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NEGOTIABLE INSTRUMENTS AND BANKING

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Under provisions of the Louisiana Civil Code, contracts entered into prior to the application for the interdiction of a party thereto can be invalidated after interdiction only by proving the incapacity to have existed at the time the contracts were made.[1] In addition, it must be shown that the person interdicted was, at the time of the contract, known by those who generally saw and conversed with him to be in a state of mental derangement, or that the person who contracted with him, from that or other circumstances, was acquainted with his incapacity.[2] The application of these principles, as between the immediate parties to a series of checks was involved in *Nalty v. Nalty*.[3] Here, the holder sought recovery of more than eight thousand dollars through suit against the curators of the interdict who had drawn the checks. The plaintiff, a night club proprietor in the City of New Orleans, had cashed eleven checks for the interdict. The checks were dated and issued July 6, 1949, September 4, 5 and 6, 1949, all prior to the defendant's interdiction on November 18, 1949. The defense was a denial of consideration coupled with averments that the interdict, at the time of the issuance of the checks, had freely indulged in alcoholic drinks, that he was notoriously insane and that his insanity was evident and should have been apparent to the plaintiff. The Supreme Court affirmed the action of the trial court dismissing the plaintiff's suit. On the facts, the case was a particularly strong one for the denial of recovery. Ten of the checks were issued during the course of what the court characterized as a "fantastic spree" which climaxed several days and nights of wild spending on the part of the interdict. The interdict had entertained patrons and night-tour visitors at the plaintiff's establishment with practically unlimited hospitality. Surrounding circumstances of an aggravated nature supported the court's factual conclusion that the plaintiff knew that the interdict was mentally incompetent and, in the language of the trial court, it was concluded that the plaintiff had "furthered this condition in order to squander his money to

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1. Art. 1788(2), La. Civil Code of 1870.
2. Art. 1788(3), La. Civil Code of 1870.
3. 222 La. 911, 64 So. 2d 216 (1953).

the plaintiff's advantage." As the contract was unenforceable for lack of capacity of one of the parties, it was unnecessary to consider the defense or lack of consideration. In disposing of the case, the court based its conclusion entirely upon Article 402 of the Civil Code[4] and no reference was made to the applicability of Article 1788 which contains provisions which would lead to the same result. It is to be noted that the *Nalty* case involved notorious insanity and not merely a temporary derangement of intellect resulting from drunkenness of the type involved in the leading case of *Emerson v. Shirley*.[5] In this case, it was held that, when a person is so thoroughly intoxicated that he has lost his reason, there is a legal basis for invalidating a purported contract under Articles 1779, 1782 and 1789 of the Civil Code, but that Article 1788 of the Civil Code is not applicable to the temporary derangement of intellect due to drunkenness. Had there not been medical proof of insanity followed by formal interdiction in this case, there is little doubt that, on the facts before the court, the case would have come within the rule of *Emerson v. Shirley*.

It is further to be noted that the instant case involved a suit by the original holder of the checks and no rights of a holder in due course were involved. The plaintiff had held the checks and did not present them to the bank for payment nor did he deposit the checks to his credit in any bank. When finally presented, they were dishonored.

The negotiable instruments law does not specifically deal with the defenses of insanity or incapacity resulting from drunkenness and the cases in other jurisdictions reach differing results as to whether such defenses are available against a holder in due course.[6] The proposed Uniform Commercial Code relegates

4. Art. 402, La. Civil Code of 1870:

"No act anterior to the petition for the interdiction shall be annulled, except where it shall be proved that the cause of such interdiction notoriously existed at the time when the acts, the validity of which is contested, were made or done, or that the party who contracted, with the interdicted person, could not have been deceived as to the situation of his mind.

"*Notoriously*, in this article, means that the cause of interdiction was generally known by the persons who saw and conversed with the party."

5. 188 La. 196, 175 So. 909 (1937).

6. See Britton, Bills and Notes § 126 (1943) and the cases cited at page 550; cases involving the rights of a holder in due course where the defense of insanity or drunkenness is urged are collected in Beutel's Brannan Negotiable Instruments Law Annotated 756-758 (7 ed. 1948). Cf. Green, Real Defenses and the N.I.L., 9 Tulane L. Rev. 78, 80 (1934).

the problem to be decided according to the local law that would be applicable to such incapacity.[7] From the code provisions and the analogy of the earlier Louisiana cases holding that incapacity of a married woman is a defense which may be asserted against a holder in due course,[8] it would seem to follow that incapacity resulting from insanity or temporary derangement of intellect would likewise be considered as a real defense and available against a holder in due course. The instant case reached a correct result and is in harmony with the holding in the earlier case of *Schmidt & Ziegler v. Ittman.*[9]

Two other cases relating to negotiable instruments decided during the term do not warrant extended comment. *Gladney v. Trahan*[10] involved a complicated record in a suit by the holder of notes against the administrator of a succession. The court affirmed the trial court's finding that the plaintiff, who was the wife of the attorney of the succession, was entitled to the ownership of the two notes on which she had filed suit and that the succession had received the benefit of the transaction though there was no necessity for the borrowing of the money represented by one of the notes. It appeared that plaintiff and her husband had in their possession and control the funds of the three successions so that the notes could have been paid in whole or in part. For this reason, attorney fees were not allowed as there was no showing that the notes had to be placed in the hands of an attorney for collection. Collections made by the plaintiff should have been applied against the notes and it was impossible to ascertain when the collections were made. Therefore, interest on the notes was allowed only from the date of the judgment in a connected proceeding for an accounting which had previously fixed the liability of the plaintiff to the administrator, but had reserved plaintiff's rights as to the notes now in controversy.[11] In a separate concurring opinion, Associate Justice McCaleb approved the result reached, but on the

7. Uniform Commercial Code, § 3-305(2)(b) (1952 Official Draft) provides that a holder in due course takes the instrument free from all defenses except "such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity." See Comment 5 pointing out that the existence and effect of statutory incapacity is not covered in the code, but is left to the law of each state.

8. Sprigg v. Boissier, 5 Mart. (N.S.) 54 (La. 1826); Conrad v. LeBlanc, 29 La. Ann. 123 (1877). But cf. after the married women's emancipatory acts, United Life & Accident Ins. Co. v. Haley, 178 La. 63, 150 So. 833 (1933).

9. 46 La. Ann. 888, 15 So. 310 (1894).

10. 222 La. 721, 63 So. 2d 615 (1953).

11. Trahan v. Gladney, 217 La. 456, 46 So. 2d 734 (1950).

ground that plaintiff having invoked the equitable processes of the court could not successfully complain of the justice in denying the attorney fees and interest on the facts before the court. The result of the case was to ignore the clause in the note under which attorney fees were made a part of the obligation. The conclusions reached were based entirely upon the exceptional circumstances of the case and would not constitute a precedent for the disallowance of attorney fees as normally provided for in a promissory note.

In *McClatchey v. Guarantee Bank & Trust Co.*,[12] a depositor's action against his bank for unauthorized payment of a check which was charged to the plaintiff's account was dismissed for want of proper verification under the Pleading and Practice Act. Had the plaintiff elected to amend his verification so as to make a trial on the merits possible under the allegations of the petition important questions as to the effect of material alterations of a check would have been involved in a determination of the case. The plaintiff suffered dismissal of his suit for lack of proper verification by persisting in his refusal to amend and, hence, no question of negotiable instruments law was decided in the case.

Article 2925 of the Louisiana Civil Code provides: "The release of the principal, without any reserve as to interest, raises the presumption that it has also been paid, and operates a release of it."[13] In 1947, in the case of *Liquidation of Canal Bank & Trust Co.*,[14] the Supreme Court applied this article to the claims of depositors of a bank in liquidation who were seeking interest on the total amount of their "frozen" balances from the day that the bank went into liquidation during the banking holiday. The court held that where the depositors had allowed judgments of court homologating the accounts of the state banking commissioner to become final against them without raising the question of their right to interest on deposits, they were not entitled to interest on any amounts distributed pursuant to such judgments of homologation. The court held at that time: (1) that as to all amounts paid pursuant to such judgments the depositors receiving such payments were precluded from the recovery of interest; and (2) that the depositors were entitled to interest on that part of their claims as

12. 222 La. 735, 63 So. 2d 738 (1953).
13. Art. 2925, La. Civil Code of 1870.
14. 211 La. 803, 30 So. 2d 841 (1947).

to which the question of interest was raised prior to the judgment of homologation becoming final. The decision in the 1947 case was of considerable importance as the assets in the hands of the liquidators were sufficient to meet all demands and leave a surplus for the payment of interest. The same doctrine was subsequently applied in *Bank of Baton Rouge v. Hart Estate*[15] to conventional interest claimed on a certificate of deposit.

During the 1953 term in *In re Interstate Trust & Banking Co.*[16] unsuccessful efforts were made by depositors, who filed oppositions to the final liquidating dividends, to reverse these earlier decisions. The District Court for the Parish of Orleans decided that the opponents were entitled to legal interest on the amount of deposits frozen on January 4, 1934. The Supreme Court, citing the earlier jurisprudence with approval, reversed the lower court in part, holding again that the depositors and creditors were not entitled to interest on payments accepted without reservation as to interest due thereon. Because the depositors raising the point had opposed the distribution of the final liquidating dividends amounting to seventeen and one-half per cent of the "frozen" deposits they were entitled to interest claimed on that amount. The court again based its determination upon the applicability of Article 2925 and the conclusive legal presumption which results from the discharge of the principal without reservation of the right to interest.[17] The orderly conclusion of liquidation proceedings which in respect to interest have been predicated on the Supreme Court's pronouncement in the *Liquidation of Canal Bank & Trust Co.*[18] would hardly have permitted of a different result than that reached in the instant case.

TORTS

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Only a few cases of sufficient importance to warrant extended discussion were handed down during the past term.[1]

15. 216 La. 603, 44 So. 2d 311 (1950).
16. 222 La. 979, 64 So. 2d 240 (1953).
17. As to the conclusiveness of the presumption resulting from the release of principal within the meaning of Article 2925 see Grennon v. New Orleans Public Service, Inc., 17 La. App. 700, 136 So. 309 (1931).
18. 211 La. 803, 30 So. 2d 841 (1947).

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1. Several cases involving torts problems only incidentally and a few