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Notes

COMMUNITY PROPERTY—CONFLICT OF LAWS—RECOVERY OF DAMAGES FOR PERSONAL INJURIES TO NONRESIDENT MARRIED WOMEN —The plaintiff, a married woman resident of Texas, was injured in Louisiana due to the negligence of defendant's agent. Defendant claimed that plaintiff did not have a cause of action because under Texas law the amount which the wife might recover would constitute community property and a right to the sum could be asserted only by the husband. *Held,* Louisiana law would apply and plaintiff could sue in her own name since under the provisions of the Louisiana Civil Code the amount which plaintiff might recover would consttitute her separate property and she could bring suit.[1] *Matney v. Blue Ribbon, Incorporated,* 12 So. (2d) 523 (La. App. 1942).

The general rule that when a tort is committed in one jurisdiction and a suit is brought in another to recover damages for such tort the *lex loci delicti,* that is, the law of the place where the tort is committed, governs all matters relating to the right of action is too well settled to be seriously questioned.[2] As a direct consequence from this rule it has been held that when a married woman residing in one state is wrongfully injured in another she may sue for damages in the state where the tort has been

1. Art. 2334, La. Civil Code of 1870, as amended by La. Act 170 of 1912 provides in part: "The earnings of the wife when living separate and apart from her husband . . . actions for damages resulting from offenses and quasi offenses . . . are her separate property."

And, Art. 2402, La. Civil Code of 1870, as amended by La. Act 68 of 1902, provides in part: "But damages resulting from personal injuries to the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone."

The case was distinguished by the court from the case of Williams v. Pope Manufacturing Co., 52 La. Ann. 1417, 27 So. 851, 50 L.R.A. 816, 718 Am. St. Rep. 390 (1900) in which a married woman, resident of Mississippi, attempted to invoke the property laws of that state in order to recover for a tort committed in Louisiana. It was held in that case that since under Mississippi law the action was the personal right of the wife, Louisiana would recognize her right to sue even though the law of Louisiana was different (prior to La. Act 170 of 1912). The decision was based on grounds of comity and the situation could clearly be distinguished from the one presented in the *Matney* case.

2. Northern Pacific R.R. v. Babcock, 154 U.S. 190, 14 S.Ct. 978, 38 L.Ed. 958, 16 Rose's Notes on U.S. Reports 1126 (1894); Ormsby v. Chase, 290 U.S. 387, 54 S.Ct. 211, 78 L.Ed. 378, 92 A.L.R. 1499 (1933); Alabama G.S.R. v. Carrol, 47 Ala. 126, 11 So. 803, 18 L.R.A. 433, 38 Am. St. Rep. 163 (1892); Yazoo & M.V.R. v. Littleton, 177 Ark. 199, 5 S.W.(2d) 930, 59 A.L.R. 936 (1928).

committed when the law of that state gives her a right of action, notwithstanding the fact that in the state where she is domiciled such right of action constitutes community property and as such is recoverable only by her husband.[3]

By Act 68 of 1902 the Louisiana legislature amending Article 2402 of the Civil Code to the effect that "damages resulting from personal injuries to the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone." This constituted the first legislative proviso concerning the recovery of damages for personal injury actions in their relation to the community of acquets and gains. Act 170 of 1912, dealing with this relation between the recovery of damages and the community property system, was enacted as an amendment to Article 2334 of the Civil Code. This act provided that "The earnings of the wife when living separate and apart from her husband, although not separated by judgment of court, her earnings when carrying on a business, trade, occupation or industry separate from her husband, actions for damages resulting from offenses and quasi offenses and the property purchased with all funds thus derived, are her separate property." By Act 168 of 1920 this last act was re-enacted and amended to the effect that "Actions for damages resulting from offenses and quasi offenses suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce shall be his separate property."

The case of *Sutton v. Champagne*[4] clearly illustrates the unbalance or inconsistency which prevails with regard to community property so far as damages recovered for personal injuries to the respective spouses is concerned. It was held that the wife's share of the amount recovered in an action brought by the spouses to recover for the death of their son was the wife's separate property while the amount recovered by the husband constituted community property.

The Louisiana jurisprudence seems then to be well settled to the effect that damages arising from personal injury actions constitute the separate property of the wife even when she is

3. Texas & Pacific Ry. v. Humble, 181 U.S. 57, 21 S.Ct. 526, 45 L.Ed. 747 (1901); Traglio v. Harris, 104 F.(2d) 439, 127 A.L.R. 803 (1939); W. W. Clyde & Co. v. Dyess, 126 F.(2d) 719 (1942).

4. 141 La. 469, 75 So. 209 (1917). See also Duchanne v. Smith, 9 La. App. 264, 119 So. 268 (1928); Johnson v. Sundberry, 150 So. 299 (La. App. 1933). Cf. Simon v. Harrison, 200 So. 476 (La. App. 1941), noted in (1941) 3 LOUISIANA LAW REVIEW 828. See Daggett, Is Joint Control of Community Property Possible? (1936) 10 Tulane L. Rev. 589.

living with her husband, but are the separate property of the husband only when as provided by the Act of 1920[5] he is living "separate and apart from his wife by reason of fault on her part, sufficient for separation or divorce."

Since damages suffered by a person oftentimes result in a decrease of the earning capacity of such person, the ideas of "earnings" and "damages" are closely related and are dealt with together in Articles 2334 and 2402 of the Civil Code. It is therefore important to point out in this discussion the relation of "earnings" to the community property.

Prior to the enactment of Act 170 of 1912[6] the decisions of our courts awarded the earnings of the wife to the community.[7] The language of Act 170 of 1912 seems to have been intended to change the jurisprudence as it existed at that time. The legislative intent appears to have been that the earnings of the wife were to be her own separate property not only when she was "living apart from her husband although not separated by judgment of court" but also when she was "carrying on a business, trade, occupation or industry separate from her husband," and that likewise the recovery of "damages resulting from offenses and quasi offenses" were to constitute the separate property of the wife.

However, when the supreme court was called upon to construe the Act of 1912 the legislative intent was apparently disregarded. In the case of *Houghton v. Hall*[8] the question presented was whether the earnings of the wife while she was living with her husband, although she was pursuing a separate business or occupation from him, constituted her separate property. The court held such earnings to be community property by construing the Act of 1912 as though it read: "The earnings of the wife when living apart from her husband although not separated by judgment of court, [that is] her earnings when carrying on a business, trade, occupation or industry separate from her husband. . . are her separate property." In other words, the second clause of the act was made illustrative of the first by interposing the words "that is" where the legislature apparently did not intend to interpose them.

5. La. Act 168 of 1920 [Dart's Stats. (1939) §§ 4729-4730], amending Art. 2334, La. Civil Code of 1870.

6. La. Act 170 of 1912, amending Art. 2334, La. Civil Code of 1870.

7. Isaacson v. Mentz, 33 La. Ann. 595 (1881); Succession of Barry, 48 La. Ann. 1143, 20 So. 656 (1896); Succession of Webre, 49 La. Ann. 1491, 22 So. 390 (1897); Succession of Manning v. Burke, 107 La. 456, 31 So. 862 (1902).

8. 177 La. 237, 148 So. 37 (1933).

Apparently the interposing of these words would make the Act of 1912 contra to the provisions of Act 68 of 1912[9] because under such construction it might just as logically be claimed that actions for damages resulting from offenses and quasi offenses constitute the separate property of the wife only when the wife is living separate and apart from her husband. Otherwise, it would be to say that the words "that is" as interposed by the court apply to the second clause of the act but do not apply to the third. Such a position cannot be sustained on logical grounds.

As a matter of social policy the construction placed by the court on the act seems to be an excellent one. The community property system like all legal institutions is devised to benefit society; the community property system achieves this purpose by strengthening the economic situation of the family. By making the earnings derived from the separate industry of the wife community property, the economic power of the family as a unit is undoubtedly increased. Since the separate earnings of the husband form part of the community[10] there is apparently no reason why the separate earnings of the wife should not be brought into this community of acquets and gains.

There are some grounds, however, on which it could be claimed that it is socially advantageous to make the separate earnings of the wife her separate property when she is carrying on such a "business, trade, occupation or industry separate from her husband." Since the husband is made by law the administrator of the community assets,[11] the possibility exists of worthless husbands using to their individual advantage the fruits of the labor and industry of their wives. Another advantage in making the separate earnings of the wife her separate property would be presented in case the husband failed in his business enterprises. His creditors would have a right to hold the community liable,

9. La. Act 68 of 1902, amending Art. 2402, La. Civil Code of 1870.

10. Art. 2334, La. Civil Code of 1870: "The property of married persons is divided into separate and common property.

"Separate property is that which either party brings into the marriage, or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly. . . .

"Common property is that which is acquired by the husband and wife during marriage, in any manner different from the above declared."

This article as it has been discussed above has been amended by La. Acts 170 of 1912 and 186 of 1920.

11. Art. 2404, La. Civil Code of 1870: "The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife."

but they could not attack the separate estate of the wife[12] and the family would preserve at least part of its economic resources.

It is then submitted that while the community property system is out of "balance" as to the recovery of damages arising from personal injury actions, the supreme court by its decision in *Houghton v Hall*[13] has preserved the "balance" with regard to earnings arising from the separate business, trade, occupation, or industry of the spouses.

R. R. A.

CRIMINAL PROCEDURE—HABITUAL OFFENDER STATUTE—STATUS OF FOREIGN CONVICTIONS—Defendant was convicted of a felony. He was later charged by information as being a second offender, the prior crime having been petty larceny in the sum of $100 in the state of New York. That offense was a misdemeanor by the laws of New York, but it would have been a felony if it had been committed in Louisiana. Defendant then filed a motion to quash the indictment on the grounds that the habitual offender statute[1] was not applicable to his case. *Held,* that the word "crime" used in the Louisiana habitual offender statute should be interpreted to mean a felony and not to include a misdemeanor. Hence, the prior offense must have been a felony by the laws of the particular state in which it was committed in order to hold the accused as a multiple offender. Since the defendant was convicted of a misdemeanor in New York, the habitual offender statute is inapplicable and the motion to quash is sustained. *State v. Johnson,* 13 So. (2d) 268 (La. 1943).

One of the most difficult problems in administering the habitual criminal statutes has been to determine what effect should be given convictions in foreign states.[2] There are two views: the

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12. The community property is liable for the separate debts of the husband whether such debts were contracted either before or after the creation of the community. Glenn v. Elam, 3 La. Ann. 611 (1848); Davis v. Compton, 13 La. Ann. 396 (1858); Hawley v. Crescent City Bank, 26 La. Ann. 230 (1874); Succession of Moore, 42 La. Ann. 332, 7 So. 561 (1890). On the other hand, the community is not liable for the debts of the wife which are clearly her own, whether such debts were contracted before marriage or afterwards. Flogny v. Hatch, 12 Mart.(O.S.) 82 (La. 1822); Kennedy v. Bossiere, 16 La. Ann. 445 (1862); Jones v. Read, 1 La. Ann. 200 (1846). See Daggett, The Community Property System of Louisiana (1931) 48-51.

13. 177 La. 237, 148 So. 37 (1933).

1. La. Act 15 of 1928, repealed and re-enacted by La. Act 45 of 1942 [Dart's Crim. Stats. (1943) § 709].

2. The problem is ably discussed in Comment (1939) 2 LOUISIANA LAW REVIEW 177.