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Community Property - Cost of Administration

A. C.

he would eat the lamb anyhow. However badly the treasury may need meat it is the hope of the writer that the bona fide property distinctions of the states will continue to be recognized as they are in the majority opinion of the case under discussion and that more tax money, if needed, will be raised by other methods than by overruling a line of decisions which were considered in the light of the community property system as such and not as a foregone conclusion which would bring more money into the treasury.

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COMMUNITY PROPERTY—COST OF ADMINISTRATION—The surviving spouse of Vaccaro became, at his death, the full owner of one-half of the community property. Vaccaro's estate was settled, but there were considerable charges upon the estate: attorneys' fees, executrix's commission, and other costs of administration. These amounted to more than seventy-three thousand dollars. Plaintiff, the surviving spouse, attempted to deduct these charges from her husband's gross estate under Section 303, Revenue Act of 1926, as amended. The commissioner refused, and allowed only the deduction of one-half of the charges, asserting that one-half of such expenses were incurred in the administration of the widow's one-half of the community estate. *Held,* the entire amount is deductible from the decedent's gross estate because, since the community terminated at the death of the husband, it was no longer capable of being charged with expenses and no part should be charged to the half of the community owned by the surviving spouse. *Vaccaro v. United States,* 4 Prentice-Hall 1944 Fed. Tax Serv. ¶ 62,646, C.C.H. Fed. Estate and Inheritance Tax Serv. ¶ 10,129 (E.D. La. 1944).

This decision is based largely upon a ruling by Justice Odom in *Succession of Lewis*[1] to the effect that "all costs of the administration should be paid out of the estate of the deceased, and that the community was not liable for any portion thereof."[2] In support of his ruling, Justice Odom cites *Succession of Solis*[3] and *Succession of Pizatti.*[4] These cases, however, are authority only

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1. 192 La. 734, 189 So. 118 (1939).
2. 192 La. 734, 743, 189 So. 118, 121 (1939).
3. 10 La. App. 109, 119 So. 768 (1929).
4. 141 La. 645, 75 So. 498 (1917).

for the charging of funeral expenses against the estate of the deceased. No mention is made there of attorneys' fees or the executor's commission or other costs of administration. Furthermore the analogy presented by the funeral expense cases is not a proper one, for there the expenses were properly charged against the estate of the deceased; also, cases where the husband is charged with his wife's funeral expenses are grounded on the theory that the husband is liable because of his duty to support his wife and furnish her with necessities.[5]

On the contrary, a different rule was announced in *Succession of Webre*,[6] *Sims v. Billington*,[7] and *Succession of Bothick*.[8] Those decisions are directly in point, and hold that the costs of settling the succession and the community (attorneys' fees, court costs, administrator's fees) are chargeable against the combined community and separate estate. This is done before the estate is divided, and each recipient thus pays his share in proportion to his interest.

It follows that, in view of these prior decisions, Justice Odom erred in his conclusion in the *Lewis* case,[9] quoted above. And if the *Lewis* opinion is out of line, it is clear that Judge Borah's decision in the principal case, which depends upon the *Lewis* case as the authoritative statement of Louisiana law, shares the same error.

A second reason advanced in support of the decision in the *Vaccaro* case is that a community of acquets and gains is terminated upon the death of either spouse, and the community, being no longer in esse, cannot be charged with the costs of administration which necessarily are incurred after its dissolution. However, it has been held that the community has a fictitious existence for the purpose of liquidation and settlement of community debts after its dissolution by death of the spouse, or by judgment;[10] and in proceedings to settle community existing between the spouses until dissolved by judgment of separation, costs of such proceedings have been properly taxed against the community.[11]

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5. Note (1935) 9 Tulane L. Rev. 440.
6. 49 La. Ann. 1491, 22 So. 390 (1897).
7. 50 La. Ann. 968, 24 So. 637 (1898).
8. 52 La. Ann. 1880, 28 So. 458 (1900).
9. Succession of Lewis, 192 La. 734, 189 So. 118 (1939).
19. Succession of Dumestre, 42 La. Ann. 411, 7 So. 624 (1890);
10. Succession of Dumestre, 42 La. Ann. 411, 7 So. 624 (1890); Tomme v. Tomme, 174 La. 123, 139 So. 901 (1932).
11. Vicknair v. Terracina, 168 La. 417, 122 So. 276 (1929).

In *Succession of Bertrand* it was said: "Whatever rights the wife might have under the régime of the community were to be found, at the death of the husband, already inside the husband's succession, and to be taken out therefrom only after full settlement. The wife's rights were residuary in character."[12]

The commission of the administrator or the executor of the community property is fixed to the full extent of that property. His services are rendered for the benefit of all parties concerned therein and are to be paid for by all parties who may be interested. Where the husband dies the commission of the executor of his estate is based upon the community, and it would seem to follow that such commission would be deductible from the community and not solely from the husband's half thereof.[13]

Furthermore, although the community is not a partnership in the usual commercial sense,[14] the wife's interest in the community is not substantially different from that of a member of a limited or an ordinary partnership,[15] and the theory of dissolution and settlement of the community may be said to be similar to that of the settlement of an ordinary partnership. The costs of settling the community should be borne by the portions of both partners, even though they accrued after the death of the spouse, as the entity is presumed to continue until its assests are finally settled, although at the time it is not a going concern. This would be true not only of a community dissolved by the death of the spouse; it applies with equal force to divorce, for the divorced wife is in the same situation as a widow.[16]

The legislature has provided that at the dissolution for any cause of the marriage community the wife can renounce her portion[17] or she may accept the community of acquets and gains under the benefit of inventory, in the same manner and with the same benefits and advantages as heirs are allowed by existing

12. 123 La. 784, 790, 49 So. 524, 526 (1909).

13. Succession of McCan, 49 La. Ann. 968, 22 So. 225 (1897); Succession of Pierce, 119 La. 727, 44 So. 446 (1907).

14. Art. 2807, La. Civil Code of 1870.

15. Brief on behalf of the United States as amicus curiae in Flournoy v. Wiener (1944) 38 [Flournoy v. Wiener, 321 U.S. 253, 64 S.Ct. 548, 88 L.Ed. 478 (1944)]. Succession of Wiener, 203 La. 649, 657, 14 So.(2d) 475, 477 (1943): "That this community is a partnership in which the husband and the wife own equal shares . . . is well settled in this state." Mabie v. Whittaker, 10 Wash. 656, 662, 39 Pac. 172, 174 (1895): " 'The fundamental idea of the community system is that marriage makes the man and woman partners.' " Metropolitan Life Ins. Co. v. Skov, 51 F. Supp. 470, 474 (D. C. Ore. 1943): "The community is in the nature of a partnership [under the community property doctrine]."

16. Phillips v. Phillips, 160 La. 813, 107 So. 584 (1926).

17. Art. 2410, La. Civil Code of 1870.

laws to accept a succession under the benefit of inventory,[18] and this acceptance is merely an expression of her consent to receive the residue of the community, if any, after the debts of the community are paid.[19]

The above indicates that the right of the wife to the share of the community is residuary in character, and administration is a step which necessarily must be taken in order to find out what that residue is. The costs thereof are for a service rendered to the community as a whole, and are necessary to accomplish a purpose without which the portions of the different parties could not be identified. Consequently it is obvious that these costs should be sustained by the entity.

A.C.

TESTAMENTARY CAPACITY—THE EFFECT OF INTERDICTION—The sister of John Lanata, deceased, instituted suit to annul the will of her brother for want of testamentary capacity. John Lanata had been interdicted in 1904 under Article 422 of the Louisiana Civil Code of 1870 and the judgment continued in full force and effect until his death in 1942. Plaintiff rests her case entirely on the judgment of interdiction. Defendant testamentary executor filed an exception of no cause of action and urged that the mere judgment of interdiction did not deprive testator of testamentary capacity. *Held,* exception of no cause of action sustained. "With the conclusion reached then that R. C. C. Articles 402 and 403 are not applicable to testaments, it would seem to follow, and we hold, that testaments are likewise excluded from the preceding codal provision, Article 401, which is the one that declares null all acts done by the persons interdicted."[1] An interdicted person can make a valid will, and the absence of an allegation that the testator was of unsound mind at the time of making the will is fatal to the validity of the petition. *Succession of Lanata*, 18 So. (2d) 500 (La. 1944).

This case presents for determination a question that is res nova in Louisiana jurisprudence—Does interdiction alone destroy the interdict's capacity to make a valid will?

In order to determine who may dispose of property by donation mortis causa the articles of the Civil Code specifically dealing

18. La. Act 4 of 1882, § 1 [Dart's Stats. (1939) § 2213].
19. Phillips v. Phillips, 160 La. 813, 107 So. 584 (1926).
1. Succession of Lanata, 18 So.(2d) 500, 505 (La. 1944).