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any tacit dedication of the street in question. However, in the presence of the three necessary elements: (1) use by the public, (2) maintenance by the municipality, and (3) acquiescence (consent) of the proprietor, there was held to be a tacit dedication. Despite the logic and reasoning, it is not hard to understand the plaintiff's displeasure when, in addition to all that had already happened, he found paving liens and assessments recorded against his property for the further improvement of this street. Nevertheless, even if it is unavoidable to heap all these misfortunes upon the poor proprietor, is it also necessary to inflict upon our civil law the description of an implied dedication in terms of a common law "estoppel in pais"?

In *Mecobon v. Police Jury*¹⁵ an alleged dedication failed for lack of evidence concerning intent to dedicate, and because there did not appear to be such a use for public purposes as would exclude the idea of private ownership.

In addition to the property cases here discussed, there were a number of cases on expropriation,¹⁶ which is treated in the Civil Code as a forced sale¹⁷ rather than as a property matter. The dispute usually centers on either the extent and value of the land to be taken, the location of the right of way, or, most frequently, the amount of compensation. Another group of cases¹⁸ concerning land involve problems which derive from tax sales.

SUCCESSIONS AND DONATIONS

*Harriet S. Daggett**

SUCCESSIONS

In *Bierhorst v. Kelly*¹ the court held that Articles 76, 77, 78, and 79, dealing with rights falling to an absentee after he de-

15. 224 La. 793, 70 So.2d 687 (1954).

16. *City of Shreveport v. Abe Meyer Corp.*, 223 La. 1079, 67 So.2d 732 (1953); *Louisiana Rural Electric Corp. v. Guillory*, 224 La. 73, 68 So.2d 762 (1953); *Greater Baton Rouge Port Commission v. Watson*, 224 La. 136, 68 So.2d 901 (1953); *Housing Authority of New Orleans v. Brinkman*, 224 La. 262, 69 So.2d 37 (1953); *Calcasieu & S. Ry. v. Bel*, 224 La. 269, 69 So.2d 40 (1953); *Housing Authority of New Orleans v. Boudwine*, 224 La. 988, 71 So.2d 541 (1954).

17. Art. 2626 *et seq.*, LA. CIVIL CODE of 1870.

18. *New Orleans v. Doll*, 224 La. 1046, 71 So.2d 562 (1954); *Cortinas v. Murray*, 224 La. 686, 70 So.2d 589 (1954); *Housing Authority of New Orleans v. Banks*, 224 La. 172, 69 So.2d 5 (1953); *Knapp v. Jefferson-Plaquemines Drainage Dist.*, 224 La. 105, 68 So.2d 774 (1953).

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1. 74 So.2d 168 (La. 1954).

parts, clearly indicate that property going to designated persons under Article 77 gives possession only and not ownership. The word "proceeds" in Article 79 is said to mean fruits and revenues rather than consideration received from a sale. The meaning of the word "proceeds" in Article 73 is clearly the latter, the protection given the reappearing absentee after heirs have been placed in absolute possession which gives the right of sale. Thus, the instant case must decide that only provisional possession is intended under Article 77. Under this analysis it would seem unnecessary to distinguish between property held by the individual when he departs and that which may fall to him thereafter, if the results are to be the same.

Cases upon which the lower court relied apparently for the decision which would have made title merchantable under either an ownership or absolute possession theory were said to be distinguishable. It would seem that absolute possession with power to alienate would be more in keeping with the whole series of articles on absentees and with the general policy against holding.²

In *Succession of Gladney*³ the previous attitude of our courts toward United States bonds was maintained, namely, that ownership as directed by the federal contract is conclusive but that in order to protect Louisiana's laws of inheritance and community property, an action against the holder may in proper cases be granted an estate or heir. An excellent resumé of former Louisiana decisions on the subject is given in the opinion, cases which have been previously discussed in this Journal.

In *Succession of Williams*⁴ Article 915, giving a usufruct of the deceased's share in the community to the surviving spouse in an intestate succession, was properly held inapplicable to a person adopted during a previous marriage. The article specifically mentions children of the marriage during which the community in question was acquired.

In *Succession of Thompson*⁵ the court decided that a mother who had formally acknowledged her child⁶ should inherit from the deceased child in preference to the latter's husband. Articles

2. Note also La. Acts 1948, No. 343, p. 833, shortening the period for legal presumption of death.

3. 223 La. 949, 67 So.2d 547 (1953).

4. 224 La. 871, 71 So.2d 229 (1954).

5. 224 La. 995, 71 So.2d 544 (1954).

6. Art. 203, LA. CIVIL CODE of 1870.

dealing with irregular successions are discussed, notably Articles 922 and 924. The court's elevation of the status of the child from illegitimate to natural is heartening and might some day assist in actually taking the unfortunate out of the illegitimate class. It is clear that the opinion disposes of the separate property of the deceased as indicated above. The case was remanded for determination of what part of the estate was community, the indication being that the husband would receive it under Article 915. Since the court has previously decided that the word "descendants" includes natural children, it might have been thought that perhaps "mother" includes natural mothers. The modern idea of social justice certainly comprehends every effort to lighten the burden of the illegitimate child, here without his consent. That the mother "by whose fault it happened" in part at least should be rewarded seems somewhat doubtful in a situation particularly where previous jurisprudence must be overruled and commentators of another country and another age consulted. The dissenting Justice's remarks in this connection are most pertinent and convincing.

In *Succession of Wesley*⁷ the court, after thorough review of authorities, most logically held that the widow of deceased inherited his separate property rather than the legitimate daughter of his illegitimate mother. The entire series of articles dealing with irregular successions would seem to bear out the conclusion.

In *Lee v. Jones*⁸ it was decided that regular heirs accepting a succession or for whom the law has accepted may successfully plead the prescription of thirty years against those heirs who have done nothing during this period allowed by Article 1030. Various interpretations of this troublesome article have been so fully and repeatedly discussed by court and commentators that further laboring of the questions would be tedious.⁹ Whether the analysis and decision of the instant case satisfy individual readers or not, perhaps the problem may be considered settled which is desirable.

The *Succession of Gomez*¹⁰ is one of the most interesting and important of the series. Over some fifteen years a mother had given a daughter monthly sums of money. These sums

7. 224 La. 182, 69 So.2d 8 (1953).

8. 224 La. 231, 69 So.2d 26 (1953).

9. Comment, 14 LOUISIANA LAW REVIEW 866 (1954).

10. 223 La. 859, 67 So.2d 156 (1953).

were said to have been given manually. It was argued that they were thus exempt from collation under Article 1245 and the court held that under the circumstances of this case, these gifts did not fall within the intent of exemption of the article. The analysis and discussion is most informative but will not be reviewed here as it has been given previously in this Journal.¹¹

In *Succession of Nelson*¹² suit was brought by forced heirs to set aside as simulated an act of sale and a giving in payment made separately by their father and mother to a son-in-law. Evidence disclosed that consideration was given in both cases, even if inadequate and thus the transactions were not simulations. The vendee was not a forced heir and thus Article 2444 was inapplicable as was the collation plea. As to any balance that might have been owing, the heirs could not collect as ten years had expired after the transactions before the parents died.

DONATIONS

In *Succession of Reynolds*¹³ an olographic will was found valid in form, uncertainty of date having been the sole issue raised. At the top of the will a superimposed date was found which rendered the original date indecipherable, and which was later than the clear date found at the end of the will. After an interesting survey of the certainty of date question as found in the jurisprudence and elsewhere, the matter was resolved as indicated.

In *Succession of Nunley*¹⁴ a will in olographic form having been lost, a transcription retained in the attorney's office was admitted to probate. The court stated that the presumption of revocation by destruction was a rebuttable one and the evidence was ample to show that a valid will had been confected, that its contents were known and that it had not been revoked.

In *Succession of Bush*¹⁵ a nuncupative will by private act was upheld as having been proved by proponent to be the very document executed by the testator; to have been in compliance with all formalities set forth by Articles 1581 and 1582; to have been signed by all witnesses in presence of each other, whether that was absolutely necessary or not. The attorney named was

11. Note, 14 LOUISIANA LAW REVIEW 295 (1953).

12. 224 La. 731, 70 So.2d 665 (1953).

13. 224 La. 975, 71 So.2d 537 (1954).

14. 224 La. 251, 69 So.2d 33 (1953).

15. 223 La. 1008, 67 So.2d 573 (1953).

held not a legatee in the sense of making him an improper witness.¹⁶ No manual presentation was necessary, the testator having stated in answer to the notary's question, that the will was his.

In *Succession of Prejean*¹⁷ a codicil in nuncupative by public act form was attacked on several grounds, all of which were found invalid. Undue influence is expressly denied by Article 1492. Mental incapacity was not proved. The procedures followed by the notary were not proved to have been incorrect.¹⁸ Words suggested by the notary to express properly the intention of the testator were permissible.¹⁹

In *Succession of Johnson*²⁰ the court again pointed out the difference between a prohibited substitution under Article 1520 and a *fidei commissum*. The text of the will follows:

"New Orleans, La.

"Nov. 2 - 51

"To whom may concern

"I, Thomas Johnson do make this my Will and do here by leave evything to my wife Sue W. Johnson as long as she live and then she is to leave her step son Robert Thomas Johnson just $\frac{1}{4}$ of the Share of what is left—and Martha Jane my only Daughter the rest. At my death Sue W. Johnson shall be the admistor of this will in my own writing at 3 P.M. Nov. - 2-51

"(s) Thomas Johnson"²¹

The court found title to be immediately vested in decedent's wife and that she was only asked to give the children *what was left* when she died—not to preserve the whole and pass it on as instructed. Thus, no prohibited substitution was found which would have nullified the entire bequest. The words indicating his desires regarding what might be "left" were but precatory. An additional point of interest said not to have been previously passed upon by the Supreme Court was the appointment of the person named in the will as "administrator" as "executor" as the decedent's intention was clear and should not be vitiated by

16. Art. 1592, LA. CIVIL CODE of 1870.

17. 224 La. 921, 71 So.2d 328 (1954).

18. Art. 1647, LA. CIVIL CODE of 1870.

19. Art. 1578, LA. CIVIL CODE of 1870.

20. 223 La. 1058, 67 So.2d 591 (1953).

21. *Id.* at 1065, 67 So.2d at 594.

virtue of his having merely used the wrong word. Thus, the court under 1041 would not gain the power of appointment of one who was to take charge of the affairs of the estate.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

The Louisiana Civil Code is clear to the point that assent to a contract may be express or implied.¹ In the latter case consent may be manifested either by actions or, in some circumstances, by silence or inaction. As an example the Code provides that to receive goods from a merchant without any express promise, and to use them, implies a contract to pay the value. This basic principle was applied in *Bascle v. Perez*,² where the defendant was held bound to pay the reasonable value of services rendered for him by the plaintiff, the compensation not having been fixed by the agreement. Relying on a series of earlier cases, the court observed that this disposition of the case was controlled by the moral maxim of the law that no one ought to enrich himself at the expense of another. Actually, when services are rendered and received with the expectation of payment the recipient impliedly agrees to pay their reasonable value. A judgment for such amount is therefore simply an enforcement of the agreement and reliance on a theory of unjust enrichment is unnecessary.

In *Lafleur v. Brown*³ the court held that an action for damages sustained in consequence of defendant's failure to deepen a well and to install properly a pump therein was contractual. It therefore overruled a plea of one-year prescription based on the mistaken theory that the action was in tort. Although some allegations of the petition gave color to the defendant's position, the petition as a whole amply supported the contrary conclusion.

The case of *Roy O. Martin Lumber Co. v. Saint Denis Securities Co.*⁴ that involved a claim for damages for breach of a contract to sell real estate was lost by the plaintiff's failure to show his acceptance of an offer made by the defendant.

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1. Arts. 1811, 1816, 1817, 1818, LA. CIVIL CODE of 1870. But see Art. 1766, LA. CIVIL CODE of 1870.

2. 224 La. 1014, 71 So.2d 551 (1954).

3. 223 La. 976, 67 So.2d 556 (1953).

4. 225 La. 51, 72 So.2d 257 (1954).