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Civil Code and Related Subjects: Conventional Obligations

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property could only be administered and sold to pay community debts, the presumption which attaches after this 67-year period (term between the succession sale and the present attack) is that community debts existed.

During the past term, the court also decided the following cases dealing with successions, donations, and community property. They are *McGregor v. McGregor*,[31] which has been omitted because the decision turned solely on questions of fact, and *Jones v. Jones*,[32] which has been omitted because it involved no question of substantial import.[33]

CONVENTIONAL OBLIGATIONS

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It has been said that, since man lives by his labors, when a person renders beneficial services to another it is not to be presumed they are rendered gratuitously. Consequently when a person having the opportunity to reject the services of another receives the benefit of them knowing or having reason to know that they are not being rendered gratuitously, he thereby consents to pay their reasonable value. These principles were involved in *Bender v. International Paint Co.*[1] where a realtor was claiming a commission by way of *quantum meruit* for bringing a lessor and lessee together. Both parties were made defendants. The court found against the realtor on the facts, since it appeared that neither party had reason to believe that the payment of a commission was his responsibility. A generous reading of plaintiff's case might have indicated that his claim, based on the allegation that he was the procuring cause of the lease, was actually planted on the theory that he was entitled to recover in quasi contract to prevent the unjust enrichment of the defendants. It is not clear that this possibility was considered by the court. If so, it may have been believed that there was no showing of enrichment or no showing that whatever enrichment may have occurred was unjust. The fact that plaintiff was claiming

31. 236 La. 184, 107 So.2d 437 (1958).
32. 236 La. 52, 106 So.2d 713 (1958).
33. This case may be used as an aid for the analysis of complicated accounting procedures.

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1. 237 La. 569, 111 So.2d 775 (1959).

the reasonable value of his services suggests that he was proceeding on the theory that he had a contractual rather than a quasi contractual right to be reimbursed for benefits received, although this is by no means conclusive. The parties were brought together by the efforts of the realtor to the benefit of both, yet neither had to pay. However, the courts might be troubled with fewer cases involving such claims if realtors depended less on the theory that whenever they are a procuring cause they are entitled to compensation and more on securing an express obligation to pay in return for the services to be rendered by them.

In *Garcia v. Dulcich*[2] the court found it unnecessary to determine whether the plaintiff's action in having a house and lot for which he paid in full transferred to the defendant and himself jointly, in return for living with the defendant and receiving his board, lodging, laundry, and care constituted a donation or an onerous contract since in either event the benefit granted to the defendant was subject to annulment. From the standpoint of the cause or motive of the plaintiff the transaction might have been basically either a donation or a bargaining transaction, depending on whether the transferor was moved by a spirit of liberality or a desire to assure himself that his needs would be taken care of for the rest of his life by buying such assurance. However, the Code presumably renders it unnecessary to undertake to identify the true cause in such cases, since it provides that the rules relating to donations will not apply unless the value of the thing given exceeds by one-half the value of the charges imposed.[3] This would mean that an evaluation of the obligation of care and support would have to be made in order to apply Article 1526, to which end mortality tables could be used to get at the probable number of years over which the obligation would have to be performed. The court took the view that no such finding was necessary because there was either a failure to fulfill the conditions of an onerous donation or a failure to perform the obligations of a synallagmatic contract. It is interesting to notice that a previous similar case treated such a transfer as an innominate contract translative of property. The suggestion was that the transfer was made by way of bargain and not of gift.[4]

2. 237 La. 359, 111 So.2d 309 (1959).
3. LA. CIVIL CODE art. 1526 (1870).
4. Thielman v. Gahlman, 119 La. 350, 44 So. 123 (1907).

In *Orr v. Walker*[5] the court correctly held that a contract may be avoided because of fraud practiced by the other party although no pecuniary loss is involved. Article 1847 of the Civil Code, relied upon as authority, is clear to the point.

In *Loew's, Inc. v. Don George, Inc.*,[6] the court concluded that a demand for triple damages under the state and federal anti-trust laws was not contractual or quasi-contractual in nature but sounded in tort and was subject to a prescription period of one year.

PARTICULAR CONTRACTS

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SALES

The degree of care required in the formulation of legislation is a matter of common knowledge. Even greater care is required to translate accurately legislative provisions from their original language into another. That the person or persons who translated the Louisiana Civil Code from French into English were wanting in this respect is also a matter of common knowledge. Some expressions of the court in *Zemurray v. Boe*[1] seem questionable, perhaps for this reason. Creole, a land developer, paid $500 for a two-year option to purchase certain acreage from the plaintiff. The exercise of the option was subjected to the condition that on or before a stated date Creole pay or buy a note of a third party held by the plaintiff. This Creole failed to do, hence the present suit to cancel the option notwithstanding that the note was paid in full prior to the expiration of the option period. After a painstaking review of the complicated evidence, the majority of the court found no basis for holding the plaintiff estopped to claim that the option had terminated for failure of the condition. A dissent took the contrary view. Although the ultimate disposition of the case turned on the matter of estoppel, in rejecting a contention that the option was not forfeited since Creole had not been put in default, a prerequisite to an action in resolution, the majority opinion took the position that the purchase or payment of the mentioned note within the stated period

5. 236 La. 740, 109 So.2d 77 (1959).
6. 237 La. 132, 110 So.2d 553 (1959).
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1. 235 La. 623, 105 So.2d 243 (1958).