Louisiana Law Review

Volume 10 | Number 2
The Work of the Louisiana Supreme Court for the 1948-1949 Term
January 1950

Civil Code and Related Subjects: Partnership. Agency

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Johnson v. Johnson[45] and *Roshto v. Roshto*,[46] the supreme court once more[47] expressed its disapproval of the practice of dividing custody between separated or divorced parents, emphasizing the need for continuous control by a single parent; but at the same time the court specifically affirmed the natural right of the parent not awarded custody to visit the child at reasonable times. *Sampognaro v. Sampognaro*[48] involved only an application of Article 157 of the Civil Code consistent with the supreme court's practice of presuming that, after separation or divorce, it is to the greater advantage of the children to place them in the custody of the mother.

PARTNERSHIP. AGENCY.

*Robert A. Pascal**

Partnership

The proper interpretation of a provision in a partnership agreement relative to the distribution of "capital and effects" on the death of a partner was one of the problems in *Succession of Conway*.[1] The widow of a deceased partner contended the agreement contemplated a distribution of the value of the partnership's business good will as well as other assets. The surviving partners denied this contention. Whether the agreement in question, analysed as a whole, did or did not contemplate the inclusion of good will among the "capital and effects" or "assets and effects" of the partnership is a question of fact which need not be considered here and which should not be considered without a review of the record. The supreme court, however, agreed with the widow's interpretation on the theory that good will was as much "partnership property" as capital assets, citing out-of-state authorities to this effect. Civil Code Articles 2808 and 2809 recognize good will as an asset, even one which may be the contribution of a partner to the total assets of the partnership.

Agency

The only agency case which need be mentioned is *Morgan v. Cedar Grove Ice Company, Incorporated*.[2] According to this

45. 214 La. 912, 39 So. (2d) 340 (1949).
46. 214 La. 922, 39 So. (2d) 344 (1949).
47. See Pierce v. Pierce, 213 La. 475, 35 So. (2d) 22 (1948), and the writer's remarks thereon (1949) 9 LOUISIANA LAW REVIEW 201.
48. 41 So. (2d) 456 (La. 1949).
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1. 41 So. (2d) 729 (La. 1949).
2. 41 So. (2d) 521 (La. 1949).

decision, the president and general manager of an ice manufacturing corporation, authorized to contract for the sale of its product, may bind the corporation by a stipulation for liquidated damages in the event of the corporation's non-performance of its obligations under the contract. Third persons are entitled to rely on a corporation's general officer having authority to enter into contracts in the usual course of business and certainly stipulations for liquidated damages must be frequent in contracts for the delivery of ice. The same result would follow under ordinary agency law, Article 3000 of the Civil Code providing that the authority of agents may be inferred from their functions or the ordinary course of the business to which they are devoted.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

Despite the criticism that has been levelled at the doctrine of lesion beyond moiety the court demonstrated in *Jones v. First National Bank, Ruston,*[1] that the opportunity it affords for protecting a vendor of real property who transfers his title thereto for less than one-half its actual value is not to be lightly surrendered. The case did not involve an ordinary sale of the property but a dation en paiement in satisfaction of a judgment. The position of the transferee was that, under the provisions of Louisiana Civil Code Articles 1861 and 1863, a dation en paiement of immovable property is not subject to the doctrine of lesion beyond moiety, and that in any event the value of the land for oil, gas and mineral purposes cannot be considered in arriving at the true value of the property. In rejecting the latter contention the court was able to clear up certain misconceptions stemming from the case of *Wilkins v. Nelson*[2] and resulting in a holding by the Second Circuit Court of Appeal in *Silbernagel v. Harrell*[3] that the court declared unsound. The opinion pointed out the obvious difference between the sale of a mineral right, a contract speculative by its very nature and covering an immovable by disposition of law to which the code does not extend the protection of the action of lesion, and the sale of property the value of which is enhanced by the possibility of profitable mineral development.

In finding a transfer of real property in the form of a dation en paiement to be subject to the action, the court merely pointed

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1. 41 So.(2d) 811 (La. 1949).
2. 155 La. 807, 99 So. 607 (1924).
3. 18 La. App. 536, 138 So. 713 (1932).