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Stanford O. Bardwell Jr.

ample of judicial willingness to avoid a strict application of the rule that a use of community funds will make the purchased property community regardless of the intention of the parties. Since a rule of "conversion" through the use of community funds is seemingly based either on the theory that such use evidences an intention of the paying party that the property become part of the community, or on the principle that the community should be maintained inviolate and therefore uses of community funds for non-community purposes should be penalized, it is submitted that an error-of-law approach to such problems is proper. It is proper in the first instance because intention in these cases is surely misguided when formed under an error as to the legal nature of the funds used, and in the second, because penalties should be imposed only when it is known that the funds utilized for separate acquisitions were community property, and the use was undertaken regardless of this knowledge.

John M. King

STATUS OF UNENDORSED INSTRUMENT DRAWN TO MAKER'S OWN ORDER

In return for a $2,000 loan, defendant executed and delivered to plaintiff a demand instrument payable to the order of "myself" which was signed and dated, but unendorsed. A $200 payment held to constitute an acknowledgment of the debt was made one year later. Suit to recover the balance was filed some 4½ years after the partial payment; defendant excepted, pleading the three-year prescription on money lent.[1] Plaintiff contended the five-year prescription for suits on a promissory note was applicable.[2] The trial court sustained defendant's exception, dismissing the suit, and the Fourth Circuit Court of Appeal on rehearing affirmed. *Held,* an unendorsed instrument payable to the maker's own order is not a promissory note,

(increase in value of a one-half interest in furniture business); and dividends: Daigre v. Daigre, 228 La. 682, 83 So. 2d 900, 55 A.L.R.2d 951 (1956) (applies only to cash payments and not to stock dividends).

1. "The following actions are prescribed by three years: . . .
"That for the payment of money lent . . . " LA. CIVIL CODE art. 3538 (1870).

2. *Id.* art. 3540: "Actions on . . . all promissory notes, whether negotiable or otherwise, are prescribed by five years, reckoning from the day when the engagements were payable."

negotiable or non-negotiable. Hence the three-year prescription of article 3538 for payment of money lent is applicable. *Marcello v. LaRocca,* 152 So. 2d 878 (La. App. 4th Cir. 1963).

After an extensive definition of a negotiable promissory note Louisiana R.S. 7:184 continues: "Where a note is drawn to the maker's own order, it is not complete until indorsed by him."[3] While no court has considered such an "incomplete" instrument negotiable, it has been held that this provision of the Negotiable Instruments Law governs only the negotiability *vel non* of the instrument,[4] and that it still is enforceable as a non-negotiable promissory note even though unendorsed.[5] Other courts including those of Louisiana have applied principles of equity to complete the instrument as between the parties,[6] thus avoiding interpretation of the statute.[7] For instance, Louisiana has en-

3. LA. R.S. 7:184 (1950): "A negotiable promissory note within the meaning of this Chapter is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him."

This provision is identical to section 184 of the Uniform Negotiable Instruments Law, in force in substantially the same form in every state whose cases are referred to herein.

4. Cassetta v. Baima, 106 Cal. App. 196, 201, 288 Pac. 830, 832 (1930): "The provisions of the statute are not to be taken as meaning that an instrument payable to order can only be transferred by indorsement; they mean only that such indorsement is necessary in order to carry the *qualities* and *incidence* of negotiable paper to the indorsee." *Cf.* LA. R.S. 7:52 (1950), which provides that one is not a holder in due course unless the instrument is "complete and regular upon its face." Conceivably, the same policy in regard to this provision— that an incomplete instrument is just non-negotiable — should be applied to instruments "incomplete" under section 184.

5. Cassetta v. Baima, 106 Cal. App. 196, 288 Pac. 830 (1930). See also original hearing in instant case.

6. In both Pineland Realty v. Clements, 149 La. 274, 88 So. 818 (1921) and Achee v. Williams, 6 La. App. 316 (La. App. 2d Cir. 1927) a mortgage was executed as security for the note and contained therein a statement to the effect that the mortgage accompanied notes which were "drawn to the maker's own order and indorsed by him." The courts seemed to construe the two documents together and in effect read in an endorsement on the notes. The situation in Kiel Wooden Ware Co. v. Laun, 233 Wis. 559, 290 N.W. 214 (1940) presents a slightly stronger set of facts. The note was made payable to the corporate maker's own order and was endorsed by the defendant (president) prior to delivery to plaintiff — but in defendant's own name. The court looked beyond the technicalities of the maker having named no other payee besides itself and looked only to the intent of the parties, which was (and had been for 18 years) that the endorser would be jointly liable with the corporate maker. As he had signed the back before delivery he became an original promissor. For all practical purposes, therefore, the paper had been endorsed by the original promissor. That this was technically not the maker seemed of no moment.

7. It may appear at this point that there is no distinction between the legal rights of a holder of endorsed "myself" paper and a holder of unendorsed paper; however, the courts which treat the latter as a non-negotiable note require its holder to prove affirmatively the circumstances under which he received the paper, whereas the holder of the former is extended a presumption of ownership. Bank of Seattle v. Titlow, 233 Fed. 838 (D.C. Wash. 1916); Ochs v. Kroehle,

forced unendorsed instruments payable to "myself" when recitals in accompanying mortgages stated that the notes had been endorsed.[8] However, the vast majority of Louisiana courts and courts of other jurisdictions interpreting this provision of the Negotiable Instruments Law have held the instrument completely null as either a negotiable or non-negotiable promissory note.[9] On the other hand, although such instruments are null as promissory notes, they have been admitted in Louisiana and elsewhere as evidence tending to establish a right to recover on the underlying indebtedness.[10]

On original hearing, the court in the instant case held that the failure to endorse a note payable to "myself" rendered the note non-negotiable but did not destroy its character as a note;[11] therefore, the five-year prescription on notes was applicable and the exception overruled. On rehearing, however, the court realigned its position with that of the earlier jurisprudence and the majority view in other states[12] and held that the unendorsed instrument was not a promissory note, negotiable or non-negotiable.[13] Consequently, the three-year prescription on recovery of money lent was applicable[14]—not the five-year prescription on notes.[15]

The decision in the instant case is clearly in line with the jurisprudence of this state.[16] That this is also the correct posi-

185 App. Div. 374, 173 N.Y. Supp. 184 (1918); BRITTON, BILLS AND NOTES § 46 (2d ed. 1961).

8. Pineland Realty v. Clements, 149 La. 274, 88 So. 818 (1921); Achee v. Williams, 6 La. App. 316 (La. App. 2d Cir. 1927).

9. Lea & Landon v. Branch Bank at Mobile, 8 Port. 119 (Ala. 1838); Rice v. Goldstein, 234 Ill. App. 448 (1924); Wilson v. Hillman, 306 Ky. 508, 208 S.W.2d 493 (1948); Succession of Rabasse, 49 La. Ann. 1405, 22 So. 767 (1897); Armato v. Ross, 170 So. 400 (La. App. Orl. Cir. 1936); Prestenbach v. Mansur, 14 La. App. 429, 129 So. 445 (La. App. 1st Cir. 1930); Bank of St. Martinville v. Duchamp, 6 La. App. 562 (La. App. 1st Cir. 1927); Market & Fulton Nat. Bank v. Ettenson, 172 Mo. App. 404, 158 S.W. 448 (1913).

10. Armato v. Ross, 170 So. 400 (La. App. Orl. Cir. 1936); Reid v. Windsor, 111 Va. 825, 69 S.E. 1101 (1911). "While it is true that a note made payable to the maker's own order is not complete as a negotiable instrument in the hands of a third person without the maker's indorsement, such a note is not a nullity but is good in equity against the maker where it is shown that the note was given for a valuable consideration and was delivered by the maker to his creditor in accordance with the terms of the contract in connection with which the note was executed." Achee v. Williams, 6 La. App. 316, 319 (La. App. 2d Cir. 1927) and quoted with approval in Armato v. Ross, *supra.* See also LA. CIVIL CODE art. 1762 (1870).

11. Marcello v. LaRocca, 152 So. 2d 878 (La. App. 4th Cir. 1963).

12. See note 9 *supra.*

13. See Marcello v. LaRocca, 152 So. 2d 878 (La. App. 4th Cir. 1963).

14. See note 1 *supra.*

15. See note 2 *supra.*

16. Succession of Rabasse, 49 La. Ann. 1405, 22 So. 767 (1897); Armato v.

tion seems equally clear. The Negotiable Instruments Law requires that a promissory note contain a promise to pay *another.*[17] Obviously an unendorsed instrument payable to "myself" does not meet this requisite.[18] Furthermore, the negative tenor of the concluding sentence of R.S. 7:184 following an extensive definition of a negotiable promissory note[19] would seem to imply that such incomplete instruments are to be excluded from the definition of a promissory note. The court was correct, therefore, in treating the instrument as null and requiring that suit to recover be brought within the three-year prescription period on money lent.

Stanford O. Bardwell, Jr.

TORTS — LIABILITY FOR DAMAGES CAUSED BY INFANTS

Suit was brought against a father to recover for damages done by his six-year-old child to a neighbor's home and its furnishings. The plaintiff predicated liability on Louisiana Civil Code article 2318, which makes the father liable for damages caused by his children without regard to his personal fault. The district court maintained defendant's exception of no cause of action and the court of appeal affirmed. *Held,* a petition alleging property damage deliberately, wantonly, and maliciously inflicted by a child of six, but failing to allege the personal fault of the parent, does not state a cause of action against the father under article 2318, since a six-year-old child is legally incapable of fault. *Scottish Union and National Ins. Co. v. Prange,* 154 So. 2d 623 (La. App. 4th Cir. 1963).

Neither in France nor at common law is the parent vicariously liable for the torts of his children simply by virtue of the familial relationship.[1] The principal basis of parental liability

Ross, 170 So. 400 (La. App. Orl. Cir. 1936); Prestenbach v. Mansur, 14 La. App. 429, 129 So. 445 (1930); Bank of St. Martinville v. Duchamp, 6 La. App. 562 (La. App. 1st Cir. 1927).

17. See note 3 *supra.* See also Navin v. McCarty, 240 Mass. 447, 1344 N.E. 232 (1922); First Nat'l Bank v. Payne, 111 Mo. 291, 20 S.W. 41 (1892).

18. Under elementary obligations principles, it is difficult to see how an instrument whose promissor and promissee are the same party could be a contract of any kind, much less a promissory note.

19. See note 3 *supra.*

1. French authorities: FRENCH CIVIL CODE art. 1384; 1 MAZEAUD, TRAITÉ THÉORIQUE ET PRATIQUE DE LA RESPONSIBILITÉ CIVILE DÉLICTUELLE ET CONTRACTUELLE n^{os} 732-734, 764 (5th ed. 1957) [hereinafter cited as MAZEAUD]; 2