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Testamentary Capacity - The Effect of Interdiction

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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).

with this subject should be reviewed first. Article 1470[2] provides that only those persons whom the law *expressly* declares incapable are prohibited from making donations mortis causa. An examination of the articles following under the same title and chapter of the Code fails to disclose any declaration that interdiction incapacitates a person from making donations mortis causa.

It may be argued that Article 401[3] would incapacitate an interdict because of its provision that "all acts done by the person interdicted from the date of filing the petition for interdiction, until the day when the same is pronounced, are null." The view has been expressed that since this article does not declare that acts done after judgment of interdiction are null, it cannot be presumed that such a conclusion was intended by the redactors of the Code.[4] However, it appears more plausible to assume that if acts done after the date of filing but prior to judgment are null, those done after the judgment of interdiction has been rendered are likewise null. It would seem that the judgment itself makes a much stronger case for declaring acts done subsequent to it as null.[5]

In the principal case the major portion of the opinion was devoted to a discussion of Articles 401, 402, and 403, and through clear and sound reasoning the conclusion was reached that these articles apply only to contracts and not to wills. A similar discussion pertaining to the applicability of these articles to wills appears elsewhere.[6] Letting these discussions suffice, Article 1475, relating to the capacity of a person to make a will, simply states that the person making the donation must be of sound mind. Article 1472, as interpreted by numerous decisions,[7] lays down the rule that the capacity of giving need exist only at the moment the donation is made. With these articles in mind, there is nothing to prevent a person interdicted for an infirmity, other than that of the mind, from making a valid will. This could not be so readily concluded in the case where a person has been interdicted under Article 389 for mental incapacity. In such a situation, the judgment of interdiction is conclusive evidence of mental unsound-

2. Art. 1470, La. Civil Code of 1870.
3. Art. 401, La. Civil Code of 1870.
4. Comment (1944) 18 Tulane L. Rev. 620.
5. Stockmeyer v. Tobin, 139 U.S. 176, 11 S.Ct. 504, 35 L.Ed. 123 (1891).
6. Comment (1944) 18 Tulane L. Rev. 620.
7. Succession of Bey, 46 La. Ann. 773, 15 So. 297 (1894); Succession of Brugier, 146 La. 29, 83 So. 366 (1919); Succession of Heineman, 172 La. 1057, 136 So. 51 (1931); Succession of Knight, 151 So. 230 (La. App. 1933).

ness,[8] and for this reason there does seem to be a necessity for determining under which article and for what cause the interdiction was obtained. This view is in accord with that of Chief Justice O'Niell's dissent in the instant case where he states that, when the court is dealing with a will made by a person interdicted under Article 422 there is no need to determine what the rule would be if a person under interdiction for insanity (Article 389) had made a will. In the *Lanata* case the interdiction obtained under Article 422 certainly does not prove anything regarding the testator's state of mind. It is not at all clear why the deceased had been interdicted, the only certain fact being that he was *not* interdicted for mental incapacity. Therefore, the facts present no reason why any inquiry should be made as to the mental condition of testator at the time the will was executed. Although the court held that interdiction under either Article 389 or Article 422 would not in itself invalidate a will, it seems that the door is still open with regard to the validity of a will executed after judgment of interdiction under Article 389 has been rendered.

B. A. G.

TRADE MARKS AND TRADE NAMES—EFFECT OF VIOLATION OF FICTITIOUS NAME STATUTE—The plaintiff organized a group of independent cab operators under the name of "Checker Cabs" and had them paint their cabs in the same fashion. The defendant, two years later, incorporated under the name of "New Orleans Checker Cabs, Incorporated," and this suit was brought to enjoin him from conducting a taxicab business under that name.[1] The defendant contended (1) that the defendant was prior registrant under the General Corporation Laws of Louisiana,[2] and (2) that the plaintiff failed to comply with a Louisiana statute which prohibits the carrying on of any business under an assumed name

8. Art. 1788, La. Civil Code of 1870; Holland v. Miller, 12 La. Ann. 624 (1857): "It is not the judgment of interdiction therefore, that creates the incapacity, it is evidence only of its existence, but it is conclusive evidence."

1. The parties litigant are reversed herein for convenience of discussion. In fact, New Orleans Checker Cabs, Inc., the later user of the name, was plaintiff, and suit was for an injunction against the prior user, Mumphrey. Mumphrey set up a reconventional demand. Judgment was adverse to plaintiff and was in favor of defendant on his reconventional demand. The present discussion is concerned with this latter aspect of the case; and for this reason Mumphrey is regarded throughout as plaintiff.

2. La. Act 250 of 1928, as amended by La. Act 65 of 1932 and La. Act 34 of 1935 (4 E.S.) [Dart's Stats. (1939) §§ 1080-1154].