Louisiana Law Review

Volume 5 | Number 1
December 1942

Matters Pertaining to the Civil Code

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A. AMENDMENTS TO SPECIFIC CODAL ARTICLES

It appears that the 1942 regular session of the legislature made but four express changes so far as specific articles of the Civil Code are concerned.

Article 915 Amended by Act 82 of 1942. In 1938 Article 915 was amended by Act 408 which provided that:

> "Should the deceased leave no descendants, but a father and mother, or either, then the share of the deceased in the community estate shall be divided in two equal portions, one of which shall go to the father and mother or the survivor of them, and the other portion shall go to surviving spouse, who shall inherit as a legal heir by operation of law, and without the necessity of compliance with the forms of law provided in this chapter for the placing of irregular heirs in possession of the successions to which they are called."

It was assumed in the absence of interpretation by the supreme court, that the blessings of the doctrine of Le Mort Saisit le Vif had been conferred upon the surviving spouse when inheritor of community property whether the whole share of the deceased was transmitted, in the absence of children or parents or whether only one-half of the deceased one-half of the community was inherited by the spouse—due to the presence of parent or parents of the deceased.[1] Act 82 of 1942 added the clause shown below in the writer's italics, making the article appear as follows:

> "(915) When either husband or wife shall die, leaving neither a father nor mother nor descendants, and without having disposed by last will and testament of his or her share of the community property, such undisposed of share shall be

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1. Fabre-Surveyer, The Civil Law in Quebec and Louisiana (1939) 1 LOUISIANA LAW REVIEW 649, 661; Hebert and Lazarus, The Louisiana Legislation of 1938 (1938) 1 LOUISIANA LAW REVIEW 80, 86; Comment (1941) 15 Tulane L. Rev. 576, 581.

> inherited by the surviving spouse in full ownership. In the event the deceased leave descendants, his or her share in the community estate shall be inherited by such descendants in the manner provided by law. Should the deceased leave no descendants, but a father and mother, or either, then the share of the deceased in the community estate shall be divided in two equal portions, one of which shall go to the father and mother or the survivor of them, and the other portion shall go to the surviving spouse, who, *together with father or mother inheriting in the absence of descendants, as provided above,* shall inherit as a legal heir by operation of law, and without the necessity of compliance with the forms of law provided in this chapter for the placing of irregular heirs in possession of the successions to which they are called."

Since the language of the 1938 act seemed clear and its purpose definite, the writer was in serious doubt regarding the legislative intent of this amendment. Certainly the purpose of the added clause could not have been to make regular heirs of the parents, as they have always been not only regular but forced in the absence of children. Did the amendment then indicate that the spouse becomes a regular heir *only* when he or she inherits "together with" the parent or parents? Obviously, the clause placing the surviving spouse in the "regular" category only appeared in the sentence ordering the sharing of the property with the parent or parents even in the 1938 act, so the assumption that the surviving spouse would be a regular heir whether inheriting all or a part of the deceased one-half might have been erroneously made from the start if a strained interpretation were placed upon the act. There is *greater* reason for making the spouse a regular heir when claiming with the parent or parents so as not to necessitate two different procedures, but not sufficient reason, it would seem, to warrant a confusing and useless distinction. On the other hand, the 1942 legislature might have intended only to smooth the language of the 1938 act and have had no desire to make the spouse a regular heir in one case and not in the other. The latter view certainly seemed more probable and more reasonable. Again, it might be that the lawgivers feared that the language of the 1938 act might give room for arguing even such a radical interpretation as would claim to exclude the father and mother. In the midst of these doubts and fears the writer sent a communication to Senator W. D. Cotton, the proponent of this bill, asking him for a statement of legislative intent. Though the Senator is

now a Captain in the United States Army, he was kind enough to send a clear exposition and to permit the writer to quote that his very definite purpose was to make the surviving spouse a regular heir in *every* case where he or she inherits community property from the deceased spouse. The purpose of amending and reenacting was to make certain the regular heirship, with consequent lack of necessity for the procedure attendant upon claiming as an irregular heir, as it seemed that some members of the bar and bench were doubtful that the 1938 act accomplished that simplification and were adhering to the old procedure. Senator Cotton makes the following statement:

> "It was the very definite purpose of this Act to remove any possible doubt created by the jurisprudence, and to definitely establish the surviving spouse a regular heir in all cases when community property was inherited from the deceased spouse. . . . The Legislative intent was . . . to make said surviving spouse a regular heir in all cases, and particularly to obviate the necessity of the proceedings of an irregular succession." (Letter from Captain W. D. Cotton, dated New Orleans, October 7, 1942.)

This statement makes certain the intent of the legislature in passing the 1942 amendment, and should make doubly certain the already obvious meaning of the 1938 act reenacted and amended by the 1942 legislature.

Article 1749 Repealed by Act 187 of 1942. Article 1749 provided that:

> "All donations made between married persons, during marriage, though termed *inter vivos,* shall always be revocable.
>
> "The revocation may be made by the wife, without her being authorized to that effect by her husband, or by a court of justice."

The second paragraph was rendered less important after its incorporation into the series of so-called married women's emancipatory acts (1916-1928). The new act does not purport to amend Article 1749 but specifically repeals it and provides that gifts by one spouse to the other "shall be irrevocable, as fully and to the same effect as if made to a stranger. . . ." A further provision makes it possible for the donor to reserve the right to revoke if his donation is made by notarial act. Again, he may later revoke his reservation by notarial act, if he should care to do so. The

clear purpose of the act is to provide escape from Federal Estate Taxes, held collectible on revocable gifts.[2]

Article 156 is specifically protected by the new act. That article provides that the spouse at fault shall lose and the vindicated spouse shall retain all "advantages and donations" made by one spouse to the other "by marriage contract or *since*" in case of separation of bed and board. It has been held that this law being "eminently conducive to public order and good morals" should override a provision agreed to by the parties in their marriage contract.[3] As to gifts made *during* marriage, since they were revocable anyway under 1749, an interesting question might have been presented as to whether 156 would apply if by chance the virtuous one should have been generous enough not to have exercised the revocatory power. However that might have been, the question of present interest pertinent to the new act is whether or not the possibility of revocation under 156 is remote enough to render the otherwise irrevocable interspousal gifts safe from the Federal Estate Tax.

Article 3369 Amended by Act 213 of 1942. The 1942 addition to Article 3369 provides that, in cases of failure to record mortgages and privileges in a special book with special index as heretofore directed by law, recordation in the Mortgage Book of the Parish in which the property is situated will have the same force and effect.

Article 3547 Amended by Act 73 of 1942. Article 3547 appeared in the Code of 1870. The first and last sentences have remained the same through the years. These statements lay down for either state or out of state money judgments a prescriptive period of ten years from rendition: give a ten year period for judgments revived and give holders the right to revive as many times as desired.

In 1936[4] a sentence was inserted which provides that no prescribed out of state judgment will be enforced, thus making it clear as to out of state judgments that while in Louisiana the ten year period might have the effect of shortening the life of a foreign judgment, it will in no case be applied to lengthen it. This portion of the 1936 act is retained. The remaining portion of

2. Howard v. United States, 40 F. Supp. 697 (D. C. La. 1941), 125 F. (2d) 986 (C. C. A. 5th, 1942). See note (1942) 16 Tulane L. Rev. 474.

3. Ledoux v. Her Husband, 10 La. Ann. 633 (1855).

4. La. Act 278 of 1936, § 1. Also see Louisiana State Law Institute, Louisiana Statutes Related to the Civil Code (1942) 707.

the article deals with revival of judgments by issue of citation. According to the 1870 provision and the 1942 provision this citation must issue from the court which rendered the judgment rather than from the court of defendant's domicile as provided in 1936. Furthermore, the original and 1942 acts speak in terms of a party interested in *any* unprescribed judgment initiating the revival process while the 1936 act spoke of a party interested in any judgment "rendered within or without the state and not prescribed in the state wherein rendered."

B. Statutes Related to the Civil Code

(a) *Of Authentic Acts* (Article 2234 et sequor) and *Of Copies of Titles* (Articles 2267 et sequor. Also see *A Compilation of Louisiana Statutes Related to the Civil Code,* p. 304).

Act 32 of 1942, while not expressly amending a code article or any other statute, closely affects the above indicated subsections of the code, as well as certain statutes. It provides "that every deed, conveyance, mortgage, sale, lease, transfer, assignment, power of attorney or other instrument whatsoever, and every oath, affirmation or acknowledgment" made before a commissioned officer of the United States Army, Navy, Marine Corps or Coast Guard and two witnesses while serving in any foreign country will have the force and effect of an authentic act executed in Louisiana. No witnesses are required for "simple affidavits, oaths and affirmations." After deposit in the office of a Parish Recorder, the latter is authorized to make copies having the same force and effect as authentic acts. In the third section it is stated that the rights conferred by the act are "in addition and supplemental to the rights conferred by existing laws" and no delimitations the one by the other are to be inferred. A rule of liberal construction is enunciated to further the express purpose of facilitating the affairs of persons in foreign service. Act 192 of 1918[5] is similar in content and purpose, less elaborate, and makes no provision for copies.

(b) *Repeal* (Articles 22-23. Also see *A Compilation of Louisiana Statutes Related to the Civil Code,* pp. 1-5).

Act 35 of 1942 deals with repeal and provides

> "That the repeal of any statute shall *not* have the effect of releasing or extinguishing any penalty, forfeiture or liability,

5. Dart's Stats. (1939) § 6289. Also see Louisiana State Law Institute, op. cit. supra note 4, at 304.

civil or criminal, incurred under such statute unless the repealing act shall expressly so provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability."

(c) *Emancipation* (Articles 385-388. Also see *A Compilation of Louisiana Statutes Related to the Civil Code,* p. 133).

Act 71 of 1942 provides that, when a non-resident minor over eighteen petitions the court of the district of the minor's principal establishment in Louisiana and presents a foreign judgment of emancipation, the decree must be given the same force as a judicial emancipation issued by a Louisiana court in the case of a resident minor.

(d) *Privileges on Oil, Gas, and Water Wells (Of Privileges,* Articles 3182-3277. See *A Compilation of Louisiana Statutes Related to the Civil Code,* pp. 579-587, and Daggett on *Louisiana Privileges and Chattel Mortgage,* c. VII, p. 486.)

Act 68 of 1942 rewrites the statute creating a privilege for the benefit of laborers, materialmen and others on oil, gas and water wells, the lease on which they are located, oil stored thereon and all appurtenances thereto. Acts 145 of 1934[6] and 100 of 1940[7] dealing with this subject are specifically repealed. Besides clarifying the language of the old acts, and inserting certain words which make more certain the classes of persons affected, the new statute provides in Section 1 that the privilege be extended to cover the cost of *preparing* as well as recording the privilege and for "ten per cent attorney's fees in the event it becomes necessary to employ an attorney to enforce collection." Section 2 contains a new provision for suspension of the ninety day prescriptive period so long as the persons protected continue to furnish labor, services, fuel, materials and supplies, to the same owner, operator, producer or driller, in the same field where the original claim arose upon other wells. The notice of the claim must contain a description of the leased property such as to make it reasonably identifiable. That portion of the old act requiring that the person making provisional seizure must make oath that he verily believes that the lease is about to be abandoned and/or the equipment sold or removed,

6. Dart's Stats. (Supp. 1941) §§ 5101.1-5101.5n. Also see Louisiana State Law Institute, op. cit. supra note 4, at 581.

7. Dart's Stats. (Supp. 1941) §§ 5101.1-5101.5n. Also see Louisiana State Law Institute, op. cit. supra note 4, at 584.

has been deleted, the new act in Section 4 only requiring oath of the amount due.

(e) *Attorney at Law* (See *A Compilation of Louisiana Statutes Related to the Civil Code*, p. 102.)

Act 74 of 1942. In 1918,[8] the legislature by Act 219 authorized the appointment by the judge having jurisdiction, of an attorney at law to represent absentees, minors and interdicted persons without the necessity of designating the appointee by any special title in order to make the representation legally effective. A second section of the act provided that after six months no legal proceeding would be rendered invalid by virtue of an incorrect designation of the representative if that was the sole ground of nullity. In 1926, by Act 133,[9] the legislature made it clear that the statute only pertained to those who were not already represented and deleted the section of the previous statute giving the six months prescriptive period. Act 74 of 1942 further amends by authorizing either the judge "or the Clerk of the Court in which the proceedings are filed" to make the appointment of this attorney at law.

(f) *Evidence* (See *A Compilation of Louisiana Statutes Related to the Civil Code*, p. 306.)

Act 70 of 1942 provides that enactments, regulations, decisions, rulings, proceedings, reports

> "or other official acts, of the Congress or any Federal executive department or subdivision therein, or of any Federal Court or commission or board or agency or public institution, may be evidenced by the Federal Register or by a printed book or pamphlet or periodical purporting to be published by the U. S. Government Printing Office at Washington, D. C., by authority, which shall be received in all courts and proceedings of this State and by all officers of this State as prima facie evidence of the records, documents, enactments, regulations, decisions, rulings, proceedings, reports or other official acts of the departments, subdivisions, courts, commissions, boards, agencies or public institutions from which they purport to emanate, and the same may be read and referred to as such in any and all courts of this State."

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8. Dart's Stats. (1939) § 9724.
9. Dart's Stats. (1939) § 9724. Also see Louisiana State Law Institute, op. cit. supra note 4, at 103.

(g) *Unfair Sales.* (See *A Compilation of Louisiana Statutes Related to the Civil Code,* p. 288.)

Act 79 of 1942. Section 2 of Act 338 of 1940 designated by the legislature as the Unfair Sales Act, was amended by *Act 79 of 1942* to include the following:

> "(c) In determining 'cost to the retailer' in those cases where the retailer buys at wholesale and receives the wholesalers' profits and discounts on merchandise to be sold at retail, both the wholesale markup of two (2) per cent and the retail markup of six (6) per cent shall be added to cover a proportionate part of the cost of doing business, in the absence of proof of a lesser cost."

(h) *Illegitimates* (Articles 202-213; 256. See *A Compilation of Louisiana Statutes Related to the Civil Code,* p. 86.)

Act 91 of 1942. Act 271 of 1940[10] conferred upon the unmarried mother, whether twenty-one years of age or under, the right to legally surrender her child to institutions or social agencies approved by the State Department of Public Welfare, by executing a release before a Notary Public and two witnesses; provided the approved agency consented to take the care, custody and control of the child. More specialized procedure for mothers under twenty-one was set forth necessitating a thirty-day notice to the State Department of Public Welfare by the agency who was to receive the child and requiring judicial authorization of the mother to make the release. After such release the receiving agency was given the right to act, as the legal custodian of the child, in placing him for adoption. Act 91 of 1942 permits the mother to surrender the child either to an approved social agency, or to the juvenile court willing to receive him. The specialized procedure for mothers under twenty-one found in the 1940 act has been deleted, and Section 4 of the new act purports to cover all surrenders made by minor mothers unless action be brought within ninety days after the effective date of the 1942 act.

(i) *Live Birth* (Article 963).

Act 180 of 1942. This act authorizes "the State Board of Health to create a central Division of Public Health Statistics for the purpose of securing complete data pertaining to births, legitimations, adoptions, deaths, stillbirths, morbidity, marriages, divorces, and annulments of marriages; to authorize and regulate

10. Dart's Stats. (Supp. 1941) § 4895.1.

the use of vital statistics records as evidence; to authorize the State Board of Health to make regulations for the enforcement of this act, the Parish of Orleans and the City of New Orleans excepted." The act contains some provisions which touch the articles of the Code since the certificates to be issued may become determinative evidence.

Article 963 of the Civil Code found under the title of *Successions* contains the following language:

> "With regard to the proofs necessary to establish the existence of the child at the moment of its birth, it must not be determined that it was born alive by the simple palpitations of its members, but by its respiration, or by other signs which demonstrate its existence."

The definition of "Live Birth" given in Act 180 of 1942 upon which designated persons are to depend in registering births and deaths is set forth as follows:

> " 'Live birth' means a birth in which the child shows evidence of life after complete birth. A birth is complete when the child is entirely outside the mother, even if the cord is uncut and the placenta still attached. The words 'evidence of life' include heart action, breathing, or movement of voluntary muscles."

(j) *Legitimation* (Article 198).

Article 198 of the Civil Code deals with legitimation of a child by the subsequent marriage of its parents, provides that incestuous and adulterous illegitimates may not be legitimated and that the child must have been "legally acknowledged" by the parents either before their marriage by an act passed before a notary and two witnesses, or by their contract of marriage itself.

In *Act 180 of 1942* in Section 23 dealing with legitimation is found the following statement:

> "In case of the legitimation of any child by subsequent marriage of its parents, the State Registrar, upon receipt of a certified copy of the marriage certificate of the parents, together with a statement of the husband acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated."

Section 12 of the act announces the "Evidentiary Character of the Certificate":

> "Each certificate, as provided for in this act, filed within six months after the time prescribed for their filing, shall be prima facie evidence of the facts therein stated. Data pertaining

> to the father of a child are such evidence, if the alleged father is or becomes, the husband of the mother in a legal marriage; if not, the data pertaining to the father of a child are not such evidence in any civil or criminal proceeding adverse to the interest of the alleged father, or of his heirs, devisees, or other successors in interest, if the paternity is controverted."

Since the supreme court of the state has so wisely declared that for purposes of inheritance by the child that informal acknowledgment is as good as formal acknowledgment,[11] it has been the hope of socially minded students of the law that the court might declare informal acknowledgment before marriage sufficient to satisfy Article 198, if and when such a case is presented to them. They have already slightly broadened the letter of 198 by declaring an acknowledgment to the priest performing the marriage ceremony sufficient to constitute a valid legitimation.[12]

The provisions for certification seem to follow the desired trend and may be helpful because of their evidentiary character.

(k) *Adoption* (Article 214. Also see *A Compilation of Louisiana Statutes Related to the Civil Code,* pp. 56-74.)

Act 154 of 1942 again rewrote the adoption law and specifically repealed Act 428 of 1938[13] which rewrote the law and repealed 233 of 1936[14] and laws on the same subject matter. This act only covers procedure for adopting children under seventeen and leaves Act 169 of 1940 intact, outlining adoption procedure for persons over seventeen.

In general the procedure is the same as that of the 1938 act—presentation of petition to the judge of the juvenile court, visitations, reports, et cetera, by the State Department of Public Welfare. Slightly more power and discretion is vested in the judge of the juvenile court to extend or cut the time in some instances, to make his own investigation without awaiting a report from the Welfare Department in some instances, et cetera. The petition may be presented apparently to any one of three juvenile courts—that having jurisdiction over (1) the child to be adopted, (2) the domicile of the person or agency having legal control of the child, or (3) the domicile of the adoptive parents. The 1938 act provided for but the first and third situations.

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11. Mother: Taylor v. Allen, 151 La. 82, 91 So. 645 (1922). Father: Succession of Corsey, 171 La. 663, 131 So. 841 (1931).
12. Succession of Roach, 155 La. 541, 99 So. 442 (1924).
13. Dart's Stats. (1939) §§ 4839.26-4839.41.
14. Dart's Stats. (1939) §§ 4839.10-4839.25.

The prescribed content of the petition remains practically the same with the additional requisite that any relationship between the petitioner and child be disclosed. Furthermore, if the child had been legally surrendered in favor of any social agency, the name and address of the agency should be substituted for that of the parents or tutor of the child. In cases where the parents cannot be located, service upon a curator-ad-hoc for the parents is provided for in addition to service on the individual or agency having physical custody of the child.

A very important addition to the law clarifying a troublesome situation is found in Section 2 of the new act. Under the previous law very properly requiring the consent of both spouses in the event of adoption by a married couple and of course requiring the consent of the parent of the child, no exception was made for the rather frequent case of adoption of the offspring of a first marriage by the second husband or wife of one of the parents. Thus the anomalous situation was presented of converting the lawful parent of a child into an adopting parent only, to which obviously no one concerned cared to subscribe. The following proviso of the new act takes care of such a contingency:

> ". . . provided that in the event that one of the spouses is the lawful parent of the child to be adopted, then the other spouse may adopt said child with the consent of the lawful parent who need not join in the petition and no judgment of adoption awarded to the said other spouse shall in any way be construed to alter the relation of the child to said lawful parent."

In Act 428 of 1938, Section 6, is found this sentence:

> "Upon the entry of the final order of adoption, the said child shall cease to be heir of its parents, whose obligations toward it for support shall also cease, and the child shall at the same time become an heir of its adoptive parents to the extent provided by existing law."

This statement has been deleted from the new act leaving the matter of inheritance a thing apart from this statute dealing with the adoption procedure.

If we take the *subject matter* of inheritance by adopted children *not* to be the *same* as that dealing with the matter of who can adopt, who may be adopted and *how* this may be legally accomplished, a logical deduction surely, then all that appears to remain on the subject matter of rights of inheritance are these

statements in Article 214: "but such adoption shall not interfere with the rights of forced heirs." "The person adopted shall have all the rights of a legitimate child in the estate of the person adopting him, except as above stated." Many most interesting problems of inheritance are still open and left, perhaps wisely, to the courts. Article 950 of the Code states that "incapacity of heirs is the absence of those qualities required in order to inherit at the moment the succession is opened. . . ." Doubtless, then, the incapacity of an adopted child to be an heir of his parents after final adoption by others, declared by Act 428 of 1938 and now repealed, will be immaterial should a person adopted under the 1938 act present a claim to the succession of his parent, dying since the adoption of the 1942 act.

Section 14 of the new act sets a limit of six months from the effective date of the statute within which an action for annulment of any adoption may be brought, grounded in lack of jurisdiction, defect in procedure, or invalidity of statute.

Another desirable change made by the new act permits completion of the adoption to be achieved more quickly where the child has been in the home of those desiring to adopt him for a year or longer, and there has been no objection made to the granting of the preliminary decree.[15] The number of visits by representatives of the Child Welfare Division of the Department of Public Welfare has been reduced to two, thus slightly relieving a sadly burdened department. Observation of the child in the new home by some trained and responsible person is a matter of such paramount importance for both the child and the adopting parents that it is most unfortunate that those most deeply concerned do not always realize the necessity of this safeguard and are irritated by, rather than grateful for, this protection given by the law to them and the child.

(1) *Registration of adoptions.*

Provisions for the safeguarding of information pertaining to the adopted child are found in at least four acts of the 1942 legislature. Act 428 of 1938, Section 10,[16] provided that the clerk of court should send a certified copy of the final decree to the registrar of vital statistics in the place of the adoptive parents' domicile, and that the registrar should cause a new record of birth to be made. It was further made the duty of the registrar to seal and

15. See Wilson, Social Welfare Legislation—1942 (1942) 1 Conference Comments, no. 2, p. 1.

16. See Louisiana State Law Institute, op. cit. supra note 4, at 26, 72.

file the original birth certificate together with the adoptive decree, and opening this package was forbidden except "upon the demand of the said adopted child or his real or adoptive parents, the State Department of Public Welfare through the Commissioner of Public Welfare, or by order of a court of record." This provision is carried forward by Section 10 of *Act 154 of 1942* with several changes. The Central Bureau of Vital Statistics of the Louisiana State Department (Board) of Health or its successor must be the recipient of the decree. The breaking of the package is prohibited except on demand of the same list, but even then *only* on order of court. If no original certificate of birth is found, then the Bureau shall file a new certificate of birth but may require "additional documentary evidence necessary to establish the circumstances of birth, which would have been recorded in the original birth record."

Section 11 of the new act also provides for private hearings and records of the court proceedings.

Act 180 of 1942 authorizes the creation of "a central Division of Public Health Statistics for the purpose of securing complete data pertaining to births, legitimations, adoptions, deaths, stillbirths, morbidity, marriages, divorces and annulments of marriages." Section 22 of this act repeats the fundamentals of Section 10 of the adoption act in regard to registration of adoptions, sealing of packages, et cetera.

Act 342 of 1942 authorizes the Central Bureau of Vital Statistics to receive certified copies of final decrees of adoption from other states and territories of the United States where the original births are on record in Louisiana and issue new certificates of birth as provided by the adoption act.

This statute greatly amplifies the provisions of 234 of 1940[17] in most respects. However, the latter provides for receipt and recordation of adoption decrees by other states *or foreign countries.*

Act 343 of 1942 amending and reenacting Act 269 of 1940.[18]

Act 269 of 1940 provided for the making of a new record by the Central Bureau of Vital Statistics of those adoptions prior to the effective date of 428 of 1938 by submitting a copy of the birth certificate of the individual together with copy of the judgment

17. Dart's Stats. (Supp. 1941) § 3468.6. Also see Louisiana State Law Institute, op. cit. supra note 4, at 74.

18. Dart's Stats. (Supp. 1941) §§ 3468.4-3468.5. Also see Louisiana State Law Institute, op. cit. supra note 4, at 75.

or notarial act showing adoption, and the Bureau was then to follow the general procedure outlined for recordation of adoptions under the 1938 act, including the sealing of the package, et cetera. Act 343 of 1942 changed this act of 1940 to the extent of adding after Central Bureau of Vital Statistics the words "or the Registrars of Vital Statistics of the various parishes, including the City of New Orleans." The words *act of adoption* are used instead of *notarial* act of adoption.

It will be observed that in three of these new acts, the Central Bureau of Vital Statistics is referred to, while in the fourth the Board of Health is instructed to create a Central Division of Public Health Statistics which will perform these duties of recordation, certification, et cetera. Power is vested in the State Board of Health to enforce the act except in the Parish and City of New Orleans.

(m) *Servitudes.*

(1) (Articles 646, 660, 822, and Act 180 of 1906. Also see *Compilation of Louisiana Statutes Related to the Civil Code,* p. 164.)

Act 97 of 1942 authorizes police juries to close and dam small canals in streams not under the jurisdiction of the United States when such action might be thought a necessary protection to health or property. Written approval must be secured from the State Department of Public Works and from the Board of Commissioners of the Levee District if the contemplated dam should be located in such a district.

(2) (Article 452). In the interest of public safety and with particular reference to conditions obtaining during a war period, *Act 117 of 1942* was passed to provide "rules and regulations concerning the use of docks, wharves, piers, the batture, banks and shores of all navigable waters" in Louisiana.

(3) *Act 283 of 1942* prohibits the state from issuing permits to prospect for minerals on any lands over which they possess any right or control *less than full ownership* without the consent of the owners of abutting property.

(n) *Cancellation of Records* (See *Of the Erasure of Mortgages,* Articles 3371-3386. Also see *A Compilation of Louisiana Statutes Related to the Civil Code,* p. 649, and Act 255 of 1936.)

Act 227 of 1942 provides that a prescribed or preempted "lien, mortgage, privilege or encumbrance of any kind" may be can-

celled from the record by the Clerk of Court of any parish but New Orleans upon the filing of a sworn written request by any interested party.

(o) *Prescription* (Articles 3457-3556. Also see *A Compilation of Louisiana Statutes Related to the Civil Code*, p. 655 et sequor.)

Act 88 of 1942[19] lays down a maximum period of five years from the rendition of account within which a depositer may question a bank regarding his statement.

Act 140 of 1942 provides that in the six months following the effective date of the act no person holding a land warrant of any kind may locate on state lands. This act is made applicable to "minors, interdicts, absentees and others now excepted by law." Those persons "serving in the active branches of the armed forces of the United States" who have bona fide ownership of such warrant at the time of entry into the service or who inherit while in service, are given a year after peace is declared "with all the nations with whom the United States is now at war."

Act 141 of 1942 is identical with Act 140 except that "warrants issued under the provisions of Act 104 of 1888"[20] are specifically covered instead of state land warrants in general.

C. Mineral Rights

Besides taxation statutes, which are not within the scope of this discussion, there are several acts of 1942 which might be mentioned here. All of them deal, however, with state lands and really have no proper place in this resume as they more properly belong in a discussion of administrative law. *Act 77 of 1942* authorizes the state and its agencies to "execute and fix the terms and duration of permits, leases or servitudes of which the grantor has title, custody or possession for directional (deviation from vertical) drilling of wells in search of oil, gas, sulphur, and other minerals which may underlie the beds of adjacent . . . bodies of water," and to give permits for pipe laying and other types of endeavor necessary in pursuing the search for minerals. These permits are to be granted only for approach to the beds of streams upon which valid leases have been obtained, of course. The five year limitation found in Act 170 of 1940[21] is not to apply.

19. Art. 3540, La. Civil Code of 1870. See also Louisiana State Law Institute, op. cit. supra note 4, at 667.

20. Dart's Stats. (1939) §§ 7291-7294.

21. Dart's Stats. (Supp. 1941) § 7317.5.

Act 92 of 1942 authorizes the state to lease the bed of White Lake in Vermilion Parish, title of which is in dispute. The purpose of the act was to avoid litigation. The Acadia-Vermilion Rice Irrigation Company, Inc., the affairs of which are under the administration of the State Bank Examiner, was claimant with the state, and the act recites that the Company agreed that mutual protection might be achieved as producers would not lease because of the questionable title. The act is termed an emergency bill due to shortness of time remaining in which materials for development might be obtained.

Act 152 of 1942 amends and reenacts Sections 3, 4, 5 and 6 of Act 77 of 1940[22] dealing with geophysical surveys. Section 3 is amended by making it mandatory for those persons who have obtained survey permits to disclose their information upon request *only after* they may have obtained a lease from the state. The former thirty day period after request, if such a period has elapsed since completion of the survey, is lengthened to ninety days. The Commissioner of Conservation as well as the State Mineral Board may make the request for disclosure.

The amendment to Section 4 of Act 77 of 1940 makes it necessary for a survey permit to be secured from the Department of Conservation *and* the State Mineral Board, and Section 5 makes the contents of reports of the survey confidential with the Department of Conservation and the State Mineral Board. Section 6 of Act 77 of 1940 is amended by making the maximum fine for violation of the act $1000 instead of $5000.

Act 283 of 1942 expresses a limitation on the state's power to issue prospecting permits and was mentioned above under the section on *Servitudes*.

Section 9 of Act 93 of 1936[23] is amended by *Act 153 of 1942* which gives to the State Mineral Board the power to amend state leases within certain limits, and specifically to pool and unitize state leases under the detailed terms of the statute.

22. Dart's Stats. (Supp. 1941) §§ 4719.11-4719.14.
23. Dart's Stats. (1939) § 4725.9.