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Civil Code and Related Subjects: Successions, Donations and Community Property

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III. CIVIL CODE AND RELATED SUBJECTS

SUCCESSIONS, DONATIONS AND COMMUNITY PROPERTY

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SUCCESSIONS

Succession of Land[1] reiterates the rule that "where there are no debts of a succession, and nothing will be gained by the holding of an administration, the appointment of an administrator will not be ordered if opposed by those in interest."[2] The application of the rule was particularly appropriate here where the heirs had by formal judgment been put into possession of all of the property of the succession. Whatever the altercation between the heirs, which could be settled by other means, it was certainly unnecessary to burden the estate with the expense and delay of an administration.

White v. Succession of Candebat[3] was concerned with proof of debt for services rendered to the deceased. Act 207 of 1906 and Act 11 of 1926 were the guides.[4] The claim was filed against the estate within the year following death. The district court had awarded $1250 on a quantum merit basis and this judgment was left undisturbed.

In a petitory action to recover a tract of land in Caddo Parish, the defendant in *Arnett v. Marshall*[5] relied principally upon the allegation of forgery. Thus the opinion is chiefly concerned with proof of signatures. In finding that plaintiff's deed was valid the court made an interesting observation regarding the testimony of handwriting experts:

> "All testimony in proof of handwriting, except where the witness has seen it actually performed rests upon the principle of comparison; and, although admissible and is to be weighed by the court, it is merely evidence of opinion. *Succession of McDonogh,* 18 La. Ann. 419. Such evidence must yield when pitted against positive testimony as to the actual writing."[6]

The defendant lost the rest of the tract in question because of having accepted unconditionally the succession of the one from whom he

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1. 31 So. (2d) 601 (La. 1947).
2. 31 So. (2d) 607, 609.
3. 210 La. 995, 29 So. (2d) 89 (1946).
4. La. Act 207 of 1906 [Dart's Stats. (1939) §§ 2024, 2025]; La. Act 11 of 1926 [Dart's Stats. (1939) §§ 2024, 2025].
5. 210 La. 932, 28 So. (2d) 665 (1946).
6. 210 La. 932, 943, 28 So. (2d) 665, 668.

claimed. Thus, he was held for all "debts and obligations" including the warranty of the title which he now questioned.

Thompson v. Thompson[7] presents most interesting questions and there seems to be the same difference of opinion among students of the law regarding solutions as there was upon the supreme bench of the state. From the facts it appears that a husband and father with seven children executed a sale of certain property to his son. A counter letter was issued showing that the sale was simulated and that no consideration was received. The sale was recorded but the counter letter was not. The simulated vendee gave an option to a third person, some eleven years after the death of the father. The option contract was recorded. The holder of the option attempted to exercise his right and the main question to be answered is whether the right of the forced heirs to bring the property back to the succession under the rules of simulation[8] was greater or less than that of the holder of the option, depending on the record, to enforce specific performance. The majority of the court decided in favor of the forced heirs. In this case, the deed did not show that the transfer was between father and son, hence, the court indicated that had the actual transfer been accomplished, then *McDuffie v. Walker*[9] and the public policy involved would have protected the third person. However, title yet remained in the son with an outstanding option right in the hands of a holder without knowledge of the right of the forced heirs to upset the sale as having been simulated. Thus the case was still in the category of the *McDuffie v. Walker* and *Watson v. Bethany*[10] decisions. Having set forth this analysis, the court then took the position that this simulated sale was indeed a donation in disguise and that every donation where forced heirs are in existence, passes but a qualified ownership which remains in this uncertain state so long as this outstanding right in forced heirs to protect their legitime remains. The five year prescription on reduction, not having been pleaded, was unavailable. Since title was not in the option giver, specific performance would not lie and the holder of the option was remitted to a damage suit. The result of this decision is eminently satisfactory to those who believe that protection of the legitime is an even more important policy than that of faith in the record. However, the theory of distinction between the right to reduce and the right to declare a simulation has been

7. 211 La. 468, 30 So. (2d) 821 (1947).
8. Art. 2239, La. Civil Code of 1870.
9. 125 La. 152, 51 So. 100 (1909).
10. 209 La. 989, 26 So. (2d) 12 (1946).

fairly well rooted hitherto and this decision may give trouble in the future since it has been understood and indeed expressed in this case that in gifts title passes subject to defeasance in whole or in part by suit to reduce, personal to the forced heirs—while a simulation leaves title where it was having been merely uncovered by forced heirs or by creditors of the simulated vendor. The prescription applicable obviously is different, also. The combination of theories leaves the reader in some confusion for while the transaction was a simulation and was partly treated as such, the principles of reduction of donations were applied.

The claim of the widow in community under Article 2404 prohibiting donations by husband of immovables of the community lost under the analysis of the *Watson v. Bethany* case and the faith of the record policy so far as the option holder was concerned. Under the theory that the forced heirs had the property returned to the succession of the deceased husband for the recovery of their legitime, the widow was then able to assert her right to half of it as community property.

Donations

The case of *Clanton v. Shattuck*[11] is concerned with evaluating evidence regarding the sanity of a testator. The presumption of mental normalcy was found to have been overcome by the evidence, particularly letters written on the same day that the will was confected which convinced the court that the testator was not sane when he wrote the will whatever his state of mental health might have been on certain other occasions.

Proof of holographic will is the concern of *Succession of Imwolde*.[12] The document was found to be in its entirety in the handwriting of the testatrix. The fact that she left her property to her cousin rather than her nieces was not peculiar as she never saw the latter and maintained close relationships with the cousin.

The interpretation of a clause of an holographic will written in French concerned the court in *Succession of Montegut*.[13] Testatrix was unmarried and left no forced heirs. After making several particular bequests following the opening words "I leave" the testatrix then stated "5 hundred for settling my estate which I leave to Charles St. Martin and to Pat Monegut, as the executor of my testament."[14]

11. 211 La. 750, 30 So. (2d) 823 (1947).
12. 210 La. 1019, 29 So. (2d) 48 (1946).
13. 211 La. 112, 29 So. (2d) 583 (1947).
14. 211 La. 112, 29 So. (2d) 583, 585.

Though there was unanimity of opinion that the statement was ambiguous, expert French grammarians split four to four on interpretation as to whether the two named individuals were universal legatees or particular legatees for five hundred dollars. Presumptions in such cases culled from the jurisprudence were in conflict. The court very properly relied on Articles 1714, 1715, and 1716 stating in general that when the intention of the testator cannot be determined from the text of the will that extrinsic evidence must be considered. The case was remanded for the "restricted purpose" of collecting this evidence.

A special legacy followed the clause which might be a universal bequest and the court saw no objection to that as the same result often had been found in codicils.

A note appears in this issue wherein the *Succession of Lambert*[15] is fully discussed. Certainly there is much room for difference of opinion regarding phraseology which will fall within the pattern of a conjoint legacy as outlined by Article 1707. However, it seems unfortunate that the matter cannot be put to rest at least so far as these expressions which seem to come so handily to draftsmen are concerned. Certainly, lawyers will do well to avoid the red flag phrases—as "share and share alike." Writers of holographic testaments however, will doubtless continue to use these easy words which to the layman at least must seem to convey a clear meaning.

Suit was instituted by two daughters in *Faison v. Patout*[16] to obtain recognition as owners of certain jewelry said to have been received as a manual gift from their deceased mother. Before her death, the mother in presence of three persons, one of whom was one of the daughters, gave a box to the latter saying, "My jewelry I give to my two daughters." After that the mother never had custody or control over the jewelry. Under the plain provisions of Article 1539 of the Civil Code, the gift was perfect. The items were later in the keeping of the brother, now dead, but he was acting as a depository and was keeping the valuables not for himself but for his sisters. Prescription did not begin to run until the daughters were refused the possession of their property by the widow of the brother, only six months before suit was filed; thus the plea of the ten year prescription on personal actions under Article 3544 of the Code was unavailing.

15. 210 La. 636, 28 So. (2d) 1 (1946).
16. 31 So. (2d) 416 (La. 1947).
17. 31 So. (2d) 412 (La. 1947).

COMMUNITY PROPERTY

The contest in *Losavio v. Losavio Realty Company*[17] is chiefly between father and son. The latter claimed that he had an interest in his mother's succession and that his father had been guilty of fraud per se when he organized a corporation, the assets of which were the property of the community, since he made this move after he learned that his wife had but a very short time to live. The court found no fraud for although the motive was clear that the father wished to keep control as president and almost, complete owner of the corporation, he concealed nothing, had continued the incorporated business, had probated his wife's will, had not failed to account to his ten children and in fact, plaintiff was himself an officer in the corporation. The case of *Wainer v. Wainer*[18] was clearly distinguished on its facts which showed failure to account, concealment and disposition of assets.

Mrs. Land left a son and daughter and a will leaving everything to her daughter in the *Succession of Land*.[19] The son seeks to recover his legitime and also to distinguish between the separate property of his mother and property that had belonged to the community which had existed between his mother and his deceased father. His portion of his father's one-half of the community would be one-half or one-fourth of the whole plus one-fourth of one-half or one-eighth of his mother's part under the will so he stood to receive three-eighths of the community property and two-eighths of the separate estate. Proof in connection with each item of both his father's and mother's succession was most carefully considered. The daughter pleaded that certain bonds had been given her by the mother during her lifetime as her name was written on the envelope containing the bonds and a gift indicated. This gift of an incorporeal was invalid as not having been made before a notary and two witnesses—the stock transfer act pleaded by counsel having nothing to do with it. Gifts of certain jewelry fell as lacking delivery necessary to the manual gift. Again the court stated that labels of property in income tax returns were not to be accepted against positive proof of their real nature. War Savings Bonds issued to mother and daughter as co-owners were declared separate property of the daughter under the regulations of the United States Government regarding such bonds.

Fleming v. Fleming[20] simply stands for the well known principle that property bought during the community is presumed

18. 210 La. 324, 26 So. (2d) 829 (1946).
19. 31 So. (2d) 609 (La. 1947).
20. 211 La. 860, 30 So. (2d) 860 (La. 1947).

community. Since there was no rebuttal of this presumption, the heirs of the mother could claim as against the father a one-half interest in a certain partnership. The couple moved here from another state and brought funds with them with which they bought certain stock later transferred to the partnership. No question of usufruct was mentioned in the opinion.

Capillon v. Chambliss[21] instances a case where the presumption of community was rebutted by a wife and the husband's step-daughter to whom certain property had been sold. The rule was again stated that while under homestead association laws and for their purposes the usual sale and resale are what they are labelled yet this procedure does not have the effect of converting separate property into community property as the double transaction is in fact but one and that a security device.

Mrs. Betz sued her husband for a separation of property whereupon he sued for separation of bed and board on ground of abandonment and obtained judgment. He appeared regarding the property decree only and hence *Betz v. Riviere*[22] is concerned with the question of whether certain property was separate or community. A recapitulation of the long and involved recitation of the many transactions would serve no useful purpose. Settled rules of community property were applied. The couple had been married more than thirty years. The wife had worked outside her home for a salary for twenty-nine years besides dealing extensively in real estate with money and property definitely separate. She had supported the home. Justice Fournet observed that during the marriage the husband had given her a total of two hundred dollars. The question of whether a donation of realty with reserve of usufruct is valid or not was mentioned but unanswered as not having been raised by a party at interest. The following statement regarding the evidential value of income tax returns in determining whether property is separate or community is of interest:

> "While it is true that the filing of community income tax returns may be used as evidence against the wife's contention that property in her name is not her separate property, such evidence is not conclusive. Evidence of this character may be weighed against the wife when the evidence offered by her otherwise to establish the separate status of property is not satisfactory or there is some doubt as to its separate status. In this

21. 211 La. 1, 29 So. (2d) 171 (1946).
22. 211 La. 43, 29 So. (2d) 465 (1947).

case, however, the paraphernality of the funds which the property claimed by Mrs. Riviere was acquired has been established by an overwhelming preponderance of the evidence."[23]

Since in this issue a note appears discussing the case of *Paline v. Heroman*[24] it would be repetitious to outline the case here. The writer would like to observe merely that the interpretation of Articles 915 and 1022 particularly is so startling as to cause alarm for the future, should this case be used as a guide to further decisions.

Roccaforte v. Barbin[25] stands for the community property principle that when property stands in the joint names of husband and wife that the wife alone may not bind it. Furthermore, the court found that other interested persons than the husband may complain since Articles 134 and 1791 of the Revised Civil Code were in reference to separate property of the wife and before the passage of the married women's emancipatory acts.

The authors of both majority and minority opinions in *Easterling v. Succession of Lamkin*[26] agreed on the rule that life insurance policies payable to the "insured, or to his executors, administrators or assigns" take the stamp of separate or community property according to the marital status of the insured at the date of the issuance of the policy. This idea seems to follow the general rule of title. The difference of opinion expressed in this case was on the matter of disability payments due the insured after his marriage on policies issued before the marriage. The majority of the court, through Chief Justice O'Niell, took the view that since the disability happened during the marriage, the payments were a community asset payable "in lieu of or as compensation for the loss of the earning capacity of the insured."[27] Since the payments depended on the future uncertain event of disability which had not happened at the time of the marriage nothing of value was brought "into the marriage" under that phrase as found in Article 2334 of the Civil Code. The Chief Justice stated that he arrived at the conclusion that these disability payments were community property by a process of eliminating the various kinds of property declared by the Code to be separate property. The position taken by Justice Hawthorne in his dissenting opinion was that title vested as of the date of the policy to all rights under the policy whether they were dependent upon

23. 211 La. 43, 29 So. (2d) 465, 472.
24. 211 La. 64, 29 So. (2d) 473 (1946).
25. 31 So. (2d) 521 (La. 1947).
26. 31 So. (2d) 220 (La. 1947).
27. 31 So. (2d) 220, 224.

the happening of future uncertain events or not and that the right was of value and was brought "into the marriage" and hence was separate. The dissenting justice pointed out of course that under this view the community should be credited with such premiums as had been paid from community assets. While it was true that payments would not be due unless disability occurred, certainly they could not have been due without the policy and under that title the right arose. The minority view seems more logical to the writer. Since deceased left no parents or descendants, the widow received all of the community under 915, as well as the death benefits coming to her as beneficiary.

Succession of Chavis[28] sets forth claims for two women contending for half of the property of their deceased husband. The second marriage was declared putative as to the wife and children. The husband clearly was in bad faith. The only property involved was acquired during the putative marriage and hence was property of the second community and the putative wife was awarded one-half of it. The children of the two marriages were awarded the other half in equal shares. The old Spanish rule[29] in such cases was not mentioned. The court indicated that the legal wife was undeserving. Furthermore, the property in question was acquired after judgment of separation of bed and board from the first wife so there was no community existing between husband and first wife when the property was acquired and hence wife number one would still have received nothing had there been no second marriage, putative or otherwise.

Two deeds caused the litigation in *Robinson v. Marks*.[30] The first was a sale of land to the wife. The second was a sale of mineral rights by the wife to the vendor of the land. The attempt was to declare the second deed void as the property was community and the transfer was signed by the wife only. Upon these facts alone obviously the title from the community would fall. However, it developed that these two transfers were one and the same transaction necessitated by the error in the first deed of failing to reserve the minerals as understood by all parties to the original contract. Thus, title to the minerals in question had never really passed from the vendor of the land, the second deed purporting to transfer them having been but an integral part of the deal to purchase land.

28. 211 La. 313, 29 So. (2d) 860 (1947).
29. See Daggett, Community Property System of Louisiana (1945) 119. Reprinted with addenda.
30. 211 La. 452, 30 So. (2d) 200 (1947).