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Private Law: Property

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of mind by either party. The second is that persons at interest will be able to acquire knowledge of the existence *vel non* of an act of adoption by or of a person. The first purpose, if to be considered important at all between the persons involved, is satisfied by registry, even if in a parish other than that specified by law. As to the second purpose, notice, it may be observed that the failure of registry should hardly be opposable by one who is not prejudiced by the lack of registry itself, and under the facts of the case it could not be said that any prejudice had resulted to the party opposing by reason of the lack of registry. What may be said about the decision, however, is that the legislation did not clearly require the result reached and, there being no prejudice to anyone by the failure of registry, the refusal to recognize the efficacy of the act needlessly destroyed the just expectations of those involved. Of the legislation itself it may be observed that, so far as notice is concerned, it would be much more sensible to require an act of adoption to be recorded in the parishes in which the adopter and adoptee live, rather than in the parish of accidental place of execution.

PROPERTY

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SERVITUDES

Among the servitudes imposed by law, Civil Code article 667 places a limitation upon a person's use of his property in that "he cannot make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him." Sometimes the remedy is an injunction,[1] or if the harm is already completed the claim is for damages.[2]

Pile-driving operations can cause serious damage to nearby properties, and article 667 has been applied in such situations.[3]

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1. City of New Orleans v. Degelos Bros. Grain Corp., 175 So. 2d 351 (La. App. 4th Cir. 1965) (emission of obnoxious and nauseous odors by a dehydrating plant). Injunction denied for failure to discharge burden of proof, in Woods v. Turbeville, 168 So. 2d 915 (La. App. 2d Cir. 1964).

2. Gulf Ins. Co. v. Employers Liab. Assur. Corp., 170 So. 2d 125 (La. App. 4th Cir. 1965).

3. Hauck v. Brunet, 50 So. 2d 495 (La. App. Orl. Cir. 1951); Bruno v. Employers Liab. Assur. Corp., 67 So. 2d 920 (La. App. Orl. Cir. 1953).

However, when a house collapsed as a result of such operations conducted by the State Department of Highways, the court held that article 667 did not apply to this agency.[4] It appears that the Department is liable for breach of contract but is not liable for torts under R.S. 48:22,[5] and the court considered "that the action under Civil Code article 667 *for the purposes* of R.S. 48:22, is more analogous to an action ex delicto."[6] The logic is not compelling, and the policy reasons are not convincing since there was liability insurance.

DEDICATION OF STREETS

When a new subdivision is opened, the developer makes a plan showing the lots and the streets; this is used for advertising to sell the lots; and when duly recorded, this constitutes a statutory dedication to the public of the streets and other areas indicated for public use.[7] In *Parish of Jefferson v. Doody*,[8] it was held that failure to comply with all the formal requirements of the statute did not invalidate the dedication, but merely subjected the developer to a penalty.[9] In this case, the plan was not signed, and it did not give the technical (section, township, and range) location of the property; it was not certified by the parish surveyor, and there was no statement of dedication. However, the plan was recorded, and it was evidently correct. It would place an undue burden on prospective purchasers to have to verify and bear the responsibility for these statutory compliances by the developer.

In reaching this decision, the Supreme Court reversed the court of appeal,[10] which ruled that there had not been sufficiently substantial compliance with the statutory requirements. This reversal should also be treated as denouncing the ingenious but potentially dangerous reasoning of the court of appeal that "it

4. Klein v. State Department of Highways, 175 So. 2d 454 (La. App. 4th Cir. 1965).

5. *Id.* at 456.

6. *Id.* at 458 (emphasis by court). A more accurate statement by the court elsewhere in the opinion is "A cause of action under C.C. 667 is neither ex delicto nor ex contractu, but is a form of strict liability placed in the Civil Code under the chapter on servitudes imposed by law." *Id.* at 457.

7. LA. R.S. 33:5051 (1950).

8. 247 La. 839, 174 So. 2d 798 (1965).

9. See also the later case, Deville v. City of Oakdale, 180 So. 2d 556 (La. App. 3d Cir. 1965), which reached the same conclusion but without reference to the earlier decision.

10. 167 So. 2d 489 (La. App. 4th Cir. 1964).

is quite clear that when the owner sold lots in Canal Street Subdivision fronting on Martin Behrman Walk, designated as such on the recorded plan of subdivision, said owner thereby *created by title a servitude of passage* over Martin Behrman Walk in favor of those lots."[11] A public street constitutes a right of passage in favor of the public, but the sale of a lot according to a plan cannot be considered as a title which creates a private servitude in favor of certain individuals as distinguished from a public street established by statutory dedication.

SUCCESSIONS AND DONATIONS

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VALIDITY OF TESTAMENTS

Certainty of Date

"If any principle in this most vexatious field of law is settled by the jurisprudence, it is the rule that if any part of the date appearing on an instrument purporting to be an olographic testament is doubtful or uncertain, whether as to the day, month or year, the effect of the incertitude or doubt about the date is the same as if the instrument bore no date at all."[1] So speaks the First Circuit Court of Appeal in *Succession of Koerkel*,[2] wherein specimens of the testator's handwriting offered to establish the year in which the testament had evidently been written were held inadmissible.[3] So holding, the First Circuit chose to resurrect the *Beird* case[4] which, in this writer's opinion,

11. *Id.* at 493. (Emphasis added.)

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1. Succession of Koerkel, 174 So. 2d 213, 216 (La. App. 1st Cir. 1965). It should be noted that apparently no rehearing was applied for.

2. 174 So. 2d 213 (La. App. 1st Cir. 1965).

3. The testament was dated "August 17" followed by the figures "19" and two additional ciphers not readily decipherable but which the proponents of the will, by the introduction of certain slips of paper containing figures purportedly made by the testator, successfully established as being the numeral "51" so that the year in which the will was made was proved to have been "1951" to the satisfaction of the trial judge. The decision of the court is summed up in the following language: "The date of decedent's purported olographic will being obscure, vague and uncertain and extrinsic evidence being inadmissible to resolve its dubiety, it follows that the judgment of the trial court admitting such evidence and declaring said will valid is erroneous and must be reversed." *Id.* at 221.

4. Succesison of Beird, 145 La. 755, 82 So. 881, 6 A.L.R. 1452 (1919).