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SUCCESSIONS, DONATIONS, AND COMMUNITY
PROPERTY*Harriet S. Daggett**

SUCCESSIONS

In *Succession of Gomez*¹ the testator had bequeathed her disposable portion and hence it became necessary to find what the portion of her forced heirs was in order to determine the balance representing her disposable portion. Contest was over the determination of the forced amount under the reduction article of the Code. The executrix computed the aggregate after all debts were paid and then fictitiously added all gifts inter vivos. Since there were three branches of forced heirs, two-thirds of this sum composed the forced amount leaving one-third disposable. The Supreme Court agreed that this was correct. The contestants argued that article 1505 applied only when a suit for reduction was filed or on demand for a forced share. Their position was that the computation should be upon the net estate at time of death. The question appears to have been new in Louisiana but much authority was found to support the opponent's contention in the French law. However, it was discovered that, due apparently to the influence of the French commentators, the courts of France had in 1826 reversed their position and since that date had maintained the position taken by the executrix on computation under article 1505. Obviously, gifts inter vivos were to be debited against the forced share of each heir. Much emphasis was properly laid upon the fictitious adding of gifts inter vivos as distinguished from actual collation, dealt with in article 1235 which forbids suit for collation by legatees or creditors of the succession. An attorney's fee of \$25,000 was allowed which the court thought might be too high for an estate of \$270,000 under ordinary circumstances, but seemed reasonable when the many and unusual services were considered.

The decision seems eminently correct and is based upon a most scholarly thesis. This case together with the *Gomez* case² dealing with collation of manual gifts represents one of the greatest jurisprudential contributions of recent years.

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1. 226 La. 1092, 78 So.2d 411 (1955).

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

In *Succession of Gaines*³ the legitimacy of certain persons was proved by competent evidence and they were declared to be the sole heirs of their deceased father and grandfather. Presumption of legitimacy was stressed. In the instant case, *Succession of Jackson*,⁴ which was consolidated with the *Gaines* case, these heirs were permitted to share in their ancestor's portion of his mother's estate.

In *Succession of Senkpiel*,⁵ the public administrator applied to sell certain property at private sale⁶ as it would be of material advantage to the succession. Opposition was filed by a realty company which wished to buy the property. The court held that this company, being neither a creditor, heir, nor legatee, had no interest and could not oppose the sale.

In *Sharp v. Sharp*,⁷ plaintiffs, brothers and sisters of deceased, brought suit to have the widow of their brother declared unworthy to inherit his half of the community because she had murdered her husband.⁸ An exception of no cause of action was entered since the widow had not been convicted of the murder and indeed the investigating grand jury had returned a "no true bill." The exception was sustained below and judgment was affirmed by the Supreme Court. The case also presented certain procedural problems which are commented upon elsewhere in this Symposium.⁹

DONATIONS

Donations — Inter Vivos

In *Davis v. Radoste*¹⁰ suit was brought in *forma pauperis* by an old lady past seventy in failing health to collect a judgment against a young man, a grocery clerk, for almost \$25,000 plus some of her silver and jewelry, of which he had allegedly managed to gain possession. There was a great deal of more or less conflicting evidence and several shifts of position by the defendant. After careful review the court affirmed the decision of the trial court declaring the transactions to have been gifts

3. 227 La. 318, 79 So.2d 322 (1955).

4. 227 La. 327, 79 So.2d 326 (1955).

5. 227 La. 516, 79 So.2d 866 (1955).

6. La. Acts 1938, No. 290, p. 757.

7. 228 La. 89, 81 So.2d 820 (1955).

8. LA. CIVIL CODE art. 966 (1870).

9. See pages 362, 380 *infra*.

10. 226 La. 160, 75 So.2d 230 (1954).

of all of the plaintiff's goods and hence null in their entirety under article 1497 of the Civil Code.

In *Miller v. Miller*¹¹ forced heirs sued to annul a mortgage made by their deceased father. Their stepmother, sister of the mortgagee, was a joint defendant. She was executor of the decedent's estate. The grounds for the action were that the contract was simulated with intent to defraud forced heirs.¹² The lower court annulled the contract, but had received over objection an affidavit of the deceased and his oral declarations that the mortgage was false. The court reversed the judgment on the ground that this evidence was hearsay and did not come within the exceptions of "dying declarations, statements against interest, and in rare instances [declarations] pertaining to family history, relationship and pedigree."¹³ The court remarked that the "circumstances of the case might be somewhat suspicious" but that "lawsuits cannot be decided on speculation."¹⁴

In *Stevens v. Stevens*¹⁵ a mother sold immovable property to her son, the consideration being proved to have been less than one-fourth of its value. This sale was held null under article 2444 of the Civil Code and the property brought back into the mother's succession.

In *Dietz v. Dietz*¹⁶ sales of immovable property by a mother to two of her sons were attacked by other forced heirs of the vendor as being simulated under Civil Code article 2239 or as being donations in disguise under Civil Code article 2444. No direct proof being available, circumstantial evidence was relied upon, the burden being carried by the attacker. In the sale to one son, it was shown that the mother continued to exercise control as formerly, and hence the presumption of simulation under article 2480 arose and was not rebutted. In the sale to the other son, this presumption did not exist; but proof of genuineness was insufficient to shift the burden of proof to the defendant. Fearing that justice would not be done, however, if defendants were not allowed to adduce evidence which seemed to be available to them but not brought forward, the case was remanded.

11. 226 La. 273, 76 So.2d 3 (1954).

12. LA. CIVIL CODE art. 2239 (1870).

13. 226 La. 273, 276, 76 So.2d 3, 4 (1954).

14. *Id.* at 278, 76 So.2d at 4.

15. 227 La. 761, 80 So.2d 399 (1955).

16. 227 La. 801, 80 So.2d 414 (1955).

The court expressed disagreement with expressions in the jurisprudence to the effect that the law did not favor actions of this nature by forced heirs and cited article 20 of the Civil Code forbidding distinction between "favored" and "odious" laws when construing meaning.

Donations — Mortis causa

In *Lebleu v. Manning*¹⁷ is recorded a second attempt to nullify a will.¹⁸ The grounds urged were that the testator could not read and write with comprehension and that the olographic will, valid in form, was a mere mechanical copy of a draft made by the universal legatee at the request of the decedent. The evidence did not support this contention. Well-settled policies were reiterated: that the will must be supported if possible; that validity and capacity are presumed and may be rebutted only by strong evidence; that the findings of the trial judge are heavily relied upon.

In *Succession of Koerkel*¹⁹ an attack was made upon a will. The form of the testament was nuncupative by public act.²⁰ The grounds for invalidation boiled down to incompetency of the attesting witnesses, of whom there were four. One was clearly incompetent as he was proved not to have been "residing in the place" as required by article 1578 where the will was executed. But since three competent witnesses are sufficient, the will was still sustainable if the remaining witness were determined to be competent. One was clearly so. The evidence of a second to the effect that a signature was not his was so weak as to be disregarded. The attack on the competency of the third witness was that he was insane. Proof of his interdiction was advanced, with no cause for it indicated. The court noted that article 422 provides for interdiction for "any infirmity" rendering the person incapable of caring for himself and his property. Thus, the witness may have been interdicted for reasons other than "insanity," listed as a grounds of an incompetency by article 1591, which does not mention interdiction. The judgment of the lower court declaring the will invalid was reversed. The contest was between the widow claiming the whole estate, it being all com-

17. 225 La. 1087, 74 So.2d 384 (1954).

18. See *Succession of Pujol v. Manning*, 221 La. 466, 59 So.2d 456 (1952).

19. 226 La. 560, 76 So.2d 730 (1954).

20. LA. CIVIL CODE art. 1578 (1870).

munity property, and the nearest blood relative of the deceased, a beneficiary under the will.

In *Succession of Trahant*²¹ the testator attempted to disinherit his daughter for marrying while a minor without his consent. The trial court decided that the deceased had failed to disinherit because of condonation. What comprised the condonation does not appear; the testator left his property about equally between his son and a sister-in-law. The court reduced both legacies on a pro rata basis under article 1502 and 1511 while maintaining the testator's intention as it interpreted it under article 1712.

In *Succession of Davis v. Richardson*²² an attack grounded upon mental incapacity of the testator was made upon a testament in nuncupative form by public act. The notary had stated that the testator had made her mark instead of signing the will as "she was unable to sign due to her physical condition." Contestants urged that the word "cause" in article 1579 intended that a specific disability should be mentioned by the notary and that mere "physical condition" was insufficient. The judge below stated that Supreme Court decisions had made it clear that a physical condition was the intent of the article, since a mental condition sufficient to disable a testator from signing would render him incapable of making a will at all. The trial judge expressed the view that a detailed explanation of the physical condition would be more desirable but that the article did not call for it. His judgment sustaining the validity of the will was affirmed. The Supreme Court's opinion observed that there could be no doubt about the physical condition of the testatrix since she died two days after making the will. Moreover, the nuncupative will by public act is proof in itself and "parol testimony is not admissible to supply any essential requirement not contained in the will."²³ The requirements of article 1579 were contained under this eminently proper interpretation.

In *Succession of Ruaxton*²⁴ a testator left a bequest to a certain person if she were not married at the time of his death. If she were married, he directed that the sum be added to the residue of his estate, disposed of in another paragraph of his will. The lady had married prior to the testator's death but op-

21. 226 La. 653, 76 So.2d 919 (1954).

22. 226 La. 887, 77 So.2d 524 (1955).

23. *Id.* at 890, 77 So.2d at 525.

24. 226 La. 1088, 78 So.2d 183 (1955).

posed the account of the executor filed in accordance with the testament. She maintained that the *condition* was against public policy and hence should be reputed, not written, under article 1519 of the Civil Code. The court found that the lady could not have been deterred as she did not know of the bequest before the death of the testator. Moreover, if the *condition* were against public policy, which was not decided, it was not against good morals. The bequest in question was not one "forbidding the donee to marry during her lifetime or even for a fixed period of time, nor one that directs the legacy shall lapse in the future, but rather one that is conditioned upon her status at the time of the testator's death."²⁵ It mattered not what the testator's motive was, whether based on whim, caprice or otherwise, as he had a right to dispose of his property as he saw fit unless prohibited by law.

In *Stephens v. Adger*²⁶ a nuncupative will by private act was in question. As to whether articles 1581 and 1582 had been complied with was a matter of fact. It was found that the will was read by one of the witnesses to the others in the presence of the testator. The uncertainty of evidence as to which witness read it was immaterial for there is no legal requirement regarding that item. Likewise, no provision requires that the witnesses sign in the presence of each other. The court observed that the "tendency of our present day jurisprudence does not exact an absolute . . . literal application"²⁷ of prescribed formalities and that they should not be "pushed to extremes." These statements were qualified, of course, by a further expression that in cases of palpable violation, the court would be forced to strike the testament even if injustice would appear to result. The will was upheld as contestants were unable to sustain their burden of proof that there had not been substantial compliance with the statutory requirements.

In *Roumain v. Moody*²⁸ the testamentary incapacity of the deceased not having been proven in the lower court, appeal was taken on rulings of the judge refusing to permit cross-examination of "particular agents" of the testatrix,²⁹ or exhumation of her body for determination of the state of brain tissue at the

25. *Id.* at 1091, 78 So.2d at 184.

26. 227 La. 387, 79 So.2d 91 (1955).

27. *Id.* at 395, 79 So.2d at 495.

28. 227 La. 609, 80 So.2d 93 (1955).

29. L.A. R.S. 13:3663 (1950).

time of making the two wills in question. The court found that all employees of an opponent are not comprehended within the meaning of the statute and that, certainly, domestic servants are not "particular agents." Exhumation was also properly disallowed by the judge as no evidence of paresis had been shown at the time of request and, moreover, had examination revealed paresis at the time of death, this fact alone would not have proved lack of testamentary capacity.

In *Succession of Roth*³⁰ a question was raised concerning the validity of a certain paragraph of an olographic testament as having been written at a later time than the rest of the will, and the use of tests to determine physical and chemical tests to determine the issue. Since the basic issues in the case were procedural in nature, it is discussed more fully in the procedure section of this Symposium.³¹

COMMUNITY PROPERTY

In *Succession of Helis*³² the decedent's estate consisted entirely of community property. The testamentary executor qualified and administered the community as a whole. This administration was said to have been necessary only in order to estimate inheritance taxes and hence the executor charged all costs of administration, including his fee and those of attorneys, to the decedent's share of the community. The tax collector maintained that only half of these costs should have been deducted from decedent's share of the community and that some eight thousand dollars more was due in taxes. The court distinguished the cases cited in support of the collector's position, found the general rule correct, but agreed with the executor in this instance, since no need for administration was present except to estimate taxes. Two dissenting opinions appear in regard to the exception to the general rule of charging but half of the administration costs to the decedent's share. The widow was said to have had the benefit of the administration consisting at least of having her portion estimated and placed in her hands free of all debt.

30. 227 La. 1058, 81 So.2d 394 (1955).

31. See page 379 *infra*.

32. 226 La. 133, 75 So.2d 221 (1954). For a discussion of the tax aspects of the case, see page 319 *infra*.

Moreover, one justice was doubtful that so large an estate could have been properly settled in any case without an administration.

In opposition to the final account of the administratrix of the estate of deceased, in *Succession of Siren*,³³ his daughter by a previous marriage, the curatrix of his interdicted widow, maintained that a debt was owed. The deceased had bought and mortgaged certain property preceding his second marriage and this indebtedness had been paid during the second community. The court held that the community owed the separate estate this amount and the widow should receive a credit of one-half of it. The lower court had recognized the widow as a creditor to be paid from the mass of the estate, which would have reduced the share of the community due to the widow.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

There was presented to the court in *Amato v. Latter & Blum, Inc.*¹ the novel question of whether a real estate agent who withholds from the owner of listed property an offer to buy it and thereby induces him to sell at a lower figure to another buyer violates a legal duty owed to the prospective purchaser. The latter brought suit for damages based on the difference between the offer submitted and the price put on the property by the party who bought it. The trial court upheld an exception of no cause of action and dismissed the action. The Supreme Court reversed. It found that the broker owed the prospective purchaser a duty to communicate the offer to the owner. This was based on the proposition that R.S. 37:1432-54 regulating the business of real estate brokerage and requiring real estate brokers to give a bond, constitute a legislative recognition that real estate brokerage is a business affected with a public interest. Justice Hamiter dissented, finding no basis in the legislation for the existence of a duty in the agent to the prospective purchaser.² Beyond the question of statutory construction it is interesting to speculate whether relief might have been granted on

33. 226 La. 687, 77 So.2d 5 (1954).

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1. 227 La. 537, 79 So.2d 873 (1955).

2. For a detailed discussion of this case, see Note, 16 LOUISIANA LAW REVIEW 447 (1956).