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## Civil Code and Related Subjects: Persons

Robert A. Pascal

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acquired by the United States both before and after the passage of the act, and in which mineral rights had been reserved. Pleas of unconstitutionality of the act were entered. Should the statute be given a retroactive effect, the United States would be injured and hence was a necessary party in the court's judgment. Since the title to the minerals was "clearly suggestive of litigation"<sup>23</sup> the court felt that it would be inequitable to force title on the Little Creek Company as the constitutional point could not be passed upon. The suit therefore was dismissed for non-joinder of necessary parties. Justice McCaleb dissented, believing with the majority that the Little Creek Company was without interest to question the constitutionality of the act, but concluding that since the Little Creek Company had not refused title on the ground of its being suggestive of litigation, they should take the lease.

#### PERSONS

*Robert A. Pascal\**

##### *Marriage*

The appeal in *Villa v. LaCoste*,<sup>1</sup> a suit for declaration of nullity of marriage on the ground of miscegenation, was easily disposed of by affirmance of the negative finding of the lower court on this issue. It is interesting to note, however, that the "white" plaintiff not only sued for a declaration of nullity, but also sought "to disclaim the paternity and legitimacy" of the issue of the marriage. Inasmuch as he apparently did not set forth "bad faith" on the part of himself and his spouse, the plaintiff's prayer must have been based on the assumption that a miscegenous union cannot be putative. The writer cannot agree with this position. Article 94 of the Civil Code states that "such celebration carries with it no effect and is null and void,"<sup>2</sup> but these words should not be interpreted to exclude the effects, including legitimacy of offspring, which flow *because of the good faith* of the parties rather than from the "marriage" itself.<sup>3</sup> The

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23. 212 La. 949, 962, 33 So. (2d) 693, 697.

\* Assistant Professor of Law, Louisiana State University.

1. 213 La. 654, 35 So(2d) 419 (1948).

2. Art. 94, La. Civil Code of 1870, sentence 3 (added by La. Act 54 of 1894): "Marriage between white persons and persons of color is prohibited, and the celebration of all such marriages is forbidden and such celebration carries with it no effect and is null and void."

3. Arts. 117 and 118, La. Civil Code of 1870:

Art. 117. "The marriage, which has been declared null, produces never-

very purpose of the putative marriage doctrine is to place the innocent parties to any null marriage and their offspring in the position in which they would have been had the marriage been valid. Good faith is the prime requisite. Parties may be in good faith in miscegenous as well as in bigamous situations and it has never been doubted that the latter might be considered putative. Certainly our state's policy against miscegenous marriages is no stronger than it is against bigamous unions. If a miscegenous marriage may not be considered putative it is simply because of the above quoted words of Article 94 of the Civil Code. These words, it is submitted, need not be given this meaning. It should be recalled that the portion of Article 94 of the Civil Code prohibiting miscegenous marriages was added by Act 54 of 1894, at a time when the legislature was anxious to put an end to the carpetbagger legislation sanctioning such unions. The words of this article should be interpreted as emphatically denying the *validity* of such marriages, but not as negating their possibly putative character.

#### *Separation and Divorce in General*

The advocates of Act 430 of 1938,<sup>4</sup> authorizing divorce on proof of separation in fact for two years without regard to "fault," undoubtedly had hoped that parties determined to secure divorces would avail themselves of this simple procedure and avoid the public airing of sordid details. The "fault" issue, however, cannot be eliminated under our present legislation in contests over alimony<sup>5</sup> or, where the fault bears on "moral fitness," over the custody of children.<sup>6</sup> This fact must account for the yet large number of proceedings for divorce begun as suits for separation for cause. The availability of immediate divorce for adultery, together with the fact that most persons believe our courts will regard it as evidence of "moral unfitness" to rear children, must have led many husbands to choose this as the cause of action. More seriously, it may be, as an eminent student of family law already has pointed out,<sup>7</sup> that the charge is being fabricated by husbands for use as a triple play for favorable divorce, ali-

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theless its civil effects as it relates to the parties and their children, if it has been contracted in good faith."

Art. 118. "If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor, and in favor of the children born of the marriage."

4. Dart's Stats. (Supp. 1947) § 2202.

5. Art. 160, La. Civil Code of 1870.

6. Art. 156, La. Civil Code of 1870.

7. The Work of the Louisiana Supreme Court for the 1938-1939 Term (1939) 2 LOUISIANA LAW REVIEW 31, 40.

mony, and custody judgments. In one case<sup>8</sup> this past year, a plaintiff husband admitted he chose to allege adultery rather than sue on the basis of separation in fact. Apparently he believed the charge would be given more consideration by the court if it were made the basis of the divorce action and that, indirectly, he would be more certain of favorable decisions on the alimony and custody issues. Such cases point clearly to the need of such legislation as was proposed, but not passed, at the last session of the legislature, making separation in fact the *only* cause for divorce<sup>9</sup> and reducing alimony contests to a question of need, regardless of "fault."<sup>10</sup> These proposals would not have eliminated "fault" in custody cases, it is true, but happily in such cases the supreme court seems to be giving little weight to "fault" which does not amount to open corrupting influence for the children.<sup>11</sup>

Procedural points of interest included the re-emphasis of the fall of all other separation and divorce actions, even on appeal, if a judgment of divorce is granted under Act 430 of 1938,<sup>12</sup> and the affirmance of a judgment of divorce, even though originally granted for the cause of adultery, simply because the record disclosed the parties had been separated more than two years and the plaintiff therefore entitled to judgment under Act 430 of 1938.<sup>13</sup> In *Moser v. Moser*<sup>14</sup> the plaintiff husband appealed from a judgment granting him a divorce under Act 430 of 1938, but allowing the wife alimony and custody of the child. On motion of the defendant appellee wife, that part of the appeal which related to the divorce judgment proper was dismissed, the court remarking one could not appeal from so much of a judgment as gave him the relief prayed for in his petition.

Two cases considered questions on attorney's fees and one dealt with a costs issue. The *Parker, Seale and Kelton v. Messina*<sup>15</sup> defense counsel contended the wife's counsel could not collect his fee from the husband, in a separation suit withdrawn by her before trial, without showing probable cause for a separation, good faith in the filing of the suit, or reconciliation of the parties. As the record disclosed a reconciliation of the parties

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8. *Donnelly v. Datusch*, 213 La. 635, 35 So.(2d) 413 (1948).

9. Senate Bill No. 314, Regular Session 1948.

10. Senate Bill No. 304, Regular Session 1948.

11. This seems implied in the language of the last paragraph in the subject case.

12. *Sampagnaro v. Sampagnaro*, 213 La. 814, 35 So.(2d) 742 (1948).

13. *Donnelly v. Datusch*, 213 La. 635, 35 So.(2d) 413 (1948).

14. 213 La. 290, 34 So.(2d) 782 (1948).

15. 36 So.(2d) 724 (La. 1948).

it seems that none of the contentions need have been considered. The court, however, said it would accept the allegations in the petition for separation as true, if they made out probable cause, for the purpose of a suit for attorney's fees, and relied upon the general presumption of good faith to shift to the plaintiff the burden of offering evidence to the contrary. The court, further, denied the necessity of proving a reconciliation as a condition for subjecting the community to liability for attorney's fees. In *Williams v. Williams*<sup>16</sup> the court indicated costs would be imposed on the husband in any unsuccessful suit "in view of the fact they are debts of the community," the community not being dissolved in such cases. It is submitted that attorney's fees and costs should always be the separate obligation of the spouse employing the attorney or incurring the costs. It is difficult to conceive of such expenditures as any relating to the marriage, for they are in fact debts incurred in attempts to affect it adversely. If the husband or wife is unsuccessful in his or her suit for separation or divorce, there is no sound reason to charge the community with those debts. If the suit is successful the community is dissolved and the attorney's fees and costs may be paid by each spouse from his or her share of the community.

In *Fletcher v. Fletcher*<sup>17</sup> the court refused to fix attorney's fees claimed by the wife but not adjudicated upon by the lower court, and non-suited the wife in this matter.

An issue of fact only, whether the conduct of the defendant amounted to "cruel treatment" under Article 138 of the Civil Code, characterized the appeal in *Martin v. Martin*.<sup>18</sup> There being no "obvious error" in the finding of the lower court, the judgment appealed from was affirmed.

#### *Reconventional Demand for Separation from Bed and Board on Ground of Abandonment*

In *Williams v. Williams*<sup>19</sup> the supreme court once again decided that "A reconventional demand . . . for a separation on the grounds of abandonment is not allowable. A demand for separation on such grounds must be brought by direct action, and cannot be brought in any other form." The court relied on its previous decision in *Bullock v. Bullock*,<sup>20</sup> in which it had declared that such was the "settled jurisprudence of this state." Chief

16. 212 La. 334, 31 So.(2d) 818 (1947).

17. 212 La. 971, 34 So.(2d) 43 (1948).

18. 212 La. 1092, 34 So.(2d) 329 (1948).

19. 212 La. 334, 336, 31 So.(2d) 818 (1947).

20. 174 La. 839, 141 So. 852 (1932).

Justice O'Niell dissented for the reasons assigned in his dissenting opinion in the *Bullock* case. Inasmuch as these two latest decisions were not based on legislation, but simply on judicial precedent, they deserve careful consideration and appraisal.

In his dissenting opinion in the *Bullock* case, Chief Justice O'Niell observed that the previous jurisprudence indicated merely that abandonment could not be pleaded by way of reconvention unless the reconvenor asked that the summons, judgment and notice required by Article 145 of the Civil Code were prayed for in the reconventional demand. With this observation the writer can agree. Chief Justice O'Niell then argued, however, that a reconventional demand for abandonment should be allowed today *if the defendant requests that the summons, judgment and notice be issued*. With this conclusion the writer cannot agree. Prior to the amendment of Article 145 of the Civil Code by Act 271 of 1928, the only way in which abandonment could be proven was by issuance of summons to the allegedly abandoning spouse to return to the common dwelling, the rendition of an interlocutory judgment sentencing such spouse to return, and notice of the rendition of this judgment. Abandonment, therefore, was not an issue triable or provable as other facts in civil suits. The fact of abandonment could be proven only by the procedure prescribed in Article 145. Indeed, even if a defendant chose to answer a plaintiff's petition for separation on the ground of abandonment and contest the allegations therein, there could be no joinder of issue until all the procedure outlined in Article 145 had been followed; and until a prima facie case of abandonment had been made out by strict adherence to this procedure it was impossible to plead justification or excuse.<sup>21</sup>

Since the passage of Act 271 of 1928, amending Article 145 of the Civil Code, the above described procedure for proof of abandonment need be resorted to only in cases in which no answer is filed by the defendant. "In all cases where there has been an answer filed, the abandonment with which the husband or wife is charged shall be proved as any other fact in a civil suit and such case shall be set and tried as any other suit."<sup>22</sup> Inasmuch as an answer to a reconventional demand is not required, the defendant in reconvention being already before the court and presumed to deny the allegations therein, it would seem that the case should be treated as one in which an answer

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21. *Moore v. Hampson*, 159 La. 717, 106 So. 250 (1925).

22. Art. 145, para. 3, La. Civil Code of 1870, added by La. Act 271 of 1928.

has been filed and the issue of abandonment triable "as any other fact."

The writer believes the above to represent the proper interpretation of the present legislation, but doubts the wisdom of the rule. Indeed, there is a strong objection to such procedure, for almost every case in which abandonment might be alleged by way of reconvention would result in a separation, whether the suit were won by plaintiff or defendant. Either the plaintiff's claim would be proven or there would be insufficient excuse for the "abandonment." The plaintiff leaving the common dwelling to file suit for separation or divorce would be classed as an abandoning spouse if he or she failed to prove cause. This, no doubt, would increase the number of separations. In addition, for the unsuccessful plaintiff husband it would mean alimony liability for failure to obtain the separation and, for the unsuccessful plaintiff wife, loss of alimony and possible loss of custody of the children. Hence, the amendment of Article 145 of the Civil Code to exclude the filing of reconventional demands on ground of abandonment should be encouraged.

#### *Alimony*

For the first time, the writer believes, the supreme court has had to take cognizance of the "alimony striker" problem. In *Zaccaria v. Beoubay*<sup>23</sup> the defendant husband, described as "a butcher by trade and a gambler by preference," appealed from a judgment ordering him to pay alimony *pendente lite*. He alleged handbooks had been closed in the City of New Orleans and that he was not able to accept employment at his trade without injury to his health, and then contended that, being without "means," he was not liable for alimony *pendente lite* under Article 148 of the Civil Code.<sup>24</sup> Evidently the court believed he was simply refusing to work, for it affirmed the lower court's award of alimony and commented "it was never contemplated that the [husband] could escape liability for alimony [under Article 148] by refusing to work." A similar question, but involving both alimony *pendente lite* and after divorce, had been avoided on facts in *Butterworth v. Butterworth*,<sup>25</sup> decided in

23. 213 La. 782, 35 So.(2d) 659 (1948).

24. Art. 148, La. Civil Code of 1870: "If the wife has not a sufficient income for her maintenance pending the suit for separation from bed and board or for divorce, the judge shall allow her, whether she appears as plaintiff or defendant, a sum for her support, proportioned to her needs and to the means of her husband."

25. 203 La. 465, 14 So.(2d) 59 (1943).

1943, the supreme court finding that the defendant's resignation from lucrative employment had not reduced his ability to support his wife and children properly. There may be a substantial difference, however, between the issues presented in these two cases. In the *Zaccaria* case the question was one of liability or non-liability for alimony; in the *Butterworth* case the question was simply one of amount of alimony or standard of support. The husband understandably might not be allowed to avoid income simply to avoid alimony liability; but whether he must support his wife and children in the manner to which they may have become accustomed to the extent that he may not choose to accept lower income for other advantages is an entirely different matter. The wife and children could not object during marriage to the husband's choosing employment with less income, for whatever reason, so long as they were maintained. A different standard should not be employed in the event of separation or divorce.

Once again the supreme court was asked to decide whether a suspensive appeal could be taken on a judgment awarding alimony *pendente lite* and once again the decision was in the affirmative.<sup>26</sup> Chief Justice O'Niell and Justice Moise dissented, handing down reasons. If a judgment for alimony *pendente lite* is an interlocutory judgment, as so often has been stated by the supreme court, the writer must agree with the dissenting Justices. Under Article 566 of the Code of Practice<sup>27</sup> an appeal is allowed from an interlocutory judgment only in the case of *irreparable* damage. As an alimony judgment is one for money, there can hardly be a question of irreparable damage, unless it is valid to consider that the judgment creditor in such cases is likely to be insolvent.

In *Melton v. Melton*<sup>28</sup> the supreme court decided a defendant in a rule for contempt for failure to pay alimony might not be denied the opportunity of presenting evidence of his inability to pay even though he had not filed an answer denying such ability. The defendant husband had filed an exception of no cause of action on the ground amicable demand had not been alleged in the petition for the rule. This exception was overruled. After the plaintiff introduced her testimony the defend-

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26. *Foret v. Gautreaux*, 36 So.(2d) 393 (La. 1948).

27. Art. 566, La. Code of Practice of 1870: "One may likewise appeal from all interlocutory judgments, when such judgment may cause him an irreparable injury."

28. 36 So.(2d) 395 (La. 1948).

ant was denied the right to show his inability to pay because he had not answered the petition of the wife by specially alleging his inability to pay. This decision was reversed on the theory that a rule for contempt under Act 189 of 1898<sup>29</sup> is criminal in nature and not subject to the rules of pleading applicable to ordinary proceedings. It also was implied, apparently, that the act mentioned limits the *power* of the court to punish for contempt to cases in which the defendant has the ability to pay.

The case of *Fletcher v. Fletcher*<sup>30</sup> involved only a review of the lower court's findings on the existence or absence of fault on the part of the wife claiming alimony.

### *Custody*

Article 157 of the Civil Code directs that custody of the children be given to the spouse obtaining the divorce or separation "unless the judge shall, for the greater advantage of the children, order that some or all of them shall be entrusted to the care of the other party."<sup>31</sup> The supreme court consistently has approved of giving the custody of young children to the mother, whether successful plaintiff or unsuccessful defendant, unless her example or life were such as to be detrimental to the child's welfare. The father's better social or financial condition usually is not given much weight if the mother's condition cannot be said to be unsatisfactory. Two cases<sup>32</sup> presented fact questions resolvable by application of this now accepted formula.<sup>33</sup>

The case of *Pierce v. Pierce*<sup>34</sup> should become important, it is to be hoped, as an expression of disapproval of split or part-time custody judgments. Here the lower court had given custody to the father during July and August and on weekends, and at other times to the mother. Inasmuch as the July and August custody award was not appealed from, the court reversed only the provision for weekend custody, but made it perfectly clear that "part-time custody" was not to be favored. The opinion of Justice McCaleb points out that *control* should be given to a single parent, but at the same time cautions that the award of

29. Dart's Stats. (1939) § 1733.

30. 212 La. 971, 34 So.(2d) 43 (1948).

31. Art. 157, La. Civil Code of 1870.

32. *Donnelly v. Datlusch*, 213 La. 635, 35 So.(2d) 413 (1948); *State ex rel. Diehl v. Ducote*, 213 La. 641, 35 So.(2d) 415 (1948).

33. A comparison of Article 146 with 157, La. Civil Code of 1870, may give rise to the propriety of this approach or interpretation of the latter article, but it cannot be doubted that it has been accepted finally by the supreme court. See my comments on this subject, (1947) 7 LOUISIANA LAW REVIEW 223.

34. 213 La. 475, 35 So.(2d) 22 (1948).

custody to one parent by no means excludes the other from seeing and visiting his child "to give expression to his natural parental affection and interest."

The writer once again<sup>35</sup> feels compelled to express concern over the attitude of the supreme court in custody contests between parents and third persons. In *State ex rel. Graham v. Garrard*<sup>36</sup> a mother sought to recover custody of a child, seven and one-half years of age at the time of commencement of proceedings, from its paternal grandparents. The child's custody had been given her when she and the father of the child were divorced in 1938, but he had taken the child a month later and placed it with his parents. The father of the child died in September, 1944, and the mother sought custody four months later. The supreme court was of the opinion, as had been the trial judge, that the mother had not evidenced much "interest or affection" in the child and awarded its custody to the grandparents. As basis for the decision, the opinion declares the parental right to custody must yield to "the superior right of the State" if "the physical, moral, or mental welfare" of the child requires it. The only legislation which the writer can find resembling such a statement is Act 79 of 1894,<sup>37</sup> but that act permits a parent to be deprived of the custody of his children only if the "physical or moral welfare" of the child is *seriously* endangered by the neglect, abuse, or the vicious, or immoral habits or associations" of the parent, or by his "inability, refusal or neglect" properly to care for the child. It is submitted respectfully that the norm of this legislation is far more strict than that assumed by the supreme court and does not warrant the decision in the instant case.<sup>38</sup>

The majority opinion in *Withrow v. Withrow*<sup>39</sup> ordered the trial judge "to appoint the Orleans Parish Director of Public Welfare to make or cause to be made an investigation of both the plaintiff and defendant, for the purpose of determining the fitness of each parent for the legal custody of the child in question, and to report under oath to the court all of the pertinent facts and circumstances found." Justice Fournet dissented, believing such a report to be hearsay and inadmissible. This opinion undoubtedly would be correct were it not that the legislation,

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35. See my comments on this subject, (1947) 7 LOUISIANA LAW REVIEW 221.  
36. 213 La. 318, 34 So.(2d) 792 (1948).

37. Dart's Stats. (1939) §§ 4887-4890.

38. See my comments on this subject, (1948) 8 LOUISIANA LAW REVIEW 220, n. 20.

39. 212 La. 427, 31 So.(2d) 849 (1947).

on which the majority relied, authorizes the courts to order and accept such reports.<sup>40</sup> Many persons may share Justice Fournet's doubt on the value of such reports, but the legislature undoubtedly has the right to regulate all aspects of the procedure in the conduct of cases, including the admissibility of evidence.

Finally, several procedural questions in custody cases were considered. *State ex rel. Morrison v. Morrison*<sup>41</sup> re-emphasized the mother's right to custody of a child, under Article 146, pending a suit for separation or divorce, even though that suit may have been filed by her primarily to obtain such custody and at a time when habeas corpus proceedings already were pending against her.<sup>42</sup> *Cox v. Cox*<sup>43</sup> repeated that a suspensive appeal will not be allowed in custody cases. *Cressione v. Millet*<sup>44</sup> decided that a devolutive appeal on a custody judgment rendered at the same time as a divorce decree is not subject to the thirty day time limitation imposed, for appeals from the divorce judgment proper, by Article 573 of the Code of Practice. This decision undoubtedly is correct. It would seem, however, that the custody issues in divorce cases should be settled as quickly as the divorces themselves and legislation to this effect should be welcomed.

#### "Neglected" Children

The scope of the application of the provisions of the juvenile courts legislation with regard to custody of "neglected" children was raised in two cases. *In re Diaz*<sup>45</sup> presented the specific question whether the *spanking* of a three and one-half month old child by its mother, under trying circumstances in a doctor's office, amounted to cause under Act 169 of 1944<sup>46</sup> for depriving her of its custody. The supreme court, fortunately, was of the opinion it did not.

The case of *In re Knight*<sup>47</sup> was much more difficult. The facts, however, cannot be treated adequately in an article of this kind and an appraisal of the result must suffice. The majority reviewed the provisions of the various juvenile courts acts<sup>48</sup> and

40. La. Act 14 of 1936, § 13, as amended by La. Act 344 of 1948, § 12 [Dart's Stats. (1939) § 6537.12].

41. 212 La. 463, 32 So.(2d) 847 (1947).

42. This matter had been decided already in *State ex rel. Martinez v. Hattier*, 192 La. 209, 187 So. 551 (1939).

43. 212 La. 726, 33 So.(2d) 500 (1947).

44. 212 La. 691, 33 So.(2d) 198 (1947).

45. 212 La. 700, 33 So.(2d) 201 (1947).

46. Dart's Stats. (Supp. 1947) §§ 1709.1-1709.28.

47. 212 La. 357, 31 So.(2d) 825 (1947).

48. Particularly La. Act 30 of 1924 [Dart's Stats. (1939) §§ 1690-1708] and La. Act 169 of 1944 [Dart's Stats. (Supp. 1947) §§ 1709.1-1709.28].

concluded it was not within the intent or purpose of this legislation to deprive parents or others of the custody of children unless the latter were suffering from the conduct or neglect of such persons. Justice Hawthorne, dissenting, pointed to the "liberal construction" clauses of the acts and argued that the children were "neglected children" under the legislation. The writer sympathizes with Justice Hawthorne's interest in the best welfare of children, but agrees with the majority opinion. The state should not interfere with the status and rearing of children unless there is *serious* danger to their moral or physical well-being. If this result can be reached without doing violence to the legislation, so let it be.

### *Adoption*

The right of a parent, who had consented by notarial act to the adoption of his child by the petitioners, to withdraw that consent before final decree of adoption was upheld in *Green v. Paul*.<sup>49</sup> The majority and Justice Hamiter, dissenting, agreed that consent of the parents was required under Act 154 of 1942,<sup>50</sup> the legislation then in force,<sup>51</sup> unless the child had been "properly surrendered or declared legally abandoned,"<sup>52</sup> but Justice Hamiter disagreed with the majority's conclusion that the consent "must be of a continuing nature." Whether correct or incorrect, the importance of the majority opinion has been minimized by subsequent legislation. The new statute on the procedure in adoption cases, Act 228 of 1948,<sup>53</sup> must have been drafted with full knowledge of the decision in *Green v. Paul* and the failure to change the language of the legislation in matters relating to this problem should be taken as an acceptance of the effect of this case. Further evidence of this legislative intent may be found in the passage of Act 227 of 1948 which provides an exclusive procedure for the surrender of children for adoption and expressly negatives the necessity of making the surrendering parents parties to future adoption proceedings. Undoubtedly this new procedure will be employed wherever the parents can be found before the final decree of adoption.

In *State ex rel. Terry v. Nugent*<sup>54</sup> the supreme court decided

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49. 212 La. 337, 31 So.(2d) 819 (1947).

50. Dart's Stats. (Supp. 1947) §§ 4839.42-4839.56.

51. This act was specifically repealed by La. Act 228 of 1948, which covers the same subject matter, but the language of the new act, as far as the present problem is concerned, is not materially different.

52. La. Act 154 of 1942, § 3 [Dart's Stats. (Supp. 1947) § 4839.44].

53. *Supra* note 3.

54. 212 La. 382, 31 So.(2d) 834 (1948).

the district court had no jurisdiction to entertain a *habeas corpus* proceeding for custody of a child *once* proceedings for adoption had begun in juvenile court. The decision should not be construed to have a broader meaning. It does not deny the jurisdiction of the district court as long as the child is not in "custodia legis" and legally subject to the jurisdiction of the juvenile court under the adoption acts. The recent case of *State ex rel. Simpson v. Salter*,<sup>55</sup> as a matter of fact, was distinguished on that basis. The court explained that in the *Salter* case the district court had been permitted to entertain the *habeas corpus* proceedings because the petitioning parent demonstrated she had not legally surrendered the child and, therefore, that the juvenile court was without right to proceed with the adoption proceedings filed therein.

#### *Interdiction*

In the *Interdiction of Maestri*<sup>56</sup> the annual account filed by the curator and approved by the undercurator was opposed by two nieces and a nephew of the interdict. The supreme court ruled these relatives were without right of action, having no "real and actual interest" as required by Article 15 of the Code of Practice. The underlying reason for the decision, however, seems to have been the possibility of the interdict or his heirs contesting the matter on the rendition of the final account. This proposition appears clearly enough from Articles 356 and 357 of the Civil Code, the former attributing only *prima facie* correctness to homologated annual accounts and the latter requiring a final accounting with the interdict at the end of the curatorship.

#### AGENCY

Robert A. Pascal\*

The fiduciary obligations of a mandatary both under a specific mandate and independently thereof were considered in *Robinson v. Thompson*.<sup>1</sup> In December 1939 plaintiff gave defendant authority to sell her shares of stock in the Item Company, Limited, "on the same basis as he sells his own." In June 1941 defendant requested "additional authority" to sell the stock, whereupon plaintiff wrote defendant giving him "full authority

55. 212 La. 918, 31 So.(2d) 163 (1947).

56. 213 La. 313, 34 So.(2d) 790 (1948).

\*Assistant Professor of Law, Louisiana State University.

1. 212 La. 186, 31 So. (2d) 734 (1947).