

Louisiana Law Review

Volume 5 | Number 2

May 1943

COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA. LOUISIANA LEGAL ARCHIVES, Volume 3. Prepared by The Louisiana State Law Institute. Joseph Dainow, Reporter. Baton Rouge. Pp. Part I, 1940: xxxii, 968; Part II, 1942: iv, 1192.

Max Rheinstein

Repository Citation

Max Rheinstein, *COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA. LOUISIANA LEGAL ARCHIVES, Volume 3. Prepared by The Louisiana State Law Institute. Joseph Dainow, Reporter. Baton Rouge. Pp. Part I, 1940: xxxii, 968; Part II, 1942: iv, 1192.*, 5 *La. L. Rev.* (1943)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol5/iss2/20>

This Book Review is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

a two-way glossary of German and English legal terms. Mr. Fisk's preface, in which he explains some Latin terms, is unfortunately not free of mistakes.⁷ Some misprints were found, mostly in foreign language quotations.

We appreciate the courage shown by the publishing house in bringing out this book. Let us hope that its pioneering enterprise will be rewarded by an increase of public interest in legal history. Roscoe Pound in his introduction stresses the need of a revival of historical jurisprudence. Modern historical jurisprudence is no longer merely the history of isolated institutions, but a comparative analysis of the growth of legal thought. It helps us to understand the background of present trends and to appraise the psychological factors working in them. Note, for instance, the striking parallel between the early history of civil procedure and modern attempts to establish an organization for the peaceful settlement of international disputes. The study of Roman law as the greatest of the legal systems of the past, and a system, like the English, whose unbroken evolution from modest beginnings to highest perfection can be followed, is bound to play a leading part in this effort.

HANS JULIUS WOLFF*

COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA. LOUISIANA LEGAL ARCHIVES, Volume 3. Prepared by The Louisiana State Law Institute. Joseph Dainow, Reporter. Baton Rouge. Pp. Part I, 1940: xxxii, 968; Part II, 1942: iv, 1192.

The Louisiana State Law Institute and its reporter for the present volumes should be congratulated on the completion of a monumental undertaking.

The texts of the Louisiana Civil Codes of 1808 and 1825 are bibliographical rarities. Even in the very State of Louisiana itself they can be found in but few libraries. Yet, they are needed by lawyers and judges not only in the comparatively rare cases which turn around a transaction executed under the regime of one of the older codes, but in the everyday case where the

7. Namely, the explanation of *ius dicere*, also, in the opinion of the reviewer, the definition of *arbiter*.

*Jur. utr. D., Berlin; formerly professor of Roman and Civil Law at the University of Panama. Present address: Legal Research Building, University of Michigan.

relevancy of an older decision is to be evaluated. Was it rendered upon the basis of a text which was identical with or similar to that which is in force now, or was it rendered upon the basis of a different text? Obviously its weight as a precedent is essentially different in these two different situations.

The last fifteen years or so have witnessed in Louisiana a remarkable revival of the state's civil law tradition. Constituting the only civil law jurisdiction in a common law nation, being all but cut off from the mother tongue of her law, having adopted the common law for important aspects of life, and counting among the members of her bench and bar many influential lawyers who obtained their legal education in common law schools, Louisiana in the early 1920's was drifting rapidly toward a situation where her civil law sources were to be interpreted and applied with uncongenial common law techniques. The trend of Anglicization of her civil law had proceeded so far that the only question it seemed legitimate to ask was not whether Louisiana would discard the civil law entirely in favor of the common law but only how long it would take until that process would be completed. Under the leadership of her law schools that tide has been stemmed. A remarkable revival of civil law tradition has taken place in the state. Necessarily such tendencies required the resumption of the all but lost contacts with French law. It seems that French cases and French texts are being studied in Louisiana with renewed interest and vigor. Such an interest in French legal materials would be misleading, however, if French solutions would be superficially transposed to Louisiana. Not only may the social, economic and political climates be different, but it may also be that the texts with which the lawyers in France and Louisiana have to work respectively are no longer the same. Contacts with the mother Code are indispensable to Louisiana lawyers if they wish to work with their basic text intelligently, but those contacts must be cultivated with an awareness of existing differences. In 1886 the courts of Louisiana had to decide whether the interest of a mortgagee which existed in agricultural implements placed upon land by the owner and thus made immovable by destination was lost when the implements were removed from the land and sold to a bona fide purchaser for value. Upon the authority of French text writers and decisions the supreme court of the state held that the bona fide purchaser had acquired a good title.¹ Unfortunately the court had overlooked that Article

1. *Weil v. Lapeyre*, 38 La. Ann. 303 (1886).

2279 of the Code Napoleon,² which gives the bona fide purchaser of any chattel a good title and upon whose words the French text writers and courts had based their opinions, was not adopted in Louisiana, where, under Section 3506 of the Revised Civil Code of 1870, title is not acquired until the chattel has been in the adverse possession of the bona fide purchaser for three years.

Such an erroneous decision could hardly be rendered today. Thanks to the efforts of the Louisiana State Law Institute the lawyers of the state have now before them an easy synopsis not only of the texts of the successive Civil Codes of their state arranged section by section in the order of the Code of 1870 in its present version, but they have also available the texts of the sections of the Code Napoleon, from which the sections of their own texts have sprung. At a glance, the lawyer of Louisiana can now see not only whether or not a decision of a Louisiana court was rendered upon the basis of a text which is sufficiently close to the present one to constitute the case a precedent for present-day practice, but also to what extent a French decision or the statements of a French commentator deserve attention in the state. In France herself it has long been the practice of the leading law publishing houses in their annual editions of the codes to print with every section of the present text such other versions as may have been in force at some earlier date. In Louisiana this need has now been filled by the State Law Institute, which has thereby deserved also the thanks of that growing number of observers outside of Louisiana who are taking a scholarly interest in her system of law. Together with the Province of Quebec, the Island of Puerto Rico, the Union of South Africa, and the Island of Ceylon, Louisiana is one of the few regions of the earth where the two great legal systems of Western civilization are inter-penetrating each other. Each one of these regions has developed its own peculiar style of combining materials, traditions and techniques of the civil law and of the common law. In at least three of them Anglicizing trends have recently been reversed. Scholars all over the world have been following these developments with keen interest. An intimate knowledge of textual histories is indispensable for such endeavors.

For Louisiana itself, the new synoptic edition of her texts is significant in another respect. In the basic charter of the Louisiana State Law Institute it is stated that it has been formed

2. "*En fait de meubles, la possession vaut titre.*" ("With respect to movables, possession is equivalent to title.")

"to promote and encourage the clarification and simplification of the law of Louisiana and its better adaption to present social needs." It is furthermore said in that instrument that "to that end it shall be the duty of the Louisiana State Law Institute to consider needed improvements in both substantive and adjective law and to make recommendations concerning the same to the Legislature." Intelligent reform presupposes a thorough knowledge of both the present and the past. Wisely, therefore, the Institute has itself undertaken to provide an inventory as the basis for all future efforts at law improvement.³ It has set thereby a model for other states which, in recent years, have established similar organizations for the purpose of systematically observing the law in action and proposing changes where defects and inequities are discovered.

The standard which Louisiana has set for her sister states is a high one, indeed. The work of the compiler of historical text materials may look easy and mechanical. Actually, it is among the most difficult assignments of legal research. Undertaken by anyone but a scholar it would have turned out incomplete, inaccurate and unreliable. The Louisiana State Law Institute was fortunate enough to find a reporter who not only has had all the training required for the difficult job but who also obviously attacked his work with that enthusiasm which is born out of the insight into the far-reaching significance of the enterprise. Professor Dainow and his staff have done splendid work. The legislative history of every section of the Civil Code of 1870 is given with meticulous accuracy, including the Code Napoleon and the "Projet du Gouvernement" of 1800, which played such a great role in the framing of the Louisiana Code. There are also reproduced the texts of the Projet of the Code of 1825 as well as original French version of that Code itself. For the French texts of the Projet of 1800 and of the Code Napoleon a new translation has been provided, which not only is expressed in Louisiana civil law terminology but which also constitutes a scholarly improvement over the existing English translations of the French Code. In this way as well as in the "translations" of important common law expressions into civil law terms contained in the index the editors have made important contributions toward a much needed clarification of legal terminology. The

3. This inventory has been made more comprehensive by the publication by the Institute in 1942 of Louisiana Statutes Related to the Civil Code, compiled by Harriet S. Daggett.

index is, as far as random tests allow one to judge, complete, sufficiently detailed and reliable. A table of concordances for the various codes increases the usability of the work for quick reference.

A special word of praise must be given to the splendid external make-up of the two stately volumes.

MAX RHEINSTEIN*

* Max Pam Professor of Comparative Law, University of Chicago.