

Emancipation by Marriage - Is Consent of Parents or Tutor Necessary for a Minor of Eighteen?

J. G. C.

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Although the Louisiana ordinance under discussion is similar to those in the contrary cases, it is of much broader scope. It goes further and "classifies" solicitors and peddlers by excepting those who sell certain types of produce: namely, ice, vegetables, butter, eggs, dairy products, and other farm produce. This classification was held not to be class legislation and therefore not discriminatory. The Court reasoned that wide discretion must be conceded to the legislative power in the classification of trades, callings, businesses or occupations, and that "legislation which affects alike all persons pursuing the same business under the same conditions is not such class legislation as is prohibited by the United States or the State Constitution." If, however, the manner of solicitation or sale is the criterion of classification, it is hard to see how the activity of vendors of farm produce can be differentiated from that of vendors of other products not excepted from the application of the ordinance. On the other hand, if the classification emphasizes the possibility of annoyance and deceit, the distinction is perhaps well founded. It may be that the court felt that deceit does not characterize peddling of farm produce and that, in view of the difficulty which city-dwellers have in obtaining fresh country products, house-to-house peddling of this class of goods may well be considered a convenience rather than an annoyance.

R. K.

EMANCIPATION BY MARRIAGE—IS CONSENT OF PARENTS OR TUTOR NECESSARY FOR A MINOR OF EIGHTEEN?—In the succession proceedings of Mrs. Hecker, her surviving husband was appointed tutor of the minor children. In lieu of the legal mortgage a special mortgage in favor of the minors had been placed on two lots of ground and, when the tutor desired to sell one of them, he obtained permission of the court to substitute a United States Bond for the special mortgage on that lot. The recorder of mortgages nevertheless refused to cancel the mortgage on the ground that since the minor (eighteen years of age) had been fully emancipated by marriage the court could not authorize the substitution of a bond. The minor asked for the cancellation of the mortgage but the father and tutor contended that there was no emancipation by a marriage without his consent. *Held*, that under Article 382 of the Louisiana Civil Code of 1870, as amended by Act 224 of

1908, a minor eighteen years of age is emancipated by marriage regardless of the parent's or tutor's consent. *Succession of Hecker*, 185 So. 32 (La. 1938).

At an early date the Supreme Court of Louisiana held that where a minor marries without the necessary consent he is not emancipated and that Article 379 of the Civil Code refers to marriages authorized by our laws, not those in contravention of them.¹ Without this restriction, irresponsible and improvident minors could disregard their parents' wishes and enter into hurried marriages in order to circumvent parental authority and gain control of their estates.² This rule was then followed and approved in a number of cases.³ In 1902, in the well-considered case of *Guillebert v. Grenier*,⁴ the rule was reasserted and broadly stated. In the preceding cases, the marriages had been solemnized in other states and the decisions were based upon the theory that such marriages, contracted in evasion of our laws, were contrary to public policy. However, in the *Guillebert* case, the court stated by way of dictum that, even if the marriage had been contracted in this state, the disability regarding emancipation would be the same.⁵

Since Article 382 was amended by Act 224 of 1908, so as to give the eighteen year old minor emancipated by marriage the full rights of majority,⁶ there have been no cases before the Supreme Court in which the necessity of parental consent has been squarely involved. On a related problem, it has been held that the 1908 act fixed a personal status and did not have a retroactive effect but that, since it was a remedial statute, it took people in the condition in which it found them so that a married person who had previously reached the age of eighteen was emancipated only upon the promulgation of the act.⁷ Again, since the new article was identical with the language of a judicial decree of emancipation, it was held that prescription ran from the day of the

1. *Maillefer v. Saillot*, 4 La. Ann. 375 (1849).

2. *Guillebert v. Grenier*, 107 La. 614, 617, 32 So. 238, 239 (1902).

3. *Babin v. Leblanc*, 12 La. Ann. 367 (1857); *Clement v. Wafer*, 12 La. Ann. 599 (1857). Cf. *Boyd v. Frantom*, 14 La. Ann. 691 (1859), where the evidence did not show affirmatively that the marriage was without the consent of the tutor.

4. 107 La. 614, 32 So. 238 (1902).

5. 107 La. at 617, 32 So. at 239.

6. *Succession of Bonnette*, 188 La. 297, 176 So. 397 (1937); *Roe v. Caldwell*, 145 La. 854, 83 So. 43 (1919); *Eureka Homestead Society v. Sladovich*, 161 La. 265, 108 So. 478 (1926); *Arrington v. Gray*, 161 La. 413, 108 So. 790 (1926). See *Bostwick v. Thomson*, 149 La. 152, 157, 88 So. 775, 776 (1921); *Roy v. Mutual Rice Co.*, 177 La. 883, 891-892, 149 So. 508, 511 (1933).

7. *Bostwick v. Thomson*, 149 La. 152, 88 So. 775 (1921).

marriage.⁸ Of course, any minor emancipated by marriage is entitled to sue in his own name.⁹ The closest approach to the issue of the principal case is found in a dictum that a minor would be emancipated by a marriage without parental consent since disinheritance is the only penalty for this disobedience.¹⁰

In the present case, the decision relies heavily upon the interpretation of Article 382 given in *Arrington v. Gray*¹¹ that, by the 1908 amendment, the legislature intended all married minors eighteen years of age to be fully emancipated without qualification.¹² However, the *Arrington* case did not raise the question of a minor's marriage without parental consent. Neither was this question considered in the cases of *Roe v. Caldwell*¹³ and *Bostwick v. Thomson*¹⁴ which were also cited as authority. It is therefore questionable whether the present decision can be justified on the reasoning of these cases, or cases prior to 1908.¹⁵ Perhaps it would have been more logical for the court to have adopted the reasoning of the dissent in *Guillebert v. Grenier* that, since Article 97 (requiring parental consent to minor's marriage) is modified by Article 112 (sustaining the validity of such marriage but making it a cause for disinheritance), the minor is emancipated of right by the marriage.¹⁶

In France, there is no room for such diversity of opinion because the requirement of parental consent is accompanied by the right of the person whose necessary consent was not obtained to have the marriage annulled.¹⁷ Emancipation by marriage takes place by operation of law regardless of absence of consent to the marriage or to the emancipation, but in the event of annulment the marriage is deemed never to have existed and the emancipa-

8. *Arrington v. Gray*, 161 La. 413, 108 So. 790 (1926).

9. Art. 380, La. Civil Code of 1870; *Bonnette v. Flournoy*, 9 La. App. 467, 119 So. 736 (1929).

10. *State v. Sacred Heart Orphan Asylum*, 154 La. 883, 889, 98 So. 406, 408 (1923).

11. 161 La. 413, 108 So. 790 (1926), cited in note 8, supra.

12. According to the court of appeals in the decision of the principal case, the purpose of the amendment was not to overrule the doctrine of the *Guillebert* case, but was merely to grant greater powers to emancipated married minors. 180 So. 228 (La. App. 1938).

13. 145 La. 854, 83 So. 43 (1919).

14. 149 La. 152, 88 So. 775 (1921), cited supra note 7.

15. These were concerned only with the power of administration; the question of consent was not involved. *Wither's Heirs v. His Executors*, 3 La. 363 (1832); *Grigsby et al v. Louisiana Bank*, 3 La. 491 (1832); *Briscoe v. Tarkington*, 5 La. Ann. 692 (1850); *Patterson & Co. v. Frazer*, 8 La. Ann. 512 (1852); *Succession of Mitchell*, 33 La. Ann. 353 (1881).

16. *Nicholls, C.J.*, in 32 So. 238, 239 (1902).

17. Arts. 148, 182, French Civil Code.

tion likewise falls.¹⁸ Thus, emancipation by marriage in France is in effect dependent upon parental consent.

In Louisiana, since parental consent is essential for judicial emancipation, it should also be necessary for emancipation by marriage. The prior Louisiana jurisprudence—which is disregarded by the present decision—is more in harmony with other provisions of the Civil Code, particularly those regarding judicial emancipation. If the refusal of a selfish parent or tutor to consent to the minor's marriage could be considered as "ill-treatment" within the intendment of Article 387, it would be possible to obtain a judicial emancipation. In view of the fact that the present decision was based on the 1908 amendment of Article 382 which refers only to minors who have reached the age of eighteen, it is open to question whether the court meant to leave the rule that, under similar circumstances, a minor under eighteen would not be emancipated.

J. G. C.

EVIDENCE—ADMISSIBILITY OF PAROL TO PROVE A CONTEMPORANEOUS COLLATERAL AGREEMENT—In answer to a suit for the balance due on a written contract of sale of roofing material, defendant contended that the plaintiff orally agreed to supervise the application of the roofing and to guarantee the roof for ten years. The defendant reconvened for damages resulting from faulty application of the roofing. *Held*, that parol evidence may be introduced by defendant to prove such an oral agreement, since it does not contradict the writing and would be in the nature of a contemporaneous collateral agreement to do something in addition to the obligation embodied in the written contract; but that defendant did not discharge her burden of proving the existence of the oral agreement. *Brandin Slate Co., Inc. v. Fornea*, 183 So. 572 (La. App. 1938).

The rule precluding admission of parol evidence to add to, subtract from, contradict or vary the terms of a valid written in-

18. 1 Planiol et Ripert, *Traité Pratique de Droit Civil Français* (1925) 653-654, n° 618; 2 Marcadé, *Explication Théorique et Pratique du Code Napoléon* (5 ed. 1852) 267, n° 476; 5 Laurent, *Principes de Droit Civil Français* (2 ed. 1876) 216-217, n° 195; 3bts Beudant, *Cours de Droit Civil Français* (2 ed. 1936) 301, n° 1716; 1 Aubry et Rau, *Cours de Droit Civil Français* (5 ed. 1897) 831-832, § 129; 3 Huc, *Commentaire Théorique et Pratique du Code Civil* (1892) 448, n° 466. See Art. 476, French Civil Code.