is issued out of the court in which the original judgment was entered within five years after the date on which the original judgment or the last preceding judgment of revival, as the case may be, was indexed." 12 PA. STAT. § 879 (1953). Texas deals with the revival of judgments by providing that: "A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after." TEX. ANN. CIV. STAT. art. 5532 (Vernon, 1958).

12. CODE CIVIL art. 2262: *"Toutes les actions, tant réeles que personnelles, sont prescrites par trente ans, sans que celui qui allègue cette prescription soit obligé d'en rapporter un titre, ou qu'on puisse lui opposer l'exception déduite de la mauvaise foi."*

13. 2 GLASSON, TRAITÉ THÉORIQUE ET PRATIQUE D'ORGANISATION JUDICIAIRE, DE COMPÉTENCE ET DE PROCÉDURE CIVIL § 560 (3d ed. 1926).

14. DALLOZ, CODE DE COMMERCE art. 189 (1959).

15. 2 GARSONNET ET CÉZAR-BRU, TRAITÉ THÉORIQUE ET PRATIQUE DE PROCÉDURE CIVIL ET COMMERCIALE § 739 (3d ed. 1913).

16. 2 GLASSON, TRAITÉ THÉORIQUE ET PRATIQUE D'ORGANISATION JUDICIAIRE, DE COMPÉTENCE ET DE PROCÉDURE CIVIL § 560 (3d ed. 1926); MOREL, PROCÉDURE CIVIL § 544 (2d ed. 1949).

17. CODE CIVIL art. 2244.

18. *Id.* art. 2248.

the French prescriptive period of thirty years appears very lengthy. At least one reason for the French rule is that a definitive judgment is the most solemn expression of an existing obligation. Because of the lengthy prescriptive period, which is easily interrupted, the French are apparently not faced with any serious problem of revival of judgments.[19]

Revival of Judgments in Louisiana

Domestic Judgments. Prior to 1853 there was no prescription on judgments rendered within the State of Louisiana.[20] In that year the legislature enacted a statute providing that money judgments would prescribe by the lapse of ten years from the date of rendition.[21] Provision was made in the act for the revival of a judgment by any interested party. The effect of revival was to continue the judgment in force for another ten-year period from the date of revival. A judgment could be revived any number of times.[22]

Early decisions interpreting the 1853 act held that revival proceedings provided the exclusive mode of interrupting prescription on money judgments.[23] Although these cases were all decided in the 1870's, the groundwork for dissension from their pronouncements was laid by the legislature in 1858. An act of that year provided that parol evidence was incompetent to prove

19. The French do have an interesting procedural rule which may defeat a plaintiff's action while suit is pending. This is termed *péremption d'instance* and may well be assimilated to our abandonment of actions. Under the French Code of Civil Procedure, if there has been no action on an instituted suit for three years, the suit is extinguished. CODE DE PROCÉDURE CIVIL art. 397. This period is one of peremption and extinguishes the plaintiff's right to pursue the suit. 2 GLASSON, TRAITÉ THÉORIQUE ET PRATIQUE D'ORGANISATION JUDICIAIRE, DE COMPÉTENCE ET DE PROCÉDURE CIVIL § 560 (3d ed. 1926).

In the case of a default judgment the peremptive period of six months is applied if there has been no execution. CODE DE PROCÉDURE CIVIL art. 156. However, since there is no *perémption d'instance* until the three-year period has run, the plaintiff may obtain a new judgment within this time. 2 GLASSON, *op. cit. supra*, at § 580.

20. The provisions of Civil Code Article 3547 placing a ten-year prescription on money judgments had no counterpart in the Codes of 1808 and 1825. Many decisions contain language sustaining the statement in the text. Cassiere v. Cuban Coffee Mills, 225 La. 1003, 74 So.2d 193 (1954); Bailey v. Louisiana & N.W. R.R., 159 La. 575, 105 So. 626 (1925); Folger and Son v. Slaughter, 33 La. Ann. 341 (1881); Marbury v. Pace, 30 La. Ann. 1330 (1878); Succession of Patrick, 30 La. Ann. 1071 (1878); McStea v. Rotchford, 29 La. Ann. 69 (1877); Succession of Rice, 15 La. Ann. 649 (1860); Blanchard v. Smith, 45 So.2d 527 (La. App. 1950).

21. La. Acts 1853, No. 274.

22. *Id.* § 2.

23. Smith v. Palfrey, 28 La. Ann. 615 (1876); Succession of Hardy, 25 La. Ann. 489 (1873); Byrne, Vance and Co. v. Garrett, 23 La. Ann. 587 (1871).

any acknowledgment of a judgment in order to interrupt prescription thereon. Any such acknowledgment was required to be in writing and signed by the debtor or his attorney in fact.[24] The conflict between this legislation and the rule that revival proceedings are the exclusive means of interrupting prescription on a judgment is apparent. If a written acknowledgment operates to interrupt prescription on a judgment, it follows that a suit to revive is not the exclusive means of interrupting prescription.[25]

The acts of 1853 and 1858 were amended[26] and incorporated into the Revised Civil Code of 1870 as Articles 3547 and 2278, respectively.[27] Shortly thereafter the Louisiana Supreme Court was afforded the opportunity to deal with the conflict in the two articles. In *Succession of Patrick*,[28] a money judgment was rendered on January 4, 1868. The plea of prescription was filed in the succession proceedings on February 16, 1878, more than ten years after rendition of the judgment. In reply to the plea of prescription under Article 3547 it was contended that there had been an acknowledgment within the ten-year period, which complied with the provisions of Article 2278. Without mentioning prior jurisprudence, which had held revival proceedings under Article 3547 to be the exclusive means of interrupting prescription on a judgment,[29] the court found that the acknowledgment effectively interrupted prescription. In reaching this conclusion the court stated that *interruption* of prescription should not be confused with *preventing* prescription under the revival proceedings of Article 3547.[30] The court used language indicating that prescription of the *debt* evidenced by the judgment could be interrupted by all the means provided for interrupting prescrip-

24. La. Acts 1858, No. 208, incorporated in LA. R.S. § 2812 (1870).

25. In Smith v. Palfrey, 28 La. Ann. 615 (1876), it was argued that there had been an acknowledgment within the ten-year period, thus interrupting prescription. The act of 1858 was not mentioned expressly and the court held that a revival proceeding was the only way to interrupt prescription on a judgment. A claim of acknowledgment under the provisions of the act of 1858 [later LA. R.S. § 2812 (1870)] was specifically urged in Succession of Hardy, 25 La. Ann. 489 (1873), but the court did not reach the question, finding that no acknowledgment *by the debtor* had been made.

26. These amendments are not pertinent to the present discussion.

27. LA. CIVIL CODE arts. 3547, 2278 (1870).

28. 30 La. Ann. 1071 (1878).

29. See note 23 *supra*.

30. The court stated: "We may here remark of this peculiar statutory action that it is not to be confounded with the *interruption* of prescription, which when the statute is complied with is not *interrupted* in the sense and meaning of the law, but is considered as *having never been*, as being altogether *prevented* by the action for revival." Succession of Patrick, 30 La. Ann. 1071, 1072 (1878).

tion on ordinary debts, subject only to the parol evidence rule of Article 2278.[31] Therefore, the *Patrick* case apparently stood for the proposition that prescription on the *judgment* can be interrupted only by revival proceedings, while the *debt* as evidenced by the judgment can be interrupted by an acknowledgment which complies with the provisions of Article 2278. If this interpretation of the decision is correct, then it would seem that the court overlooked the basic principle that a debt is merged in its judgment. To deal with the debt apart from the judgment is to indulge in a fiction. Regardless of the true meaning of the court, subsequent cases interpreted the *Patrick* case to mean that revival proceedings under Civil Code Article 3547 were not the exclusive mode of interrupting prescription on a money judgment.[32]

The rule that a suit for revival was not the exclusive mode of interrupting prescription on a money judgment prevailed until the case of *Bailey v. Louisiana and N.W.R.R.*[33] was decided in 1925. As in the *Patrick* case, the court was presented the question of whether an acknowledgment by the judgment debtor would interrupt prescription on the judgment. Although the court found no acknowledgment and maintained the plea of prescription, some rather puzzling language was used in the course of the opinion. It was determined that the *Patrick* decision had been misinterpreted and that it actually stood for the proposition that only prescription on the *debt*, as evidenced by the judgment, could be interrupted by a written acknowledgment signed by the debtor. The court stated that although a revival proceeding under Article 3547 was the exclusive means of interrupting pre-

31. At one point the court stated: "If then, the proceeding under the statute [referring to Civil Code Article 3547] was intended to revivify and 'continue in force' *ab origine* the judgment, and with no other scope or object, how can it be said to be at all events the only and exclusive means of 'interrupting' the prescription of *the debt evidenced by the judgment*, a subject and matter for which the law at the time of the passage of the act under discussion made other and distinct provisions?" (Emphasis added.) *Id.* at 1074. The court also enumerated the means of interrupting prescription on ordinary debts contained in the Code and stated that "by every fair and well established rule of interpretation, being upon a general subject under general heads, and being, also, general in their terms, they must have general application to all *debts, however evidenced.*" (Emphasis added.) *Id.* at 1076. The court further stated: "We think then, that, subject only to the exclusion of *parol evidence*, . . . the prescription of judgments may be interrupted like other debts, or debts evidenced in other form." (Emphasis added.) *Ibid.*

32. Lelane v. Payne, 42 La. Ann. 152, 7 So. 481 (1890); Norres v. Hayes, 42 La. Ann. 857, 8 So. 606 (1890); Levy v. Calhoun, 34 La. Ann. 413 (1882); Calhoun v. Levy, 33 La. Ann. 1296 (1881); Keller v. Keller, 4 Orl. App. 309 (La. App. 1907).

33. 159 La. 576, 105 So. 626 (1925).

scription on the judgment, the judgment creditor might yet sue on the debt, as evidenced by the acknowledgment or promise to pay. As pointed out in connection with the *Patrick* case, it is unrealistic to deal with a debt apart from the judgment. In view of the numerous Louisiana decisions declaring that a debt is merged with the judgment,[34] it is submitted that the accuracy of the language used in the *Bailey* case is questionable in this respect.[35]

Although the *Bailey* case was cited with approval in later cases holding that revival proceedings under Article 3547 are the exclusive means of interrupting prescription on a money judgment,[36] it was not until 1954 that this area was completely cleared of confusion. In that year, the decision of *Cassiere v. Cuban Coffee Mills*[37] removed any doubts as to the proper interpretation of Articles 3547 and 2278. Once again the court was squarely tendered the problem of whether an acknowledgment would interrupt prescription on a money judgment. Approval was given that part of the *Bailey* decision holding that a revival proceeding under Article 3547 provides the only means of interrupting prescription of a money judgment. However, the court disapproved the language in the *Bailey* case to the effect that a suit could be brought on the *debt* as evidenced by the judgment. Recognizing that a debt is merged with the judgment rendered on the debt, the court held that any further action on the original debt would be res judicata.[38]

The practical effect of the decision in the *Cassiere* case is to render obsolete the provisions of Article 2278 requiring a written acknowledgment to interrupt prescription on a judgment. It

34. E.g., West Feliciana R.R. v. Thornton, 12 La. Ann. 736, 68 Am. Dec. 778 (1857); Denistoun & Co. v. Payne, 7 La. Ann. 333 (1852); Smalley v. His Creditors, 3 La. Ann. 386 (1848); Oakey v. Murphy, 1 La. Ann. 372 (1846); Abat v. Buisson, 9 La. 417 (1836).

35. The court in the *Bailey* case actually went further than was necessary. Since no acknowledgment was found, the discussion of whether prescription would have been interrupted had there been an acknowledgment was extraneous to the decision. Therefore, the language properly could be termed dictum.

36. Fritz Jahncke, Inc. v. Fidelity Deposit Co., 172 La. 704, 135 So. 32 (1931); Blanchard v. Smith, 45 So.2d 527 (La. App. 1950); McDaniel v. Smith, 13 La. App. 61 (1930).

37. 225 La. 1003, 74 So.2d 193 (1954).

38. The court recognized that a written promise to pay a judgment, whether given before or after prescription accrues, is enforceable. However, the court made it clear that "such a promise is valid and enforceable but only because it creates a new obligation and not because it interrupts the prescription on the original debt which no longer existed when it was reduced to judgment." *Id.* at 1013, 74 So.2d at 197.

is the writer's opinion that the result reached in the *Cassiere* case is desirable. The provisions for reviving a money judgment under Article 3547 are clear and uncomplicated.[39] If a judgment creditor fails to comply with the simple requisites of that article, surely the judgment debtor should be discharged.

At this point it might prove helpful to note other interesting problems and principles in connection with the revival of judgments in Louisiana. It is settled that the ten-year prescription on a money judgment begins to run from its rendition in the lower court,[40] and that neither a suspensive nor devolutive appeal works an interruption of this prescription.[41] The suit for revival must be brought in the court which rendered the original judgment,[42] and the merits of the original action are not at issue in the revival proceeding.[43] Prescription on a judgment is interrupted by the filing of a suit to revive in a court of competent jurisdiction.[44] However, this interruption of prescription is not to be construed as having any effect on the judicial mortgage which may exist by virtue of the recordation of the original judgment.[45] It has been stated that under the provisions of Ar-

39. The pertinent part of the article provides that "any party interested in any judgment may have the same revived at any time before it is prescribed, by having a citation issued according to law, to the defendant or his representative, from the court which rendered the judgment, unless the defendant or his representative show good cause why the judgment should not be revived." LA. CIVIL CODE art. 3547 (1870).

40. Bailey v. Louisiana & N.W.R.R., 159 La. 575, 105 So. 626 (1925); Scott & Co. v. Seelye, 39 La. Ann. 749, 2 So. 309 (1887); Arrowsmith v. Durell, 21 La. Ann. 295 (1869). Rendition of a judgment in the trial court is the signing thereof by the judge. Victor v. Heintz, 201 La. 884, 10 So.2d 690 (1942). In case the money judgment has been rendered for the first time on appeal the prescriptive period begins to run from the date the appellate court's decision is handed down. Crusel v. Teirce, 150 La. 893, 91 So. 288 (1922).

41. Bailey v. Louisiana & N.W.R.R., 159 La. 575, 105 So. 626 (1925); Marbury v. Pace, 30 La. Ann. 1330 (1878); Byrne, Vance & Co. v. Garrett, 23 La. Ann. 587 (1871); Walker v. Succession of Hays, 23 La. Ann. 176 (1871); Arrowsmith v. Durell, 21 La. Ann. 295 (1869).

42. New Orleans Canal & Banking Co. v. Pike, 28 La. Ann. 896 (1876); Samory v. Montgomery, 27 La. Ann. 50 (1875); Watt & Co. v. Hendry, 23 La. Ann. 594 (1871).

43. Folger & Son v. Slaughter, 33 La. Ann. 341 (1881); McStea v. Rotchford, 29 La. Ann. 69 (1877). In Marbury v. Pace, 30 La. Ann. 1330, 1330-31 (1870), the court stated: "The sole issues therefore that can be tried in a suit to revive a judgment are whether it had ever been rendered, and whether it had become extinct. The proof of the former is a certified copy of the judgment itself, and of the latter an actual payment, or the payment which the law presumes to have been made from lapse of time, or some other mode of extinguishing it."

44. LA. R.S. 9:5801 (1950). See Blanchard v. Smith, 45 So.2d 521 (La. App. 1950). Service of citation from an incompetent court also interrupts prescription on a money judgment. Levy v. Calhoun, 34 La. Ann. 413 (1882). See LA. CIVIL CODE art. 3518 (1870) and Comment, 14 TUL. L. REV. 601 (1940).

45. See LA. CIVIL CODE arts. 3321, 3322 (1870).

ticle 3369[46] a judicial mortgage must be reinscribed within ten years of the original inscription.[47] Thus, a situation can be envisaged where prescription on a judgment may be interrupted by the filing of suit to revive, but the judicial mortgage would be lost through failure to reinscribe. Where junior mortgages are involved the priority of the judicial mortgage would be lost even though the revived judgment, if recorded, would constitute a mortgage on the debtor's property.[48]

Judgments of Another State. Although, as previously stated, domestic judgments were imprescriptible prior to 1853, judgments obtained outside Louisiana did not enjoy this status. Before the enactment of legislation dealing with the prescription of out-of-state judgments it was determined that a suit on a foreign judgment in Louisiana was a personal action, which prescribed in ten years under Article 3508 of the Civil Code of 1825.[49] Even at this early date it was made apparent that Louisiana was going to apply its own prescription to judgments, regardless of the law of the state where the judgment was rendered.[50] By Act 274 of 1853[51] the Louisiana legislature provided for the prescription and revival of foreign judgments. This legislation, discussed above as providing for prescription and revival of domestic judgments, also provided that money judgments obtained outside Louisiana should be prescribed by the lapse of ten years from the date of rendition. As in the case of domestic judgments, provision was made for the revival of money judgments rendered outside Louisiana.

In 1855 Louisiana enacted its "borrowing statute" which provides that:

> "Whenever any contract or obligation has been entered into, or judgment rendered, between persons who reside out of the State of Louisiana, and to be paid or performed out of this State, and such contract, obligation or judgment is

46. *Id.* art. 3369.
47. Carrol, Hoy & Co. v. Seip, 25 La. Ann. 141 (1873).
48. See *ibid.*
49. LA. CIVIL CODE art. 3508 (1825); Deal v. Patterson, 12 La. Ann. 728 (1857); Shackleford v. Robinson, 10 La. Ann. 583 (1855); Succession of Tilghman, 7 Rob. 387 (La. 1844). LA. CIVIL CODE art. 3508 (1825), now, as amended, LA. CIVIL CODE art. 3544 (1870). Under LA. CODE OF PRACTICE art. 746 (1825), a judgment obtained in another state could be enforced in Louisiana by executory process. This provision of the article was repealed by La. Acts 1846, No. 197. *Cf.* LA. CODE OF PRACTICE art. 746 (1870).
50. Taylor v. Joor, 7 La. Ann. 272 (1852).
51. La. Acts 1853, No. 274.

> barred by prescription or the statute of limitations of the place where the contract or obligation is to be performed or judgment executed, the same shall be considered and held as barred by prescription in Louisiana, upon the debtor who is thus discharged subsequently coming into this State."[52]

In order for a judgment which is barred in another state but otherwise enforceable in Louisiana to fall within the scope of this article, the following conditions must be present: (1) the judgment must, in fact, be barred where rendered;[53] (2) the judgment must have been rendered out-of-state between parties residing out-of-state;[54] (3) the foreign limitation must have been completed before the judgment debtor came to Louisiana.[55] This last requirement was apparently negatived by a 1936 amendment to Article 3547. The amendment provides "except that no judgment for money rendered without the State shall be enforceable in this State if it is prescribed or unenforceable under the laws of the State wherein it was rendered."[56] Although no cases were found interpreting the amendment, it appears that a foreign judgment debtor might avail himself of its provisions even though the foreign limitation accrued after he became a resident of this state.

Under the Louisiana jurisprudence it is settled that the prescriptive period of the forum is to be applied in actions on out-of-state judgments.[57] Since Article 13 of the Louisiana Code of Practice provides in part that "the prescription of actions, are governed by the law of the place where they are brought,"[58] most of the jurisprudence is based on this article. Such application of the *lex fori* is not contrary to the "full faith and credit" clause

52. LA. CIVIL CODE art. 3532 (1870), formerly La. Acts 1855, No. 168.

53. Morton v. Valentine, 15 La. Ann. 150 (1860). In this case a Mississippi court had allowed a judgment to be revived after the lapse of seven years even though Mississippi law forbade such revival. When a suit was brought in Louisiana on the judgment the court said that to be barred in Louisiana under the "borrowing" statute, the judgment must be completely barred where rendered.

54. Walworth v. Routh, 14 La. Ann. 205 (1859). *But see* Roper v. Monroe Grocery Co., 171 La. 181, 129 So. 811 (1930) (the word "between" appearing in Civil Code Article 3532 was interpreted to mean "against," and the article was applied even though the plaintiff was a resident of Louisiana).

55. Walworth v. Routh, 14 La. Ann. 205 (1859).

56. La. Acts 1936, No. 278.

57. Roper v. Monroe Grocery Co., 171 La. 181, 129 So. 811 (1930); Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902); Succession of Ducker, 10 La. Ann. 758 (1855); Taylor v. Joor, 7 La. Ann. 272 (1852); Park v. Markley, 17 So.2d 459 (La. App. 1944).

58. LA. CODE OF PRACTICE art. 13 (1870).

of the United States Constitution,[59] and is in keeping with the majority Anglo-American common law rule.[60] It is arguable that the life given a money judgment by the state of rendition should form an integral part thereof and be given effect in sister states. However, any such unqualified position would involve consideration of the many ramifications of the substantive-procedural aspect of statutes of limitation which is beyond the scope of this paper.

The Proposed Code of Civil Procedure

The proposed Code of Civil Procedure, drafted by the Louisiana Law Institute, has made no drastic change with reference to revival of judgments. The procedural aspects of Civil Code Article 3547, providing for prescription and revival of money judgments, will be transferred to the procedural code. Thus Article 2031 provides:

> "A money judgment may be revived at any time before it prescribes by an interested party in an ordinary proceeding brought in the court in which the judgment was rendered.
>
> "The judgment debtor shall be made a defendant in the proceeding to revive the judgment, unless he is dead, in which event his legal successor shall be made a defendant.
>
> "A judgment shall be rendered in such a proceeding reviving the original judgment, unless the defendant shows good cause why it should not be revived."[61]

The Redactors' comments following this article indicate that it is predicated on the assumption that Civil Code Article 3547 will be given the same interpretation as given in the *Cassiere* case, which was discussed above.

The transfer of the procedural aspects of Article 3547 to the proposed procedural code will necessitate an amendment to Article 3547 of the Civil Code. In an implementing bill the Law Institute will recommend that this article be amended to provide that:

59. McElmoyle v. Cohen, 38 U.S. 312 (1839). For an interesting attempt to extend the traditional doctrine that foreign statutes of limitation are procedural see Union Nat. Bank v. Lamb, 337 U.S. 38 (1949).

60. STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 141 (1937); RESTATEMENT, CONFLICT OF LAWS § 604 (1934).

61. Proposed La. Code of Civil Procedure art. 2031.

"A money judgment rendered by a court of this state is prescribed by the lapse of ten years from its signing, if rendered by a trial court, or from its rendition if rendered by an appellate court.

"An action in a court of this state to enforce a money judgment rendered by a court of another state, or of a possession of the United States, or of a foreign country is barred by the lapse of ten years from its rendition; but no such judgment is enforceable in this state if the judgment is prescribed, barred by the statute of limitation, or otherwise unenforceable under the laws of the jurisdiction where it was rendered.

"Any party having an interest in a money judgment may have it revived before it prescribes, as provided in Article 2031 of the Code of Civil Procedure. A judgment may be revived as often as the party interested may desire."

The present law will not be changed by the above article. However a comparison with the present article on the subject will reveal the clarity effected by the amendment. The amendment further serves the desirable purpose of eliminating the procedural aspects of Article 3547 from the Civil Code.

Conclusion

It has been noted that the American common law states found it desirable to modify the early procedures of revival of judgments under the writ of *scire facias* and action of debt. With each state enacting legislation, the law on the subject has grown in a haphazard manner. It has also been noted that the French have such a long prescriptive period on judgments that revival procedure is not necessary in that country. It is suggested that the Louisiana system providing both a limitation on the life of a money judgment and an uncomplicated procedure to revive such a judgment is both practical and workable.

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