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Donations Omnium Bonorum: Article 1497

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states in which the lawmakers have frankly faced the problem of occupational disease and have met the need by comprehensive coverage, or at least have permitted recovery for those diseases which are most obviously attributable to the employment.

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DONATIONS OMNIUM BONORUM ARTICLE 1497

WHO MAY OBJECT TO SUCH DONATIONS?

Article 1497 provdes that: "The donation inter vivos shall in no case divest the donor of all his property; he must reserve for himself enough for subsistence; if he does not do it, the donation is null for the whole." This article was adopted from the Spanish law. The Spanish commentator Febrero states that the raison d'être was public consideration.[1] The article did not appear in the Louisiana Civil Code of 1808, but was adopted in 1825. In reflecting upon the significance of the article at the time of its adoption the redactors of the Louisiana Civil Code of 1825 said: "We propose to re-establish this wise disposition which before existed and which the code had abolished, wherefore we have not learned," thus indicating that the article had been adopted for the protection of the public.[2]

Louisiana jurisprudence instances a various application of this article. Insofar as the donor is concerned, his right to annul such a donation has repeatedly been recognized.[3] Furthermore,

1. II Febrero Novisimo (ed. by Tapia 1837) tit. IV, c. XXII, p. 462. (*"La razón es porque además de quedarse el donante sin lo necesario para su manutencion, se priva del derecho de testar, y se puede dar occasión al donatario para que maquine la muerte del donante con el fin de apoderarse prontamente de sus bienes. Fuera de esto, y además del perjuicio que se causa á las costumbres, no conviene en el orden público que los hombres sean pródigos."*) The reason is because, besides the fact that the donor remains without the necessary means for his subsistence, he deprives himself of the right of making a will and an occasion may be given to the donee to procure the death of the donor in order to take possession of the estate. Besides this, and besides the prejudice it causes to the mores, it is not convenient to the public order that men be prodigious.

2. I Projet of the Civil Code of 1825 (1937) 207. (*"Nous proposons de rétablir cette sage disposition, que existait ci-devant, et que le code avait abolie, on ne voit pas pourquoi."*)

3. Lagrange v. Barre, 11 Rob. 302 (La. 1845); Beaulieu v. Monin, 50 La. Ann. 732, 23 So. 937 (1898); Harris v. Wafer, 113 La. 822, 37 So. 768 (1904); Nunge v. Cegretto, 3 Orl. App. 39 (La. App. 1905); Rocques v. Freeman, 125 La. 60, 51 So. 68 (1909); Jaco v. Jaco, 129 La. 621, 56 So. 615 (1911); Succession of Suarez, 131 La. 500, 59 So. 916 (1912); Kelly v. Kelly, 131 La. 1024, 60 So. 671 (1913); Tucker v. Angell, 1 La. App. 577 (1925); Armand v. Armand, 8 La. App.

the court decided that the donor was not estopped from annulling a donation of realty which had passed to a third person by sale, even though the purchaser had relied on the donor's assertion that the donee had good title.[4] A donation will be considered void ab initio even if the donor has property left, provided that such residue is not enough for his subsistence.[5] The right of the donor to annul is as forceful between spouses as against strangers.[6] Hence, a donation in consideration of marriage will be null and void, if the donor does not reserve enough for his subsistence.[7] Furthermore, a donation, the object of which was community property, was held null for the whole and not for only half, where the action invoking Article 1497 was brought by the survivor of the spouses,[8] the survivor having been the original donor.

Several times it has been said that it is the concern of the state that one shall not pauperize himself by his gratuities.[9] Yet, however inconsistent with this thought, the right cannot be exercised by forced heirs while the donor is still living.[10] But on the theory that such a donation is void ab initio and title has never left the donor, the forced heirs have been permitted to annul the donation after the death of the donor.[11] Where, however, forced heirs rightfully exercise this right, it will be fatal to an annulment of the donation, if they fail to prove conclusively that the donation divested the donor of all his property and that the value of the property exceeds by one-half the value of the services,[12] for Article 1526 is a complete answer to Article 1497.[13]

810 (1928); Carter v. Bolden, 13 La. App. 48, 127 So. 111 (1930); Kirby v. Kirby, 176 La. 1037, 147 So. 70 (1933).

4. Hearon v. Davis, 8 So.(2d) 787 (La. App. 1942). In such a situation, however, the donee will be liable for any warranty deed demands made upon him by the purchaser.

5. Kirby v. Kirby, 176 La. 1037, 147 So. 70 (1933); Heron v. Davis, 8 So.(2d) 787 (La. App. 1942). The determination as to whether the donor reserved enough for his subsistence is made with reference to his circumstance at the time of the donation, and not at the time suit is brought.

6. Succession of Suarez, 131 La. 500, 59 So. 916 (1912); Kelly v. Kelly, 131 La. 1024, 60 So. 671 (1913).

7. Succession of Suarez, 131 La. 500, 59 So. 916 (1912).

8. Harris v. Wafer, 113 La. 822, 37 So. 768 (1904).

9. Lagrange v. Barre, 11 Rob. 302 (La. 1845); Despart v. Darambourg, 2 McCloin 5 (La. App. 1884); Kelly v. Kelly, 131 La. 1024, 60 So. 671 (1913).

10. Maxwell v. Maxwell, 180 La. 35, 156 So. 166 (1934).

11. Caraway v. LeBlanc, 1 La. App. 192 (1924); Litton v. Stephens, 187 La. 918, 175 So. 619 (1937).

12. Burk v. Burk, 7 Orl. App. 92 (La. App. 1909); Hersey v. Craig, 126 La. 824, 53 So. 17 (1910); Potts v. Potts, 142 La. 906, 77 So. 786 (1918).

13. Landry v. Landry, 40 La. Ann. 229, 3 So. 728 (1888); Dopler v. Feigel, 40 La. Ann. 848, 6 So. 106 (1888); Robinson v. Guedry, 181 So. 882 (La. App. 1938).

Moreover, where there is a conveyance, purporting to be a sale, but which is proved by a preponderance of evidence to have been a donation, such a conveyance will fall under the ban of Article 1497.[14]

It is definitely settled that the collateral heirs have no right to annul a donation omnium bonorum, either during the life of the donor or after his death.[15]

It is difficult to reconcile the jurisprudence on Article 1497 and its public policy philosophy. The court apparently proceeds on the theory that it is to protect the public from the burden of supporting the donor, that a donation omnium bonorum is null ab initio; yet the right to annul the gift of all goods is denied to all but the donor while the latter lives, thus defeating what the article has been inaugurated to accomplish. The donor may become a burden upon the public, but the article is inoperative unless invoked by the donor. This seems repugnant to the spirit of this law.

The court has gone further and has permitted the forced heirs of the donor to annul such a donation after the death of the donor. This position is also difficult to reconcile. If Article 1497 is for the protection of the public against those who pauperize themselves by their gratuities, then those who are legally responsible for the support of the individual, including the state, should be allowed to bring the action during the lifetime of the donor if and only when they are called upon to support him. Certainly no action by anyone should be allowed after the death of the donor if the purpose of the aticle is to be carried out. If the forced heirs have been prejudiced by the donation, they have their remedy—reduction. Furthermore, if the case be that the donation was in compensation of service, then they still may reduce to the value of such service. By being allowed to annul the donation after the donor's death, forced heirs are permitted to circumvent positive laws delegating personal rights to the donor. In short, the effect is to deny the donor the right of freely allocating the disposable portion of his estate.

In this connection the jurisprudence grounds the annulment on the theory that since the donation is void ab initio, title has

14. Armand v. Armand, 8 La. App. 810 (1928).

15. Scott v. Briscoe, 37 La. Ann. 178 (1885); Bernard v. Noel, 45 La. Ann. 1135, 13 So. 737 (1893); Thielman v. Gahlman, 119 La. 350, 44 So. 123 (1907); Grandchampt v. Billis' Heirs, 121 La. 340, 46 So. 348 (1908); Succession of Desina, 123 La. 468, 49 So. 23 (1909); Succession of Bradley, 8 La. App. 260 (1928).

never left the donor; hence the forced heirs are merely asserting their rights to what is actually vested in them at the moment of the donor's death. The code article under discussion if adopted for the purpose stated does not support this theory. The article merely states that the donation shall be "null for the whole." Assuming for the moment, however, that the donation is void ab initio, it should then be an inevitable consequence that the legal heirs of the most remote degree would have a right to annul it. If title has never left the estate, and in consideration of the fact that they have a right to claim an intestate succession in the absence of closer heirs, they cannot be denied the right to assert their claim. The effect of this would be astounding. Suppose a widower who had lost his sons in this war donated all his property for the purpose of caring for the returning veterans. According to the ab initio theory, in such a situation, the legal heirs would be able to annul the donation after the donor's death. This construction would seem to be contrary to the purpose of the article. It is submitted that the theory that the donation is void ab initio is an erroneous interpretation of the article.

The case of *Maxwell v. Maxwell*[16] held that the right to invoke Article 1497 is personal to the donor and cannot be invoked by the forced heirs while the donor lives. If this right be personal, then presumably it perishes with its owner, the donor. As an analogy the treatment given to the right of the surviving spouse to the marital portion allowed under Article 2382 might be cited. The court has repeatedly held that this is a personal and optional right, that the heirs do not and cannot receive this right by inheritance, because all personal rights die with the individual.[17]

In the *Succession of Turgeau*,[18] where a donation was sought to be annuled the court said that the "attack after death of the decujus is of a personal character, and that only forced heirs can urge the ground to the *extent of their légitime*."[19] (Italics supplied.) The soundness of this notion should not be disparaged by the fact that it was presented by way of dicta. A close examination of Article 1497 in relation to the articles on reduction is convincing that the remedy of forced heirs is reduction.

16. 180 La. 35, 156 So. 166 (1934).

17. Succession of Justus, 44 La. Ann. 721, 11 So. 95 (1892); Succession of Rogge, 50 La. Ann. 1220, 23 So. 933 (1898); Succession of Kunemann, 115 La. 604, 39 So. 702 (1905); Succession of Bancker, 154 La. 77, 97 So. 321 (1923).

18. 130 La. 650, 58 So. 497 (1912).

19. 130 La. 650, 655, 58 So. 497, 499.

Where public interest comes into conflict with personal rights, the latter should yield. Since, therefore, it is the concern of the public that an individual should not pauperize himself, he who has donated all his goods should forfeit his personal right of annulment to those who are immediately affected by his act. Under Article 229 of the Revised Civil Code, the children are bound to maintain their father and mother and other ascendants, who are in need. If it should be that a parent is in a state of destitution because of having donated his property, is it not equitable, sound and consistent with the public policy of this article that such heirs should have the unquestionable right of annuling, then and there, such a donation? Article 1497 contemplates this situation. The article should not be emasculated by suspending its operation until after the donor is dead—after the commission of the damage against the public is completed.

The state should also have this right, if called upon to support the donor. Conceding that the purpose of the article is for the protection of the public, then the granting of this right to the state or to those legally responsible for support of the donor would be a complete fulfillment of this purpose, if granted during his lifetime and *only* if support is necessary.

If any person is allowed to annul a donation omnium bonorum during the life of the donor, certainly the benefits of the annulment should inure to the donor and not to anyone who should annul the donation.

In consideration of the fact that Louisiana does not recognize stare decisis and that the jurisprudence on this article is not too definitive nor multiple in nature, the court might shift its present position with regard to the rights of those concerned. Any of those who are legally bound and are called upon to support the donor, if the latter does not wish to exercise his right, should be able to annul any donation omnium bonorum, during the donor's lifetime, and the effect of the annulment should restore title in the donor. And conversely, no person whatsoever should be entitled to exercise the right provided by Article 1497 after the donor so divested has died, since forced heirs are fully protected by their right to reduce any and all gifts.

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