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

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SUCCESSIONS, DONATIONS, AND COMMUNITY PROPERTY

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SUCCESSIONS

In *Succession of Wilder*[1] the plaintiff opposed the final accounting of the decedent's estate. She sought compensation under the quantum meruit theory for various services which she had performed for the decedent. Although she valued her services at over $5,000, she limited her claim to $2,000 in view of an annuity which the decedent had provided for her. The court affirmed the trial judge in holding that the evidence did not establish that the value of the services exceeded the value of the annuity created by the decedent in favor of the plaintiff.

In *Sparrow v. Sparrow*[2] the decedent's concubine sought to be declared owner of one-half of the property listed in the inventory of the decedent's succession. The evidence showed that the plaintiff and the decedent had worked together in establishing and operating the various businesses which composed the decedent's entire estate. The plaintiff contended that a partnership had existed between herself and the decedent and that she was entitled to one-half of the assets of the partnership. The court held that the primary purpose of the relationship was concubinage; therefore, no legal partnership could have existed since the Code declares that partnerships formed for unlawful or immoral purposes are void.[3] The prior cases which allowed the concubine or paramour to recover part of the property accumulated during the relationship were distinguished on the ground that the concubinage in those cases was merely incidental to the business relationship. The writer of the dissenting opinion argued that the business relationship of the parties should be treated separately from their personal relationship as concubine and paramour.

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1. 232 La. 905, 95 So.2d 495 (1957).
2. 231 La. 966, 93 So.2d 232 (1957).
3. LA. CIVIL CODE art. 2804 (1870).

DONATIONS

Donations Inter Vivos

In *Succession of Anderson*[4] the evidence showed that the decedent had sold certain property to his son. The daughters of the decedent brought an action to force their brother to collate the excess value of this property in accordance with Article 1248 of the Civil Code because the sale had been made for "a very low price." The court held that the price which the son paid for the land was not inadequate in view of the value of the land at the time of the sale, and therefore no collation was due by the son.

In *Weems v. Medak*[5] the husband and wife transferred certain community property to one of their daughters, reserving the mineral rights thereto. After the death of the husband, his widow transferred the mineral rights on the same property to the daughter. The widow and the forced heirs of the deceased husband now seek to be declared owners of this property and to annul the oil leases which have been granted by the daughter. Since it was admitted that no consideration was given for the transfers, the purported sales were actually donations in disguise. The forced heirs of the husband were allowed to annul the donation of his one-half interest in the property under Article 1504 of the Civil Code. Therefore each of the six children was recognized as owner of an undivided one-twelfth interest in the property. The court also allowed the widow to annul the donation of her one-half interest in the property because it left her without means for her subsistence.[6] However, the court held that the widow's one-half interest and the defendant daughter's one-twelfth interest in the property would remain subject to the mineral lease granted by the defendant because they were parties to the lease transaction.

In *Succession of Quaglino*[7] the surviving widow and the daughters of the decedent brought an action to annul certain inter vivos transfers of stock certificates and real estate made by decedent to his sons. The court found that the transfer of the stock certificates was without consideration and therefore was a pure simulation. Under Article 2239 of the Civil Code, the forced heirs were allowed to annul this simulated transfer made by

4. 231 La. 195, 91 So.2d 8 (1956).
5. 231 La. 923, 93 So.2d 217 (1957).
6. LA. CIVIL CODE art. 1498 (1870).
7. 232 La. 870, 95 So.2d 481 (1957).

their father. As to the real estate, the court held that the transfer was not a simulation since some consideration had been given for the transfer.[8] Nor was the consideration so inadequate as to allow the transfer to be considered a donation in disguise.[9]

In *Spiers v. Davidson*[10] the court held that the plaintiff's petition, which alleged that a purported sale of land made by her mother to her aunt was actually a simulation, had established a cause of action under Article 2239 of the Civil Code. The plaintiff should have been allowed to offer proof of her allegations. The defendant argued that since the plaintiff had accepted her mother's succession unconditionally, she was bound by her mother's warranty of title under Article 2236 of the Civil Code. In rejecting this argument, the court held that if the forced heirs were bound by their ancestor's warranty of title in an authentic act, they could never bring an action to annul the simulated contracts of those from whom they inherit. It would appear that the right given to the forced heirs in Article 2239 is an exception to the general rule that the heirs are bound by the authentic acts of their ancestors under Article 2236 of the Civil Code.

Donations Mortis Causa

In *Succession of Guillory*[11] a resident of Texas left a will disposing of property situated in Louisiana. The testament provided that the property should be held in trust for her son during his lifetime, and at his death the naked ownership and the possession of the property should go to a named religious organization in this state. The court held that the bequest was a prohibited substitution and, therefore, unenforceable insofar as it affected property in Louisiana.[12]

In *Succession of Kamlade*[13] an olographic will provided that the testator's estate should be used for the support of his sister-in-law and, at her death, should be divided so that one-half would go to his cousins on his mother's side of the family and one-half would go to his cousins on his father's side. The executors of the estate petitioned the court for a judgment, under the

8. Succession of Nelson, 224 La. 731, 70 So.2d 665 (1953); Citizens Bank and Trust Co. v. Willis, 183 La. 127, 162 So. 822 (1935).
9. LA. CIVIL CODE art. 2444 (1870).
10. 96 So.2d 502 (La. 1957).
11. 232 La. 213, 94 So.2d 38 (1957).
12. LA. CIVIL CODE art. 1520 (1870).
13. 232 La. 275, 94 So.2d 257 (1957).

Uniform Declaratory Judgments Act,[14] declaring the testator's intent as to the proper disposition of the estate between his cousins. Since the sister-in-law predeceased the testator, the question of whether or not the disposition was a prohibited substitution was moot because of Article 1697 of the Civil Code. In rejecting the argument that the entire will should be declared void because of uncertainty, the court said that it was bound under Articles 1712 and 1713 of the Civil Code to give some effect to the testament. Because of the uncertainty as to what was meant by the word "cousins," the court sought an interpretation which would most closely approximate the legal order of distribution.[15] The court held that the word "cousins" meant the *nearest surviving cousins* on each side of the family, rather than all of the testator's cousins regardless of degree. Therefore, one-half of the estate was given to the first cousins on his father's side of the family and the remaining half was given to his second cousins on his mother's side as they were his nearest surviving cousins.

In *Succession of Mutin*[16] the validity of an olographic will dated "Feb 2/9/54" was assailed under the claim that the date was uncertain. After holding that the evidence introduced to show the testator's intent as to the date could not be used to clarify any uncertainty of date because such a nullity results from a vice of *form*, the court found that the date was not uncertain and that the will was valid. The court held that the century and decade (1954) and the month of the year (February) were explicit.[17] The only question to decide was whether the will was written on the second or on the ninth day of February. The court held that some effect had to be given to each of the numerals and it was reasonable to conclude that the will was written on the ninth of February and that the number two (2) was merely a repetition by figure of the month. It is believed that the reader should distinguish this case from the cases which hold that a will dated solely by slash marks leaves the date uncertain.[18] In this case the month of the year was clearly indicated by the abbreviation of the word "February."

14. LA. R.S. 13:4231 *et seq.* (1950).
15. Succession of Williams, 132 La. 865, 61 So. 852 (1913); Burthe v. Denis, 31 La. Ann. 568 (1879).
16. 232 La. 416, 94 So.2d 421 (1957).
17. Succession of Kron, 172 La. 666, 135 So. 879 (1931). *But see* 1948 amendment to LA. CIVIL CODE art. 70 (1870).
18. Succession of Beird, 145 La. 756, 82 So. 881 (1919); Succession of Lasseigne, 181 So. 879 (La. App. 1938).

In *Succession of Moore*[19] the legal heirs of the decedent brought an action to reduce a donation mortis causa, claiming that the legatee and the testator had lived together in open concubinage.[20] The evidence showed the the legatee had left her husband and had taken up residence with the testator. The court held that a relationship of concubinage existed between the parties, as distinguished from mere acts of fornication or adultery. Since no attempt was made to conceal their relationship, the parties were deemed to have lived together in a state of open concubinage. Therefore, in accordance with Article 1481 of the Civil Code, the donation was reduced to one-tenth of the value of the estate to be paid out of the movable property only.

In *Succession of Lapene*[21] the plaintiffs were allowed to prove their relationship to the testator by formal acts passed before public officers in France. While it was admitted that such evidence was secondary in nature, the court held that the evidence was sufficient to establish the plaintiffs' rights to the estate since it was the best evidence available upon which such proof could be based. The court also held that the fact that more than thirty years had elapsed since the death of the testator would not prevent the legatees from asserting their claims to the estate. The prescriptive period under Article 1031 of the Civil Code cannot be invoked by the state in order to allow the land to escheat to the state.[22] Such prescription is available only to coheirs or their transferees who have accepted the succession.[23]

In *Winsberg v. Winsberg*[24] the testator had disposed of his entire estate in favor of his surviving spouse. By agreement, this disposition was reduced to his disposable portion under Article 1493 of the Civil Code, and his children were recognized as owners of their forced share of their father's estate. The question later arose as to whether the surviving spouse was entitled to the usufruct over the property inherited by the children of the marriage.[25] The testator's son relied on the case of *Forstall v. Forstall*,[26] which denied the surviving spouse the usufruct over the children's inheritance when she had received

19. 232 La. 556, 94 So.2d 666 (1957).
20. LA. CIVIL CODE art. 1481 (1870).
21. 96 So.2d 321 (La. 1957).
22. Succession of Tyson, 186 La. 516, 173 So. 772 (1939).
23. Lee v. Jones, 224 La. 231, 69 So.2d 26 (1953); Sun Oil Co. v. Tarver, 219 La. 103, 53 So.2d 437 (1951).
24. 96 So.2d 33 (La. 1957).
25. See LA. CIVIL CODE art. 916 (1870).
26. 28 La. Ann. 197 (1876).

the disposable portion of her husband's estate. The court refused to follow the *Forstall* decision and held that the usufruct created by law in favor of the surviving spouse over the property inherited by issues of the marriage would be recognized whenever the testator had not disposed of his property *adversely* to the usufruct. Since no mention of the usufruct was made in the testament, the court held that the testator had not intended to deprive his widow of the legal usufruct over the children's inheritance.

In *Talton v. Todd*[27] the collateral heirs of the testator attempted to have a nuncupative will by public act declared invalid because of vices in its form.[28] Both of the subscribing witnesses testified that they did not believe that the will had been perfected in accordance with the requirements of Article 1578 of the Civil Code. In reversing the trial judge, the court held that the uncorroborated testimony of the subscribing witnesses, which impeaches their solemn declarations that the will was drawn and signed in the presence of the witnesses, is not legally sufficient to invalidate the testament.[29] To carry their burden of proof, those who seek to invalidate a will by public act must support the testimony of the subscribing witnesses with other facts or reasonable inferences.

COMMUNITY PROPERTY

In *Weems v. Medak*[30] the court held that property acquired during the existence of the community of acquets and gains is presumed to be community property even though it is purchased in the name of one of the spouses. The evidence offered to prove otherwise was not sufficient to overcome this presumption.

In *Succession of Scott*[31] the decedent died intestate, leaving an estate consisting entirely of funds received from the federal government in the form of service disability payments. The surviving spouse contended that these payments became part of the community and therefore she was entitled to inherit her husband's share under Article 915 of the Civil Code. Her demand was opposed by the collateral heirs of the husband who claimed that the payments were pure gratuities and thus became the

27. 96 So.2d 327 (La. 1957).
28. LA. CIVIL CODE art. 1578 (1870).
29. Succession of Beattie, 163 La. 831, 112 So. 802 (1929).
30. 231 La. 923, 93 So.2d 217 (1957).
31. 231 La. 381, 91 So.2d 574 (1956).

separate property of the husband. While recognizing that the veteran had no vested right to the payments, the court held that such payments rested upon a moral obligation of the government to compensate the disabled veteran or his dependents for his loss of earning power. Consequently, the payments could not be considered as purely gratuitous, and therefore constituted assets of the community.

In *Succession of Rusciana*[32] the heirs of the decedent spouse sought to recover one-half of the value of certain improvements made upon her second husband's separate property with funds belonging to the community.[33] The evidence showed that $10,000 of community funds had been spent in improving the property. The court held that the actual *cost* of the improvements could not be used to determine the increased value of the property. The recovery is limited to one-half of the *increase in value* resulting from the improvements, to be measured by value of the property at the beginning of the community and at its dissolution.[34]

During the past term, the court also decided the following cases dealing with successions, donations, and community property. They are *Gilbert v. Heintz*,[35] *Succession of Pailet*,[36] *Succession of Baragona*,[37] *Succession of Franz*,[38] and *Balzrette v. Hughes*.[39] These cases have been omitted from this discussion because the decisions turned solely on questions of fact.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

In *Plummer v. Motors Insurance Corp.*,[1] the court found the way to substantial justice through a confused and confusing situation. Plaintiff was the credit purchaser of a truck that had sustained fire damage. The insurer took the truck into its possession for the required repairs. Before they were made the

32. 96 So.2d 1 (La. 1957).
33. LA. CIVIL CODE art. 2408 (1870).
34. The case was remanded in order that evidence might be introduced to establish the value of the property at the beginning of the community.
35. 231 La. 535, 91 So.2d 784 (1956).
36. 231 La. 972, 93 So.2d 235 (1957).
37. 231 La. 1016, 93 So.2d 542 (1957).
38. 232 La. 310, 94 So.2d 270 (1957).
39. 232 La. 509, 94 So.2d 649 (1957).
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1. 96 So.2d 605 (La. 1957).