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Successions - Community Property - Renunciation

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SUCCESSIONS—COMMUNITY PROPERTY—RENUNCIATION — Joseph Paline died intestate leaving a widow, two sons and five grandchildren. Since his succession, consisting solely of community property, was renounced by his sons, their mother was placed in possession. Upon her death, she bequeathed to her sons the real property formerly belonging to the community. After partition of the property, one of the sons contracted with the defendant who agreed to purchase a portion of this land. In answer to a suit for specific performance, the defendant denied that plaintiff's title was merchantable. One of the grandchildren intervened contending that, by virtue of the renunciation, title to their grandfather's share of the community vested in the five grandchildren. *Held,* by the 1938 amendment to Article 915 "the wife was virtually—for succession purposes as set forth in article 888—placed in the same category as a blood relation to the deceased"[1] and "became recipient of the accretion as she is the heir in the next rank or degree under the provisions of Article 915, R.C.C."[2] *Paline v. Heroman,* 211 La. 64, 29 So. (2d) 473 (1946), Justices Hawthorne and Fournet dissenting.

Prior to 1938 the surviving spouse inherited both separate and community property as an irregular heir. Act 408 of 1938, which amended Article 915 of the Civil Code, provides that the surviving spouse shall "inherit as a legal heir by operation of law, and without the necessity of compliance with the forms of law provided in this chapter for the placing of irregular heirs in possession of the successions to which they are called." Clearly, the act intended only to make the surviving spouse inheriting under Article 915 a regular heir with seizen, thus eliminating the procedure required for being put into possession as an irregular heir.[3] It was not the 1938 amendment which changed the rights of the surviving spouse in the order of inheritance of community property,[4] but the amendments of 1910[5]

1. 211 La. 64, 29 So. (2d) 473, 474 (1946).

2. 211 La. 64, 29 So. (2d) 473, 476.

3. Daggett, Matters Pertaining to the Civil Code (1942) 5 LOUISIANA LAW REVIEW 83; Hebert and Lazarus, The Louisiana Legislation of 1938 (1938) 1 LOUISIANA LAW REVIEW 83; Oppenheim, The Inheritance of the Surviving Spouse —Article 915, Louisiana Civil Code of 1870 (1946) 21 Tulane L. Rev. 54.

4. The intent of the legislature on this point is further evidenced by the statements of Senator W. D. Cotton, the proponent of Act 82 of 1942, which reenacted and amended the 1938 act. "It was the very definite purpose of this Act to remove any possible doubt created by the jurisprudence, and to definitely establish the surviving spouse a regular heir in all cases when community property was from the deceased spouse.

". . . The Legislative intent was . . . to make said surviving spouse a regular heir in all cases, and particularly to obviate the necessity of the proceedings of an irregular succession." (Letter from Captain W. D. Cotton, dated New Orleans, October 7, 1942.)

5. La. Act 57 of 1910: "In all cases when either the husband or wife shall

and 1916.[6] None of these amendments, however, purport to classify the surviving spouse as a degree relation to the deceased spouse.

Article 915, which governs the inheritance of community property, provides that "In the event the deceased leave *descendants*[7] his or her share shall be inherited by such descendants in the manner provided by law." The absence of descendants, therefore, is a condition precedent to the right of the surviving spouse or parents of the decedent to inherit any part of his or her share of the community.

According to strict lexiographical meaning, the term "descendants" means only the issue of a deceased person and not the children of a living person.[8] This definition would not apply in this case since Article 14[9] states that "The words of the law are generally to be understood in their most usual signification, without attending so much to the niceties of grammar as to the general and popular use of the words." The term "descendants" is generally accepted as including the lineal issue of a living person.[10] This view seems to be supported by Article 3556(8)[11] which defines children as "not only the children of the first degree, but the grandchildren, great-grandchildren, and all other descendants in the direct line." The French commentators also consider the children of the renouncing child as descendants.[12]

The court in the case under consideration relied in part upon *Jacob v. Falgoust,*[13] where the children of the marriage renounced

die leaving no descendants, nor ascendants and without having disposed by last will and testament of his or her share in the community property, such undisposed of share shall be inherited by the survivor in full ownership."

6. La. Act 80 of 1916: "In all cases, when either husband or wife shall die, leaving no ascendants or descendants, and without having disposed by last will and testament, of his or her share of the community property, such undisposed of share shall be inherited by the survivor in full ownership. But in the event the deceased should leave descendants his or her estate shall be inherited by them in the manner now provided for by law. But should the deceased leave no descendants, but a father or mother, or both, the estate shall be divided into two equal portions, one of which will go to the father and mother, or the survivor of them, and the other portion to the surviving spouse."

7. Italics supplied.

8. In re Plaster's Estate, 179 Misc. 80, 87 N. Y. S. (2d) 498, 501 (1942); Lamb v. State Tax Com'r, 72 N. D. 42, 44, 4 N. W. (2d) 585, 586 (1942); Parrish v. Mills, 101 Tex. 276, 283, 106 S. W. 882, 886 (1908).

9. La. Civil Code of 1870.

10. Lamb v. State Tax Com'r, 72 N. D. 42, 45, 4 N. W. (2d) 585, 586 (1942); Bouvier, Law Dictionary (Student ed. 1934); Cyclopedia Law Dictionary (3 ed. 1940).

11. La. Civil Code of 1870.

12. 4 Planiol et Ripert, Traite Pratique de Droit Civil Francais (1928) 101, no 72; 2 Toullier, Le Droit Civil Francais (6 ed. 1846-1848) tit. 1, Successions 119, § 8, no 202.

13. 150 La. 21, 90 So. 426 (1922): "It may be added that it does not follow, because the heirs renounced the community, that they renounced their mother's succession. As a matter of fact, they accepted that, which included a large claim

their mother's interest in the *community*. Nieces and nephews of the deceased spouse claimed her share as the heirs next in degree. Although the Civil Code has no provision for the disposition of the wife's interest in community property which she or her heirs renounce, the court held that such interest remains in the husband by force of his original title.[14] This case is not controlling because the heirs of the wife renounced her interest in the *community*,[15] whereas in the *Paline* case the heirs renounced the *succession* of their father.[16] No authority would have permitted them to renounce their father's share of the community.[17] The *Jacob* case also differs from the case under consideration in that there were no descendants other than the children who renounced.

Under Article 1022[18] "The portion of the heir renouncing the succession goes to his coheirs in the same degree; if he has no coheirs of the same degree, it goes to those in the next degree." In the present case, since all the coheirs in the same degree renounced the succession, it devolved upon those in the next degree. The court decided that upon the renunciation by all the children of the deceased spouse, the surviving widow (in the absence of parents) inherited as the heir in the next degree in preference to her grandchildren. This conclusion appears to be erroneous.

Under the provisions of the Civil Code the wife has never been considered as a degree relation to her husband.[19] Although Article 915 grants to the surviving spouse an equal right to inherit with ascendants in the first degree, this position in the order of inheritance is not pertinent to the decision in the present case. To determine who are the heirs of the *de cujus* next in rank or degree entitled to inherit the succession, it is necessary to consult Articles 902-915.[20] In the inheritance of both separate and community property the entire fabric of the Civil Code indicates that lawful descendants are called

against the community, which doubtless they desired to enforce." 150 La. 21, 24, 90 So. 426, 427.

14. Fabre v. Hepp, 7 La. Ann. 5 (1852); Jacobs v. Falgoust, 150 La. 21, 90 So. 426 (1922).

15. In accordance with a special privilege granted to the wife and her heirs by Arts. 2410, 2411 and 2423, La. Civil Code of 1870.

16. Governed by Arts. 1014-1031, La. Civil Code of 1870.

17. Succession of Baum, 11 Rob. 314 (La. 1845). Daggett, The Community Property System of Louisiana (reprinted with addenda, 1945) 77.

18. La. Civil Code of 1870. If the sons had renounced in favor of their mother, under Articles 1002 and 1003 of the Civil Code of 1870, the renunciation would have been considered as an acceptance with a gift over. However, the renunciation was not made in favor of any person, and, therefore, must be governed by the general provisions of the Civil Code dealing with renunciation of successions.

19. Arts. 888, 892, 924, 1495, La. Civil Code of 1870.

20. Ibid.

to the succession to the exclusion of all other classes, independent of the nearness in degree.[21] Thus descendants exclude all other relatives, ascendant or collateral, who are even more closely related to the deceased.[22]

Since the renouncing heir is still alive, his children cannot represent him,[23] but under Article 902[24] descendants may inherit either by representation or in their own right. The renunciation by the forced heirs did not affect the rights of the grandchildren to inherit *de son chef*.[25] Therefore, since there were descendants who had not renounced the succession, this class of heirs is the only one to be considered in determining who are the "heirs in the next degree." Applying the above rules to the present case, the grandchildren, as the nearest in degree in the descending line, should have inherited in preference to the wife.

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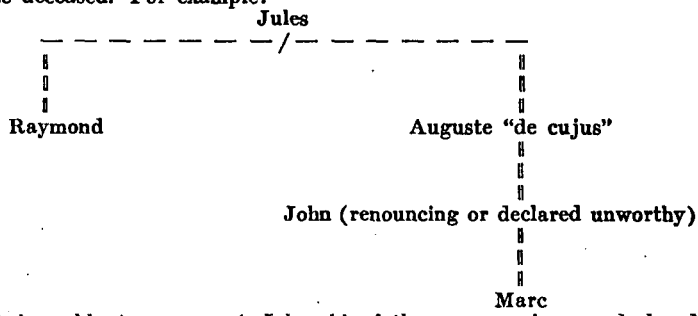
21. Arts. 888, 902, 916, 1493-1494, La. Civil Code of 1870. Saunders, Lectures on the Civil Code (1925) 190: "Now with regard to the persons whom the law designates to be the legal heirs of a person when he dies intestate, without a will. In the first place, his descendants are his heirs; and no matter how remote they inherit to the exclusion of everyone else."

Cross, Successions (1891) 70, § 50: "The order among legal heirs is as follows: 1. Children and their descendants to the exclusion of all persons."

22. 2 Toullier, loc. cit. supra note 12: ". . . the law calls to the first order, to the exclusion of all other ascendant or collateral relatives, the descendants of a deceased person."

"No 202. This calling of descendants of the deceased, to the exclusion of other order or lines, is independent of the proximity of degree. They exclude all other ascendants or collateral relatives of an equal degree, or even more closely related to the deceased. For example:



"Marc, not being able to represent John, his father, renouncing or declared unworthy, remains the relation of Auguste, his grandfather, in the second degree. However, he excludes from the succession both Jules, father of Auguste, who is in the first degree, and Raymond, brother, who is in the second degree, because the relations in the ascendent line, and those in the collateral line, even brothers, are called to inherit only in the single case where the decedent leaves no posterity."

23. Art. 899, La. Civil Code of 1870: "Persons deceased only can be represented; persons alive cannot." 2 Toullier, loc. cit. supra note 12.

24. La. Civil Code of 1870.

25. 2 Toullier, loc. cit. supra note 12.