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hence retroactive.[24] The 1952 act merely provides that in the case of movable property executory process may be resorted to in those cases where the confession of judgment and chattel mortgage are by private act duly acknowledged. Prior to the passage of this act executory process could be resorted to only in those cases where the act importing confession of judgment was in authentic form.[25] It is to be noted that the 1952 act did not change the rule as applied to immovable property. The court cogently pointed out that "the fact that the procedural remedy [defendant] contracted for was in a form which at that time would not have authorized executory process does not detract from the *validity of his confession of judgment.*"[26] (Italics supplied.)

Executory process is one of the simplest, most expeditious, and effective remedies available in Louisiana. Under the regime of *Coreil v. Vidrine*,[27] it had one serious defect in not affording the debtor a day in court or an adequate opportunity to assert his defenses. The principal case completely removes these objections and supplies the needed remedy.

John S. Covington

SUCCESSIONS—EXEMPTIONS FROM COLLATION—COLLATION OF MANUAL GIFTS

Three grandchildren of the deceased Mrs. William Gomez, children of a predeceased son, sued the only surviving child, Mrs. Amelie Gomez Salatich, and the testamentary executrix, for the collation of certain sums given the daughter during the lifetime of Mrs. Gomez.[1] The deceased gave her daughter $19,200 in the form of checks[2] in monthly installments between 1930 and

24. See discussion of this point in Shreveport Long Leaf Lumber Co., Inc. v. Wilson, 195 La. 814, 197 So. 566 (1940).

25. Osborne v. Mossler Acceptance Co., 214 La. 503, 38 So. 2d 151 (1948). Cf. La. Act 172 of 1944.

26. General Motors Acceptance Corp. v. Anzelmo, 222 La. 1019, 64 So. 2d 417, 420 (1953).

27. 188 La. 343, 177 So. 233 (1937).

1. This case is one for collation only and not for reduction of an excessive donation, because it is conceded that the total amount received by Mrs. Salatich does not exceed the disposable portion of her mother's estate.

2. The question that a check, if considered an incorporeal thing, could not be the object of a manual gift was not raised in the instant case. See Art. 1539, La. Civil Code of 1870.

1946. The defenses against collation were that the sums were remunerative donations for services rendered, or, in the alternative, "they were manual gifts and for that reason exempt from collation under the provisions of Article 1245 of the Civil Code."[3] The lower court failed to find that the sums were for services rendered, but dismissed the suit on the theory that manual gifts were not subject to collation. Appeal was taken to the Louisiana Supreme Court. *Held*, "We agree with the district judge's conclusions that the defendant did not prove that the sums given were for services rendered, *but cannot agree that manual gifts, as such, are exempt from collation.*"[4] (Italics supplied.) *Succession of Gomez*, 67 So. 2d 156 (La. 1953).

The question regarding the collation of manual gifts presents a problem which has never before been adjudicated upon by the courts of this state.[5] The court felt that the importance of this decision merited a comprehensive examination of the subject matter. Perhaps, too, it was influenced by the fact that the weight of authority in Louisiana seemed to be that manual gifts were exempt from collation. This position has been suggested in judicial dictum[6] and accepted by law reviews[7] and writings of authorities.[8]

3. Succession of Gomez, 67 So. 2d 156, 157 (La. 1953).

4. Ibid.

5. A number of cases presenting situations where the collation of manual gifts was demanded have been before the courts, but never has it been squarely decided that manual gifts were not subject to collation. See Potts v. Potts, 142 La. 906, 77 So. 786 (1918); Gilmore v. Gilmore, 137 La. 162, 68 So. 395 (1915); Succession of Burns, 52 La. Ann 1377, 27 So. 883 (1900). In many of the cases, for instance, Succession of Burns, 52 La. Ann. 1377, 27 So. 883 (1900), the defense against collation was not based on the claim that manual gifts were exempt from collation, but on other dfefenses such as the donation was remunerative. In Soules v. Soules, 104 La. 796, 29 So. 342 (1901), the Supreme Court did not recognize the defense that a remunerative donation was not subject to collation. In pure dictum at 104 La. 796, 797, 29 So. 342, 343, the court said, "We do not understand that defendant's counsel argues that a manual gift is not subject to collation." From the case we do not know just what implications the court had in mind.

The nearest our courts have come to passing on the question of the exemption from collation as regards manual gifts was in LeBlanc v. Volker, 198 So. 398 (La. App. 1940), noted in 3 LOUISIANA LAW REVIEW 650 (1941). There the plaintiff's contention was that the thing sought to be collated was not the proper subject of a manual gift. The court of appeal agreed and held that the stock of a homestead association was not subject to collation, since it was an incorporeal and not a proper subject of a manual gift. However, it appears to have been assumed by the court that if the stock had been the subject of a manual gift, it would have been exempt from collation. See note 6 infra.

6. LeBlanc v. Volker, 198 So. 398, 400 (La. App. 1940), discussed favorably in Note, 3 LOUISIANA LAW REVIEW 650 (1941). There the court of appeal said: "A manual gift is not subject to collation."

7. Comment, 26 Tulane L. Rev. 217 (1952).

The court approached this problem in true civilian manner. It looked to the code for the applicable provisions,[9] examined the history of their texts,[10] investigated the opinions of the French commentators,[11] and interpreted the text of the code in light of present society.[12]

The pertinent articles of the Louisiana Civil Code are Articles 1244 and 1245, which provide:

> "Art. 1244: Neither the expenses of board, support, education and apprenticeship are subject to collation, nor are marriage presents which do not exceed the disposable portion."
>
> "Art. 1245: The same rule is established with respect to things given by a father, mother or other ascendant, by their own hands, to one of their children for his pleasure or other use."

These two articles, treating the legal exemptions from collation, have their origin in the law existing in France prior to the Napoleonic Code.[13] The modern French law retains these exemptions,[14] predicating them on parental obligations and customary gifts which have developed out of common usage.[15] Although

8. Oppenheim, An Introduction to the Louisiana Law of Successions, 4 West's Louisiana Statutes Annotated, Civil Code 71 (1952), states: "Manual gifts are not subject to collation."

9. The applicable articles are Arts. 1244, 1245, La. Civil Code of 1870, which are quoted in the text of this note.

10. See 3 Louisiana Legal Archives, Compiled Editions of the Civil Codes of Louisiana (Part I) 692 (1940).

11. The court made a very thorough study of the writings of the French commentators and many were cited in the opinion. It is to be noted that this research was done by the court, since counsel for the litigants in their briefs did not refer to the French authorities.

Some of the recent cases where the Supreme Court has cited French authorities are: Justice Higgins, in Wolfson v. Lisso's Succession, 207 La. 67, 74, 20 So. 2d 427, 429 (1944); Chief Justice Fournet, in Fried v. Bradley, 219 La. 59, 75, 52 So. 2d 247, 253 (1951); Justice Hawthorne, in Feazel v. Feazel, 222 La. 113, 120, 62 So. 2d 119, 121 (1952); Justice LeBlanc, in Love v. Dawkins, 222 La. 259, 265, 62 So. 2d 399, 400 (1952).

12. In speaking of the language of Articles 1244 and 1245, Justice Hawthorne said, "The language the redactors chose to describe this kind of giving was broad and elastic enough to keep apace of changes in our social development." Succession of Gomez, 67 So. 2d 156, 162 (La. 1953).

13. In referring to 2 Domat's Civil Law, n° 2944 (Strahan's tr., Cushings ed. 1850), and Brissaud, A History of French Private Law 675, § 483 (Howell's tr. 1912), Justice Hawthorne indicates that the origin of these principles in Articles 1244 and 1245 is in Roman law. However, since collation in Roman law was much different from that of either France or Louisiana, it would seem that the origin could better be traced to the Customs of Orleans and Paris. See Pothier, Traité des Successions, c. IV, Art. II, § I, 4 Oeuvres de Pothier (Merlin ed. 1830).

14. Art. 852, French Civil Code.

15. See 3 Colin et Capitant, Cours Élémentaire de Droit Civil Français, n° 1228 (de La Morandière, 10 ed. 1950).

the concept of the "manual gift" is recognized in France, it has never been accepted as an exemption from collation.[16] However, there is some belief that the presumptions in favor of collation do not operate so strongly in the case of manual gifts.[17]

The most persuasive argument for exempting manual gifts as such from collation is the language of Article 1245, which makes gifts "by their own hands" exempt from collation.[18] This phrase has even prompted the captioning of Article 1245 "Manual Gifts."[19] Justice Hawthorne, in the instant case, neatly disposes of this argument by taking cognizance of the limiting phrase "for his pleasure and other use" and interpreting it in the light of the history of the article.[20] He found that one set of legal exemptions,

16. 3 Planiol et Ripert, Traité Élémentaire de Droit Civil, nº 2251 (11 ed. 1937), cited by Justice Hawthorne. See also 10 Laurent, Principes de Droit Civil Français, nºs 596-597 (2 ed. 1876). 3 Colin et Capitant, loc. cit. supra note 15, does not even mention manual gifts under the title "Exemptions from Collation." 8 Baudry-Lacantinerie et Wahl, Traité Théorique et Pratique de Droit Civil, Des Successions III, nº 2789 (2 ed. 1899) state: "But it is wrong that manual gifts as such are exempt from collation."

The statement in Comment, 26 Tulane L. Rev. 203, 218 (1952), that "one view is . . . that such gifts are, by their nature, exempt from collation," citing as authority Cass. 19 Octobre 1903, Sirey 1904.I.40, n. 1 and Dalloz, Jurisprudence Générale 390, nº 1108 (nouvelle ed. 1856), does not seem to be justified. This decision was not rendered by the chambre civile, but by the chambre des requêtes, which can merely eliminate those cases which are not considered worthy of a contradictory proceeding. See 1 Glasson et Tissier, Traité Théorique et Pratique d'Organization Judiciaire, de Compétence et de Procédure Civile 261 (13 ed. 1925).

Even 41 Dalloz, Jurisprudence Générale—Répertoire Méthodique et Alphabétique, Verbo Succession, nº 1106 (1856), cites as authority for this view only Toullier, the oldest of the great commentators, in addition to obscure writers like Vazeille, Grenier, and Poujol, and states that the contrary view appears to be preferable.

17. 41 Dalloz, op. cit. supra note 16, at nº 1108. In the appeal case Bordeaux, May 2, 1832, which is cited in nº 1108 as the basis for the statement that there is a presumption that manual gifts are to be exempt from collation, there was direct evidence of a dispensation from collation by the de cujus.

18. Such an interpretation would in effect be founding the exemption on the form of the gift.

19. Article 1245 has been captioned "Manual Gifts" in West's Louisiana Statutes Annotated, Civil Code (1952). Dart's edition of the Civil Code also has a similar caption for Article 1245.

20. In the opinion Justice Hawthorne stated: "The redactors themselves, then did not indicate that they had changed in any way the law relating to things exempt from collation in the Code of 1808. The redactors of the Code of 1825 were men learned in the law, and they were familiar with the term 'manual gift', for they mentioned it expressly when they defined it in Article 1526 of that Code." (67 So. 2d 156, 161 [La. 1953]) He then points out that if they had intended to exempt manual gifts as such from collation, they could very easily have made that intention clear. In formulating the article in the 1825 Code, which is the same as Article 1245 of the present code, they would simply have made the article to read: "The same is established with respect to manual gifts" instead of using the phrase "by their own hands, to one of their children for his pleasure and other use." He then points out that the express purpose of abridging the

those presently found in Article 1244, were predicated on the theory that they were obligations of the parent.[21] The other exemption, contained in Article 1245, was predicated on the theory that customary gifts from parent to child should not be collated.[22] He pointed out that the broad, elastic language of the redactors permits the courts to determine what constitutes a "customary gift" in light of presently existing usage and customs.[23] In explaining the adoption of the phrase "by their own hands" in the Code of 1825,[24] Justice Hawthorne concluded that "it was never the intention and purpose of the redactors of the Code of 1825 to make a drastic change from the provisions of the Code of 1808 relating to exemptions or, for that matter, a radical departure from our fundamental concept of collation."[25]

A holding that all manual gifts are exempt from collation seems to be out of harmony with the general principles of collation. Collation is a well-known principle in our law insuring equality among the forced heirs coming to their ancestor's succession. There is a strong presumption that all gifts inter vivos from a person to one of his forced heirs of the descending line are subject to collation.[26] To destroy this presumption, the gift either must be classified as a legal exemption[27] or be accompanied by the express will of the donor in unequivocal manner to dispense with collation.[28] These exemptions from collation are predicated on the reasons for the gift, and not the form in which

dispositions in the Code of 1808 was to improve those overloaded with detail. 1 Louisiana Legal Archives, Projet of the Code of 1825, 182 (1937). The justice then says, "If such was their purpose, and they intended to exempt manual gifts, why did they overload this disposition by the use of the limiting phrase 'for his pleasure or other use'?" (67 So. 2d 156, 161 [La. 1953])

21. Id. at 162. Article 1244 exempts the expenses of board, support, education, apprenticeship, and marriage presents—all of which seem to be obligations which are owed from parent to child.

22. In speaking of the exemptions contemplated in Article 1245, Justice Hawthorne stated, "When the redactors used the expression 'by their own hands, to one of their children for his pleasure or other use', they were contemplating those things usual for parents of this country to give to a child without thought or regard to his having to account for them to his co-heirs." Succession of Gomez, 67 So. 2d 156, 161 (La. 1953).

23. Thus it would seem that the justice is saying that it is for the court to decide what is the usual gift for a parent to give a child in our present society.

24. See note 20 supra.

25. 67 So. 2d 156, 162 (La. 1953).

26. Art. 1230, La. Civil Code of 1870.

27. Arts. 1244, 1245, La. Civil Code of 1870, contain the legal exemptions.

28. The donor may always declare that collation is not due by stating that the gift is given as an extra portion out of the disposable portion. See Arts. 1232, 1233, La. Civil Code of 1870.

it is given.[29] It seems that the court correctly decided that no exemption of a class of gifts characterized by their form is contemplated by the Civil Code. If all manual gifts were made legal exemptions, individual articles of the code would be circumvented. For instance, Article 1243[30] provides that collation is due when a parent pays his child's debts. If manual gifts were recognized as exemptions, the payment of a child's debt would not be subject to collation in cases where money was given directly to the child in order that he may pay his debts.

Justice Hawthorne was careful that his opinion would not lead to unwarranted generalities. Although he was explicit in holding that manual gifts receive no blanket exemption,[31] he did not indicate that manual gifts must necessarily in all instances be collated. Further, the latter part of the opinion suggests that the court is somewhat reluctant to state that manual gifts are subject to the same rules regarding collation as other inter vivos gifts.[32] Justice Hawthorne pointed out that there is some question in the mind of the court as to what expression is necessary on the part of the donor to exempt manual gifts from collation. He pointed out two possible views—either there must be a written dispensation before a notary and two witnesses (only method possible in the case of ordinary gifts),[33] or the intent to dispense with collation must be shown from the facts and circumstances surrounding the gift.[34] This might well be an indication that the court thinks different rules apply in the case of manual gifts.

Although the code seems to require the more formal mode, it would present an anomaly if the maker of a simple manual gift were forced to adhere to the formalities suggested by the code. The author of the *Gomez* decision recognized this incongruity

29. 3 Colin et Capitant, Cours Elémentaire de Droit Civil Français, no 1228 (de La Morandière, 10 ed. 1950), points out that not only the expenses of board, support, education and apprenticeship, but also the marriage presents and customary gifts are really made not for the benefit of the donee but to satisfy legal or social obligations of the parents.

30. Art. 1243, La. Civil Code of 1870.

31. See note 4 supra.

32. Although it was unnecessary to the decision in the instant case, the court spent considerable time and research on the question of what expression was necessary on the part of the donor to dispense with collation. It is well settled that in the case of ordinary gifts inter vivos the donor must declare his intention to dispense with collation in his testament, in the gift in written form before a notary and two witnesses, or in open court. See Art. 1232, La. Civil Code of 1870.

33. It seems that in the case of ordinary gifts collation may be dispensed with by the donor in a declaration before a notary and two witnesses, in his will, or in any judicial proceedings.

34. See Succession of Gomez, 67 So. 2d 156, 163 (La. 1953).

and cogently addressed it to the Louisiana Law Institute for consideration.[35] Although it is believed that the better view would be to allow the court to ascertain the existence or non-existence of the intent to dispense with collation from the facts of the particular case, it is thought that Justice Hawthorne should be commended for pointing out the need for legislative clarity.

The *Gomez* decision obviates any beliefs which may have previously existed that there is a blanket exemption of manual gifts from collation. However, there are indications that the court would allow certain manual gifts to be free from collation if the facts and circumstances surrounding the gift would warrant the dispensation. In reaching this conclusion the Supreme Court made a very intensive study which resulted in what is submitted to be one of the court's most scholarly opinions in recent years. To reach this result, Justice Hawthorne seems to have taken cognizance, as he has done on previous occasions,[36] of the shift in wealth from immovable to movable property. Any reason which may have once justified the blanket exemption of manual gifts has disappeared from our modern society. Once again the justices have shown that new wine may fit in an old bottle.

A. B. Atkins, Jr.

WORKMEN'S COMPENSATION—DEATH BENEFITS—PRIORITIES BETWEEN CLAIMANTS

Plaintiff employer, invoking the Uniform Declaratory Judgments Act,[1] sought to determine its liability under the Louisiana Employers' Liability Act[2] for the death of an employee in an

35. It is submitted that the court should receive favorable recognition for bringing this situation to the attention of the Law Institute. It is interesting to note that the Livingston committee which drafted the Civil Code of 1825 contemplated that all gaps in the law would be called to the attention of the Legislature for immediate correction. See 1 Louisiana Legal Archives, Preliminary Report of the Code Commissioners LXXXVI, XCII (1937).

36. See Succession of Geagan, 212 La. 574, 599, 33 So. 2d 118, 126 (1947), where Justice Hawthorne remarked, "In modern times, when movable property may and often does constitute the great bulk of the wealth, it appears to be a matter of sufficient importance to warrant the Legislature's giving this provision of our law serious consideration."

1. La. R.S. 1950, 13:4231 et seq. The use here of the Uniform Declaratory Judgments Act is made the subject of another Note at p. 281 of this issue.

2. La. R.S. 1950, 23:1021 et seq.