Suggestions for the Consideration of the Council of the Louisiana State Institute

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HARRIET S. DAGGETT*

The readers of this journal are familiar with the organization known as the Louisiana Law Institute created by Act 166 of 1938 "as an official advisory law revision commission, law reform and legal research agency of the State of Louisiana." (La. Act 166 of 1938, § 1 [Dart's Stats. (1939) § 9284.18]). The publications of the results of the Institute's legal research, a compilation of the three Civil Codes of Louisiana and a compilation of the Louisiana Statutes related to the Civil Code, are available. The Institute's draft of a criminal code, undertaken at special legislative mandate under the terms of Act No. 7 of 1940 is now the Criminal Code of Louisiana by virtue of Act No. 47 of 1942.

In addition to tasks of this nature, the Institute is instructed by Act No. 66 of 1938 to recommend to the legislature such changes in the law as are thought desirable and in accordance with this duty certain proposed bills have been offered to each regular session of the legislature for their consideration. Following this procedure, the Council of the Institute is presently engaged in preparing their recommendations for the 1944 session of the legislature to the Institute which, after approval by the Institute, will be transmitted to the law making body. Interest in the Institute's program having been evidenced by non-Institute members of the bar, the acting director was asked to prepare a resume of the work for publication. The report of the Council is by no means complete. Indeed, much of the material presented has not yet been even considered by the body. Some suggestions have been approved in principle, others have been rejected totally or in part. Some of the ideas have reached the first draft stage, none have gone further than that. Because of this situation, it appears manifestly unwise and unfair to present, the Council's work and appear to in any wise commit this body at an untimely stage and before any recommendation of theirs is complete. Con-

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sequently, the writer wishes to make very clear the fact that the following matter is simply a list of suggestions offered to the Council for consideration. The comments are those of the writer and any views expressed are individual to the writer. The Council is in no way responsible or committed by the following memorandum of the acting director, prepared in the regular course of duty.

OUTLINE

I. An act to provide a central registration system for chattel mortgages.

II. An act to repeal Article 161 prohibiting marriage between adulterer and co-respondent.

III. An act dealing with inheritance rights in adoption.

IV. An act dealing with tutorship and emancipation of adopted children.

V. An act dealing with legitimation by marriage of natural parents.

VI. An act to strike the word "Bastard" from the Code.

VII. An act providing against dissolution of the community by judgment of separation.

VIII. A resolution for amending the 1921 Constitution deleting the clause which gives women the right of freedom from jury service.

IX. An act to amend the Workmen's Compensation Act by reserving to the persons now designated by Article 2315 a right of action for wrongful death when there are no dependents of the employee.

X. The Uniform Expert Testimony Act.

XI. The Uniform Judicial Notice of Foreign Law Act.

XII. The Uniform Business Records as Evidence Act.

XIII. An Act to amend the Rehearing Statute.

XIV. An act to repeal Article 552.

XV. An act to repeal Article 167.

XVI. An act to amend the law of matrimonial agreements.

XVII. An act to rank privileges.

XVIII. An act to give certain rights to married persons.

XIX. An act to amend Article 222.
SUGGESTION I

AN ACT

To provide a central registration system for chattel mortgages.

Comment*

Section 5 of the amendment of 1936, Act No. 178, made a radical change, so that now the chattel mortgage has to be recorded only in the parish where the act of mortgage is executed and at the domicile of the mortgagor, which recordation affects all third persons, “both within the parish where recorded and outside of the parish where recorded, but within the State of Louisiana.” The property mortgaged does not necessarily ever have to be in the parish where the instrument is recorded. Obviously, this throws the hardship on the third person instead of the mortgagee, and his only protection is the fact that under Section 8 of Act No. 198 of 1918 a criminal prosecution may be held over the head of the mortgagor in case he removes the property without the written consent of the mortgagee. The property, however, remains subject to the mortgage. If the mortgagor has obtained the written consent of the mortgagee to remove the property, the purchaser may not resort to a criminal prosecution. Furthermore, he has not been aided in determining whether there is a mortgage on the property or not because of the absence of a requirement that the mortgagee record the act of mortgage in the mortgage records of the parish to which it is removed. In addition, the purchaser of any movable property susceptible of mortgage from a nonresident of his parish must obtain the usual “affidavit from the person that there is no mortgage on the property, nor any money due for the purchase price thereof.” Failure to do so renders the purchaser personally liable for the debt secured on the property; and the obtaining of the affidavit does not help the purchaser if a mortgage actually exists, because the mortgage may be enforced against the property regardless of whether the affidavit so states or not.

An obvious deficiency in this particular phase of the statute is its complete failure to provide for the registration of a mortgage covering a nonresident's chattels situated in the state of

* This comment with documentations is taken from Louisiana Privileges and Chattel Mortgage, by Harriet S. Daggett, p. 50 et seq.

2. Id. at § 5, as amended by La. Act 178 of 1936.
Louisiana. As has been pointed out, Section 2 requires recorde-
don of the original or a certified copy of the act of mortgage in
the office of the recorder of mortgages in the parish where the
act of mortgage is executed, and also at the domicile of the
mortgagor.

In the case of a nonresident it would be impossible to comply
with the requirement that it be recorded at the domicile of the
mortgagor, in which instance the court might hold that recorda-
tion of the act in the parish where it was executed would be suf-
ficient. A contrary holding would greatly decrease the value of
the act with no resulting advantages. The real problem, and a
practical one, arises in those instances where the mortgagor is a
nonresident and the chattel mortgage is executed in another
state. Under the very words of the statute the mortgagee with
notice could not protect himself against the rights which third
persons might acquire on said properties. The necessity for rem-
edying this deficiency is apparent.

The amendment of 1936 merely shifted the burden from the
mortgagee to the buyer or other third party, as has been sug-
gested above, and did not advance the solution of the real prob-
lem—namely, protection of all parties concerned. Furthermore,
these rules are diametrically opposed to the underlying civilian
view prevailing in the state. It is always to be expected when a
common-law device is imported and engrailed upon the civilian
base that perfect harmony will not ensue. If the new device is
sufficiently valuable as a tool to commerce and society, no regrets
need be entertained about sacrifice of revered legal principles,
but if the importation is an imperfect tool and also runs counter
to accepted ideas, doubtful advantage has accrued. The principle
is ingrained among civilian lawyers and laymen that the seller,
rather than the buyer, should be held responsible. The doctrines
of warranty and caveat venditor, as opposed to the common-law
maxim, caveat emptor, are well known principles in the law and
commerce of Louisiana. The present rules in regard to the rights
or purchasers of chattels burdened with a mortgage are contrary
to the letter and the spirit of Louisiana's law of sales. Perfect
equality of burden and watchfulness may be too idealistic a goal,
but some suggestions from the legislation of other states may be
offered as possibilities for approximating an admittedly desirable
goal.

The statutes of Oregon, California, Idaho, and Nevada have incorporated in their chattel mortgage laws central registration systems. As would be expected, certain variations are found in these laws. The Oregon law requires any mortgage on personal property to be recorded or filed in the office of the county clerk where the mortgaged property is situated and in such other county or counties as the mortgagee may elect, the mortgage to be a lien upon the mortgaged property while it is in any county where the instrument is filed; "provided, that when the chattel mortgage creates a lien upon any chattel required by the law to be registered with the secretary of state and a license thereon issued by him, a certificate of the county clerk must be made and filed in the office of the secretary of state, and when such a certificate is so filed, the mortgage lien of such chattel mortgage is effective and follows the property into any and all counties of the state." Any person may have a certified copy of a chattel mortgage which has been recorded or filed in the county where the mortgaged property was situated at the time of the execution of the mortgage filed with the secretary of state; and after such certified copy has been filed with the secretary of state, such mortgage constitutes a lien upon the property wherever found in the state without the necessity of further recordation.

Where the mortgaged property is removed from the county or counties in which the mortgage is recorded or filed, the lien of the mortgage is suspended as to subsequent purchasers and mortgagees thereof in good faith and for valuable consideration from and after twenty days from the time of removal, unless within that twenty days the mortgage has been recorded or filed in the county to which the property has been removed, or the mortgagee has taken possession of the property or a certified copy has been filed with the secretary of state. Such mortgage lien remains suspended until the mortgage is recorded in the county to which the property is removed, until the property is returned to a county in which the mortgage is recorded or filed, or until the mortgagee takes possession of the property or a certified copy has been filed with the secretary of state. This law

9. Ibid.
contains detailed procedural steps to be followed, as well as a means of financing such a system without further costs to the state. Directions for indexing are also given.

The California law involves a more complicated system. All mortgages of personal property must be recorded in the office of the county recorder in the county in which the mortgagor resides and in the county in which the mortgaged property is situated, or, save in the case of livestock, vehicles (other than motor vehicles) and other migratory chattels, in the county to which it is removed. When the property mortgaged is removed from the county in which it is situated, the lien is not affected for thirty days after such removal; but after the expiration of the thirty days the property mortgaged, except in the case of livestock, vehicles (other than motor vehicles), and other migratory chattels, is exempt from the operation of the mortgage, except as between the parties, until either (1) the mortgagee causes the mortgage to be recorded in the county to which the property has been removed, or (2) the mortgagee takes possession of the property. If a mortgage of livestock, vehicles (other than motor vehicles), or any other migratory chattel has been recorded as provided above, and within thirty days thereafter, a certificate of such record has been filed by the county recorder with the secretary of state, the property mortgaged may be removed into any county without in any way affecting the lien of the mortgagee. In regard to mortgages on livestock, vehicles (other than motor vehicles), and any other migratory chattel, it is the duty of the county recorder, wherever a mortgage is filed in his office purporting to create a lien upon such objects or when the discharge or assignment of such a mortgage appears of record, to collect the additional costs and to make a certificate over his official signature upon the form prescribed by the secretary of state and transmit the same to the secretary of state, whose duty it is to receive and file such certificate.

California has recently enacted a law providing an exclusive method for giving constructive notice of a chattel mortgage on a vehicle required to be registered under the Vehicle Code and excepting such chattel mortgages from the general provisions of law relating to the recording of mortgages on personal property. A copy of the mortgage covering any vehicle required to be registered under the Vehicle Code must be deposited with the De-

11. Id. at § 2965.
department of Motor Vehicles, which deposit constitutes constructive notice of the mortgage and its contents to "all the world."\(^\text{13}\)

The Idaho law requires\(^\text{14}\) the mortgage of personal property or a true copy thereof to be filed for record with the county recorder of the county where such property is located and kept at the time of the execution of the mortgage. A mortgage once properly recorded in no event thereafter has to be recorded in a different county unless the mortgagee grants his written consent to such removal, in which case it becomes the duty of the mortgagee to file for record the mortgage or a true copy thereof, either (1) in the office of the recorder of the county or counties into which the property has been removed, or (2) in the office of a county recorder and the secretary of state. Such recording with the secretary of state has the same effect as if the mortgage has been duly filed for record in the office of the recorder of each county in the state.

The incorporation of a central registration system in the chattel mortgage law of Louisiana based upon some of the better features contained in the above laws might to a great extent alleviate the present unsatisfactory condition which necessarily places the hardship on either the mortgagee or the innocent third person. The proposed system would provide a definite means of ascertaining whether or not a chattel mortgage exists on the property. Louisiana is thoroughly accustomed to a state license bureau for automotive vehicles. It would be comparatively easy to take the next step found in California and impose the duty upon the bureau to record all chattel mortgages on such vehicles. This duty could be amplified to cover all "migratory" chattels. Since the cost of recording might be borne by the parties to the mortgage and the recordation made optional with them, no increased financial burden need be incurred by the state. The expense might ultimately be borne by the mortgagor of the chattel, which would be an argument against any additional recordation fees; but it would seem that with increased security for the mortgagee and purchaser, greater facility for use of this security device would ensue, which would counterbalance additional cost for recordation and for certifications. A maximum of two registrations is sufficient, however—one in the parish and one in the state office; or, indeed, on migratory chattels, but one in the state office, so that fees, regardless of bearer, need be no greater than under the present system.

\(^{13}\) See Cal. Stats. of 1935, ch. 27, §§ 195-198.

SUGGESTION II

AN ACT

To repeal Article 161.

Comment

Article 161 reads as follows:

"In cases of divorce, on account of adultery, the guilty party can never contract matrimony with his or her accomplice in adultery, under the penalty of being considered and prosecuted as guilty of the crime of bigamy, and under the penalty of nullity of the new marriage."

This article did not appear in our Codes of 1808 or 1825. The statute was first passed in 1827, reenacted in 1855, and incorporated in the revised code of 1870 as Article 161.

The similar provision of the French Code was repealed on December 15, 1904.

Louisiana courts checked the chaotic effect which Article 161 might have had on legitimacy, property rights, and the introduction of scandalous material in the very first case to raise the issue. Succession of Hernandez, 46 La. Ann. 962, 15 So. 461 (1894). The court said:

"... the principles of Article 161 of the Code, which manifestly indicates the necessity of the accomplice being named and disclosed, as the means of enforcing its behests. If this were not so, grave and serious injury might result, and the rights of inheritance, the legitimacy of children, and the security of marital rights, as well as the title to property, would be imperiled by the uncertainty and insecurity of the tenure; depending, as it would, upon the uncertain recollection of witnesses, long years after the occurrences had happened."

This decision has been reaffirmed and strengthened. See Succession of Gabisso, 119 La. 704, 44 So. 438 (1907); Succession of Knupfer, 174 La. 1048, 142 So. 609 (1932). In Succession of Damico, 155 La. 1036, 99 So. 862 (1924) evidence for identification was allowed which the court in Succession of Knupfer emphatically stated did not enlarge the rule of the Hernandez case. [142 So. 610, column 2].

In Stallings v. Stallings, 179 La. 663, 154 So. 729 (1934) a wife, who had previously secured a separation of bed and board from her husband, was fighting her husband's suit for final divorce,
brought under Act 56 of 1932. She alleged that her husband had the

"... intent to make the court an instrument to enable him to commit a felony under article 161 of the Civil Code, as his alleged purpose in obtaining the divorce is to violate this article by intermarrying with his paramour and thereby commit the crime of bigamy."

The court declared this assertion immaterial and granted the final divorce to the husband under the clear terms of Act 56 of 1932.

In *Rhodes v. Miller*, 189 La. 288, 179 So. 430 (1938), suit was brought by a husband to annul his marriage to his accomplice in adultery named in the divorce suit successfully brought against him by his previous wife. He alleged that he and his accomplice went out of the state to be married in order to evade the prohibition of Article 161; that his marriage was void, et cetera. The court annulled the marriage despite the uncleanliness of the plaintiff, because of the "prohibitory" rule of 161, apparently influenced by an Illinois case dealing with a marriage of first cousins.

**Practical and Social Considerations**

It would seem then that Article 161 might cause more immorality than it averts. Act 25 of 1898 amended and reenacted by Act 56 of 1932 and the 7-year, 4-year, 2-year divorce laws were passed to enable erring spouses to apply for voluntary bankruptcy proceedings in connection with their insolvent domestic affairs—certainly with the purpose of providing a clean slate upon which to write a new life rather than forcing them to remain in a never-never land, often of illicit association.

Marrying the accomplice is about the only decent reparation possible for the individual or society and is generally thought desirable by all but the vindictive.

The living in adultery, presumably an immoral state, is not a crime under our law, while changing this status into the honorable one of marriage, after the barrier is removed by a legal divorce, is a crime under Article 161.

The worst punishment falls upon the child who cannot be acknowledged (Article 204) or legitimated (Article 198) and who may only receive alimony (Article 1488). The court slightly tempered the harshness of this rule in *Succession of Haydel*, 188 La. 646, 177 So. 695 (1937) by upholding the bequest of a father of
one-half of his property to his adulterous daughter of six years, under Article 1488, as not being "excessive" for her maintenance, and without reference to Article 1496 which delimits the share which may be donated to such children to a maximum of one-third, even where only remote collateral relations exist.

The French Code specifically provides for legitimation of adulterous children by the marriage of their parents when the child of a married mother has been disavowed by her husband, and hence made illegitimate, and when married, the father of the child has no legitimate descendants "born of the marriage during which the adulterous child has been conceived." [Article 331, French Civil Code, Cachard's translation.]

SUGGESTION III

AN ACT

To amend and reenact Article 214 dealing with inheritance rights in adoption.

Comment

After the long series of amendments to Article 214, together with separate statutes on the subject (See Institute's Compilation, Louisiana Statutes Related to the Civil Code, p. 712) all that appears to be left of the article is the following: "... 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."

No other statements regarding inheritance by the child now appear in the statutes.

Section 6 of Act 428 of 1938 contained the following:

"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 sentence is not found in Act 154 of 1943, which specifically repealed Act 428 of 1938.

Act 256 of 1936 still stands and reads as follows:

"An Act conferring on adoptive parents the full rights of inheritance of parents, in the estates of their adopted children."
"Section 1. Be it enacted by the Legislature of Louisiana, That adoptive parents shall have all the rights of inheritance of parents in the estates of their adopted children as are enjoyed by parents, in the estates of their legitimate children.

"Section 2. That all laws or parts of laws contrary hereto or in conflict herewith, be, and the same are, hereby repealed."

It is obvious that the latter fails to state what status the blood parents might continue to have in relation to the child's estate. The jurisprudence is clear on the point that the child has among others the right to his legitime. [Succession of Hesser, 37 La. Ann. 839 (1885).]

The Succession of Dielman, 155 La. 503, 99 So. 416 (1924), is the only case, however, which deals in a clearcut fashion with the adopted child's right in opposition to asserted claims of the forced heirs of the blood. The contest in that case was between an adopted child and the mother of the adopting father, who left a will giving the residue of his estate to his wife and an adopted daughter. The court gave the mother her legitime, stating that two classes or lines of forced heirs existed, the mother and the adopted daughter.

It would appear then, that if an adopting father left an adopted child and one legitimate child, and a will necessitating determination of the forced share, that the legitime of the legitimate child under 1493 would be one-third and that of the adopted child one-fourth; that if there was an adopted child and two legitimate children that each of the latter would be entitled to one-fourth, while the adopted child would receive two-ninths, et cetera.

The French code does not cut down the share of the adopted child when there are legitimate children [Art. 357, French Code] born after a child has been adopted, but the French law does not permit adoption when there are already in existence legitimate children of the persons wishing to adopt. [Article 344, Cachard's Translation.]


First drafting problem

Should we leave the present provisions in the Louisiana Civil Code, making the adopted a forced heir, but prohibiting "interference with forced heirs"?
The writer's thought is that we should, as it is not unfair that an adopted child should receive a smaller portion in the case of legitimate children of the adopter, and it seems inadvisable to permit the adopted to cut off the legitime of the adopter's parents where no legitimate children exist.

Second drafting problem

Should the adopted be cut off from the chance of inheritance from his blood relatives?

While, practically, it might be rare that a person given in adoption would ever receive anything from his blood parents or relatives, the thought of the writer is that he should retain his rights of inheritance.

Third drafting problem

Should the adopted and his legitimate descendants enjoy the rights of representation?

One phase of this question arose in the case of Salatich v. Heller in the southern federal district court of California [4 Fed. Supp. 474 (1933)] and that court's interpretation of the Louisiana law was that the legitimate child of the deceased adopted could not represent his parent in the succession of the adopter.

The French law provides as follows:

"Art. 353. The relationship resulting from adoption extends to the legitimate children of the adopted."

"Art. 357. The adopted and his lawful issue acquire no rights by succession to the property of the parents of the adopter. However, they have the same rights to the succession of the adopter as his issue or legitimate descendants might have." [French Civil Code, Revised Edition, translation by Cachard, pp. 124, 125.]

The writer's judgment runs with the French law. It seems fair that an adopter should assume this obligation for the line that he voluntarily founds. It seems unfair that the ascendants of the adopter should be forced to assume the obligation of this graft on their line which is involuntary and which might well be against their wishes.

Fourth drafting problem

Should the rules of collation apply to the adopted and his descendants?
The law as it stands would seem to include these provisions in the phrase "all the rights of a legitimate child" but if it seems questionable, the writer's judgment is that the rules should apply as they affect the estates of the adopter, but not as they might affect the estate of the parents or other relatives of the adopter.

The French articles bearing on the subject appear as follows:

"Art. 357. The adopted and his lawful issue acquire no rights by succession to the property of the parents of the adopter as his issue or legitimate descendants might have.

"Art. 358. If the adopted dies without lawful issue the things given by the adopter or which have come from his estate, and which exist in kind at the time of the adopted's decease, revert to the adopter or to his descendants, on condition of contributing to the payment of the debts and without prejudice to the rights of third parties.

"Art. 359. If during the life time of the adopter, and after the death of the adopted, the children or descendants left by the latter, die without issue, the adopter is entitled to the things which he has given as is stated in the foregoing article; but this right belongs to the adopter personally, and does not extend to his heirs, even in the direct descending line." [French Civil Code, Revised Edition, translation by Cachard, pp. 124, 125.]

SUGGESTION IV

AN ACT

Granting tutorship rights and emancipatory powers to adopting parents to the exclusion of natural parents.

Section 1. Be it enacted that after final adoption the adopting parent or parents, to the exclusion of the blood parents, shall have in regard to the adopted child all of the rights of natural tutors including the right of the parent dying last to appoint a tutor by will. After the death of both adopting parents, no tutor having been appointed by will, a dative tutor shall be appointed. The judge may consider the blood parents and relatives in making appointment to the dative tutorship but is not obliged to appoint a blood parent nor any relative of the adopted child. Bond shall be required by all dative tutors for adopted children.

Section 2. All emancipatory powers now vested in natural parents shall, to the exclusion of the blood parents, be granted to adopting parents.
Section 3. All laws on the subject of tutorship of adopted children are hereby repealed and particularly Act 206 of 1920 and 243 of 1926.

Comment

Tutorship of Adopted

Act 206 of 1920 appeared as follows:

"An Act to authorize the appointment in certain cases of the adoptive father or mother as tutor to an adopted minor child.

"Section 1. Be it enacted by the General Assembly of the State of Louisiana:

"That whenever it becomes necessary to appoint a tutor to a minor who may have been legally adopted by any person, the adoptive parent, father or mother, shall have the right to be appointed tutor to such adopted child in preference to all other persons, upon complying with the requirements of existing laws in reference to the appointment and qualification of natural tutors.

"Section 2. Be it further enacted: That all laws or parts of laws in conflict herewith be and the same are hereby repealed."

In 1926, by Act 243, Act 206 of 1920 was reenacted and the two following sections were added:

"Section 2. That it shall be competent for the adoptive parent, father or mother, to be appointed and confirmed as tutor of any adopted minor having property in the State of Louisiana.

"Section 3. That whenever any person shall have purchased property belonging to a minor, or in which a minor may be interested, under proceedings in which a minor was represented by a tutor heretofore appointed under the conditions specified in Section 2 hereof, said sale shall not be set aside or annulled because of any illegality or nullity in the appointment of such tutor unless suit be brought for this purpose within three months from the time this Act goes into effect, which prescription of three months shall run against minors, reserving to minors recourse against their tutors or de facto tutors."

It would appear that this statute should be rewritten and that the adopting parents should have the rights of a natural tutor over the person and the estate of the adopted especially when the
child’s property came to him as a donation from one of the adopting parents. The inclusion of powers of emancipation might prevent the use of that device by blood parents to defeat the powers of the adopting parent.

SUGGESTION V

AN ACT

To amend and reenact Article 198 of the Code dealing with legitimation by marriage of natural parents.

Comment

The article now reads:

"Children born out of marriage, except those who are born from an incestuous or adulterous connection, may be legitimated by the subsequent marriage of their father and mother, whenever the latter have legally acknowledged them for their children, either before their marriage by an act passed before a notary and two witnesses, or by their contract of marriage itself."

The Article with suggested amendments would read as follows:

"Children born out of marriage may be legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them for their children either before or after the marriage."

Reasons:

Under the present law natural children must have been acknowledged prior to or concurrently with the marriage ceremony of their parents in order for legitimation to result from the marriage of their parents. See Succession of Roach, 155 La. 541, 99 So. 442 (1924); Van Dickson v. Mayfield, 158 La. 529, 104 So. 315 (1925).

Article 198 apparently contemplates formal acknowledgment while the jurisprudence of more recent years has found informal acknowledgment by either mother or father sufficient to entitle natural children to inherit. See Taylor v. Allen, 151 La. 82, 91 So. 635 (1922) (mother) and Succession of Corsey, 171 La. 663, 131 So. 841 (1931) (father).

Under the method of legitimation set forth by Article 200 of the Code, the presence of forced heirs of the parent of the natural child blocks such legitimation.
Hence there is no machinery for legitimation under certain circumstances. For example, if \( F \) and \( M \) had a natural child, married thereafter without having first legitimated the child, then had another child or had a parent or parents living, or had legitimate children by a previous marriage, they could not legitimize the natural child.

There seems to be stronger reason why informal acknowledgment should be sufficient for legitimation by marriage than in case of inheritance as the intention of the parents by virtue of their marriage is more forcefully demonstrated.

The prohibition against legitimating adulterous or incestuous children seems superfluous in Article 198, as the parents are barred from marriage and hence from the use of this method of legitimation by Articles 94, 95, and 161.

Practical and Social Considerations

Since the fairly recent decisions declaring informal acknowledgment sufficient for inheritance purposes, question has been raised as to whether the court might not take the same view in interpreting Article 198 on legitimation. Doubt has thus been cast upon the status of informally acknowledged children whose parents have married. It is troublesome for conveyancers, title examiners and others.

SUGGESTION VI

AN ACT

To strike the word Bastard from the Code.

Comment

This word does not appear in the French Code. It came from Common Law, previously less vigilant in the protection of individual rights of children and women than the Civil Law. The word adds nothing to the meaning of our law. It is found in articles of a general nature, and the classification of illegitimates with which it deals is handled by other specific rules of prohibition. In many cases the word does not appear in the text of the article but only in the headnote by an editor of the particular edition. The present text of Article 182 is as follows:

"Adulterous bastards are those produced by an unlawful connection between two persons, who, at the time when the child was conceived, were, either of them or both, connected by marriage with some other person."
Using the terminology of the French Code, the article as amended would appear as follows:

"Adulterous children are those produced by an unlawful connection between two persons who, at the time when the child was conceived, were, either of them or both, connected by marriage with some other person."

The present text of Article 183 is as follows:

"Incestuous bastards are those who are produced by the illegal connection of two persons who are relations within the degrees prohibited by law."

The article as amended would appear as follows:

"Incestuous children are those who are produced by the illegal connection of two persons who are related within the degrees prohibited by law."

The present text of Article 202 is as follows:

"Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellation of bastards."

The article as amended would appear as follows:

"Illegitimate children who have been acknowledged are called natural children."

The present text of Article 204 is as follows:

"Bastards—Acknowledgment ineffective.—Such acknowledgment shall not be made in favor of children whose parents were incapable of contracting marriage at the time of conception."

The article as amended would appear as follows:

"Illegitimate children.—Such acknowledgment shall not be made in favor of children whose parents were incapable of contracting marriage at the time of conception."

The present text of Article 209 is as follows:

"In the case where the proof of paternal descent is authorized by the preceding article, the proof may be made in either of the following ways:

1. By all kinds of private writings, in which the father may have acknowledged the bastard as his child, or may have called him so;"
"2. When the father, either in public or in private, has acknowledged him as his child, or has called him so in conversation, or has caused him to be educated as such;

"3. When the mother of the child was known as living in a state of concubinage with the father, and resided as such in his house at the time when the child was conceived."

The article as amended would appear as follows:

"Id. How Made. In the case where the proof of paternal descent is authorized by the preceding article, the proof may be made in either of the following ways:

"1. By all kinds of private writings in which the father may have acknowledged the child as his child, or may have called him so.

"2. When the father, either in public or in private, has acknowledged him as his child, or has called him so in conversation, or has caused him to be educated as such.

"3. When the mother of the child was known as living in a state of concubinage with the father, and resided as such in his house at the time when the child was conceived."

The present text of Article 245 is as follows:

"Alimony—Bastards.—Alimony is due to bastards, though they be adulterous and incestuous, by the mother and her ascendants."

The article as amended would appear as follows:

"Alimony is due children, though they be adulterous and incestuous, by the mother and her ascendants."

The present text of Article 920 is as follows:

"Bastard, adulterous or incestuous children shall not enjoy the right of inheriting the estates of their natural father or mother, in any of the cases above mentioned, the law allowing them nothing more than a mere alimony."

The article as amended would appear as follows:

"Adulterous or incestuous children shall not enjoy the right of inheriting the estates of their natural father or mother, in any of the cases above mentioned, the law allowing them nothing more than a mere alimony."

Practical and Social Considerations

The word is a curse word and should be reserved for the private use of those who find it valuable.
SUGGESTION VII

AN ACT

To provide that the community be not dissolved by judgment of separation of bed and board in cases where reconciliation has taken place.

Comment

Reasons

In every other respect reconciliation wipes out the effect of the judgment of separation. The Code does not provide for this effect of the judgment. The court seems to have originally arrived at this conclusion because the Code does not specifically provide for reestablishment of the community, while the French Code does.


Practical and Social Considerations

The layman does not understand the present rule, which is not strange, as it is illogical.

After reconciliation and resumption of ordinary pooling of interests, the task of fact finding, difficult at best, in order to finally divide community property equitably under the law is practically impossible.

The change would save abstractors, conveyancers and other record searchers the task of examination of separation judgments until and unless final judgment for divorce was found.

The change would save "reconciled" spouses income tax.

The change might encourage reconciliations.

Alternative

AN ACT

To provide for reestablishment of community after dissolution by judgment of separation.

Comment

This is the French method. It would require additional work for abstractors, conveyancers, and others. The layman apparently
does not understand that the community is dissolved by judgment of separation and hence might be unlikely to think of formally re-establishing it. If this method should be used, however, it might be well to permit all spouses to make property contracts during marriage, as well as before.

SUGGESTION VIII

A RESOLUTION for amending the Louisiana Constitution of 1921 by deleting the following clause found in Section 41, Article VII, p. 72 of the 1935 State Edition:

"... provided, however, that no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service."

Comment

The results of this provision are that women are practically unavailable for jury service, as very few, either from ignorance of the provision or lack of a civic duty, file a declaration.

The experience seems to have been in states where it is required that women serve, that they make excellent jurors. Indeed, they are considered necessary for reaching just decisions in cases involving women with whom juries composed entirely of men are thought sometimes to be too lenient.

It is difficult at all times to get well balanced juries since so many business and professional men have to be excused. It is particularly difficult during a war period, as so many men are in the service or are in defense industries from which time must not be lost.

Women should share responsibilities while enjoying benefits, even though these civic duties may be unpleasant.

SUGGESTION IX

AN ACT

To amend the Workmen's Compensation Act, reserving to the persons now designated by Article 2315 a right of action for wrongful death when there are no dependents of the employee.
Comment

The case of Atchison v. May, 10 So. (2d) 785 (1942) held under the present Workmen's Compensation Act that a brother and sister, sole heirs of the employee killed by defective machinery had no right against the employer. They were not dependents of the deceased and hence could not recover under the Workmen's Compensation Act which had abrogated their previous right under Article 2315. It would appear that the legislature in enacting the Workmen's Compensation law, designed for the social purpose of spreading the risk of industrial accidents, did not foresee this result.

Practical and Social Considerations

It seems undesirable that an employer should escape all liability for fault. During the war period when it is necessary that all able-bodied persons in a family should be employed, many cases may arise where there are no dependents. Employers might tend to become careless in providing proper safeguards and in using the degree of care which society has a right to expect for humane reasons and for the best progress of production for the war effort.

SUGGESTION X

Uniform Expert Testimony Act

An Act

To empower any civil or criminal court of Louisiana, in any case before it in which it deems expert testimony desirable, to appoint experts to testify therein; to fix the maximum number of expert witnesses which may be so appointed; to provide the conditions under which expert witnesses may be appointed by the court or called by the parties; to provide that any expert appointed by a court or called by a party be given access to any person, thing or place under investigation and to provide for the inspection and examination thereof by such experts; to provide for the making and filing of reports by experts appointed by the court; to regulate the calling of experts as witnesses and their examination and cross-examination; to provide for the fixing of the compensation of expert witnesses appointed by the court and the payment thereof; to provide for the interpretation and construction of this act so as to make uniform the laws of those jurisdictions adopting it; to declare the legislative intent as to the
severability of the provisions of this act and to provide that the unconstitutionality or invalidity of any provision hereof shall not affect the validity of any other provision; and to repeal all laws inconsistent herewith.

Be it enacted by the Legislature of Louisiana, that,

Section 1. Court Empowered to Appoint Expert Witnesses. Whenever, in a civil or criminal proceeding, issues arise upon which the court deems expert evidence is desirable, the court, on its own motion, or on the request of either the state or the defendant in a criminal proceeding or of any party in a civil proceeding, may appoint one or more experts, not exceeding three on each issue, to testify at the trial.

Section 2. Notice When Called by Court. The appointment of expert witnesses by the court shall be made only after reasonable notice to the parties to the proceeding of the names and addresses of the experts proposed for appointment.

Section 3. Notice When Called by Parties. Unless otherwise authorized by the court, no party shall call a witness who has not been appointed by the court, to give expert testimony unless that party has given the court and the adverse party to the proceeding reasonable notice of the name and address of the expert to be called.

Section 4. Agreement on Expert Witnesses by Parties. Before appointing expert witnesses, the court may seek to bring the parties to an agreement as to the experts desired, and, if the parties agree, the experts so selected shall be appointed.

Section 5. Inspection and Examination of Subject Matter by Experts. Expert witnesses appointed by the court shall, at the request of the court or of any party, make such inspection and examination of the person or subject matter committed to them as they deem necessary for the full understanding thereof and such further reasonable inspection and examination as any party may request. Reasonable notice shall be given to each party of the proposed inspection and examination of persons, things, and places, and each party shall be permitted to be represented at such inspection and examination. Experts called by the court or by the parties in the proceeding shall be permitted access to the persons, things or places under investigation for the purpose of inspection and examination.

Section 6. Report by Experts and Filing Thereof. The court may require each expert it has appointed to prepare a written
report under oath upon the subject he has inspected and examined. This report shall be placed on file with the clerk of court at such time as may be fixed by the court and be open to inspection by any party. By order of the court, or on the request of any party, the report shall be read, subject to all lawful objections as to the admissibility of the report or any part thereof, by the witness at the trial.

Section 7. Conference and Joint Report by Expert Witnesses. The court may permit or require a conference before the trial on the part of some or all of the expert witnesses, whether summoned by the court or the parties or both; and two or more of them may unite in a report which may be introduced at the trial by any party or by order of the court, subject to all lawful objections as to the admissibility of the report or any part thereof.

Section 8. Expert Witnesses Called to Testify by Court or Parties. At the trial the court or any party may call any expert witness appointed by the court. The fact that he has been appointed by the court shall be made known to the jury, and he shall be subject to cross-examination by any party on his qualifications and the subject of his testimony. Any party to the proceeding may also call other expert witnesses, subject to the provision of Section 3, but the court may impose reasonable limitations upon the number of witnesses so called.

Section 9. Examination of Experts. (1) An expert witness may be asked to state his inferences, whether these inferences are based on the witness’ personal observation, or on evidence introduced at the trial and seen or heard by the witness, or on his technical knowledge of the subject, without first specifying hypothetically in the question the data on which these inferences are based.

(2) An expert witness may be required on direct or cross-examination, to specify the data on which his inferences are based.

Section 10. Compensation of Expert Witnesses. The compensation of expert witnesses appointed by the court shall be fixed by the court at a reasonable amount. In criminal proceedings it shall be paid by the parish under the order of the court, as a part of the costs of the action. In civil proceedings the compensation of experts appointed by the court shall, after it has been fixed by the court, be paid in equal parts by the opposing litigants to the clerks of the court at such time as the court shall
prescribe, and thereafter assessed as costs of the suit. The fee of an expert witness called by a party but not appointed by the court shall be paid by the party by whom he was called, and the amount of such fee shall be disclosed if requested upon cross-examination. The receipt by any witness appointed by the court of any compensation other than that fixed by the court, and the payment of, or the offer or promise by any person to pay such other compensation shall be unlawful.

Section 11. Uniformity of Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

Section 12. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 13. Short Title. This act may be cited as the Uniform Expert Testimony Act.

Section 14. Repeal. All laws or parts of laws inconsistent herewith are hereby repealed.

SUGGESTION XI

Uniform Judicial Notice of Foreign Law Act

AN ACT

To require all courts of Louisiana to take judicial notice of the common and statutory law of every state, territory or other jurisdiction of the United States and to provide the manner in which such courts may inform themselves of such laws; to provide that the determination of such law shall be made by the court and may be reviewed on appeal; to provide the conditions under which any party may offer evidence of such foreign law; to provide that the determination of the laws of foreign states or countries shall be made by the court; to provide for the interpretation and construction of this statute so as to make uniform the laws of those jurisdictions adopting it; and to repeal all laws inconsistent herewith.
Be it enacted by the Legislature of Louisiana, that,

Section 1. Judicial Notice. Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States.

Section 2. Information of the Court. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Section 3. Ruling Reviewable. The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

Section 4. Evidence as to Laws of Other Jurisdictions. Any party may also present to the trial court any admissible evidence of such laws; but, to enable a party to offer evidence of the law in another jurisdiction or to ask that judicial notice be taken thereof, reasonable notice shall be given to the adverse parties either in the pleadings or otherwise.

Section 5. Foreign Country. The law of a jurisdiction other than those referred to in Section 1 shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice.

Section 6. Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 7. Short Title. This act may be cited as the Uniform Judicial Notice of Foreign Law Act.

Section 8. Repeal. All laws or parts of laws inconsistent herewith are hereby repealed.

SUGGESTION XII

Uniform Business Records as Evidence Act

AN ACT

To provide the conditions under which certain records of any business may be received as evidence in the courts of this state; to define the term “business” as employed herein; to provide for the interpretation and construction of this statute so as to make uniform the laws of those jurisdictions adopting it; and to repeal all laws inconsistent herewith.
Be it enacted by the Legislature of Louisiana, that,

Section 1. Definition. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

Section 2. Business Records. A record of an act, condition, or event, shall, in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

Section 3. Uniformity of Interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 4. Short Title. This act may be cited as the Uniform Business Records as Evidence Act.

Section 5. Repeal. All laws or parts of laws which are inconsistent herewith are hereby repealed.

SUGGESTION XIII

AN ACT

To amend and reenact Article 558 of the Louisiana Code of Practice.

Article 558 now appears as follows:

"Art. 558. The party who believes himself aggrieved by the judgment given against him, may, within three judicial days after such judgment has been rendered, pray for a new trial, which must be granted if there be good ground for the same; provided, that said new trial shall be prayed for and passed before the adjournment of the court."

The article with suggested change would appear as follows:

"Art. 558. The party who believes himself aggrieved by the judgment rendered against him, may, within three days, exclusive of Saturdays and legal holidays, after such judgment has been signed, pray for a new trial, or for a rehearing, which must be granted, if there be good cause therefor."
AN ACT

To repeal Article 552 of the Louisiana Civil Code.
The so-called "mine and quarry" article, No. 552 of the Civil Code, appears as follows:

"The usufructuary has a right to the enjoyment and proceeds of mines and quarries in the land subject to the usufruct, if they were actually worked before the commencement of the usufruct; but he has no right to mines and quarries not opened."

Comment

This article is of Roman origin, when because of primitive methods, mines were thought to be inexhaustible, and was fought at the time of the preparation of the Code Napoleon. The projet prepared by commissioners of the government in the year 8 of the Republic of France (1800) was said by Laurent to have "expressed the true principles" in the declaration that "mines and quarries were not comprised within the usufruct." However, the old provision again appeared in the Code Napoleon but has since been modified.

The danger in our time is in regard to equitable distribution of proceeds from oil and gas wells between usufructuary and naked owner and in the possible engendering of litigation over when a mine is open. Without this article it would appear that oil and gas—properly declared by the court not to be fruits—would simply be subject to the rules of imperfect usufruct as are other consumables.

[For full discussion, see Daggett on Mineral Rights, p. 221 et sequor.]

SUGGESTION XV

AN ACT

To repeal Article 167 of the Louisiana Civil Code.

Article 167 appears as follows:

"Persons who have attained the age of majority cannot bind themselves for a longer term than five years."

Comment

This article, first appearing in the Louisiana Civil Code as Article 60 of the Code of 1825, was designed to regulate servants
and apprentices and to protect against peonage, but now seems to redound solely to the employee's disadvantage;\textsuperscript{15} to be misapplied generally since its concern is with indentured servants only, while Article 2746\textsuperscript{16} under the title of the letting out of labor or industry treats of the term of contracts between employer and employee;\textsuperscript{17} to be inimicable to certain recognizably desirable tenure policies.\textsuperscript{18}

**SUGGESTION XVI**

**AN ACT**

To amend and reenact Article 2328.

Every matrimonial agreement must be made by an act before a notary and two witnesses and to affect third persons without notice must be recorded in the register for

\[\text{and}\]

**AN ACT**

To amend and reenact Article 2329.

Matrimonial agreements may be made by the husband and wife jointly either before or after the celebration of the marriage.

**Comment**

Articles 2328 and 2329 presently read as follows:

"Article 2328 [2308] (N 1394). Matrimonial agreements—Method of executing.—Every matrimonial agreement must be made by an act before a notary and two witnesses.

"Article 2329 [2309] (N 1394-7). Alteration of agreement after marriage prohibited—Couples removing into state—Contracts.—Every matrimonial agreement can be altered by the husband and wife jointly before the celebration of marriage; but it cannot be altered after the celebration. Provided that in the case of married couples removing to this State and settling therein from other States and countries after marriage, they shall have the right at any time within one year after the

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\textsuperscript{16} Art. 2746: "A man can only hire out his services for a certain limited time, or for the performance of a certain enterprise."


\textsuperscript{18} See Opinions of Attorney General of Feb. 27, 1940, and 2 Louisiana Law Review 557 (1940).
passage of this act, or a like period after such settlement in this State, to make a valid marriage contract, subject in all other respects to the laws of this State. [As amended, Act 1910, No. 236.]

Comment

The outcome of present tax litigation is doubtful. The trend of the tax administrator and perhaps of congress is against separate returns by husband and wife by community property. *Bender v. Pfaff*, 51 S. Ct. 64 (1930) may be overruled by the Supreme Court of the United States as presently constituted. A device for partitioning the community and making other property adjustments between the spouses may be timely particularly for the use of couples in high income brackets. Certainly the community system should be retained. The Code has detailed provisions for the matrimonial agreement—only slight changes would be necessary.

SUGGESTION XVII

**AN ACT**

To rank privileges.

Comment

It seems desirable that an act be passed to establish a definite rank and eliminate cycles. However, order of priority may prove to be a very controversial matter.

SUGGESTION XVIII

**AN ACT**

To provide that a married woman may sue on her individual contract and may act as a responsible agent for her husband or the community.

Be it enacted by the Legislature of Louisiana:

Section 1. That a married woman may sue upon her individual contract whether the property of the judgment obtained be separate or community.

Section 2. That a married woman may be empowered by the husband to act as a responsible agent for her husband or for the community and may sue and be sued in such capacity.

Section 3. That nothing herein contained shall change the law relative to the character of community property.
Comment
This legislation seems to be particularly needed at this time to expedite the affairs of men in service.

SUGGESTION XIX

AN ACT

To clarify the powers of the father during marriage over the estate of the minor by amending Article 222 of the Civil Code to read as follows:

“As administrator of the minor's property the father may not borrow for the minor, purchase for him immovables, compromise respecting his rights, sell, mortgage, grant a servitude or in any way encumber his property except in the same manner and by pursuing the same forms as in the case of minors represented by tutors, the father occupying the place and being clothed with the powers of the tutor.

“An undertutor ad hoc shall be appointed by the court, contradictorily with whom the proceedings shall be carried on.”

Articles 221 and 222 presently appear as follows:

“Art. 221. The father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence during said interdiction or absence.

“He or she shall be accountable both for the property and revenues of the estates the use of which he or she is not entitled to by law and for the property only of the estate the usufruct of which the law gives him or her.

“This administration ceases at the time of the majority or emancipation of the children, and also ceases upon judicial separation from bed and board either of the father from the mother or the mother from the father.”

“Art. 222. Property belonging to minors, both of whose parents are living may be sold or mortgaged, and any other step may be taken affecting their interests, in the same manner and by pursuing the same forms as in the case of minors represented by tutors, the father occupying the place and being clothed with the powers of the tutor.

“An undertutor ad hoc shall be appointed by the court, contradictorily with whom the proceedings shall be carried on.”