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

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

## SUCCESSIONS

In *Henry v. Jean*,<sup>1</sup> suit was instituted by four children of a daughter of their maternal grandmother, to be recognized as forced heirs of the grandmother and for reduction to the disposable portion of the legacy of the defendant, the only child born during the marriage of the grandmother to her husband. Prior to the marriage plaintiff's mother was born. After the death of the grandmother, the defendant filed suit and secured a judgment recognizing him as the sole legitimate child and universal legatee of his grandmother. At the time of the opening of the succession all of the plaintiffs in the instant case were minors, and they were neither cited nor represented. The court held that since the children were minors at the opening of the succession, and were neither represented nor cited, they were not precluded by the adjudication from suing for recognition as forced heirs. No change is made in the law of successions by this case.

## COMMUNITY PROPERTY

In *Azar v. Azar*,<sup>2</sup> the question presented was whether a wife could file suit to set aside a *dation en paiement* and transfer of immovable community property during the existence of the community. The wife alleged that the *dation en paiement* recited as consideration a debt of \$80,000, which was in fact not a real indebtedness. The wife had separated from her husband but there was no dissolution of the community. The court alluded to the provisions of the Civil Code,<sup>3</sup> to the effect that during the existence of the community between the spouses the husband is

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

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1. 238 La. 314, 115 So.2d 363 (1959).

2. 239 La. 941, 120 So.2d 485 (1960).

3. LA. CIVIL CODE art. 2404 (1870) provides in part: "The husband is the head and master of the partnership or community of gains, he administers its effects, disposes of the revenues which they produce, and may alienate them by an onerous title, without the consent and permission of his wife. He can make no conveyance inter vivos by a gratuitous title of the immovables of the community, nor of the whole, or a quota of the movables, unless it be for the establishment of the children of the marriage."

head and master of the community and has complete control of community property; and except in certain specific instances he does not need the wife's consent to alienate the immovable effects. The court held that the wife's half interest in the community property is not a mere expectancy and that title is vested in her from the moment the property is acquired by the community, subject to the husband's management and control. Finally, the court held that the wife has no right to question the husband's management of the community property, even for fraud, until there is at least a suit for separation of the community. The court pointed out that the manner in which a community may be dissolved is provided for in the Civil Code<sup>4</sup> and mere separation in fact is not one of the means. This decision establishes no new principle of law. It is well supported by previous decisions of the court.<sup>5</sup>

In *Peltier v. Begovich*,<sup>6</sup> there was a concursus proceeding in which petitioner represented a number of individual oyster men as their attorney in claims against certain oil companies, alleging damages to the oyster beds by the oil companies. These claims were compromised in a lump sum settlement and all the claimants were paid except respondents, who could not be paid because of a conflict concerning their interests. Petitioner deposited the proceeds in the registry of the court. The dispute was over the claim of the divorced wife of Jack Begovich, Sr., to one-half of the proceeds of the damages due Jack Begovich, Sr., and his son. Respondents, father and son, contended that they formed a partnership to operate the oyster beds, and the damages to the beds were (1) for damages occurring before the marriage of Begovich, Sr., to his wife, and (2) for damages arising during the marriage, which damages occurred after Begovich, Sr., and his wife had separated in fact, because of fault of the wife, and therefore under Civil Code Article 2334 the damages formed no part of the community between Begovich, Sr., and his wife. Begovich, Sr., and his wife were married in March 1943. They separated in 1946 and obtained a divorce in 1948. The damages claimed were for the seasons 1941-42, 1942-43, and 1946-47. The court held that there existed a valid partnership between father and son, so that one-half of the pro-

4. *Id.* arts. 136, 2406.

5. *Thigpen v. Thigpen*, 231 La. 206, 91 So.2d 12 (1946); *Van Asselberg v. Van Asselberg*, 164 La. 553, 114 So. 155 (1927); *Lockart v. Dickey*, 161 La. 282, 108 So. 483 (1926).

6. 239 La. 238, 118 So.2d 395 (1960).

ceeds belonged to the son. As to the father's half, the court held that Article 2334 of the Civil Code did not apply to damages of this kind. This article provides that, "Actions for damages resulting from offenses . . . suffered by the husband, living separate and apart from his wife, by reason of fault on her part, sufficient for separation or divorce shall be his separate property." The court pointed out that "actions for damages" in this article do not include actions for damages resulting from injury or damage to community property. The court held that any recovery of damages arising out of the loss of community income (this was community income even though the lease was executed before the marriage) is for the benefit of the community and is not a recovery of damages within the meaning of Civil Code Article 2334. This decision seems to be sound, since the obvious intention of Article 2334 is to cover only personal damages and not damages to community income or assets.

In *Vail v. Spampinato*,<sup>7</sup> the sole question involved was the liability of the husband for the tort of his wife committed by running over a pedestrian, while driving the community automobile, with the implied consent of the husband. The husband contended that the wife had no consent, but the court found she had implied consent to use the automobile whenever she desired. The court applied the test that the liability of the husband depended on whether the wife was acting as agent of the community, on a community mission.<sup>8</sup> Citing the case of *Brantley v. Clarkson*,<sup>9</sup> the court held that "community mission" is broad enough to include trips for the enjoyment and pleasure of the wife. The wife in the *Vail* case was paid for taking a friend on the trip; thus the court concluded that the proceeds were community assets as the community had benefited. The court determined that the husband was liable for the wife's negligence in running over the pedestrian plaintiff. The case seems to be a very sound decision. The test applied is not new, and the reaffirmation of the broad scope of the "community mission" as set out in *Brantley v. Clarkson*, settles what seems to be the only reasonable and just application of this test.

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7. 238 La. 259, 115 So.2d 343 (1959).

8. The court cited *Adams v. Golson*, 187 La. 363, 174 So. 876 (1937), as establishing the test of "the wife acting as agent of the community, on a community mission."

9. 217 La. 425, 46 So.2d 614 (1950).

## WILLS

In *Succession of Spatafora*,<sup>10</sup> an action was brought by the brother of the deceased Mrs. Spatafora, to have her nuncupative will by public act set aside. The plaintiff's contention was that the testatrix at the time of making the will did not possess testamentary capacity to make a valid will. He also argued that certain formalities required in the execution of a nuncupative will were not complied with as there was an interruption and turning aside to other acts during the execution of the will. The court held that there is a presumption that a testator possessed testamentary capacity, and the persons attacking the will have the burden of showing lack of capacity. The court pointed out that the test of capacity is the ability of the testator to comprehend the condition of his property and his relation to those who may naturally expect to receive it after his death. After examining the evidence, the court concluded that the plaintiffs had not overcome the presumption of capacity. As to the allegation that the requirements of form of the testament contained in Civil Code Article 1578<sup>11</sup> had not been complied with, the court quoted from *Bernard v. Francez*,<sup>12</sup> and *Renfrow v. McCain*,<sup>13</sup> and concluded that the will makes full proof of what it contains and of the facts therein cited, unless and until it be shown otherwise by competent and satisfactory testimony. The legal presumption is that the recitals of a nuncupative will by public act must be presumed valid. Thus, the will was held valid.

The writer feels that the court properly decided the case. It is another factual application of the well-settled rules that wills are presumed valid and the testator is presumed to have testamentary capacity.<sup>14</sup>

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10. 239 La. 326, 118 So.2d 427 (1960).

11. LA. CIVIL CODE art. 1578 (1870). "The nuncupative testaments by public act must be received by a notary public, in the presence of three witnesses residing in the place where the will is executed, or of five witnesses not residing in the place. This testament must be dictated by the testator, and written by the notary as it is dictated. It must then be read to the testator in presence of the witnesses. Express mention is made of the whole, observing that all those formalities must be fulfilled at one time, without interruption and without turning aside to other acts."

12. 166 La. 487, 117 So. 565 (1928).

13. 185 La. 135, 168 So. 753 (1936).

14. The rule concerning the presumption of testamentary capacity is found in the following cases: *Succession of Lafferanderie*, 228 La. 871, 84 So.2d 442 (1955); *Succession of Moody*, 227 La. 609, 80 So.2d 93 (1955); *Succession of Prejean*, 224 La. 921, 71 So.2d 328 (1954).