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Civil Code and Related Subjects: Successions, Donations, and Community Property

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fication of Lake Pontchartrain, and some of the stronger decisions classify it as an arm of the sea thereby making the land at the water's edge "sea shore."[3] Even though it would make no difference to the plaintiff in a particular case, the above language of the court would tend to accentuate confusion concerning the legal classification of Lake Pontchartrain. It would be more helpful in the stabilization of the jurisprudence on Lake Pontchartrain and the Louisiana rules of property if the court maintained consistency on the classification of this body of water.

SUCCESSIONS, DONATIONS, AND COMMUNITY PROPERTY*

*Harriet S. Daggett***

SUCCESSIONS

In *Roy O. Martin Lumber Company v. Strange*[1] suit was instituted under the provisions of R.S. 9:171 *et seq.*,[2] dealing with the partition of an absentee's property by private sale, seeking the partition of certain property in which the plaintiff owned a 31/32d interest, and a 1/32d interest being owned by the defendant. The defendant contended that the statutes were not applicable for the reason that her domicile was well known to the plaintiff, and that because of her appearance through counsel of her own choice, having been made counsel of record, she was not an absentee within the meaning of the statute. The court, on rehearing, held that the whole tenor of R.S. 9:171 *et seq.* clearly demonstrates that the provisions were only meant to apply to an absentee whose whereabouts are unknown, who remains unknown, and who has made no appearance, either in person or by counsel of record. The court supported its conclusion by reference to particular provisions of the statute requiring publication of the notice of the filing of the petition in a newspaper and the appointment of an attorney at law to "represent the absent, unlocated or deceased owner," stating that the former were intend-

3. See Comment, *Seashore in Louisiana*, 8 TUL. L. REV. 272 (1934).

*Grateful acknowledgment is hereby registered to my student and friend Dale Powers for his work in the preparation of these materials.

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1. 236 La. 77, 106 So.2d 723 (1958).

2. After institution of this suit, LA. R.S. 9:171 *et seq.* (Supp. 1959) were amended by La. Acts 1956, No. 534.

ed to apply to one who was not only absent but was in fact unrepresented in the proceedings.

The conclusion reached seems to be a proper interpretation of the statute. If the statute were held to apply to the case under discussion, serious constitutional issues concerning due process and equal protection of the laws might arise. To deny the right of a public sale to a person solely because he is a resident of a state other than Louisiana, and to afford the right of public sale to residents of Louisiana, would seem to be arbitrarily discriminating against nonresidents who have property interests in Louisiana. Such a holding would jeopardize the interest of all nonresident co-owners by putting them at the mercy of Louisiana residents.

In *Babineaux v. Babineaux*[3] the court held that the judge must order the property partitioned in kind unless it be proved that it is indivisible by its nature or that loss or inconvenience to one of its owners would be the consequence of dividing it.[4] The evidence offered to prove otherwise was not sufficient to overcome this rule, which has been consistently enforced in judicial partitions.

DONATIONS

Donations Inter Vivos

In *Broussard v. Doucet*[5] action was brought to set aside a purported exchange of property on the ground that it was in truth and in fact a donation and was void as a donation omnium bonorum. The evidence showed that the plaintiff conveyed to defendant Doucet 20 arpents of land in Vermilion Parish, which had a value of $150 an acre, or at least a total valuation of $2,500, in exchange for the life usufruct of one acre of land and a dwelling house 12 feet long by 12 feet wide, which had a value of $200. In 1952 Doucet conveyed the land to defendant Marceaux who sold the land to defendant Guidry. All the instruments were recorded in the conveyance records of Vermilion Parish. The evidence further showed that defendants Doucet and Marceaux had full knowledge of the fact that the plaintiff

3. 237 La. 806, 112 So.2d 620 (1959).
4. Aucoin v. Greenwood, 199 La. 764, 7 So.2d 50 (1942); Succession of Miller v. Evans, 184 La. 933, 168 So. 106 (1936); Rayner v. Rayner, 171 La. 1050, 132 So. 784 (1931); Hoss v. Hardeman, 156 La. 371, 100 So. 532 (1924); Kaffie v. Wilson, 130 La. 350, 57 So. 1001 (1911).
5. 236 La. 217, 107 So.2d 448 (1958).

was disposing of all her property and that she was of such feeble mentality that she could not take care of herself or manage her own affairs. The court held that as to defendant Doucet the purported act of exchange was void ab initio under Article 1497 of the Civil Code, which states that if the donor divests himself of all his property the donation is null for the whole. As an additional ground the court stated that the exchange would be void under Article 12, which states that whatever is done in contravention of a prohibitory law is void. Defendant Marceaux contended that the law of registry as announced by the court in *McDuffie v. Walker*[6] and *Martin v. Fuller*[7] should apply, but the court held otherwise stating: "We give full recognition to the holding of those cases. However, we do not think that the law of registry has any application to the facts and circumstances of the instant case insofar as Marceaux is concerned."[8] The court further stated that the public records doctrine should not be applied under the peculiar facts and circumstances of this case,[9] as fraud vitiates all things[10] and the defendants "should not be permitted to use the public records doctrine of this state as a cloak for their wrongdoing."

The writer feels that the court properly decided the case as the facts were very strong in favor of the plaintiff, and the court would not allow the conspiracy to be successful.

In *Garcia v. Dulcich*[11] property was conveyed to the plaintiff and defendant as copurchasers. Approximately eight months after the sale, the plaintiff instituted suit to have himself declared the sole owner of the property, contending that the condition in the purchase agreement had not been fulfilled. The court held that the transaction, although disguised as a sale, was in truth and in fact an onerous donation and was subject to revocation as defendant failed to comply with the conditions of the donation. The court further stated that the value of the charges imposed on the donee were immaterial in the instant case. If the instrument were subject to the rules governing donations, it may be revoked under Article 1559 of the Civil

6. 125 La. 152, 51 So. 100 (1909).
7. 214 La. 404, 37 So.2d 851 (1948).
8. Guidry, Marceaux's vendee, did not appeal.
9. See Sanders v. Mitchell, 153 La. 1087, 97 So. 200 (1923).
10. Board of Com'rs of Orleans Levee Dist. v. Shushan, 197 La. 598, 2 So.2d 35 (1941); Cuselich v. Cuselich, 159 La. 652, 106 So. 20 (1925); Yeager Milling Co. v. Lawler, 39 La. Ann. 572, 2 So. 398 (1887).
11. 237 La. 359, 111 So.2d 309 (1959).

Code for "non-performance of the conditions imposed on the donee." If governed by the law of contracts, it may be dissolved for non-performance of its conditions or the failure of consideration under Articles 2045, 2046, 2130, and 2561 of the Civil Code.

Donations Mortis Causa

In *Succession of Blaum*[12] the testator provided for numerous particular legacies and then stated: "and the balance of my estate to be divided equally between my brothers Frank B. Blaum, Louis Blaum and my sister Mrs. Annie Frantz, and the children of my deceased brother, August Blaum, and the children of my deceased sister, Mrs. Clara Foerster." Opposition to the executor's distribution, which was by roots into five equal parts, was filed by the five children of the deceased brother August Blaum, who contended that the division should be by heads into equal parts. In rejecting the argument of the opponents the court, relying on Article 1712 of the Civil Code, held that the testator intended the equal division of the residuum of his estate to be made by roots and not by heads was clearly shown (1) by the testator's failure to name the children of the deceased brother and sister individually and (2) by his treatment of them as two classes or groups and not as individual persons. The court also applied the well-settled jurisprudential rules that "in the interpretation of wills, the first and natural impression conveyed to the mind on reading the clause is entitled to great weight,"[13] and "that, in case of doubt, the interpretation should be preferred which will approximate closest to the legal order of distribution."[14] The court stated that under both rules it would arrive at the same interpretation, i.e., that the testator intended the residuum of his property to be divided by roots and not by heads. The court also held that the words "to be divided equally" do not necessarily or in all cases import a division by heads and that the words must be interpreted in their own particular context in each will.

In *Succession of Elliott*[15] under an olographic will testatrix bequeathed one-third interest in certain land to her daughter and granddaughter, share and share alike. The will also bequeathed to her daughter the remainder of "my disposable por-

12. 236 La. 1046, 110 So.2d 95 (1959).
13. Succession of La Barre, 179 La. 45, 48, 153 So. 15, 16 (1934).
14. Burthe v. Denis, 31 La. Ann. 568 (1879).
15. 237 La. 457, 111 So.2d 344 (1959).

tion of my estate." The granddaughter opposed the proposed plan of distribution of the assets contending that she was entitled to be recognized as a special legatee under the will bequeathing her one-half of testatrix' one-third interest in certain land and that in addition thereto she was entitled as a forced heir to her legitime. The court applied the well-settled principles of law used in the interpretation of wills[16] and held that as the testatrix explicitly and clearly intended the bequest of land be taken from the disposable portion of her entire estate the opponent was entitled to the special legacy designated in the will in addition to her legitime. As the court stated in the opinion, "How else could there be a remainder of the disposable portion if the bequests of the land were not donations mortis causa of the disposable portion in favor of the named legatees?" In such a case there can be no doubt from the very language of the will that it was the intent of the testatrix to bequeath the full disposable portion of her estate to the named legatees.

In *Succession of Holland*[17] the opponents, testamentary coexecutors in a prior will, petitioned to have declared null and void a subsequent will on the ground of testamentary incapacity of the testator at the time of the execution of the will. The opponents were faced with a presumption of sanity on the part of the decedent and carried the burden of proving the alleged lack of capacity by strong, clear, and convincing evidence. In finding that the will should be admitted to probate, the court held that the medical testimony adduced at the trial that at the time of the execution of the will the testator was in a state of progressive hepatic failure was insufficient to overcome the presumption of testamentary capacity. The court further held that lay testimony must be taken in connection with expert medical testimony, and that such weight should be attached to it as will guide the court in resolving the issue of mental capacity.

COMMUNITY PROPERTY

In *Bagala v. Bagala*[18] a question arose as to the classification of a tract of land acquired by plaintiffs' father before marriage; but which, after marriage, was conveyed to a third party for

16. LA. CIVIL CODE arts. 1712, 1713, 1493 (1870); Succession of Price, 202 La. 842, 854, 13 So.2d 240, 244 (1943).
17. 236 La. 8, 106 So.2d 697 (1958).
18. 237 La. 60, 110 So.2d 526 (1959).

$600, and on the same day was reconveyed by the third party to the father for $601. The plaintiffs contended that the latter transaction changed the character of the property from separate property to property belonging to the community of acquets and gains. The court, relying on *Ruffino v. Hunt*[19] and *Lazaro v. Lazaro*,[20] held that there had been no acquisition by the husband during the existence of the community as contemplated by Article 2402 of the Civil Code, and that such a transaction is nothing more than a pignorative contract. The court further stated that the instruments themselves most clearly indicated that the two transactions were nothing more than the execution of a mortgage and consequently held that the property in question had been the separate property of the father. The court refused to apply the plaintiffs' argument of the well-settled principle of law prevailing in this state that the acquisition of property by a husband during marriage without a declaration in the deed that the property is acquired with the husband's separate funds for his separate estate conclusively precludes the husband from later contending that the property does not belong to the community.[21] This decision seems to be sound, as it has never been the intention of the law to produce a change in the status of property from separate to community as the consequence of placing a secured loan thereon.

In *Sirocka v. United States Rubber Company*[22] the plaintiff sued seeking to enjoin the sheriff from selling an immovable, which plaintiff claimed to be her separate property, where the purpose of the sale was to satisfy a judgment previously obtained against the plaintiff's husband. The evidence showed that the plaintiff, previous to her marriage, had accumulated capital assets in excess of $12,000, and during marriage acquired in her own name property for $8,000 — $4,000 cash and the balance payable in installments. The court held that the property was acquired by an investment of plaintiff's separate and paraphernal funds, being derived from capital assets of her business, which were under her exclusive control and administration, and that the plaintiff, under the tests set forth in *Fortier v. Barry*[23] and *Betz v. Riviere*,[24] had effectively rebutted the

19. 234 La. 91, 97, 99 So.2d 34, 36 (1958).
20. 92 So.2d 402 (La. App. 1957).
21. Slaton v. King, 214 La. 89, 36 So.2d 648 (1948).
22. 237 La. 505, 111 So.2d 752 (1959).
23. 111 La. 776, 778, 35 So. 900, 901 (1904).
24. 211 La. 43, 29 So.2d 465 (1947).

presumption of community. The court further stated that Article 2386 of the Civil Code, which states that the fruits of the paraphernal property of the wife fall into the community unless the wife, by written instrument, reserve such fruits for her own separate use and benefit, was immaterial to the decision as the evidence clearly established that the funds derived from capital assets owned by the plaintiff prior to her marriage, and not earnings, were used to purchase the property.

In *Nides v. Hoyle*[25] a divorced wife brought an action against her former husband for partition by licitation of certain property and an accounting. The evidence showed that in January of 1943 the wife had purported to transfer her interest in the property involved in this suit to her husband, and that in the judgment of divorce, which was rendered in April of 1943, no mention of community property appeared. Various arguments were advanced regarding the effect of the document which the wife had executed, but the court held it null under the well-settled rule that husband and wife may not contract preceding a separation from bed and board or divorce.[26] A partition by licitation of the property was granted after thirteen years of co-ownership; and a stay of the sale for the purpose of adjusting claims was denied as the court declared that an accounting must follow and not precede the sale.[27]

In *Sallier v. Boudreaux*[28] the plaintiffs claimed that the interest of their grandmother, who died prior to the death of their grandfather, had not been conveyed in the succession sale of their grandfather. The court, following the prior jurisprudence, held that where there are community debts all the community property can be administered and settled in the succession of the husband alone.[29] The court further stated that ordinarily there would be no legal presumption that the debts were community obligations, but that there does attach to the succession sale the legal presumption that all things were done correctly in selling the entirety of the property;[30] and as the

25. 236 La. 1032, 109 So.2d 908 (1959).
26. Sheard v. Green, 219 La. 199, 52 So.2d 714 (1951).
27. LA. CODE OF PRACTICE arts. 1027, 1028, 1029, 1030 (1870).
28. 237 La. 909, 112 So.2d 657 (1959).
29. Kelley v. Kelley, 198 La. 338, 3 So.2d 641 (1941); Fontenot v. Fontenot, 157 La. 511, 102 So. 590 (1924); Festivan v. Clement, 135 La. 938, 66 So. 304 (1914); Kremer v. Kremer, 121 La. 484, 46 So. 600 (1908).
30. Hicks v. Hughes, 223 La. 290, 65 So.2d 603 (1953); Egle v. Constantin, 198 La. 899, 5 So.2d 281 (1941); Thibodeaux v. Barrow, 129 La. 395, 56 So. 339 (1911).

property could only be administered and sold to pay community debts, the presumption which attaches after this 67-year period (term between the succession sale and the present attack) is that community debts existed.

During the past term, the court also decided the following cases dealing with successions, donations, and community property. They are *McGregor v. McGregor*,[31] which has been omitted because the decision turned solely on questions of fact, and *Jones v. Jones*,[32] which has been omitted because it involved no question of substantial import.[33]

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

It has been said that, since man lives by his labors, when a person renders beneficial services to another it is not to be presumed they are rendered gratuitously. Consequently when a person having the opportunity to reject the services of another receives the benefit of them knowing or having reason to know that they are not being rendered gratuitously, he thereby consents to pay their reasonable value. These principles were involved in *Bender v. International Paint Co.*[1] where a realtor was claiming a commission by way of *quantum meruit* for bringing a lessor and lessee together. Both parties were made defendants. The court found against the realtor on the facts, since it appeared that neither party had reason to believe that the payment of a commission was his responsibility. A generous reading of plaintiff's case might have indicated that his claim, based on the allegation that he was the procuring cause of the lease, was actually planted on the theory that he was entitled to recover in quasi contract to prevent the unjust enrichment of the defendants. It is not clear that this possibility was considered by the court. If so, it may have been believed that there was no showing of enrichment or no showing that whatever enrichment may have occurred was unjust. The fact that plaintiff was claiming

31. 236 La. 184, 107 So.2d 437 (1958).
32. 236 La. 52, 106 So.2d 713 (1958).
33. This case may be used as an aid for the analysis of complicated accounting procedures.

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1. 237 La. 569, 111 So.2d 775 (1959).