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Kaplan: Continuing Problems with the Constant Acknowledgment Rule

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Kaplan: CONTINUING PROBLEMS WITH THE CONSTANT ACKNOWLEDGMENT RULE

A corporation pledged a collateral mortgage note to a bank to secure a loan financing development of the mortgaged property. To secure further the collateral mortgage note, the corporation also pledged several contracts to sell lots on the property. For eighteen months the corporation paid only interest on the loan. Eventually the bank sold both the hand note that represented the loan and the accompanying security devices. The land was sold several times, the purchaser assuming the mortgage each time. Eleven years after the execution of the loan, the holder of the hand note filed suit against the corporation and subsequent purchasers of the property to collect on the note and to enforce the collateral mortgage. The court of appeal affirmed the trial court's judgment[1] in favor of the holder, ordering enforcement of the collateral mortgage. On original hearing the Louisiana Supreme Court, reversing in part, *held* that the pledged contracts did not interrupt prescription on the collateral mortgage note because the parties to the contracts revoked them. The court concluded that the prescribed collateral mortgage note, however, interrupted prescription on the hand note because the collateral note remained in the possession of the creditor and served as a constant acknowledgment of the debt.[2] *Kaplan v. University Lake Corp.*, 381 So. 2d 385 (La. 1980).

Pledge is a contract by which a debtor gives his property to a creditor as security;[3] as an accessory obligation, pledge exists only if a primary obligation or debt is present.[4] A distinguishing feature of the contract of pledge is that the pledged property actually must be placed in the possession of the creditor or his agent.[5] Furthermore, the creditor has the right to retain the pledge until the entire debt

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1. Kaplan v. University Lake Corp., 369 So. 2d 1107 (La. App. 1st Cir. 1978).

2. On rehearing the court amended its ruling and *held* that, upon prescription of the collateral mortgage note, the collateral mortgage became unenforceable and the hand note reverted to a purely personal obligation of its maker. Kaplan v. University Lake Corp., 381 So. 2d 385, 389-91 (La. 1980). The decision on rehearing will not be discussed except insofar as it relates to the constant acknowlegement rule.

3. LA. CIV. CODE art. 3133: "The *pledge* is a contract by which one debtor gives something to his creditor as a security for his debt."

4. LA. CIV. CODE arts. 3136-38.

5. LA. CIV. CODE art. 3152: "It is essential to the contract of pledge that the creditor be put in possession of the thing given to him in pledge, and consequently that actual delivery of it be made to him, unless he has possession of it already by some other right." For the requirements of the delivery of incorporeal rights, *see* LA. CIV. CODE arts. 3153 & 3158.

is paid.[6] Because the debtor is divested of his property and cannot reclaim it until he has extinguished the debt, the debtor has considerable incentive to pay the creditor.

Since 1842 Louisiana courts have held that prescription does not run against a debt secured by a pledge.[7] The theory underlying this principle is that the creditor's possession of the pledge with the consent of the pledgor operates as a constant acknowledgment of the debt which continually interrupts prescription.[8]

The requirement that the debtor be dispossessed of the pledged property is of primary importance to the constant acknowledgment rule. Prescription ceases to run whenever the debtor acknowledges the right of the creditor to collect the debt;[9] thus, an acknowledgment that interrupts prescription may be inferred from any act by the debtor indicating that he still owes the debt.[10] Because the purpose of the contract of pledge is to *secure a debt*,[11] the giving of a pledge to a creditor constitutes positive evidence of acknowledgment of the debt.[12] So long as the debtor allows his valuable property to remain in the possession of the creditor as security for the debt, the debtor continues to acknowledge the creditor's right; hence, prescription is continuously interrupted on the debt.[13]

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6. LA. CIV. CODE art. 3164: "The creditor who is in possesion of the pledge can only be compelled to return it, but when he has received the whole payment of the principal as well as the interest and costs."

7. Succession of Picard, 238 La. 455, 115 So. 2d 817 (1959); Scott v. Corkern, 231 La. 368, 91 So. 2d 569 (1956); Standard Homestead Ass'n v. Horvath, 205 La. 520, 17 So. 2d 811 (1944); Reconstruction Fin. Corp. v. Holloway, 191 La. 583, 186 So. 35 (1938); Latiolais v. Citizens' Bank of Louisiana, 33 La. Ann. 1444 (1881); Wilson v. Bannen, 1 Rob. 556 (La. 1842).

8. *See* Police Jury of West Baton Rouge v. Duralde, 22 La. Ann. 107 (1870); Citizens' Bank of Louisiana v. Johnson, 21 La. Ann. 128 (1869); Montgomery v. Levistones, 8 Rob. 145 (La. 1844).

9. LA. CIV. CODE arts. 3520 & 3551.

10. 28 G. BAUDRY-LACANTINERIE & A. TISSIER, TRAITE THEORIQUE ET PRATIQUE DE DROIT CIVIL, PRESCRIPTION no. 529 (4th ed. 1924) in 5 CIVIL LAW TRANSLATIONS 260 (La. St. L. Inst. trans. 1972).

11. LA. CIV. CODE art. 3133.

12. G. BAUDRY-LACANTINERIE & A. TISSIER, no. 530, *supra* note 10, at 263. *See* Scott's Executors v. Shreveport, 20 F. 714 (W.D. La. 1884).

13. G. BAUDRY-LACANTINERIE & A. TISSIER, *supra* note 10, at 263: "We would even say that when a security was given, the creditor's right can not continue to be prescribed as long as the security is in the creditor's hands, since it constitutes a tacit acknowledgment." Scovel v. Gill, 30 La. Ann. 1207 (1878); Police Jury of West Baton Rouge v. Duralde, 22 La. Ann. 107 (1870); Citizens' Bank of Louisiana v. Johnson, 21 La. Ann. 128 (1869); Montgomery v. Levistones, 8 Rob. 145 (La. 1844); Wilson v. Bannen, 1 Rob. 556 (La. 1842). *See* 2 M. PLAINOL, CIVIL LAW TREATISE pt. 2, no. 2462 (11th ed. La. St. L. Inst. trans. 1959).

In *Wilson v. Bannen*,[14] the earliest decision mentioning the constant acknowledgment doctrine in Louisiana, a ship owner sought to retain possession of a shipper's property and recognition of a privilege on the property to satisfy unpaid shipping charges. The shipper's other creditors contended that the owner's claim had prescribed and that the owner had no right to retain the goods. The Louisiana Supreme Court upheld the ship owner's rights of retention and preference, holding that an implied constant acknowledgment of the debt by the shipper resulted from the owner's possession of the shipper's goods as security for the debt.[15] Because the shipper's acknowledgment served as an interruption, prescription did not run on the primary debt.[16] The court's use of the constant acknowledgment rule in *Wilson* was consistent with the principles of pledge; *i.e.*, the creditor could retain the pledged property until payment extinguished the debt.[17]

Meyer Bros. v. Colvin[18] created an entirely new aspect of the constant acknowledgment rule. The court held that the creditor's detention of a pledged note (which prescribed after it had been pledged) interrupted prescription on the principal obligation.[19] The court reasoned that the detention of the pledge by the creditor, not the act of pledge, interrupted prescription. Because the pledged note, although prescribed, was not lost or destroyed but remained in the possession of the creditor, prescription was interrupted.[20] This holding detached the constant acknowledgment rule from its rationale. The rule's premise is that the debtor wants to regain possession of the pledged property and allows the creditor to hold the pledge only as security for the debt.[21] In *Meyer Bros.* the prescribed note no longer had value and could not function as security. Additionally, as the pledged note was worthless, the debtor had no reason to desire its return; thus, any basis for inferring an acknowledgment disappeared when the pledged note prescribed.[22]

The decision of *Scott v. Corkern*[23] represented a further departure from the rationale of the constant acknowledgment rule. In *Scott* the pledge of a life insurance policy secured a promissory

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14. 1 Rob. 556 (La. 1842).
15. *Id.* at 558.
16. *Id.*
17. *See* LA. CIV. CODE arts. 3133, 3152, 3157, & 3164.
18. 122 La. 153, 47 So. 447 (1908).
19. 122 La. at 154, 47 So. at 448.
20. *Id.*
21. See text at note 8, *supra*.
22. See text at notes 11-13, *supra*.
23. 231 La. 368, 91 So. 2d 569 (1956).

note.[24] The creditor waited thirty years to sue on the promissory note. Although the debtor mysteriously regained possession of the policy during this period, the court ruled that the pledge still existed because the debtor held the policy as the creditor's agent.[25] Because the pledge was found to be extant, the court applied the constant acknowledgment rule and held that prescription had been interrupted on the promissory note.[26]

The court's application of the constant acknowledgment rule in *Scott* was inconsistent both with the rationale of the rule and with the nature of pledge.[27] The constant acknowledgement rule emphasizes possession of the pledge by the creditor or his agent only because such possession indicates that the debtor, in recognition of the creditor's right, allows the creditor to hold his property.[28] The dispossession of the debtor is also a primary advantage of the pledge as a security device. In effect, the court's ruling in *Scott* meant that the debtor's possession of his own pledge was an acknowledgment of the creditor's right.[29]

Succession of Picard[30] further extended the constant acknowledgment rule by holding that a pledge of a promissory note, prescribed on its face at the time of the pledge, interrupted prescrip-

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24. 231 La. at 374-75, 91 So. 2d at 571. The initial issue before the court was whether the insurance policy was transferred as a pledge or as an assignment. The insurance policy had been changed to make the transferee the beneficiary; however, the question also existed as to whether the transferee also became the owner of the policy. The delivery of an assignment involves a transfer of ownership. LA. CIV. CODE art. 2642. The delivery of a pledge transfers only possession of the pledged property. LA. CIV. CODE arts. 3166 & 3175. The court found that the contract between the parties evidenced an intent to treat the policy as a pledge; therefore, transfer of the ownership of the policy did not occur. 231 La. at 374-75, 91 So. 2d at 571.

25. The court indicated:

> The mere circumstance that the pledged insurance policy was found in the possession of the pledgor does not justify the conclusion that the pledge was extinguished and, in the absence of any evidence showing that the pledge be terminated or even that the pledgor considered it terminated, it will be presumed that the possession of the pledgor was precarious or as an agent pro hac vice.

231 La. at 378, 91 So. 2d at 572.

26. 231 La. at 380-81, 91 So. 2d at 573.

27. *See The Work of the Louisiana Supreme Court for the 1956-1957 Term—Security Devices*, 18 LA. L. REV. 10, 49-51 (1957).

28. See text at notes 5-6, *supra*.

29. The Louisiana Legislature has enacted legislation specifically allowing the pledgor to remain in possession of pledged incorporeal rights under certain limited circumstances. *See* LA. R.S. 9:4302-03, 4321-23 & 4324 (1950 & Supp. 1978).

30. 238 La. 455, 115 So. 2d 817 (1959). *See* Comment, *Pledge, Prescription, and the Succession of Picard*, 10 LOY. L. REV. 82 (1959); Note, *Limitation of Action—Interruption of Prescription—Acknowledgment of Debt Through Pledge*, 34 TUL. L. REV. 631 (1950).

tion on the principal debt.[31] The court abandoned any attempt to base the rationale of the constant acknowledgment rule on the debtor's consent to the creditor's possession of valuable property. The court instead asserted that the mere detention of the pledge serves as a constant acknowledgment of the debt and as an interruption of prescription; "[i]t is not the detention of a thing *of value* by the pledgee which serves as a constant acknowledgment . . . ."[32]

In the instant case, *Kaplan v. University Lake Corporation*,[33] the Louisiana Supreme Court once again had the opportunity to examine the rationale of the constant acknowledgment doctrine. The issue on original hearing was whether or not prescription had run against either a hand note or a collateral mortgage note. The hand note was secured by the pledge of the collateral mortgage note which, in turn, was secured by a pledge of buy-sell contracts.[34] The court found that the pledged contracts were revoked by the mutual consent of the parties to the contract with the approval of the creditor; therefore, the contracts were no longer in the possession of the creditor, and prescription was not interrupted on the collateral mortgage note.[35] The court reasoned that the possession of the actual obligation, not the detention of written evidence of the obligation, interrupts prescription; because the contracts were revoked, the obligation evidenced by them no longer existed.[36] Because more than five years[37] had passed without acknowledgment by the maker or action by the creditor, the collateral mortgage note was prescribed, and the collateral mortgage was unenforceable.[38]

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31. 238 La. at 462-63, 115 So. 2d at 819-20.

32. *Id.* (emphasis in original).

33. 381 So. 2d 385 (La. 1980).

34. *Id.* at 386-87.

35. *Id.* at 389.

36. 381 So. 2d at 387-88. Actually, the court was explaining the rationale of the decision in *Succession of Picard*, 238 La. 455, 115 So. 2d 817 (1959), but the court apparently relied on the same reasoning in the instant case.

37. Civil Code article 3520 provides for a five-year period for liberative prescription on promissory notes.

38. Apart from its treatment of the constant acknowledgment rule, the court erred in holding that the collateral mortgage note had prescribed. The court stated that prescription against the collateral mortgage note began on November 3, 1964, the day the pledged contracts were revoked. The suit was not filed until November 15, 1974; therefore, more than five years had elapsed, and the collateral mortgage note prescribed. 381 So. 2d at 389. However, the court overlooked the salient fact that the corporation continued to pay interest on the hand note until April, 6, 1966. *Id.* at 387 n.2. Louisiana Revised Statutes 9:5807 provides that a payment on the principal obligation constitutes an acknowledgment of the debt on all other obligations that are pledged to secure the principal obligation on which payment is being made. According to this statute, prescription did not begin to run until April 6, 1966, when the last in-

In ruling on the hand note, however, the court reaffirmed the constant acknowledgment rule[39] and held that a pledged collateral mortgage note, even if it prescribes, always interrupts prescription on the hand note.[40] The importance of *Kaplan* derives partially from the reaffirmation of the constant acknowledgment rule and partially from the innovative rationale that the court fashioned for this holding. The court ruled that if a promissory note prescribes, the

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terest payment was made, and prescription could not have tolled until April 6, 1971.

The court failed to consider that an assumption of the collateral mortgage by each subsequent purchaser of the property also constituted an acknowledgment of the collateral mortgage note, interrupting prescription on the note. In *Simon v. McMeel*, 167 La. 243, 119 So. 35 (1928), the Louisiana Supreme Court held that prescription on a promissory note secured by a mortgage was interrupted or suspended when a purchaser of the mortgaged property assumed payment of the mortgage. In *Kaplan*, the mortgaged property changed hands as follows: (1) November 10, 1964—sale of 60% of the property by University Lake Corporation to Ingram Contractors, Inc., Parish of East Baton Rouge Conveyance Records book 1806, folio 99; (2) December 7, 1967—sale of 40% of the property by University Lake Corporation to Town House Trace, Inc., Parish of East Baton Rouge Conveyance Records, book 1995, folio 206; (3) December 26, 1969—sale of 60% of property by Ingram Contractors, Inc. to Town House Trace, Inc., Parish of East Baton Rouge Conveyance Records, book 2102, folio 143; (4) December 29, 1970—sale of property by Town House Trace, Inc. to International Speedways, Inc. with assumption of all mortgages extant against the property, Parish of East Baton Rouge Conveyance Records, book 2148, folio 102; (5) June 15, 1971—sale by International Speedways, Inc. to Guaranty Savings Assurance Company with assumption of all mortgages extant against the property, Parish of East Baton Rouge Conveyance Records, book 2199, folio 203.

On the date International Speedways assumed the mortgage, December 29, 1970, the collateral mortgage note had not yet prescribed; therefore, on this date prescription was interrupted on the collateral mortgage note. As interruption caused the prescriptive period to begin anew, LA. CIV. CODE arts. 3520 & 3551, the collateral note could not prescribe until December 29, 1975. The final purchaser bought the land and assumed the mortgage within this five-year period; thus, the collateral mortgage note had not yet prescribed, and the final purchaser did assume the collateral mortgage. The court should have affirmed the decisions of the lower courts and ordered enforcement of the collateral mortgage to pay the debt remaining on the hand note.

39. The court cited *Succession of Picard*, 238 La. 455, 115 So. 2d 817 (1959), and *Scott v. Corkern*, 231 La. 368, 91 So. 2d 569 (1956), as authority for the constant acknowledgment rule. In a note to the decision, the court also acknowledged that the "policy underlying the doctrine is to protect 'the valuable right of the pledgee to retain possession of the thing pledged until he [is] paid.'" 381 So. 2d at 387, n.3, *quoting* Comment, *supra* note 30, at 88. However, the court continued, "as it has developed in Louisiana, the constant acknowledgment rule has come to mean that when there is a pledge, the principal obligation is imprescriptible, no matter what the value or nature of the thing pledged." *Id.*

40. The court stated that "[a]lthough the collateral mortgage note is prescribed and the mortgage is unenforceable, the hand note and the original obligation . . . have legal validity. The court of appeal correctly held that the collateral mortgage note, because the pledgee and his assigns retained it, operated as a constant interruption of prescription on the hand note." 381 So. 2d at 389.

obligation to pay is not extinguished, but subsists as a natural obligation.[41] Because the *detention* of the pledged obligation, rather than its value, interrupts prescription, the creditor's detention of a prescribed mortgage note, representing a natural obligation, is a constant acknowledgment of the principal debt and continually interrupts prescription.[42]

The decision in *Kaplan*, though consistent with prior jurisprudence,[43] has a questionable effect on the basic principles of the law of pledge. The fundamental purpose of the pledge is to serve as security;[44] to achieve this purpose, the pledged property must have value. However, in its treatment of the constant acknowledgment rule, the court ignored the purpose of the pledge contract[45] and instead focused attention on the detention or possession as an aspect of acknowledgment. The court concluded that the revoked buy-sell contracts did not interrupt prescription (although the pledgee retained possession of the contracts) because the obligation represented by the contracts no longer existed.[46] However, the detention of the prescribed collateral mortgage note interrupted prescription on the hand note because the collateral note continued to exist as a natural obligation.[47]

Kaplan's distinction between the detention of the written evidence of an obligation and the detention of a natural obligation is difficult to understand, at least in light of the nature of pledge as security. The prescribed collateral mortgage note had no more value as security for the debt than the worthless evidence of the revoked contracts; representing merely a natural obligation, the collateral note was legally unenforceable and, if sold, could bring no funds to apply to the debt. The invocation of the constant acknowledgment rule in this situation served only to allow the interruption of prescription, not to preserve the essential security function of pledge.

The court's holding that the creditor's detention of a natural obligation activates the constant acknowledgment rule also contradicts the principles underlying prescription and acknowledgment. Prescription should run against a debt if the creditor is inactive

41. *Id.*

42. *Id.*

43. *See* Succession of Picard, 238 La. 455, 115 So. 2d 817 (1959); Scott v. Corkern, 231 La. 368, 91 So. 2d 569 (1956); Meyer Bros. v. Colvin, 122 La. 153, 47 So. 447 (1908). See text at notes 18-22, 27-29, & 30-32, *supra.*

44. LA. CIV. CODE art. 3133.

45. See note 40, *supra.*

46. 381 So. 2d at 388-89.

47. *Id.*

without excuse for a long period of time.[48] If a debtor allows his creditor to hold valuable property as a pledge, the creditor has an excuse for not pressing his claim; the creditor knows that the debtor eventually will pay to get his property back. Thus, the debtor's consent to the creditor's possession of the debtor's valuable property may be regarded as an acknowledgment of the debt, or, in other words, as an excuse for the creditor's inaction.[49] Once the pledged property loses its value, the creditor's excuse for inaction disappears, and the debtor has no reason to seek return of the property. In that situation, an acknowledgment no longer exists, and prescription should begin to run.

The ruling of the court in *Kaplan* perhaps can be explained as a policy decision to fashion a "bright-line" test in a troublesome area of the law. To the extent that future courts follow the *Kaplan* decision, this purpose will be achieved; the standard clearly indicated is that in every case in which a pledge of a promissory note secures a principal obligation, the principal obligation is imprescriptible.[50] One advantage of the *Kaplan* ruling is that creditors never will have to worry about prescription's running against a debt when a promissory note is pledged to secure the debt. Additionally, neither creditors nor the courts will have to inquire into the value of the pledge to activate the constant acknowledgment rule.[51]

But if the court intended to make a "bright-line" test for application of the constant acknowledgment rule, the court should have done so expressly, instead of predicating the rationale of the decision upon the detention of a natural obligation. The *Kaplan* decision risks transforming the contract of pledge from a meaningful security device into a mechanism to interrupt prescription. As one writer has suggested, the rationale of *Kaplan* creates the possibility that the pledge of "a dollar bill or a peppercorn" might be allowed to interrupt prescription on "a million dollar debt."[52]

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48. G. BAUDRY-LACANTINERIE & A. TISSIER, *supra* note 10, no. 27, at 17. *See* LA. CIV. CODE art. 3459.

49. *See* cases cited in note 8, *supra*.

50. 381 So. 2d at 389. See note 40, *supra*.

51. The effect of the value of the pledged property on the constant acknowledgment rule is a potential problem in cases in which the pledge has greatly decreased in value and the secured debt has not. In a practical sense, the pledge could be of such minimal value that the debtor would not want it back; theoretically, no acknowledgment should be inferred at this point. The decision of the court in *Kaplan* avoids this difficult problem by stating that the value of the pledge is irrelevant; whether the pledge remains in the possession of the creditor is the decisive factor. An alternative to the *Kaplan* ruling would entail drawing the line between pledges that have no value and pledges that have some value, even if slight.

52. *The Work of the Louisiana Appellate Courts for the 1978-1979 Term—Security Devices*, 40 LA. L. REV. 572, 578 (1980) [hereinafter cited as *1978-1979 Term*].

Other public policies also militate against the court's ruling in *Kaplan*. Because the contract of pledge provides the creditor who possesses pledged property a privilege on the debtor's pledge,[53] the contract conflicts with the general principle that the property of a debtor is the common pledge of his creditors;[54] therefore, pledge agreements should be construed strictly and limited to performing security functions. The policies underlying the theory of prescription, including the promotion of security of transactions,[55] discredit the notion that a debt secured by the pledge of a *prescribed promissory note* is imprescriptible.[56] Because general policy favors the institution of prescription,[57] a particular category of debts (obligations secured by promissory notes) should not be made automatically imprescriptible unless sound reasons support special treatment of that category.[58]

Whether based on policy considerations or not, the *Kaplan* decision is supported by prior jurisprudence[59] and is likely to remain important in the law of security devices. Accordingly, practitioners should take note of the two consequences of the decision: (1) obligations secured by the pledge of a promissory note cannot prescribe, and (2) promissory notes that serve as pledges may prescribe.

Debtors who contemplate securing their obligations with the pledge of a promissory note should be counseled that the primary obligation may be deemed imprescriptible. They should reclaim the

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53. LA. CIV. CODE art. 3157: "The pawn invests the creditor with the right of causing his debt to be satisfied by privilege and in preference to the other creditors of his debtor, out of the product of the movable, corporeal, or incorporeal, which has been thus burdened." LA. CIV. CODE art. 3162: "In no case does this privilege subsist on the pledge, except when the thing pledged . . . has been actually put and remained in the possession of the creditor. . . ."

54. LA. CIV. CODE. art. 3183: "The property of the debtor is the common pledge of his creditors, and the proceeds of its sale must be distributed among them ratably, unless there exists among the creditors some lawful causes of preference." LA. CIV. CODE art. 3185: "Privilege can be claimed only for those debts to which it is expressly granted in this Code."

55. Civil Code article 3133 expressly indicates that the function of pledge is to serve as security; in contrast the constant acknowledgment rule is a judicial creation. As pledge is a *stricti juris* agreement, any possible conflict between the Civil Code provisions concerning pledge and the constant acknowledgment rule should be resolved in favor of the Civil Code provisions.

56. G. BAUDRY-LACANTINERIE & A. TISSIER, *supra* note 10, no. 29, at 18.

57. "[W]ithout it [prescription] there would be no security in transactions, no stability in private estates, no peace among individuals, no order in the state." *Id.*

58. Without further explanation, the court in *Kaplan* offered only the reason that the detention of a pledge consisting of a natural obligation causes the secured debt to be imprescriptible. 381 So. 2d at 387-88.

59. *See* cases cited in note 43, *supra*.

pledge promptly when the debt is paid or secure other reliable evidence of its payment in order to avoid any confusion at a later date.

The main risk for creditors after *Kaplan* is that they may find themselves holding an enforceable principal obligation but no security. Creditors should insert a stipulation in the pledge agreement that the failure of the debtor to reacknowledge the pledged promissory note within the prescriptive period is a condition of default.

The problems *Kaplan* poses to the security function of pledge may be minimized by such precautions; however, a sound approach to the constant acknowledgment problems would be to decide the issue of prescription on a case-by-case basis.[60] If a court finds that a pledge no longer has value, either because the pledge is prescribed or because it no longer exists, the constant acknowledgment rule should cease to apply. This approach would insure that the pledge remains a valuable security device, rather than a tool to interrupt prescription permanently.

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DISCHARGE OF FEDERAL TAX LIENS IN EXECUTORY PROCEEDINGS

The plaintiff bought certain immovable property from a bank that had, through executory process, sued upon its mortgage and acquired the land at the subsequent sheriff's sale. Inferior federal income tax liens affecting the property were cancelled from the mortgage records by the parish clerk of court when the proceeds of the judicial sale to the bank did not cover the interests of the superior creditors. The Internal Revenue Service subsequently levied upon the property, claiming that, since the United States had not received proper notice of the judicial sale, the liens were still valid; the plaintiff sued, alleging that the federal tax liens had been discharged by the sheriff's sale of the property. The district court *held*: section 7425(b) of the Internal Revenue Code relating to "other sales," which requires written notice to the I.R.S., applies to Louisiana's executory process; because proper notice was not given, the judicial sale did not discharge the federal tax liens. *Myers v. United States*, 483 F. Supp. 1154 (W.D. La. 1980).[1]

60. This approach was suggested in *1978-1979 Term*, *supra* note 52, at 578.

1. The scope of this note is limited to the issue of whether or not the tax liens were discharged by the judicial sale.