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Community Property - Liability of Wife For Damages Caused by Her While Driving the Community Automobile

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State, prior to the Constitution of 1921, issued through error . . . a patent thereto."[14] His dissent further indicated that the interpretation given Act 62 of 1912 by the *Price* case repealed by implication Articles 450, 451, 453 and 482 of the Civil Code. Chief Justice Fournet, also dissenting, felt that the result reached in the *Price* case will lead to nothing but confusion when attempts are made to distinguish property rights of individuals from property rights of the people in general.

The instant case almost immediately provoked legislation to curb its effect. Act 727 of 1954[15] is a direct legislative effort to overrule the *Humble* and *Price* cases. The act reiterates the public policy against alienation of beds of navigable bodies of water and states that the purpose of the 1912 statute was to ratify patents conveying lands susceptible of private ownership. The act also declares null and void any patent purporting to transfer to private individuals lands including the beds of navigable bodies of water. In view of Act 727 of 1954, and what Chief Justice Fournet termed the "public policy that is established by codal articles that have been interpreted and reaffirmed in an unbroken line of jurisprudence for more than a century,"[16] it is submitted that future disputes involving similar questions should be given careful examination.

William C. Hollier

COMMUNITY PROPERTY—LIABILITY OF WIFE FOR DAMAGES CAUSED BY HER WHILE DRIVING THE COMMUNITY AUTOMOBILE

Plaintiff sued both the community and the wife to recover damages resulting from an automobile accident which occurred while the defendant wife was driving the community automobile on a community errand. Defendant wife filed an exception of misjoinder of parties defendant and exceptions of no right or cause of action, alleging she was not a proper party defendant in a suit against the community. From the judgment sustaining the defendant's exception of no cause of action, the plaintiffs appealed. *Held*, since the wife was on a community errand and driving the community automobile an action cannot be maintained against her separate property *for a community debt*. The

14. 74 So.2d 1, 17 (La. 1954).
15. La. Acts 1954, No. 727; LA. R.S. 9:1107-1109 (Supp. 1954).
16. California Co. v. Price, 74 So.2d 1, 15 (La. 1954).

judgment sustaining the exception is affirmed. *Ellis v. White*, 71 So.2d 640 (La. App. 1954).

Article 2315 of the Louisiana Civil Code provides that every act of a person that causes damage to another obliges the person by whose fault it happened to repair the damage.[1] This is true even though the person who caused the damage may have been an agent, for whose act his principal was vicariously liable.[2] The question of whether or not the community is also liable is usually settled by determining whether or not the wife was on a community errand.[3] In some cases where there was community liability, the wife has been held *in solido* with the community.[4]

The court of appeal in the instant case took the view that the accident gave rise only to a community debt. They then reasoned that if this was a community debt the wife could not be liable, because, among other reasons, even though the Married Women's Emancipation Act allows the wife to bind herself individually for a community debt she can do so only by a contract in writing and signed by her individually.

Where the wife is at fault her personal liability should in no way depend upon the community's liability. Since the defendant filed an exception of no cause of action in the instant case, the allegations of the plaintiff that the defendant wife was negligent were deemed true for the purpose of this decision.[5] If, then, the wife was negligent, she was liable individually simply because she was the person who inflicted the harm. This is particularly true in the light of the Married Women's Eman-

1. Art. 2315, LA. CIVIL CODE of 1870; Stone, *Tort Doctrine in Louisiana: The Concept of Fault*, 27 TULANE L. REV. 1 (1952).

2. Delaney v. Rochereau, 34 La. Ann. 1123, 1128 (1882) ("No man increases or diminishes his obligations to strangers by becoming an agent.") See also Seavey, *Liability of an Agent in Tort*, 1 So. L.Q. 16 (1916); RESTATEMENT, AGENCY § 343 (1933); BOWSHEAD, A DIGEST OF THE LAW OF AGENCY, ARTICLE 135, p. 266 (1944).

3. This would seem to be mainly a question of fact and the following cases have held that the wife was on a community errand and hence the community was therefore liable. Shipp v. Ferguson, 61 So.2d 531 (La. App. 1952); Alpaugh v. Krajcer, 57 So.2d 700 (La. App. 1952). *But see* Adams v. Golson, 187 La. 363, 174 So. 876 (1937). See *The Work of the Louisiana Supreme Court for the 1949-1950 Term—Torts*, 11 LOUISIANA LAW REVIEW 186, 190 (1951).

4. See cases cited in note 3 *supra*.

5. Duplain v. Wiltz, 174 So. 652 (La. App. 1937); Wolff v. Hibernia Bank & Trust Co., 161 La. 348, 108 So. 667 (1926); MCMAHON, LOUISIANA PRACTICE 463, n. 88 (1939); McMahon, *The Exception of No Cause of Action*, 9 TULANE L. REV. 17, 23 (1934). Plaintiff alleged negligence in the instant case. Petition of Plaintiff, ¶ 5, Ellis v. White, 71 So.2d 640 (La. App. 1954).

cipation Act, which gives the wife control over her own property and the right to sue and be sued individually in the courts.[6] Thus the court approached this problem from too restricted a viewpoint in determining only whether the wife was liable for a *community debt.* The rule referred to by the court that the wife can bind herself for a community debt only by a contract in writing and signed by her individually is pertinent to conventional obligations but is irrelevant to tort obligations of the instant type.

Maynard E. Cush

EVIDENCE—PROPERTY ACQUIRED DURING MARRIAGE IN NAME OF WIFE—PROOF REQUIRED TO REBUT COMMUNITY STATUS

Immovable property was bought on credit in wife's name during the marriage for $2,350, of which $150 was paid immediately, the balance in installments. The purchase authorized by the husband stated that the wife was "purchasing . . . for herself. . . ." The husband mortgaged the property to the plaintiff who seeks to enforce the mortgage through executory process. The wife seeks to enjoin the proceedings against the property alleging, *inter alia,* that it is her separate property.[1] The wife's evidence tended to prove: (1) that she had made the down payment with proceeds of savings bonds given her by children of a previous marriage; (2) that her husband had never had any income, and therefore could not have paid the down payment or the credit portion; (3) that she had received $3,000 from the sale of separate property some nine years before the purchase; (4) that her children and stepchildren, the oldest of which was fifteen at the time of the purchase, had contributed toward paying the notes. The trial court held that the property formed part of the community and granted judgment against the husband's half of the property.[2]

6. LA. R.S. 9:101 *et seq.* (1950). See also Art. 2278, LA. CIVIL CODE of 1870; United Life & Acc. Ins. Co. v. Haley, 178 La. 63, 150 So. 833 (1933).

1. The petition of the wife also alleged that the mortgage was obtained under duress, Transcript of Record, p. 16, Succession of Franek, Dale v. Franek, 224 La. 747, 70 So.2d 670 (1954). This allegation was discussed but apparently not decided in the original opinion.

2. Art. 2334, LA. CIVIL CODE of 1870, does not state the effect of a mortgage granted by the husband on property standing in the name of the wife when such property is found to form part of the community. The trial court, by granting judgment against the husband's undivided one-half interest, apparently concluded that the mortgage was invalid only as to the wife's interest