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Civil Code and Related Subjects: Community Property

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premises that were sub-let by him to the defendant was the issue in *Masset v. Beckler*.¹⁰ The evidence in support of plaintiff's contention was found to be ample.

The case of *Walters v. Coen*¹¹ involved the application of three established principles. The first was that the right of a lessee under Article 2726 of the Civil Code to remove improvements and additions to the thing let is not forfeited by his breach of the lease resulting from proceedings in bankruptcy. It was further recognized that such a right is subject to valid assignment by the lessee when the trustee in bankruptcy disclaims any interest in the lease. And it was held that if the landlord does not honor the lessee's right of removal he becomes liable for the value of the improvements.

When a lessee under a five-year lease failed to pay the rent due for the fifth month, the lessor, after giving notice to vacate but before instituting ejectment proceedings, leased the premises to a new tenant. Before judgment was rendered in the ejectment proceedings the instant suit was brought by the lessee, who claimed damages in the amount of five thousand dollars on the theory that the lessor in re-letting the premises had broken the contract of lease. The ejectment proceedings were successful. It was held that the lessor's conduct was justified under the circumstances. The case was *Sirianos v. Hill, Harris & Co.*¹²

The rule that a party by continued acquiescence in a course of conduct may estop himself from asserting a legal right was applied in *Whittington Co. v. Louisiana Paper Co.*¹³ A lessor who over a period of four years permitted an agent to collect rental payments was held estopped to claim that the lessee in continuing to pay the agent had violated the terms of the written lease.

COMMUNITY PROPERTY

*Harriet S. Daggett**

The case of *Succession of Woolfolk*¹ is principally concerned with proof of a manual gift from a husband to his wife. The

10. 224 La. 1067, 71 So.2d 570 (1954).

11. 223 La. 912, 67 So.2d 175 (1953).

12. 224 La. 60, 68 So.2d 757 (1953).

13. 224 La. 357, 69 So.2d 372 (1953).

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1. 225 La. 1, 71 So.2d 861 (1954).

spouses had made a prenuptial contract declaring for a separate property regime. The trial judge found sufficient evidence based on full control by the wife, after judicial separation, of certain items to justify a perfected gift, presumably irrevocable. The Supreme Court, with one dissenting Justice, found the evidence insufficient. The wife was dead. The husband denied his intent to have made a gift despite the wife's uninterrupted use and control. The trial judge found a wedding present of a clock to be the joint property of the spouses but the donor testified that the gift had been made solely to the husband and the Supreme Court decided in the husband's favor.

In *Guilbeau v. Guilbeau*² the well-settled rule that a wife may prove that property bought in her name during the existence of the community was bought with separate funds, although she had failed to state so in the deed, was applied. Part of the funds used were shown to have been income from separate property under her administration. Since the purchase was made in 1930, this income was the wife's separate property. It was implied that had the purchase been made since the passage of Act 286 of 1944, the income would have been community property, since no act had been filed by the wife indicating her intention to administer the property.

In *Austin v. Succession of Austin*³ the court held that after a judgment of separation and partition of community property homologated by the court and in absence of an agreement between the parties after reconciliation to reconstitute the community,⁴ the surviving widow had no claim upon the husband's estate accumulated after the dissolution of the community. She received a substantial sum when the community was settled, was a legatee under the husband's will and thus had no valid claim for a marital portion under Article 2382.

In *Succession of Chapman*⁵ a well-settled rule was again applied, namely, that property purchased by a married man without stipulation in the deed that it was bought with his separate funds and for his separate benefit will be that of the community.

In *Ducasse v. Modica*⁶ a mortgage given by a wife upon com-

2. 224 La. 837, 71 So.2d 129 (1954).

3. 225 La. 449, 73 So.2d 312 (1954).

4. See La. Acts 1944, No. 200, p. 581, La. Acts 1950, No. 304, p. 503.

5. 225 La. 641, 73 So.2d 789 (1954).

6. 224 La. 318, 69 So.2d 358 (1953).

munity property standing in her name was held invalid under the court's previous interpretations of Article 2334, as amended by Act 186 of 1920. A strong dissent in the creditor's interest under the facts of the case is registered on equitable ground apart from the rule stated above.

PARTNERSHIP

*Harold J. Brouillette**

Only two cases in the 1954-1955 term involved the law of partnership. In *Parker v. Davis*¹ the court recognized the jurisprudential rule that one partner cannot bring suit against another on matters pertaining to the partnership until after its dissolution, and then for the limited purpose of getting a final settlement. But the facts rendered that rule inapplicable, the court finding that the transaction giving rise to the suit was independent of the partnership.

*Succession of Jurisich*² was decided by a determination of the meaning of "book value." The partnership agreement provided that upon the death of one of the partners, the surviving partner could buy the interest of the deceased "at its then book value." The surviving partner tendered one-half the value of the business according to the figures on its books. The books did not include a good will account and the heirs of the deceased partner contended that good will should nevertheless be taken into consideration in evaluating the business. The court rejected this claim and cited much authority in holding that book value means what its name says—value as shown on the books, and that the clear words of the agreement could not be avoided.

MANDATE

*Harold J. Brouillette**

*Bourg v. Hebert*¹ was the only case of the term involving the law of mandate. The validity of a mineral lease depended upon the authority of certain substituted agents who had granted it.

* Member, Louisiana Bar.

1. 225 La. 359, 72 So.2d 877 (1954).

2. 224 La. 325, 69 So.2d 361 (1953).

* Member, Louisiana Bar.

1. 224 La. 535, 70 So.2d 116 (1953).