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# Civil Code and Related Subjects: Conventional Obligations

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alleged. But, said the court, "once the plaintiff has stated a cause of action and established that the accident occurred through the negligence of the wife in her use of the community car, which she was operating with the permission and consent (actual or implied) of the husband, since the husband has peculiar knowledge of facts which would relieve him of liability it then devolves upon him should he seek to avoid responsibility to show, to the satisfaction of the court, that the wife was on a mission of her own."<sup>4</sup>

Thus the question resolves itself into one of pleading and proof in which the plaintiff carries the burden of alleging all the necessary elements and of proving all but one, *viz.*, that the wife was on a community errand, as to which the defendant husband carries the burden of persuasion to the contrary.

## CONVENTIONAL OBLIGATIONS

*J. Denson Smith\**

The opinion of the court in *McGuffy v. Weil*<sup>1</sup> contains an interesting discussion of the legal nature of a restriction against the use of land. In connection with the sale of a city lot, the parties signed a separate contract in authentic form under the terms of which the vendor agreed that an adjoining lot would never be used except for residential purposes. It was provided that this restriction would constitute a covenant running with the land, binding upon all subsequent owners. The contract was recorded. Thereafter, the plaintiff, a successor in title to the original vendor, sought a declaratory judgment that the lot was free of the restriction. In holding against the plaintiff, the court found the restriction to be a continuous, non-apparent servitude, and concluded that, having been recorded in the form of a notarial act, it was "established by title" although it was not included in the act of sale itself. Consequently it was held binding. This classification is helpful. In addition, the decision may tend to overcome the impression obtainable from some earlier cases that a restriction of this kind is valid only if contained in a general scheme or plan of land development. Such a qualifica-

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4. *Martin v. Brown*, 240 La. 674, 683, 124 So.2d 904, 908 (1960).

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1. 240 La. 758, 125 So.2d 154 (1960).

tion may properly bear on the question of whether a third person may enforce this kind of provision as beneficiary of a stipulation pour autrui, but it should not be controlling in determining whether the restriction constitutes a real obligation to which the land is subjected.

The question of the continued effectiveness of a general scheme or plan of land development despite some violations of the restrictions imposed was considered carefully and at length by the court in *Guyton v. Yancey*.<sup>2</sup> It was found that the plan as conceived and established by the subdividers had not been abandoned or discarded and continued to be legally effective. The court also found that an imperceptible violation by the plaintiff himself of the front set-back requirements did not debar him from complaining of the threatened flagrant violation by the defendant. The case represents a realistic application of the controlling principles.

## SECURITY DEVICES

*Joseph Dainow\**

### *Widow's Homestead Privilege*

Privileges are a form of security device in Louisiana law and when they affect immovable property there is a close resemblance to mortgage. For mortgages, there is an inexorable rule that there must be proper recordation in order to affect third persons. For privileges which affect immovables, the same is generally true, but there are some exceptions.<sup>1</sup> In the case of such an exception, the privilege attaches to the property just as if it had been recorded, and the lack of recordation does not abbreviate or limit the scope of the effectiveness of the privilege, even as against third persons. At this time, there is no question of sympathy for the property owners who have so many other burdens, or the title examiners who already have a fantastic job in comparison to the simple checking of titles under a Torrens system type of recordation. Neither is this the time for sympathy to the patient funeral director, the devoted doctor, or the necessitous widow. These policy considerations were all

2. 240 La. 794, 125 So.2d 365 (1961).

1. LA. CONST. art. XIX, § 19 (1921); LA. CIVIL CODE art. 3276 (1870).