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Civil Code and Related Subjects: Successions

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tude of Article 665; the Supreme Court reversed and remanded. Property on Lake Pontchartrain is not *a priori* subject to a public servitude for levees under Article 665. At the same time, it does not follow that it may not be subject to this servitude. However, the burden of proof is on the levee board to show that the property "is within range of the reasonable necessities of the situation, as produced by the forces of nature, unaided by artificial causes."[12]

SUCCESSIONS

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Succession of Ryan[1] is concerned with the question of revocation of a principal will by a later one valid in form but allegedly containing a prohibited substitution and hence invalid in substance. The matter was argued on an exception of no right of action brought by a niece of the testatrix claiming only as a legatee under the prior will. Thus, the question of whether or not the language of the second will should be interpreted as a substitution was not passed upon. On rehearing the court held that the first will was tacitly revoked by the second which was valid in form and indicated a change of intention by the testatrix whether the bequest showing this change could be executed or not.

This distinction between invalidity of form and substance adds further complexity to the question of revocation of wills, an already most disturbing subject. The historical and legislative intent approach was taken in arriving at the conclusion. Article 1519 of the Revised Civil Code of 1870 states that "those [conditions] which are contrary to the laws . . . are reputed not written." *If* the bequest in the later will was a prohibited substitution (which was not passed upon) and thus "not written," the later will might have been said to be bare of substance and thus not to have exhibited a change of intention by the testatrix. The author of the opinion on first hearing, wherein this distinction between form and substance was not found, dissented on the rehearing.

12. 87 So.2d at 754.

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1. 228 La. 447, 82 So.2d 759 (1955).

In *Succession of Hemenway*[2] decedent husband left a will leaving everything of which he died possessed to his wife. Counsel agreed that the will was valid in form, that his forced heirs could reduce to the disposable portion and that if a fidei commissum was found to be contained in the testament it would be regarded as not written. Thus, the issues were really only those of community versus separate property. The first item had to do with a bank account wherein separate property of the decedent, inherited from his father, had been commingled with community property to the extent that it must be considered community property under the strong presumption. *Succession of Land*[3] could not save the cause for separate property for in that case the sum commingled was so small as not to warrant the conclusion that the separate account had lost its character. Such was not the situation in the instant factual situation. Stocks and bonds clearly traceable to inheritance from the husband's father were declared separate property. This was also true of shares of stock which had been split as was the case of dividends from the ancestor's stock.

Stock purchased wholly with funds derived from sale of inherited stock were declared to be separate property, an interesting point because apparently no double declaration, required by the husband in purchase of an immovable, was in evidence. Shares of stock issued by virtue of a reorganization of the corporation as substitutes for stock owned as separate property were declared separate under settled jurisprudence. Title to stock purchased with community funds or with commingled funds were declared community assets with a debt by the community to the separate estate for funds of the separate estate so used. Stock of which the title could not be properly traced was declared community. A one-half interest in realty wherein the deceased had failed to state that it was acquired with his separate property and for his separate benefit was, under well-settled jurisprudence, declared to be community property. The attempt to oust the mother as testamentary executrix because of alleged acts of bad faith failed as her actions had been above board in the several situations cited.

In 1954 the Supreme Court of Louisiana decided in *Succession of Reynolds*[4] that a will was not invalid for uncertainty of

2. 228 La. 572, 83 So.2d 377 (1955).
3. 212 La. 103, 31 So.2d 609 (1947).
4. 228 La. 640, 83 So.2d 885 (1955).

date because of a change in the year from 1945 to 1948 by a surcharge made by the testatrix of one numeral. The superimposed number eight was clear and the court found the will to be valid and as of 1948. On the final page of the will 1945 was given as the date but the court found that a sequence of dates is not necessary, nor do two dates make the will invalid for uncertainty. The plaintiffs in that case now appear again, pleading that the court found two wills of the same date, August 3, 1945, which revoke each other leaving the estate an intestate one. The court reiterated their first decision that the will was one of 1948 after pointing out inconsistencies in the many pleadings. The exception of no cause of action was sustained.

In *Cotton v. Washburn*[5] a young man engaged to be married bought property in his name and that of his fiancée. Shortly thereafter, the parties were married and until the wife left occupied the premises that had been purchased. She secured a divorce and sued to have the property partitioned by licitation. The defendant urged that the property had been purchased with his separate funds and asked to have the deed reformed. In the alternative, he asked for a judgment for one-half the purchase price and a declaration of ownership of half of the property. The court held that a donation in anticipation of marriage had been made by the prospective husband — that the marriage had taken place, thus fulfilling the condition and that acceptance was instanced by occupation of the premises, a corporeal possession thereof. The sale was by authentic act naming the parties. Thus, all formalities for a donation of one-half of the immovable property were met. The partition was granted.

A nuncupative will by public act was declared null in *Succession of Lafferanderie*[6] for want of mental capacity of the testatrix at the time the will was made. The burden of proof was sustained by those attacking the testament. Indeed, the evidence was overwhelming. The court observed that ordinarily great weight is given to the opinions of the notary and four witnesses, but here the notary did not know the testatrix and the witnesses were close to the sole and universal legatee. These persons only testified in favor of mental capacity.

In *Succession of Bishop*[7] action was brought to have a sale declared simulated or fraudulent and the property inventoried as

5. 228 La. 832, 84 So.2d 208 (1955).
6. 228 La. 871, 84 So.2d 442 (1955).
7. 228 La. 994, 84 So.2d 613 (1955).

part of the estate of the first husband and deceased father of plaintiffs. One of the plaintiffs was administrator of the succession. The sale had been made by the deceased and his second wife to the latter's daughter by a previous marriage. It was proved that the vendee had given money and services over a period of twenty years which far exceeded the down payment on the property. Thus, the sale was not simulated. The plea of fraud of forced heirs as "creditors" had no merit, as they are not "creditors." Cases cited in support of that theory had to do with suits to reduce gifts in excess of the forced portion.

In *Succession of Maguire*[8] a testatrix left a will containing a trust for girls under the charitable and educational purposes of the acts of Louisiana. Included therein, however, was an attempt to allocate a certain amount to a cousin. Attack was made by a brother, heir at law, to have the will declared invalid as it attempted a "mixed trust" not allowed by the statutes and Constitution of Louisiana. The cousin had died before the testatrix and the court upheld the trust despite the wide discretion given to trustees. The provision in favor of the cousin was said to have been merely "precatory" in any case.

Succession of Rolling[9] instances an interpretation of two wills and a codicil to the first one. The issue was whether the last will, being in conflict or otherwise, tacitly revoked the preceding will and codicil. The court, after most careful analysis of the three instruments, concluded that the last will expressed the intention of the testator revoking any possible conflicts and thus should govern the distribution. It was shown that very little "favoritism" was shown the daughter and that in general the estate was distributed equally among the children.

In *Succession of Alstock*[10] a widow in community was appointed administratrix of her deceased husband's estate. A brother of deceased opposed. The court found that an administrator was needed as claims against the separate estate by the community for improvements placed upon the separate estate with community funds would have to be examined as would a claim by the widow as widow in necessitous circumstances. The brother had sold all of his interest to his attorney and having no pecuniary interest could not interfere in the management of the

8. 228 La. 1096, 85 So.2d 4 (1956).
9. 229 La. 727, 86 So.2d 687 (1956).
10. 230 La. 167, 88 So.2d 14 (1956).

estate. The court found it "unconscionable for the attorney of this opponent to purchase the right, title and interest of his client and thereafter file an opposition in the name of said client."[11]

COMMUNITY PROPERTY

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A settlement of community after dissolution by judgment for separation is under consideration in *Daigre v. Daigre*.[1] Two most interesting issues are presented, that of a stock dividend and a pension.

The husband owned certain stock in the Coca-Cola Company when he was married. Later, during the marriage, a stock dividend was declared by the company. The wife claimed half of the additional shares as community property. An exhaustive and scholarly discussion of the nature of a stock dividend as distinguished from cash dividends from any source appears in the opinion. The court held that stock dividends are *not* income; that they do not alter the recipient's share in the corporation but merely express it in a different number of units representing the same original holding. Thus, the stock dividends were not community but the separate property of the husband who had brought them into the marriage.

The value of the company and hence that of the husband's holdings in it had definitely increased since his marriage, but it had not resulted from the labor, industry, or expenditures of either spouse under Article 2408 of the Code and hence was not community property.

The discussion of the nature of the pension received after marriage is also clear, rewarding, and satisfying. The court stated that the arrangement made by a company for a pension must be examined in every case. If it is established by contract with the employee as an anticipated right of deferred compensation, then obviously it is income from labor of the husband and would fall into the community. If it is optional to the company, even though in recognition of services previously performed, it is a gratuity and separate property of the husband.

11. 230 La. 167, 88 So.2d 15 (1956).

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1. 228 La. 682, 83 So.2d 900 (1955).