Private Law: Successions, Donations and Community Property

Harriet S. Daggett
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SUCCESSIONS

In *Dileo v. Dileo*¹ the court declared a sheriff's sale under executory proceedings absolutely void. The opinion stated as "firmly established jurisprudence that forced heirs do not lose by prescription their right of inheritance in failing to accept the succession within thirty years because, if they have not renounced it, they are presumed to have accepted it. *Le mort saisit le vif.*"² The forced heirs of the deceased mother were declared owners in indivision of the property in dispute, because plaintiffs had proved no possession, as required under Act 6 of 1928³ for validating after five years any sheriff's sale.

At the death of a donee, it was discovered that a piece of property had been a gift inter vivos from her mother, whose succession had been closed for more than twenty years. The demand for collation of this property was refused in *Succession of Byrne.*⁴ Since the property had been that of the donee and not that of her mother at the time of the death of the latter, Article 1029,⁵ penalizing an heir who embezzles or conceals property of the succession, was not applicable. Prescription of the right to demand collation was not discussed as such and continues to remain in doubt.

*Sun Oil Company v. Smith*⁶ applies the well-known principle supported by the jurisprudence⁷ that an attempted partition where one of the co-owners is not represented is null as to all parties. A thorough and careful survey of the evidence led to the further observation on the ever-troublesome question of estoppel:

"There is no merit in this plea of estoppel, as it is now the well settled jurisprudence of this state that only admissions or allegations made in the same judicial proceedings effect a judicial estoppel; that admissions made in a judicial proceeding other than the one in which the plea of estoppel is urged operate as an estoppel against the one making the

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1. 217 La. 103, 46 So. 2d 53 (1950).
2. 46 So. 2d 53, 56.
4. 215 La. 1050, 42 So. 2d 699 (1949).
6. 216 La. 27, 43 So. 2d 148 (1949).
7. See the many cases cited in 216 La. 27, 39, 43 So. 2d 148, 152.
admissions only when the one urging the plea has relied upon them and has been deceived, misled, or damaged by such reliance, and that such admissions are evidence but do not of themselves create an estoppel.\(^8\)

The fact that the successions of certain deceased co-owners had not been administered did not prevent other co-owners from exerting the right of partition, according to the decision in Dobrowolski v. Dobrowolski.\(^9\)

**DONATIONS**

*Board of Trustees of Columbia Road Methodist Episcopal Church of Bogalusa v. Richardson*\(^10\) was concerned with interpretation of an act of conditional donation by the defendant. It appeared that plaintiffs were attempting to violate the condition that the property be used for church purposes by advertising it for sale as a commercial site. The court held that the condition was clear and that the property could not be sold or used for any other purpose than that specified by the donor. Since the property was still being used correctly, however, no reversion had taken place and the donation was not subject to revocation by the donor.

The problem in *McCarty v. Trichel*\(^11\) was factual, raising the question of mental capacity of a testatrix. A preponderance of evidence was not adduced to overcome the presumption of sanity. The court pointed out that it was rare and only "where the evidence of insanity was positive and overwhelming\(^12\) that "wills were annulled and voided."\(^13\) A brain tumor does not of itself indicate insanity any more than would "a disease of the liver."\(^14\)

In *De la Vergne v. St. Paul*\(^15\) a trust was terminated by the court in accordance with the specific language of Act 81 of 1938,\(^16\) under which the trust had been created. The pertinent facts having been admitted by all parties at interest, Section 91\(^17\) of the trust estates act was applied. The section appears as follows:

\[\text{"If owing to circumstances not known to the settler and not}\]

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8. 216 La. 27, 55, 43 So. 2d 148, 157.
10. 216 La. 633, 44 So. 2d 321 (1949).
12. 46 So. 2d 621, 624.
13. Ibid.
14. 46 So. 2d 621, 624.
15. 216 La. 92, 43 So. 2d 229 (1949).
anticipated by him, the continuance of the trust would defeat or substantially impair the accomplishment of the purposes of the trust, the proper court shall direct or permit the termination of the trust, in whole or in part.18

COMMUNITY PROPERTY

In Saunier v. Saunier,9 the question arose as to proper disposition of refunds on taxes paid to the United States government during the existence of the community. A contract between husband and wife was made a part of the separation judgment and provided that the wife would get certain real estate in addition to a cash settlement and that the remainder of the community property would belong to the husband. The court held that the refund was the property of the husband and that the sum of money which she received might be pleaded in compensation for judgment to pay alimony to her for their children.

TORTS

Wex S. Malone*

A spare handful of torts cases reached the supreme court during the past term, and of these, only one was of outstanding importance.1 By and large, the cases merely afford new illustrations of familiar rules and tendencies.

ASSAULT AND BATTERY

Moore v. Blanchard2 was a case in which a bouncer employed by defendant, who was keeper of a night club, assaulted and seriously injured the plaintiff, a customer. The controversy was decided by a jury, which awarded more than $4,000 in damages. On appeal to the court of appeal3 the damages were reduced to $1,000 for a rather startling reason. The court observed that night clubs are rowdy places by nature and the task of maintaining order is a difficult one. Therefore, if employees hired to maintain peace and protect customers "unconsciously exceed the authority which they have under the law" their employer, who is subject only to vicarious liability, is entitled to the compassion of the court and should not be required to pay the full extent of the actual damage inflicted.

18. Ibid.
19. 47 So. 2d 19 (La. 1950).
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2. 216 La. 253, 43 So. 2d 599 (1949).
3. 35 So. 2d 667 (La. App. 1948).