Louisiana Law Review

Volume 17 | Number 2
The Work of the Louisiana Supreme Court for the 1955-1956 Term
February 1957

Civil Code and Related Subjects: Community Property

Harriet S. Daggett

estate. The court found it "unconscionable for the attorney of this opponent to purchase the right, title and interest of his client and thereafter file an opposition in the name of said client."[11]

COMMUNITY PROPERTY

*Harriet S. Daggett**

A settlement of community after dissolution by judgment for separation is under consideration in *Daigre v. Daigre*.[1] Two most interesting issues are presented, that of a stock dividend and a pension.

The husband owned certain stock in the Coca-Cola Company when he was married. Later, during the marriage, a stock dividend was declared by the company. The wife claimed half of the additional shares as community property. An exhaustive and scholarly discussion of the nature of a stock dividend as distinguished from cash dividends from any source appears in the opinion. The court held that stock dividends are *not* income; that they do not alter the recipient's share in the corporation but merely express it in a different number of units representing the same original holding. Thus, the stock dividends were not community but the separate property of the husband who had brought them into the marriage.

The value of the company and hence that of the husband's holdings in it had definitely increased since his marriage, but it had not resulted from the labor, industry, or expenditures of either spouse under Article 2408 of the Code and hence was not community property.

The discussion of the nature of the pension received after marriage is also clear, rewarding, and satisfying. The court stated that the arrangement made by a company for a pension must be examined in every case. If it is established by contract with the employee as an anticipated right of deferred compensation, then obviously it is income from labor of the husband and would fall into the community. If it is optional to the company, even though in recognition of services previously performed, it is a gratuity and separate property of the husband.

11. 230 La. 167, 88 So.2d 15 (1956).

* Professor of Law, Louisiana State University.

1. 228 La. 682, 83 So.2d 900 (1955).

The latter was found to be the situation in this case. On rehearing, the original decision was adhered to.

Again, in *Abraham v. Abraham*,[2] an involved settlement of a community dissolved by judgment for separation is presented. Disentangling the separate property of the wife and that of her son by a previous marriage called for great detail in accounting and weighing of evidence.

The major legal issue was concerned with increase in value of a business, one half of which came to the wife in settlement of her first husband's estate. The court found this increase *not* to be a fruit of her separate estate under Article 2386 of the Revised Civil Code of 1870 as amended. Article 2408 of the Code was then studied and the court found that the enhancement in value was *not* due to the "ordinary course of things," but to the industry and good management of the wife. Hence, the amount in question was community property.

The wife was held to be entitled to certain rents and revenues from her separate property after the date of her filing of the notarial act required by Act 286 of 1944, amending Article 2386 of the Code. The commingling principle was applied to defeat several items claimed.

In *Byrd v. Byrd*[3] a widow sued to have a conveyance made by her husband set aside. Usufruct had been retained by the husband. No consideration was found to have been received by the husband. Hence, the court found the conveyance to have been a donation in disguise with retention of usufruct and an absolute nullity, being against the law. Any person at interest may bring an action to set aside such a conveyance and the action is not prescriptible. It appeared that the property may have been purchased with separate funds of the husband but no recitation to preserve the property as separate was made in the deed and the property was acquired during the marriage and hence was community.

The case of *Abunza v. Olivier*[4] involved a settlement of community after judgment of separation and divorce. After a thorough evaluation of evidence, too lengthy to be detailed here,

2. 230 La. 78, 87 So.2d 735 (1956).
3. 230 La. 260, 88 So.2d 214 (1956).
4. 230 La. 445, 88 So.2d 815 (1956).

the court decided upon disputed items in accordance with well-settled principles.

Property inherited by either spouse, the identity of which is not lost by commingling or otherwise, remains the separate property of husband or wife. Gifts made to either spouse, particularly, properly proved, whether manual or otherwise, are separate property of the donee.

Money, labor, or industry expended by the spouses upon separate property of either will not necessarily cause a debt to be owed by the separate estate of the spouse to the community. A debt is owed only if the separate estate has been *enhanced* in value by virtue of expenditures or efforts by partners in community. Again, separate funds of the husband spent during the existence of the community will not be credited to him unless it is proved that the community property was enhanced in value because of the expenditure.

A fee received by the husband during the existence of the community is community property even though part of the work done was after dissolution of the community. Great care was taken throughout the analysis of evidence to find that the husband's separate property was preserved as such in separate, earmarked bank accounts so that the commingling principle did not apply.

The case of *Messersmith v. Messersmith*[5] deals with partition of a community dissolved by separation of bed and board and divorce. Disputed items are as follows. The husband maintained that certain stock must remain in toto under his control because as an employee of the company, he was under a restriction against selling the stock without first offering it to officers of the company or to other co-shareholders. The court held that no limitation of this nature could alter the law of community property and prevent a vesting of one-half of all community assets in the wife by right.

During the existence of the community, a certificate was issued to the husband in an employee group insurance company. The policy was valueless at the time of the dissolution of the community and would continue to be so until he severed his connection with his employers by death or otherwise. However,

5. 229 La. 495, 86 So.2d 169 (1956).

the court found the certificate to be a thing of value even if deferred in realization, acquired during the marriage and hence community property.

The community is dissolved as of the date of judgment for separation — not of the filing of the suit. Thus, the husband owes the community all cash dividends received by him until the date of judgment. Alimony pendente lite is grounded on the husband's legal duty to support his wife, regardless of fault on her part and is payable out of community funds. After dissolution of the community, the husband does not owe his wife alimony unless the court awards it, which was not the case here. Thus, alimony paid after judgment by the husband must be charged against the wife's share in the community. The commingling rule was applied against the husband's demands for credit to his separate estate. The law allows the wife an injunction to protect her share of community and she may not be penalized for using it. Interest was allowed on the debt to the wife without need to amend pleadings.

CONVENTIONAL OBLIGATIONS

*J. Denson Smith**

A contention that Civil Code Article 167 is out of harmony with modern conditions and should be held repealed by implication was rejected in *Lowther v. Fireside Mutual Life Insurance Co.*[1] The court concluded, contrary to the contention of plaintiff, that the prohibition against a major's binding himself for a longer term than five years is still in full force and effect. It therefore affirmed the dismissal of plaintiff's suit to recover on an employment contract beyond the allowable period.

A contract between the Louisiana Department of Highways and a road contractor was held to contain a stipulation pour autrui in favor of an abutting landowner in *Ortego v. Caldwell.*[2] In consequence, the landowner, whose levees were to be rebuilt to his satisfaction, was given judgment against the contractor for damages resulting from the contractor's failure properly to fulfill his obligation. That the stipulation for the rebuilding of

*Professor of Law, Louisiana State University.
1. 228 La. 946, 84 So.2d 596 (1955).
2. 229 La. 907, 87 So.2d 124 (1956).