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Criminal Law and Procedure: Evidence

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in connection with a conviction of criminal neglect of family in *State v. Tanner.* In the first of these opinions,[142] the Supreme Court held that the scope of appeal from juvenile court misdemeanor convictions was broader than from criminal district court judgments. In ordinary cases, the constitution limits the right to appeal from misdemeanor conviction to situations where "a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed."[143] In granting an appeal to the defendant whose sentence was below the general jurisdictional amount,[144] the Supreme Court stressed the fact that the special constitutional provision, and implementing legislation, for appeals from juvenile court judgments[145] would prevail over the general provision as to appeals from misdemeanor convictions.

In the second opinion,[146] the Supreme Court held that a juvenile court's trial of an adult defendant was essentially a criminal case, and was subject to the general limitation that appeal is on "questions of law alone."[147] This was consistent with the special constitutional provision governing appeals from juvenile court decisions, which grants an appeal on both law and facts from custody and adoption judgments, but concludes that "in all other cases an appeal shall lie on questions of law alone."[148]

Evidence

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There were only two cases of interest involving points of evidence during the 1953-1954 term. The others merely reaffirmed well-recognized principles which need not be commented upon.

Under Article 2278 of the Civil Code, the acknowledgment or promise of a party deceased to pay a debt in order to interrupt

142. State v. Tanner, 224 La. 19, 68 So.2d 743 (1953).
143. LA. CONST. Art. VII, § 10.
144. In State v. Jackson, 224 La. 830, 71 So.2d 127 (1954), the Supreme Court dismissed an appeal from a regular misdemeanor conviction in the district court, where the sentence imposed had been only "six months imprisonment."
145. LA. CONST. Art. VII, § 52, as amended.
146. 224 La. 374, 69 So.2d 505 (1954).
147. LA. R.S. 15:160 (1950).
148. LA. CONST. Art. VII, § 52, as amended.

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the running of prescription on it, or to revive it after prescription has run, must be in writing and signed by the debtor.[1] In *Sliman Realty Corporation v. Sliman's Estate*,[2] the plaintiff sued upon a mortgage note which was prescribed on its face, but contended that prescription had been interrupted because the deceased debtor had, during his lifetime, made payments as evidenced by checks drawn by the decedent payable to the creditor-mortgagee. The trial court excluded the checks offered in evidence, apparently on the grounds that they did not constitute the written acknowledgment contemplated by the Code. On appeal, the plaintiff, though complaining of the ruling of the trial court in excluding the checks, filed a motion to remand on the grounds of newly discovered evidence consisting of entries in decedent's ledger book which would show that decedent had made the alleged payment. The court held that although the entries in the ledger were clearly in the handwriting of the deceased, nevertheless, by themselves, they indicated no connection whatever with the note sued upon. This, despite the fact that the heading on the page of the ledger indicated a "payment to brother Kalil from note to me," and that at least one of the entries in the ledger corresponded both in date and in amount to the check given to "brother Kalil." In any event, the court said, these entries were not signed by the decedent and thus failed to meet the requirements of Article 2278 of the Code.

It is regrettable that the court completely ignored what seems to have been the real point at issue, *viz.*: whether the checks together with the entries in the ledger, constituted the necessary written acknowledgment.[3] Had it done so, the court might have concluded, as did the court in *McGinty v. Succession*

1. The question is not whether parol evidence is admissible in corroboration of the written acknowledgment of the debtor as in LA. R.S. 13:3721-3722 (1950). Under Article 2278 parol evidence is incompetent, and inadmissible even without objection, to prove the promise or acknowledgment on the part of the deceased, or to prove the promise to pay the debt of a third person. Weil v. Jacobs' Estate, 111 La. 357, 35 So. 599 (1903); Levy v. DuBois, 24 La. Ann. 398 (1872); Merz v. Labuzan, 23 La. Ann. 747 (1871). See also Guillot v. Guillot, 141 La. 81, 74 So. 702 (1917).

2. 225 La. 521, 73 So.2d 447 (1954).

3. "[W]hereas counsel state that the trial judge erred in his ruling excluding prior evidence [the checks], they make no serious attempt to have the judgment reversed at this time. They may indeed as well concede the point for under the latest decision of this Court, Rassat v. Vegas, 173 La. 778, 138 So. 665, it is clear that like the letter claimed as an acknowledgment in that case, the two checks offered in this case are not, themselves alone, acknowledgments of the debt and parol evidence was not admissible to show that they constituted payments on the debt sued on." Sliman Realty Corporation v. Sliman's Estate, 73 So.2d 447, 448 (La. 1954). In the *Rassat* case, plaintiff sought to introduce a letter from decedent reading: "Enclose please

of *Henderson*,[4] that the necessary payment and acknowledgment had been made.[5]

In *Bass v. Prewett*,[6] the third opposition filed by the Truckers Loan Company (which held valid chattel mortgages executed and authenticated in and in accordance with the laws of Texas) was dismissed on the ground that the signature of defendant had not been established in accordance with R.S. 13:3720,[7] since the

receive check for $500" and parol evidence was offered to show *that the check referred to in the letter* was a payment made on the prescribed note. The court, without discussion, and in one short paragraph said: "The letter herein above quoted does not purport to be an acknowledgment of any debt whatsoever, and hence parol evidence was inadmissible to show that it was such in fact and had reference to the note herein foreclosed upon." Rassat v. Vegas, 173 La. 778, 779, 138 So. 665 (1931). It is clear that in the *Rassat* case the court was dealing with the letter which admittedly was definitely not an acknowledgment, and not with the check which evidenced the payment. The case is clearly distinguishable. In any case, the issue before the court was not whether parol evidence was admissible to prove payment upon a prescribed debt, but whether the written evidence offered would have satisfied the requirements of Article 2278.

4. 41 La. Ann. 382, 6 So. 658 (1889). In the *McGinty* case, where the plaintiff sought to introduce checks to prove payment on the debt, the court used the following language: "These checks undoubtedly evidence a payment by Henderson to McGinty on some account, *and in discharge of some obligation*, and while they do not, of themselves, establish a payment on *this* particular debt, it is conclusively settled that where an acknowledgment in writing signed by a deceased debtor is proved, parol evidence is admissible to show the particular debt to which the acknowledgment was intended to apply." (Italics supplied.) McGinty v. Succession of Henderson, 41 La. Ann. 382, 385, 6 So. 658, 659 (1889). While this language is unequivocal, the court of appeal (McCaleb, J.) is of the opinion that, in the light of all of the facts presented in the case, what the court meant to say was that the checks, *together with the unsigned check stubs kept by the deceased*, constituted a sufficient acknowledgment under Article 2278: "The foregoing quotation led us into error as we interpreted it to mean that the court was of the view that the mere production of a check issued by a debtor, since deceased, to his creditor, was sufficient to establish it as a payment on account of an obligation, despite the fact that there was nothing on the check (*or other writing of the deceased debtor*) to indicate the purpose for which it was given. However, it is now clear from the facts of that case that the court did not intend to create such an impression and that the remarks * * * (while somewhat misleading) *had reference to the checks as supplemented by the writings of Henderson* on the stubs of his check book which revealed that they were given in payment on account of the obligation. . . ." (Italics supplied.) Robin v. Walsh, 17 So.2d 852, 855 (La. App. 1944).

5. There is little, if any, distinction between this decision and the *McGinty* case as interpreted by the court of appeal in the *Walsh* case, unless it be the fact that the entries in the ledger were not sufficiently clear to supplement the signed checks issued by decedent.

6. 74 So.2d 150 (La. 1954).

7. "Any . . . instrument, under private signature, purporting to be attested by two or more witnesses and accompanied by an affidavit of the . . . grantor that the same was signed or executed by him, or by an affidavit of one or more such witnesses, made at or after the signing and execution of such . . . instrument, and setting forth substantially that the instrument was signed or executed by the party . . . thereto in the presence of the affiant . . . , shall be deemed, taken and accepted, prima facie, and without further proof, as being true and genuine, and shall be so received and accepted in evidence in the courts of Louisiana, without further proof." LA. R.S. 13:3720 (1950).

mortgages in question had been acknowledged by a notary only without the two attesting witnesses required under the statute. It is to be noted that in so holding, the court apparently overlooked the Uniform Acknowledgments Law[8] under which the acts of mortgage should have been held properly authenticated and thus admissible in evidence. The statute relied upon does not purport to provide the only method of proving the genuineness of acts under private signature. It is primarily a statute designed to establish, prima facie, the authenticity of such acts when executed in accordance with its provisions; it does not exclude other methods of proving acts under private signature, nor does it prohibit the reception in evidence of acts otherwise properly acknowledged according to law. The mortgages in question were executed by the mortgagor as acts under private signature and subsequently acknowledged before the notary who recited that the mortgagor was well known to him and that he executed the instruments for the purposes and considerations expressed in them. This is all that the uniform law requires,[9] and, having complied with its provisions, the mortgages should have been admitted. The effect of this decision, if adhered to, might well render ineffective all acknowledgments executed in accordance with the uniform law.

Civil Procedure

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DECLARATORY ACTIONS

Although the Uniform Declaratory Judgments Act[1] has now been in effect in Louisiana for more than six years, and has been

8. LA. R.S. 35:511-513 (1950).

9. "Either the forms of acknowledgment now in use in this State, *or the following*, may be used in the case of . . . written instruments, whenever such acknowledgment is required or authorized by law *for any purpose*: . . . .

"1. In the case of natural persons. . . .

"On this _____ day of _____ 19_____ before me personally appeared A B (or A B and C D), to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that he (or they) executed it as his (or their) free act and deed. . . ." LA. R.S. 35:511 (1950).

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1. Adopted by La. Acts 1948, No. 431, p. 1168, and La. Acts 1948(E.S.), No. 22, p. 56, now LA. R.S. 13:4231-4242 (1950).