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cipation Act, which gives the wife control over her own property and the right to sue and be sued individually in the courts.[6] Thus the court approached this problem from too restricted a viewpoint in determining only whether the wife was liable for a *community debt.* The rule referred to by the court that the wife can bind herself for a community debt only by a contract in writing and signed by her individually is pertinent to conventional obligations but is irrelevant to tort obligations of the instant type.

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EVIDENCE—PROPERTY ACQUIRED DURING MARRIAGE IN NAME OF WIFE—PROOF REQUIRED TO REBUT COMMUNITY STATUS

Immovable property was bought on credit in wife's name during the marriage for $2,350, of which $150 was paid immediately, the balance in installments. The purchase authorized by the husband stated that the wife was "purchasing . . . for herself. . . ." The husband mortgaged the property to the plaintiff who seeks to enforce the mortgage through executory process. The wife seeks to enjoin the proceedings against the property alleging, *inter alia,* that it is her separate property.[1] The wife's evidence tended to prove: (1) that she had made the down payment with proceeds of savings bonds given her by children of a previous marriage; (2) that her husband had never had any income, and therefore could not have paid the down payment or the credit portion; (3) that she had received $3,000 from the sale of separate property some nine years before the purchase; (4) that her children and stepchildren, the oldest of which was fifteen at the time of the purchase, had contributed toward paying the notes. The trial court held that the property formed part of the community and granted judgment against the husband's half of the property.[2]

6. LA. R.S. 9:101 *et seq.* (1950). See also Art. 2278, LA. CIVIL CODE of 1870; United Life & Acc. Ins. Co. v. Haley, 178 La. 63, 150 So. 833 (1933).

1. The petition of the wife also alleged that the mortgage was obtained under duress, Transcript of Record, p. 16, Succession of Franek, Dale v. Franek, 224 La. 747, 70 So.2d 670 (1954). This allegation was discussed but apparently not decided in the original opinion.

2. Art. 2334, LA. CIVIL CODE of 1870, does not state the effect of a mortgage granted by the husband on property standing in the name of the wife when such property is found to form part of the community. The trial court, by granting judgment against the husband's undivided one-half interest, apparently concluded that the mortgage was invalid only as to the wife's interest

On original hearing, *held*, the property is separate property of the wife, and even if it were not, a mortgage granted on property standing in the name of the wife is invalid. On rehearing, *held*, the evidence was insufficient to rebut the presumption that all property bought during the marriage forms part of the community of acquets and gains, for, even if the testimony that the property was paid for with the separate funds of the wife is given credence, there is no evidence that at the time of the purchase the wife had a reasonable expectation that she could meet the deferred payments out of her separate funds. *Succession of Franek, Dale v. Franek*, 224 La. 747, 70 So.2d 670 (1954).

Louisiana Civil Code Article 2402 provides that all property acquired during marriage in the name of either spouse forms part of the community of acquets and gains. Construing this article the courts have held that all immovable property bought during the marriage in the name of the husband is conclusively presumed to be community property unless the act of transfer contains a recitation that the property is bought with separate funds of the husband and for his separate account.[3] If immovable property is bought during the marriage in the name of the wife, however, the courts have held that it is not necessary that the act of transfer contain this "double declaration";[4] the fact that the property is bought in the name of the wife is sufficient notice that the property may not belong to the community.[5] The wife can rebut the presumption that the property is community by proving that at the time of the purchase she had the administration of separate funds sufficient to make the purchase, and that she made the purchase out of these funds.[6] The court has frequently stated and sometimes held that if the purchase was made on credit the wife must also prove that at the time of the purchase she had sufficient income from her separate property to enable her reasonably to expect to be able to make the pay-

in the property. It was argued in appellant's brief that such a mortgage is absolutely null. Original Brief on Behalf of Mrs. Mary Franek, pp. 9-10. The court did not discuss this particular point, but the opinion on rehearing states that the mortgage was held invalid in the original opinion. 224 La. 747, 758, 70 So.2d 670, 674 (1954).

3. See, *e.g.*, Succession of Bell, 194 La. 274, 280, 193 So. 645, 646 (1940). For a complete discussion of the theory of separate ownership by husband and wife, and an analysis of the cases, see Huie, *Separate Ownership of Specific Property Versus Restitution from Community Property in Louisiana*, 26 TULANE L. REV. 427 (1952).

4. Metcalf v. Clark, 8 La. Ann. 286 (1853).

5. *Ibid.*

6. See, *e.g.*, Dominguez v. Lee, 17 La. 295 (1841).

ments on the credit portion.[7] Under this line of cases it has been held that even if the wife proves that she has paid all of the notes which have fallen due, if she cannot prove that at the time of the purchase she had income sufficient to enable her reasonably to expect to make the payments, the property forms part of the community.[8] The wife's only recourse is to recover from the community the sum which she has actually paid.[9] In several cases, however, the court has found property to be the separate property of the wife solely because she had paid for it without discussing whether she ever had a reasonable expectation of being able to do so.[10]

The courts have held that the wife had a reasonable expectation of having revenues sufficient to pay the credit portion when she had received annual income from her separate plantation which income was equal to one-third of the price of the property purchased, and could expect to receive a like sum each year;[11] and when the wife had accumulated and administered a separate fund out of which she had paid the cash portion of the purchase price and the first of two deferred payments and which was sufficient to pay the last payment.[12] In most of the cases which, after listing this rule without discussing it, held that the property belonged to the community it was also found that the wife had not made the down payment or any subsequent payment, and had no separate income whatever.[13] In one case, however, it was held that, since the wife's separate income was not sufficient to justify a reasonable expectation of meeting notes given for two pieces of property purchased the same day, both formed part of the community, even though the installments on one of the pieces of property had been kept up, apparently out of the wife's separate funds.[14] In another case, the court held that, although the wife must as a general rule show a reasonable

7. Fortier v. Barry, 111 La. 776, 35 So. 900 (1904); Miller v. Handy, 33 La. Ann. 160 (1881); Lotz v. Citizens Bank & Trust Co., 17 So.2d 463 (La. App. 1944).

8. Fortier v. Barry, 111 La. 776, 35 So. 900 (1904).

9. *Ibid.*

10. Rouyer v. Carroll, 47 La. Ann. 768, 17 So. 292 (1895); Cockburn v. Wilson, 20 La. Ann. 40 (1868); Metcalf v. Clark, 8 La. Ann. 286 (1853); Higginbotham v. Anders, 69 So.2d 107 (La. App. 1953); Blake & Zaegler v. Hackney, 1 La. App. 558 (1925).

11. Miller v. Handy, 33 La. Ann. 160 (1881).

12. Laporte v. Laporte, 9 Orl. App. 84 (La. 1911).

13. See, *e.g.*, Montgomery v. Bouanchaud, 179 La. 312, 154 So. 8 (1934); Whittington v. Heirs of Pegues, 165 La. 151, 115 So. 441 (1928); Jordy v. Muir, 51 La. Ann. 55, 25 So. 550 (1898); Cefalu v. Hallowell, 12 Orl. App. 134 (La. 1915).

14. Fortier v. Barry, 111 La. 776, 35 So. 900 (1904).

expectation of being able to pay the credit portion, special facts could make the rule inapplicable.[15] The original opinion in the instant case did not discuss whether the wife could expect to meet the credit portion of the purchase price. The rehearing was granted to consider this point,[16] and the court seems to have held on rehearing that even granting credence to the testimony tending to show that the property was paid for entirely out of the wife's separate funds, it belonged to the community because there was no evidence to show that the wife could have expected to meet the credit payments when she made the purchase. From the opinion as a whole, however, it seems that the court did not actually believe that the property had been paid for with separate funds of the wife, and the dissent maintained that this was the reason for reversing the original opinion.[17]

The requirement that the wife show a reasonable expectation of being able to meet the credit payments can be traced to *Bouligny v. Fortier*,[18] decided in 1861. In that case the husband had authorized the wife to make a credit purchase far beyond her means, and the creditor was proceeding against the wife, who claimed that the purchase was actually made by the community. The court held that while the husband could, as a general rule, authorize his wife to make credit purchases for her separate account, he could not remove liability from the community by authorizing her to make such "wild and ruinous speculations"[19] as these, which obligated her to make payments she had no reasonable expectation of meeting. The wife was allowed to recover the down payment from the community and was held not liable for the credit portion. In two subsequent cases involving credit sales to the wife decided in 1853 and 1868 no mention was made of this statement. The court found that the payments were made with separate funds and held that the property was separately owned.[20] In *Miller v. Handy*[21] creditors of the husband proceeded against property standing in the name of the wife, which property had been bought on credit. It was clearly established that the wife had made the initial and all subsequent payments and

15. Succession of Lewis, 45 La. Ann. 833, 12 So. 952 (1893).
16. Succession of Franek, 224 La. 747, 763, 70 So.2d 670, 676 (1954) (dissent to the opinion on rehearing).
17. *Ibid.*
18. Bouligny v. Fortier, 16 La. Ann. 209 (1861).
19. *Id.* at 214.
20. Cockburn v. Wilson, 20 La. Ann. 40 (1868); Metcalf v. Clark, 8 La. Ann. 286 (1853).
21. 33 La. Ann. 160 (1881).

was able to make the remaining payment, but the creditors urged that under any circumstances a wife could not make a credit purchase for her separate account. The court discussing the prior cases mentioned *Bouligny v. Fortier* and said that in the case under discussion the wife could have reasonably expected to meet the deferred payments. After deciding that a wife could purchase property on credit for her separate account, the court concluded:

> "It is difficult to lay down precise rules as to the limits within which the wife's liberty to purchase on credit should be restricted, but we think the following general proportions are reasonable, viz:
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> . . .
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> "3d The wife's paraphernal property and revenues should be ample to enable her to make the acquisition, with the reasonable expectation of being able to meet the deferred payments."[22]

The *Handy* case has been cited many times for this rule, and in *Fortier v. Barry*[23] the rule was applied to permit creditors of the community to seize property standing in the name of the wife, and on which she apparently had made the payments. Thus from *Bouligny v. Fortier*, which held that when a husband authorized his wife to bind herself for an obligation which she has no reasonable expectation of meeting, the community is liable rather than the wife, a rule was extracted which allowed creditors of the community to seize property paid for by the wife.

Some of the cases intimate that a reasonable expectation that the wife will be able to meet deferred payments is an indispensable element of a credit sale to the wife. It is submitted that there is no logical necessity for such a conclusion. In attempting to determine whether the parties intended that property be sold to the wife or to the community, the wife's ability to pay for the property may be looked to as evidence of the true intent of the parties, but a probable ability to pay would not seem to be a prerequisite to a valid sale being made to the wife. If it is found that the parties intended the property to be sold to the wife and that the wife has paid for it, the property should belong to her. Creditors and forced heirs of the husband should not be permitted to recover from property purchased by a wife

22. *Id.* at 169.
23. Fortier v. Barry, 111 La. 776, 35 So. 900 (1904).

who owes them nothing, but should look only to property purchased with community funds.

Problems involving credit sales to married women will probably diminish in the future. In 1944, the Civil Code was amended to provide that the revenues from the separate property of the wife accrue to the community unless the wife registers a document stating her intent to maintain separate administration.[24] Income from a wife's occupation, trade, or business also falls into the community unless the husband and wife are living separate and apart.[25] Thus, a wife living with her husband who has not filed a document indicating that she retains separate administration of her property can obtain funds to meet payments on separate property only by selling other property or by inheritance or gift.

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LEGISLATION—LOUISIANA REVISED STATUTES OF 1950—EFFECT

The jurisprudence concerning the effect of the Louisiana Revised Statutes of 1950 has two branches, emphasizing the two significant characteristics of the revision.[1] The first group of cases stands for the proposition that there is a presumption against any intended change in the *substance* of prior statutes. The second group of cases holds that since the prior statutes which were revised have been repealed expressly,[2] a source statute may not be used to alter a clear provision of the Revised Statutes. The purpose of this note is to discuss the basis of these decisions.

One purpose in enacting the Revised Statutes was to reorganize and to clarify the general statute law so as to simplify its use without changing its substance. The Louisiana Law Institute was directed by legislative act, "to prepare a comprehensive revision of the statutes of the State of a general character, including those contained within the revision of 1870, to

24. Art. 2386, LA. CIVIL CODE of 1870, as amended, La. Acts 1944, No. 286, p. 836.

25. Art. 2334, LA. CIVIL CODE of 1870; Houghton v. Hall, 177 La. 237, 148 So. 37 (1933).

1. For a comprehensive discussion indicating the purpose and scope of the Revised Statutes, see Bennett, *Louisiana Revised Statutes of 1950*, 11 LOUISIANA LAW REVIEW 4 (1950).

2. La. Acts 1950(1 E.S.), No. 2, § 2, printed in 5 LA. R.S. 870 (1950).