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Property - Transfer of Immovable Community Property - Estoppel and the Parol Evidence Rule

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and acquiescing in the location thereof."[20] When the requisite consent is not present, the possessor is considered to hold as an occupant and not by adverse possession as is required by Article 853.[21] In this situation it will be necessary to establish thirty years possession as a prerequisite to prescription under Article 852.

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PROPERTY — TRANSFER OF IMMOVABLE COMMUNITY PROPERTY — ESTOPPEL AND THE PAROL EVIDENCE RULE

Plaintiff brought suit to be declared owner of land which his wife had purchased during marriage and sold to a third party without his written consent. There was no recital in the act of sale that the property was purchased by the wife in her name as her separate property, and the district court, applying the presumption that such property was part of the community of acquets and gains, annulled the purported sale because it lacked the husband's signature. The court of appeal *held*, reversed. Since the husband was instrumental in arranging the sale by the wife, was actually present at its execution and received a part of the consideration, he ratified the act of sale and could not sue to rescind it because his signature was absent. The vendee was not acquiring property by estoppel since the wife here had a deed in her name. *Cato v. Bynum*, 98 So.2d 257 (La. App. 1957).

The opinion in the instant case lends itself to two distinct interpretations. On first reading it would appear that the husband's signature is being supplied by parol testimony, under a plea of estoppel, to pass title to community property of which the wife is record owner. On the other hand, the court's language may easily be taken to mean that the husband, by his conduct at the time of the sale, is estopped to assert the character of the property in question as community, thus making a sale by the wife alone translative of title, since a sale of the separate property of the wife does not require the signature of the husband. The first of these interpretations involves a consideration of the parol evidence rule.

It is the generally accepted principle in Louisiana that title

20. Blanchard v. Monrose, 12 La. App. 503, 506, 125 So. 891, 893 (1930).
21. Williams v. Bernstein, 51 La. Ann. 115, 25 So. 411 (1899).

to immovable property cannot be established by parol.[1] Considerable effort has been made to avoid the application of this rule by the doctrine of estoppel in pais, which in effect provides that one will not be heard in his own interest to controvert or deny the truth of a state of facts which he has openly and publicly led others to believe, and upon the faith of which they have acted.[2] As far back as 1850 the Louisiana courts have sustained the transfer of immovable property under such an equitable plea, holding that where one stands by and is silent while his property is sold, he is estopped to dispute the purchaser's title; but in such cases there has always been some *written evidence* introduced to support the plea of estoppel.[3] In the absence of written evidence, the courts have refused to sustain the transfer of immovable property.[4] In the language of the decisions, "title

1. LA. CIVIL CODE art. 2440 (1870): "All sales of immovable property shall be made by authentic act or under private signature. Except as provided in article 2275, every verbal sale of immovables shall be null, as well for third persons as for the contracting parties themselves, and the testimonial proof of it shall not be admitted."

LA. CIVIL CODE art. 2275 (1870): "Every transfer of immovable property must be in writing; but if a verbal sale, or other disposition of such property, be made, it shall be good against the vendor, as well as against the vendee, who confesses it when interrogated on oath, provided actual delivery has been made of the immovable property thus sold."

Lemoine v. Lacour, 213 La. 109, 34 So.2d 392 (1948), 21 TUL. L. REV. 706 (1947); Sexton v. Waggoner, 66 So.2d 634 (La. App. 1953); Johnson v. Sandifer, 56 So.2d 762 (La. App. 1952) (rule applied to an executory contract to sell).

See generally Sarpy, *Form in Louisiana Contracts Involving Rights in Property*, 14 TUL. L. REV. 16 (1939); SAUNDERS, LECTURES ON THE CIVIL CODE 460 *et seq.* (1925).

The formality of writing is dispensed with in those areas where immovable property is acquired by operation of law, i.e., *judicial sale.* LA. CIVIL CODE bk. III, tit. VII, c. 9, *Of Sales by Auction, or Public Sales* (1870); Comment, 17 LOUISIANA LAW REVIEW 197 (1956); *heirship*, LA. CIVIL CODE, bk. III, tit. I, *Of Successions; prescription*, bk. III, tit. XXIII, *Of Occupancy, Possession and Prescription* (1870).

2. This doctrine is discussed in Harvey v. Richards, 200 La. 97, 7 So.2d 674 (1942); Harper v. Learned, 199 La. 398, 6 So.2d 326 (1942); Jackson v. United Gas Public Service Co., 196 La. 1, 198 So. 633 (1940); Blanchard v. Allain, 5 La. Ann. 367 (1850). See Annot., 50 A.L.R. 671 (1927).

3. Davidson v. Silliman, 24 La. Ann. 225 (1872) (wife was estopped to assert title to property sold by executors of her deceased husband's estate since she ratified the sale, the procés verbal showing that she was adjudicatee of at least two thirds of the entire property sold); Blanchard v. Allain, 5 La. Ann. 367 (1850) (party signed inventory of succession, procés verbal of family meeting and adjudication).

Written evidence was also present in Wimbish v. Mayer, 144 La. 866, 81 So. 373 (1919); Lippmins v. McCranie, 30 La. Ann. 1251 (1878); Nicholls v. Mercier, 15 La. Ann. 370 (1860).

See Harvey v. Richards, 200 La. 97, 7 So.2d 674 (1942), where the defendant, although he signed as witness an act of sale between the plaintiff's vendor and his son transferring property of which he was record owner, was not estopped to assert title to property in question, because the plaintiff failed to prove that the defendant knew of the discrepancy and that the plaintiff's vendor was misled in any way by his act.

4. Snelling v. Adair, 196 La. 624, 637, 199 So. 782 (1940) ("The pleas of

to immovable property cannot be acquired by estoppel."[5] This principle has been applied to transfers involving the mandate to sell or purchase immovable property. The authority of the agent in such a transfer must be in writing,[6] and the courts have for the most part been consistent in their rejection of parol testimony to establish this authority.[7] While in the case of *Bradford-Kennedy v. Brown*[8] the doctrine of estoppel was used to preclude a principal from denying the authority of an agent, thus eliminating by parol the necessity of written proof, that case has apparently never been followed. There is no apparent reason why authorization to transfer immovable commercial partnership property should not follow the general rule;[9] yet there are several cases standing as an exception to the proposition that "title to immovable property cannot be acquired by estoppel." Partners, who receive a portion of the purchase price, have been estopped to assert title to commercial partnership property sold by a fellow partner without written authority.[10]

In the case here discussed the property was presumed community property since the wife bought it during the existence of the community with no recitation in the act of sale that it

estoppel, ratification, and acquiescence, which are based on the long silence and inaction of the plaintiff and her ancestor, are equally unimpressive, for one can never be divested of his title to property except in the manner prescribed by law") ; Pearce v. Ford, 124 La. 851, 50 So. 771 (1909) (silence and inaction will not bring about the loss of title to real estate, unless in connection with the prescription established by law).

Accord, Sun Oil Co. v. Smith, 216 La. 27, 43 So.2d 148 (1949) ; Gibson v. Pickens, 187 La. 860, 175 So. 600 (1937) ; Lindner v. Cotonio, 175 La. 352, 143 So. 286 (1932) ; Bayard v. Baldwin Lumber Co., 157 La. 994, 103 So. 290 (1925) ; Chronos Land Co. v. Crichton, 150 La. 963, 91 So. 408 (1922). *But see* Long v. Chailan, 187 La. 507, 175 So. 42 (1937).

5. Pan American Production Co. v. Robichaux, 200 La. 666, 8 So.2d 635 (1942).

6. LA. CIVIL CODE arts. 2275, 2276, 2992, 2997 (1870). As the law requires that a contract to buy or sell real estate must be in writing, so also must a power of attorney to make such a contract be in writing. Turner v. Snype, 162 La. 117, 110 So. 109 (1926).

7. Triangle Farms v. Harvey, 178 La. 559, 152 So. 124 (1934) ; Hackenburg v. Gartskamp, 30 La. Ann. 898 (1878) ; Badon v. Badon, 4 La. 166 (1832).

8. 152 La. 29, 92 So. 723 (1922).

9. Partners of a commercial partnership are the co-owners of all real estate bought for or by the firm. Succession of Ratcliff, 209 La. 224, 24 So.2d 456 (1945) ; Brinson v. Monroe Automobile & Supply Co., 180 La. 1064, 158 So. 558 (1935) ; Baca v. Ramos, 10 La. 418 (1836). Property so owned cannot be alienated by one partner without the consent of the others. Weld v. Peters, 1 La. Ann. 432 (1846) ; Thomas v. Scott, 3 Rob. 256 (La. 1842) ; Varnado v. Meyer & Neugass Co., 133 So. 396 (La. App. 1931).

10. When the other partners are informed of the sale and they make no objection but accept part of the purchase price, they thereby ratify it and are estopped to assert title against a bona fide purchaser. Weld v. Peters, 1 La. Ann. 432 (1846) ; Thomas v. Scott, 3 Rob. 256 (La. 1842) ; Varnado v. Meyer & Neugass Co., 133 So. 396 (La. App. 1931).

was purchased as her separate property.[11] Thus, although the wife as record owner would have to sell the property as agent of the community,[12] she could not do this without the written consent of the husband.[13] Yet despite the lack of such written consent, the defendant-vendee was allowed to show by parol certain conduct of the husband which, the court concluded, showed that the husband had ratified the act of sale by the wife.[14] Thus, the court continued, the husband should not be permitted to upset the sale "by claiming that he did not sign the act."[15] This language would perhaps indicate that the court was here permitting the vendee by parol testimony to supply the husband's signature in violation of the general rule that title to immovable property cannot be acquired by estoppel. Such a holding could perhaps be justified in that the sale by the wife here is closely analogous to sales by unauthorized partners which have been upheld on the basis of estoppel.[16] But the court did not base its decision on that exception to the general rule. On the contrary, at the close of its opinion the court seems to deny that it is allowing the husband's signature to be supplied by parol, when it says "No one here is attempting to acquire property by estoppel. The wife here had a deed in her name. The defendant has a deed in his name, which deed was ratified by the husband's acceptance of the consideration."[17] This language, plus the reliance of the court on the case of *Stewart v. Mix*,[18] indicates another interpretation of the decision.

11. LA. CIVIL CODE art. 2405 (1870): "At the time of the dissolution of the marriage, all effects which both husband and wife reciprocally possess, are presumed common effects or gains, unless it be satisfactorily proved which of such effects they brought in marriage, or which have been given them separately, or which they have respectively inherited."

Property acquired by purchase in the name of the wife alone is presumed to become property of the community. To rebut such presumption the wife must show that such property was paid for from her paraphernal funds, that such funds were administered by her and they were invested by her. Cameron v. Rowland, 215 La. 177, 40 So.2d 1 (1949); Betz v. Riviere, 211 La. 43, 29 So.2d 465 (1947).

12. Property purchased by the wife which is presumed to be community property can only be sold by the wife, as agent of the community, since it stands of record in her name. Garlick v. Dalbey, 147 La. 18, 84 So. 441 (1920).

13. LA. CIVIL CODE arts. 2402, 2404 (1870); Roccoforte v. Barbin, 212 La. 69, 31 So.2d 521 (1947); Bywater v. Enderle, 175 La. 1098, 145 So. 118 (1932); Thomas v. Winsey, 76 So.2d 33 (La. App. 1954); Vanzant v. Morgan, 181 So. 660 (La. App. 1938).

14. Cato v. Bynum, 98 So.2d 257 (La. App. 1957).

15. *Id.* at 259.

16. See notes 9 and 10 *supra*. The community of acquets or gains is in a sense a legal partnership. LA. CIVIL CODE, bk. III, tit. VI, c. 3, *Of the Community or Partnership of Acquets or Gains*, § 1, *Of Legal Partnership* (1870).

17. Cato v. Bynum, 98 So.2d 257, 260 (La. App. 1957).

18. 30 La. Ann. 1036 (1878).

In the *Stewart* case, the husband by his conduct was estopped to assert the community character of property purchased by the wife during the existence of the community. The husband, prior to his suit to be declared owner, had acted as if the property was the separate property of his wife, by permitting taxes to be assessed and paid in the name of the wife and by assisting her in the mortgage of the property for her own personal, individual benefit. The court said: "This property may indeed be community property, but C. S. Stewart has, by his acts and conduct, debarred himself from asserting it to the prejudice of third persons."[19] The court then permitted the sale of the property in question as the separate property of the wife.

In the instant case, the plaintiff asserted the presumption of community property existing in his favor. The wife, had she been involved in the litigation, could have overcome this presumption by proving that the property in question was purchased as her separate property, with her separate funds which she administered and invested independently of the husband's control.[20] The vendee of the wife, the defendant here, was likewise entitled in this way to rebut the presumption that the property was community. But the plaintiff, by setting up the sale, being present at its execution and receiving a part of the purchase price, in effect denied the community character of the property, holding it out as the separate property of the wife. Applying the reasoning of the *Stewart* case, he was estopped by his conduct to assert the community character of the property in question, and the defendant was relieved of the normal burden of proving that the property was in fact the separate property of the wife. This being so, the act of sale signed only by the wife was properly translative of title, since a sale of the wife's separate property does not require the signature of the husband.[21]

The opinion in the instant case is certainly susceptible of two distinct interpretations. It may be interpreted to mean that the plaintiff by his conduct ratified the act of sale by the wife and was estopped to deny that he had not signed the act. On the other hand, there is authority for the proposition that the plaintiff was estopped by his conduct, not to deny that he had signed the act, but to assert the community character of the

19. *Id.* at 1040.
20. See note 11 *supra*.
21. LA. R.S. 9:101 (1950) (Women's Emancipation Act).

property in question, thus making the act of sale by the wife alone translative of title as a sale of her separate property. While arguments may be proposed in support of either interpretation, the latter presents a more salutary result. Under that interpretation the crux of the problem is centered around the presumption of community property asserted by the plaintiff and not the actual transfer of the property involved. This avoids the necessity of an application of the parol evidence rule and negatives the possibility that the defendant was acquiring property by estoppel.

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TORTS — INJURIOUS RELIANCE

Plaintiff was the employee of defendant, who was engaged in the severance and sale of timber. Defendant, desiring the protection of compensation insurance, approached *X* who regularly purchased timber from defendant and who maintained compensation insurance for his own employees. *X* proposed, in good faith, that the cost of insurance premiums be deducted regularly from the price to be paid for timber purchased from defendant by *X*, and assured defendant that the effect would be to extend the protection of his policy to defendant's employees. Defendant, relying upon *X*'s representation, made no further effort to secure compensation coverage. Thereafter plaintiff was injured during the course of his employment. He instituted suit for compensation against defendant, *X*, and *X*'s insurer. The district court held defendant, *X*, and *X*'s insurer liable in solido in tort. On appeal, *held*, affirmed as to defendant and reversed as to *X* and his insurer. However, the court of appeal, grounding its decision on estoppel, held that *X* was liable in damages to defendant,[1] for whatever amount defendant was forced to expend toward fulfilling the judgment against him. One who, with knowledge of the facts, conducts himself so as to mislead another who relies thereon, is estopped from afterwards assuming a position inconsistent with his prior position. *Carpenter v. Madden*, 90 So.2d 508 (La. App. 1956).

A vendee-vendor relationship between the injured claimant's employer and the defendant will not support a workmen's com-

1. The court did not indicate the process by which they allowed defendant to recover judgment against *X*, thus leaving a procedural question open; however, it is assumed that defendant called *X* in warranty under Louisiana's Third Party Practice Act.