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carefully dealing with the lands granted by the State to the levee boards under the provisions of the various acts making such grants, so that they were not lightly to be considered as revoked or repealed by the Legislature,"³⁴ and, second, in the light of such careful dealing, an intent to divest the board of title was not to be lightly inferred particularly since "it would have been a very simple matter for the Legislature to have used appropriate language showing such intention."³⁵

III. CIVIL CODE AND RELATED SUBJECTS

SUCCESSIONS AND DONATIONS

*Harriet S. Daggett**

In a contest between a brother and sister, both seeking appointment as administrator of their mother's estate, the supreme court in *Succession of Brown*¹ upheld the trial judge's appointment of the brother, stating that the matter was largely in the discretion of the judge unless abuse was shown. The rule that the term "beneficiary heir" applies to heirs who may accept with benefit of inventory, as well as to those who have thus accepted, was reiterated. Article 1033 of the Revised Civil Code was said to govern the presented situation.

The facts in *Kiper v. Kiper*² showed that Mrs. Kiper, widow, died, leaving four children and an interest in a piece of property formerly belonging to the community between herself and her deceased husband. Her husband had left a will in which he donated to her his one-half of the community. This amount was reduced to the disposable portion, one-third of his one-half, thus giving the widow a two-thirds interest in the land. After the mother's death, two of the children sued the other two for partition of the property by licitation, claiming that the four children owned in equal shares. The defendants produced not only the will of their father, but also an unprobated will of the mother in which she left her entire two-thirds interest to the daughter who had cared for her for many years. The words of her testament showed her intention to remunerate the daughter for services, which were proved. The court likened the remunerative donation to a dation en paiement. Plaintiffs maintained that services of a child are

34. *Ibid.*, citing *State ex rel. Hodge v. Grace*, 191 La. 15, 184 So. 527 (1938).

35. 214 La. 383, 389, 37 So. (2d) 844, 846.

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1. 214 La. 377, 37 So. (2d) 842 (1948).

2. 214 La. 733, 38 So. (2d) 507 (1948).

gratuitous in absence of promise to pay. The court found the intent to pay in the will wherein the property was bequeathed as compensation, so no reduction was due plaintiffs. No mention of judgment to partition is made, as the pleadings regarding shares were not in accord with the findings of the court under the mother's will. The mother's precatory statement in her testament trusting that the children would not contest it was futile.

Partition was held to be in order in *Fabacher v. Fabacher*³ between the succession of a deceased father and his children who had been put into possession of their deceased mother's half of the community subject to the father's usufruct. Article 1135, *Succession of Dumestre*⁴ and *Wilson v. Wilson*⁵ were relied upon. *Robin v. Lob* was overruled.

In *Succession of Dugas*⁷ the court found that the filing of a final account by an administrator, wherein a debt by the deceased to the administrator was shown, was the filing of suit within the meaning of Act 207 of 1906 as amended by Act 11 of 1926.⁸ The case was remanded in order that the testimony of "at least one credible witness" could be produced to prove the claim as required by the cited statutes. Prescription of ten years under Article 3544 for board and lodging was applied.

Petitioners sought to have the will of their grandmother probated in *Succession of Lewis*.⁹ It was found that the will, dated May 19, 1882, had been probated in 1899, soon after the death of the testator and the heirs had been put into possession.

A suit to declare a donation inter vivos null because of fraud and error fell for lack of proof in *Breaux v. Savoie*.¹⁰

A contest between the state and the natural brothers and sisters of decedent appears in *State v. De Lavallade*.¹¹ Decedent's mother was an unmarried colored woman and his father was alleged to have been an unmarried white man. The mother had informally acknowledged the child, who was born in 1864. The court refused to give retroactive effect to Article 204 of the Code of 1870 providing that those persons who are not legally capable of marrying at the time of conception of a child may not there-

3. 214 La. 940, 39 So. (2d) 426 (1949).

4. 42 La. Ann. 411, 7 So. 624 (1890).

5. 107 La. 139, 31 So. 643 (1902).

6. 204 La. 983, 16 So. (2d) 541 (1944).

7. 215 La. 13, 39 So. (2d) 750 (1949).

8. Dart's Stats. (1939) §§ 2024-2025.

9. 215 La. 79, 39 So. (2d) 830 (1949).

10. 215 La. 88, 39 So. (2d) 833 (1949).

11. 215 La. 123, 39 So. (2d) 845 (1949).

after acknowledge him. Article 923 was applied and the natural brothers and sisters and the representatives of those previously deceased inherited.

Plaintiff attempted in *Muse v. Muse*¹² to recover from his sisters and brothers, who had unconditionally accepted their mother's succession, remuneration for his services to the mother. The mother was not in necessitous circumstances and had not promised payment. The court held he must be presumed to have donated his services and allowed no recovery. The case was carefully distinguished from a situation where one child had performed the legal obligation of caring for a parent in need when he would then have a right against the other children for their contribution.

The facts in *Olivier's Minor Children v. Olivier*¹³ were that a widow, mother of three sons, having lost two of them, had conveyed to the third and only living child a certain piece of property. This was her only asset, and she owned one-half in indivision with usufruct over the other one-half, since the property had belonged to the community existing between herself and her deceased husband, who had died intestate. The mother had reserved the usufruct in the deed, which recited cash consideration and credit represented by a note. After the mother's death, minor children of one of the previously deceased sons attacked, through their tutrix-mother, the sale of their grandmother as having been simulated. The vendee son was unable to prove "the reality of the sale" under Articles 2444, 2480, and the court decreed the property to form part of the estate of the deceased grandmother of plaintiffs.

A final accounting of an administrator was reviewed in *Succession of Shaddinger*,¹⁴ and the judgment appealed from by the administrator was affirmed. Recitation of the items, the audit, et cetera, would be of no interest in a resume of this nature.

A protracted discussion of the marital portion appears in *Malone v. Cannon*¹⁵ with a resume of jurisprudence. The court stated that previous expressions of the court that Article 2382 (marital portion) and Article 3252 (providing for a necessitous widow and children) were to be regarded as in pari materia were erroneous since these articles do not have the "same purposes,

12. 215 La. 238, 40 So. (2d) 21 (1949).

13. 215 La. 412, 40 So. (2d) 803 (1949).

14. 41 So. (2d) 236 (La. 1949).

15. 41 So. (2d) 837 (La. 1949).

aim and scope."¹⁶ This analysis is eminently correct in the writer's judgment. The court denied a husband, claiming under Article 2382, a portion of his deceased wife's estate, since the spouses had been voluntarily separated for almost ten years. The case was remanded to the district court to find out *why* the spouses had been separated. Furthermore, instructions to the lower court were that if it were found that the plaintiff was "free from fault" he must be granted the portion; otherwise, his suit should be dismissed. Justice McCaleb dissented on the ground that the majority opinion pursued the spirit rather than the letter of a clearly written article. This was the basis of previous decisions which, it had been thought, laid to rest the many times debated question.

While certain individual cases might result in apparent injustices, the social welfare in general might be better served under the dissenting justice's view. In the writer's judgment, an examination by the court in every case as to whether the spouses were married "in fact as well as in law," as to how long they had been separated and why and most particularly as to the matter of being with or without fault is most deleterious and is an injection of divorce proceeding material bad enough in its own place. The parties, during life having seen fit not to subject their personal affairs to public scrutiny through divorce proceeding, certainly should not have their differences examined after the death of one of them. Present ideas of social justice and family privacy and protection should have more weight than intent of legislature as discovered by the history of an article pursued from Roman times, particularly when the language of the article is clear.

The principle that collation cannot take place in a partition between co-owners was reiterated in *Succession of Scardino*.¹⁷ Heirs do not become co-owners until they are placed in possession of the estate by a judgment of court. The property being partitioned in this instance was between co-heirs in settlement of succession, hence collation was ordered. A dispute of fact regarding retention of a sum by one heir had been resolved by the district judge, whom the supreme court thought better able to evaluate veracity of witnesses, et cetera. A withdrawn allegation, which was a mere conclusion of law and unprejudicial, was said not to estop plaintiffs in subsequently taking a contrary position.

16. *Id.* at 845.

17. 215 La. 472, 40 So.(2d) 923 (1949).

COMMUNITY PROPERTY

In *Lee v. Lee*¹⁸ a contract between husband and wife settling the community was dissolved on account of fraudulent representations made by the husband as to the value of the community. The agreement was made on the day upon which a judgment for separation of bed and board was rendered.¹⁹ Emphasis is placed upon the fact that the parties were not dealing at arm's length due to the husband's knowledge of the business of the community, and hence it was not necessary to prove that the wife's reliance on the husband's representation was the cause of her execution of the contract.

The settled rule that a community of property is a civil effect of a putative marriage was applied in *Funderburk v. Funderburk*,²⁰ and the wife in good faith was awarded her half of the community upon its dissolution by the death of the husband. The putative wife also claimed half of the value of the improvements made with community funds upon the separate property of the husband. The court announced the rule of Article 2408 to be an award of half of the enhanced value of the improved property, not of the price of the improvements; and, since proof of an enhanced value was lacking, this item was not allowed. A claim for certain movables as the wife's separate property was disallowed as the items were purchased with her earnings while the community was in existence and hence were community property. A claim was entered for other movables said to have been manual gifts from the husband. The rule that a husband may legally make gifts to his wife was honored, but proper proof was lacking of his intent to make these gifts. The court found that the objects had merely been purchased as articles for the home and hence were community property. The discussion regarding the alleged gift of a Buick automobile indicates the necessity for buying in the name of the donee and insuring in like fashion. Words of presentation are not enough. Real delivery was not discussed.

A husband bought a moss gin and equipment before marriage. After marriage he entered into a partnership and a two-thirds interest in the pre-nuptial investment was transferred to a Moss Company which issued him seventeen shares of stock. Since the gin and equipment given for the stock was not the identical gin

18. 214 La. 434, 38 So.(2d) 66 (1948).

19. See Art. 2446, La. Civil Code of 1870.

20. 214 La. 717, 38 So.(2d) 502 (1949).

and equipment bought before marriage, the court in *Hawthorne v. Hawthorne*²¹ held the shares of stock to be community property.

An accounting from a second wife was demanded by plaintiff, child of the deceased by his first marriage, in *Cameron v. Rowland*.²² A careful resumé of facts occupied the court in distinguishing property of the second community from separate property of the surviving widow. The rehearing is concerned only with the matter of certain shares of stock in the First Federal Savings and Loan Association of Shreveport. The court recited the pertinent passages of the various statutes²³ dealing with building and loan associations and found the shares purchased while the 1902 act was in force to be separate property of the wife, and those purchased under the 1936 statute community property. Furthermore, the court felt that those statutes making the shares separate property did not intend to "divest the community" of funds and hence held that the separate estate owed the community the amounts used in the purchase under the 1902 act.

A married man purchased property declaring in the instrument of acquisition that he was single. Plaintiff sought in *Humphreys v. Royal*²⁴ to recover a one-half interest in this property, which he had purchased from the divorced wife. The husband after his divorce had sold all of the property to defendant. The divorce judgment was never recorded in the parish wherein the land was situated. The defendant relied on the law of registry and was upheld by the court, thus divesting the wife of her community interest because of the false representations of the husband. Justice Hawthorne's dissenting opinion strongly presents the preservation of the community interest to the wife or her heirs as being a more valuable public policy than that of registry. He cites *Succession of James*,²⁵ which the majority of the court attempted to distinguish.

Well established rules of community property were reiterated in *Williams v. Williams*,²⁶ namely, that the husband might preserve title in his separate property by proper recitation in the deeds of acquisition and that community funds expended on sepa-

21. 214 La. 905, 39 So.(2d) 338 (1949).

22. 215 La. 177, 40 So.(2d) 1 (1948).

23. La. Act 120 of 1902; La. Acts 140 of 1932, 337 of 1938, 95 of 1940 [Dart's Stats. (1939 and Supp. 1949) § 716 et seq.].

24. 41 So.(2d) 220 (La. 1949).

25. 147 La. 944, 86 So. 403 (1920).

26. 41 So.(2d) 736 (La. 1949).

rate property might be recovered by the community from the separate estate, if an enhanced value by virtue of the expenditure could be shown at the time of dissolution of the community.

MINERAL RIGHTS

*Harriet S. Daggett**

The case of *State v. Evans*¹ has been noted in this journal² and, hence, a discussion of the material would be largely repetitious.

The majority of the court in *H. H. Transportation Company, Incorporated v. Owens*³ concurred with the finding of the district judge "that Act No. 68 of 1942 did not contemplate nor did it require recordation of a vendor's lien covering the sale of an entire drilling rig which is moved into a parish for the drilling of wells and that it contemplated only the furnishing of supplies to a well already commenced."⁴ Act 68 of 1942 reads: "That as to movable property said vendor's lien and privilege must exist and be filed for record within seven days after said property, subject to the vendor's lien and privilege, is delivered to the well or wells."⁵ Justice McCaleb did not subscribe to this view, finding the section "clear and unambiguous" and the majority interpretation narrow, in that it failed to include the site within the words "well or wells" and hence took the position that an entire rig delivered before a well was commenced was not covered by Section 2-B of the statute. Justice McCaleb's view seems the sounder one under the language of the statute, the intentment of the legislature and the statutory history and trend in connection with this and other legislation dealing with protection of laborers and materialmen.

Ownership of royalty interests was involved in *Continental Oil Company v. Fuselier*.⁶ The record owner had made a contract under the terms of which he transferred his interest to another person and himself as trustees for a corporation subsequently to be formed. One of the provisions of the agreement was that in case the corporation was not formed within ten years, the trustees would cancel the contract. Since the condition was not

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1. 214 La. 472, 38 So.(2d) 140 (1948).

2. Note (1949) 9 LOUISIANA LAW REVIEW 561.

3. 214 La. 985, 39 So.(2d) 441 (1949).

4. 214 La. 985, 991, 39 So.(2d) 441, 443 (1949).

5. La. Act 68 of 1942 [Dart's Stat's. (Supp. 1949) §§ 5101.6-5101.12].

6. 214 La. 1009, 39 So.(2d) 596 (1949).