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NOTES

FAMILY LAW — SINGLE ACT OF INTERCOURSE AS GROUNDS FOR RECONCILIATION

Wife sued husband for separation from bed and board on the ground of cruel treatment. Husband denied the acts of cruelty and reconvened seeking a separation from bed and board on the grounds of abandonment and cruelty. Lower court held for wife. Court of appeal reversed on the basis that a reconciliation between the spouses had extinguished the action of separation from bed and board. *Held*, wife's single voluntary act of sexual intercourse between time of last difficulty and the day she left the marital home condoned the prior acts of cruelty by the husband and effected a reconciliation. *Stewart v. Stewart*, 175 So. 2d 692 (La. App. 1st Cir. 1965).

The Civil Code states that an action of separation is extinguished by reconciliation of the parties after the occurrence of facts which might have given rise to the action.¹ The Code, however, fails to state what acts constitute a reconciliation.

The basic French view is that a reconciliation occurs when the offended spouse renounces the right to seek a separation, and restores the other spouse to his former status.² It is more than forgiveness. In order to have a reconciliation, the offending spouse must accept the forgiveness and cease his misconduct.³ At common law condonation (which has the same effect as "reconciliation" in Louisiana,⁴ although it is not necessarily the same concept) occurs when one spouse forgives the other for past misconduct and intends to renew or continue the marital relation.⁵

1. LA. CIVIL CODE art. 152 (1870): "The action of separation shall be extinguished by the reconciliation of the parties, either after the facts which might have given ground to such action, or after the action has been commenced."

2. 2 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS no 534 (2d ed. 1952).

3. *Alberti v. Dame Alberti*, Cour de Cassation (Ch. Req.) July 17, 1906; [1908] *Sirey Recueil Général* I.75.

4. *Hill v. Hill*, 112 La. 770, 36 So. 678 (1904).

5. *Glass v. Glass*, 175 Md. 693, 2 A.2d 443 (1938); *Forbis v. Forbis*, 274 S.W.2d 800 (Mo. 1955); *Ramsay v. Ramsay*, 244 P.2d 381 (Nev. 1952); *Belville v. Belville*, 114 Vt. 404, 45 A.2d 571 (1946).

The Louisiana Supreme Court in 1922 stated:

“Under the authorities cited, it is clear, we think, that, in order to constitute a reconciliation that would bar an action for separation from bed and board, in the sense of article 152 of the Civil Code, there must be not only a mutual forgiveness on the part of the injured spouse, and acceptance by the offender, expressed or implied, but there must be a restoration and renewal of the marital relation.”⁶

Since this time, most of the Louisiana decisions have dealt with the question whether the offended spouse has *condoned* the prior wrongful acts of the other spouse in determining if a reconciliation has been effected.⁷ Misconduct of the husband in allegedly striking his wife was held to have been “condoned” by the wife who had continued to live with her husband for more than four years after the incident.⁸ Where parties resumed the marital relation after knowledge by the injured spouse of adultery on the part of the other, a court of appeal reasoned that the injured spouse had “condoned and forgiven” the wrongful acts, and hence the action for divorce had been extinguished.⁹ In short, when it is found that one spouse has condoned or forgiven the prior wrongful acts of the other spouse, the courts conclude that a reconciliation has been effected.

For the court in the instant case, the question of “condonation” was one to be decided on all the facts. The last alleged acts of cruelty had occurred on Sunday. The wife, however, did not leave the domicile until the following Tuesday, and had shared a bed with her husband and engaged in an act of sexual intercourse on Monday night. The court decided that this voluntary act of sexual intercourse effected a reconciliation. The basic premise of the court was that “the act of intercourse is the extreme fulfillment of the marital relationship. The voluntary performance of this action on the part of petitioner, and there is no evidence in the record to show it was other than voluntary, could serve no purpose other than to condone the prior acts of cruelty on the part of the defendant.”¹⁰

6. Martin v. Martin, 151 La. 530, 92 So. 46 (1922).

7. DeJean v. DeBose, 226 La. 600, 76 So.2d 900 (1954); Abele v. Barker, 200 La. 125, 7 So.2d 684 (1942); Collins v. Collins, 194 La. 446, 193 So. 702 (1940); Pichon v. Pichon, 164 La. 272, 113 So. 845 (1927); Carriere v. Carriere, 147 So.2d 668 (La. App. 3d Cir. 1962).

8. Abele v. Barker, 200 La. 125, 7 So.2d 684 (1942).

9. Smith v. Smith, 139 So.2d 813, 816 (La. App. 2d Cir. 1962).

10. Stewart v. Stewart, 175 So.2d 692, 696 (La. App. 1st Cir. 1965).

It is important to note that there had been no break in the marriage relationship in the instant case. In 1922 the Supreme Court followed the French view¹¹ and held that reconciliation presupposes a break in the marriage.¹² The reasoning behind such a requirement would seem to be that finding a reconciliation when there has been no break in the marriage would prejudice a spouse who continued to cohabit with the other spouse in an effort to make the marriage a success. To hold in this situation that a reconciliation has been effected and the action for separation has been extinguished might encourage a spouse to interrupt the marital relation so as to avoid these consequences. Subsequent decisions have not followed this interpretation of the word "reconciliation." In 1927 the Supreme Court held that there had been no reconciliation where the wife remained in the house but stayed in a separate room.¹³ The last alleged act of cruelty had occurred on Saturday, and the wife had not left the domicile until Tuesday. The court stated that the wife's remaining in the house under those circumstances did not constitute a forgiving of the husband's offense; presumably, different circumstances (such as sharing the same room) might have amounted to a reconciliation. Thus the court ignored the requirement that there be a break in the marriage.¹⁴ This seems the better view because a spouse can certainly forgive the other spouse for past wrongs without interrupting the marital situation. The question should be whether there was in fact an intention to forgive the other spouse and *either* to continue or to renew the marital relationship. A spouse's patience in enduring wrongful acts would simply be a factor to consider in determining whether there was such intent.

Article 153 of the Civil Code states that once the cause for separation has been extinguished, the plaintiff is precluded from bringing his action; but he shall be at liberty to bring a new suit for causes arising since reconciliation, and therein to make

11. The French require a break in the marriage in order to have a reconciliation. 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1208 (1959). The common law does not generally require a break in the marriage. Many states define condonation in terms of a continuance or resumption of the marital relation. 24 AM. JUR. 2d *Divorce and Separation* § 211 (1966).

12. *Martin v. Martin*, 151 La. 530, 92 So. 46 (1922).

13. *Pichon v. Pichon*, 164 La. 272, 113 So. 845 (1927).

14. For other cases with similar reasoning and results see *Humes v. McIntosh*, 225 La. 930, 74 So. 2d 167 (1954); *Mischler v. Duchman*, 159 La. 478, 105 So. 559 (1925).

use of the former motives to corroborate his new action.¹⁵ The word "corroborate" as used in this article has been interpreted to mean that the past wrongs cannot be used as *part* of the cause of action for separation. An entirely new basis for the action must exist.¹⁶ It is submitted that a better interpretation of the word "corroborate" would allow the past acts as part of the cause of action for separation. Thus, the spouse who bears cruel treatment would be more adequately protected.¹⁷

The court in the instant case decided that the single act of intercourse effected a reconciliation. Nothing in the text of article 152 of the Civil Code warrants such a conclusion. It seems reasonable to say that a single act may, considered with other factors, evince a desire on the part of one spouse to forgive the other and to continue the marital situation. It seems dangerous, however, to place controlling emphasis on the nature of the act.¹⁸ The primary concern should be with intention. A spouse may have sexual relations with the other spouse, yet have no intention or desire to forgive or to forego the possibility of separation, and no purpose to continue or renew the marital relationship. Thus, the act of intercourse should be considered with other factors to determine the true intent of the aggrieved spouse, and there should be no finding of reconciliation where the person required to forgive¹⁹ does not do so. Perhaps a spouse might continue to cohabit with the other spouse simply to subserve interests of the children or of some other person.²⁰ Of course, repeated acts of sexual intercourse, even in the absence of other evidence of intent, would create a strong

15. LA. CIVIL CODE art. 153 (1870): "In either case the plaintiff shall be precluded from bringing his action; but he shall be at liberty to bring a new suit for causes arising since the reconciliation, and therein make use of the former motives to corroborate his new action."

16. *Ellois v. Ellois*, 145 So.2d 123 (La. App. 4th Cir. 1962).

17. It is admitted that the spouse in the cruel treatment situation is given some protection in that the courts have consistently held that the forbearance of a spouse in enduring cruel treatment from the other spouse should not be construed as reconciliation barring her action for separation from bed and board. *New v. New*, 186 La. 1017, 173 So. 748 (1937); *Carriere v. Carriere*, 147 So.2d 668 (La. App. 3d Cir. 1962); *Magliolo v. Magliolo*, 135 So.2d 616 (La. App. 1st Cir. 1961); *Seeling v. Seeling*, 133 So.2d 161 (La. App. 4th Cir. 1961).

18. *Stewart v. Stewart*, 175 So.2d 692, 696 (La. App. 1st Cir. 1965).

19. Forgive is used in the sense of consenting not only to ignore the injury, but also to continue the marital relation.

20. Perhaps the wife may have submitted in order to avoid an argument with her husband because she believed it would be in the best interest of her children not to subject them to such turmoil. Other possible reasons for the wife's action would be a sense of marital obligation in that she believed she had no right to refuse, and perhaps even fear.

presumption of an intention to forgive and continue the relationship. The conclusion that must be drawn from all the facts is that the offended spouse intended to forgive the other spouse *and* to renew or continue the marital relation. Thus, where a single act of sexual intercourse is engaged in, and the facts show that the offended spouse never intended to continue the marital situation, there should not be an extinguishment of the action for separation based on reconciliation of the parties.

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JURISDICTION IN PERSONAM OVER NONRESIDENT CORPORATIONS

A Louisiana resident injured while employed on an oil rig in the Persian Gulf brought a workmen's compensation action against his employers, several Panamanian oil corporations, in a Louisiana court. The oil companies had recruited employees, including the plaintiff, in Louisiana to work on an oil rig built and repaired in Louisiana for operation in the Persian Gulf; but the companies had neither qualified to do business in Louisiana nor consented to be sued there. The trial court sustained defendants' exceptions to its jurisdiction in personam. The Third Circuit Court of Appeals reversed. *Held*, defendants' "business activity" within Louisiana had been sufficient to give the state's courts jurisdiction under La. R.S. 13:3471 (1) extending Louisiana's personal jurisdiction over nonresident corporations. *Babineaux v. Southeastern Drilling Co.*, 170 So. 2d 518 La. App. 3d Cir. (1965), *writs refused*: "The ruling on the plea to the jurisdiction in personam is correct." 247 La. 613, 614, 615, 172 So. 2d 700, *appeal dismissed* for want of a substantial federal question, 382 U.S. 16.¹

In *International Shoe Co. v. Washington*,² the United States Supreme Court recognized that a state could, without violating due process, require a foreign corporation to defend a suit in its courts if the corporation had sufficient minimum contacts with the state so that maintenance of the suit would not offend "traditional notions of fair play and substantial justice."³ The

1. See *The Work of the Louisiana Appellate Courts for the 1964-1965 Term - Civil Procedure*, 26 LA. L. REV. 581 (1966).

2. 326 U.S. 310 (1945). See Student Symposium, *Personal Jurisdiction*, 26 LA. L. REV. 350, 361, 391 (1966).

3. 326 U.S. 310, 316 (1945).