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Louisiana Legislation of 1946: Civil Code and Related Matters

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The Blue Sky law of 1940,[4] designed to prevent fraud in the sale of securities by requiring their registration with the commissioner of securities, has been amended by Act 257 of 1946, but only to provide that the percentage fee to be charged for registering securities is to be computed on the "aggregate price" of the stock to be sold, instead of the "aggregate par value" as was formerly provided.[5]

CIVIL CODE AND RELATED MATTERS

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The amendments to the Civil Code by the 1946 regular session of the legislature were, as usual, few, clearcut in purpose and, for the most part, worthwhile. The officially unannounced but apparently rather definite policy of the law-makers is to deal with the Civil Code sparingly and with caution. If this attitude seems at times to be too conservative for proper progress, certainly the error, if it be one, is being made on the safer side as piecemeal-tinkering with such a closely knit, inter-dependent body of laws can easily be disastrous. There is danger in this policy, however. Some statutes do not contain the warning signal of an article of the Code, yet, nevertheless, amend. Thus, the ramifications of effect are sometimes not fully explored and results are obtained which were really not within the intent of the legislature. In 1946, but two specific amendments were passed, together with four statutes, which directly affect the subject matter, so no great cause for alarm is evidenced, at least on a quantitative basis.

Act 185 of 1946. While not specifically amending the Code, this act affects Chapter 2 of Title VIII, Book I, dealing with emancipation of minors. The new statute emancipates "any minor eligible for benefits under the 'Servicemen's Readjustment Act of 1944,' Title III of Public Law 346-78th Congress," in connection with any transaction necessary to make these benefits available to the minor. The purpose of the act is excellent. Certainly, an individual old enough to have fought for his country

4. La. Act 262 of 1940 [Dart's Stats. (Supp. 1946) § 1179.1 et seq.].

5. The fee originally provided for was 1/20 of 1 per cent, or 1/10 of 1 per cent of the aggregate par value of the stock or of the price at which offered for sale if the stock had no par value, depending upon whether the stock was registered by notification or qualification. La. Act 262 of 1940, §§ 7, 8 [Dart's Stats. (Supp. 1946) §§ 1179.7-1179.8].

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should be old enough to accept benefits assigned him without the delay, annoyances and expense of emancipation.

Act 224 of 1946. This statute affects Article 1520 which prohibits substitutions and fidei commissa and expresses the established general policy against long term removal of property from commerce. Specifically, it amends Act 72 of 1918 merely by the addition of national banks having their principal offices in Louisiana to trust companies and trust banks already authorized to hold and administer donations made for "educational, literary or charitable purposes."[1] In Sections 5 and 6, the words "or bank trustee" are substituted for the words "or trust bank." The purpose of the slight changes is obvious and is good.

Act 341 of 1946. While this act amends no article or statute specifically, it affects a large section of the Code, as well as many pre-existing statutes, by adding yet another privilege to Louisiana's long—too long—list. The act creates a privilege upon all movables in favor of those who have performed labor or furnished materials in the repair or construction of a movable. The privilege exists only so long as the movable remains in the possession of the person who has performed the work or furnished the materials. If the furnisher and laborer happen to be different persons, the nonpossessor apparently is not protected. The statute provides that this privilege will be of no effect against the vendor's privilege or a chattel mortgage previously recorded. Furthermore, the act "shall not be construed to conflict with any of the provisions of Act 209 of 1926,"[2] which created a privilege in favor of garagemen upon the automobiles, trucks or other machinery which received labor or materials. The usual repealing clause then appears, so that all other privileges on movables, barring the three exceptions noted, may be seriously affected if in conflict with the new act. Upon the statute books are privileges for the protection of laborers and materialmen on logs, poles and crossties, carpets and rugs, garments, jewelry, certain farm products, moss, and boats, to list only a few items. Obviously, space here is too limited to discuss all these privileges with their varied provisions and procedures in the light of the possible effect upon them of the new statutes. Furthermore, many if not most of these queries will be unanswerable until the courts pass upon them.[3] One of the most interesting aspects of the new statute is

1. Dart's Stats. (1939) §§ 9823-9829.
2. Dart's Stats. (1939) §§ 5047-5048.
3. A full discussion of the statutes and the courts' interpretations will be found in Daggett, Louisiana Privileges and Chattel Mortgages (1942).

its relation to the artisan's privilege, which first appeared as Article 3184 of the Civil Code of 1825 and was reenacted as Article 3217 of the Civil Code of 1870 where it has continued unchanged. The privilege is granted for "the debt of a workman or artisan for the price of his labor, on the movable which he has repaired or made, if the thing continues still in his possession." The court extended the protection to cover value of materials.[4] Apparently then, the protection desired by the new act was already in existence, and it was even stronger, as the jurisprudence established that the artisans' privilege had preference over the vendors' privilege, while the new act especially excepts the vendors' privilege from "effect" by the new statute, though no ranking provisions as such are found in the new act.

This act further illustrates the great need of a clear, unified, comprehensive statute after a thorough survey of Louisiana privileges so that some certainty of proper protection to groups requiring it might be realized without need for litigation.

Act 281 of 1946. This act amends the title and the first section of Act 298 of 1926 as amended and reenacted by Act 79 of 1944.[5] Act 298 of 1926 is the comprehensive statute, unifying many previous laws granting privileges to laborers and materialmen in connection with building contracts involving private works. The amendment extends the protection of the privilege to those who furnish "material or supplies for use in machines used in or in connection with the erection, construction, repair or improvement of any building, structure or other immovable property."

No effort was made to clarify or simplify the very involved provisions of the original act.[6]

Amendments To Civil Code

Act 347 specifically amends and reenacts Article 142 of the Civil Code. The change consists merely of providing for divorce as well as separation from bed and board to relieve a wife returning to her former domicile in Louisiana after behavior by her husband in another state which would have given cause in Louisiana. The substance of this first paragraph was initiated by Act 9 of 1855 and paralleled the language of Article 2437,

4. See Cozzo v. Ulrich, 14 Orl. App. 137 (La. 1916); Hart Enterprise Electrical Co. v. Stewart, 168 So. 791 (La. App. 1936); Hoggatt v. Campbell, 187 So. 294 (La. App. 1939), cited by Daggett, op. cit. supra note 3, at 377.

5. Dart's Stats. (1939) §§ 5106-5122; Dart's Stats. (Supp. 1946) §§ 5120.1.

6. The subject matter and jurisprudence is discussed at length in the volume by Daggett, op. cit. supra note 3, so will not be repeated here.

giving the right to sue for separation of property, hence, doubtless, the relief for the wife only. Jurisdictional questions in matters of divorce are even more confused, if that could be possible, since the *Williams* cases,[7] than they were before. Hence, the amendment will probably serve a useful purpose for Louisiana women returning after unfortunate matrimonial experiences, without opening the door to dissatisfied wives generally. The new act also effected some clarification in the language of the article. It left untouched, however, the amendment of 1934, which constitutes the second paragraph of the act and which is believed to be the most perfect example extant of special legislation under a general heading. As yet, however, no attack has been made upon its constitutionality.

Article 70 of the Civil Code formerly provided for absolute possession by the heirs of an absentee after a lapse of thirty years since provisional possession or of one hundred years from birth of the absentee. As amended by Act 377 of 1946 it is restricted in application to the estates of men and women in the armed services of the United States and provides that in cases where persons "have been reported missing in time of war under circumstances giving rise to strong presumptions of death" and the United States government has "accepted the presumption of death," then those who have rights in their estates may be put into possession. The word possession is unqualified, but it would appear from the context that absolute possession is intended. Obviously, should the presumptively dead individual reappear, the general safeguards found in this section of the Code for the protection of all absentees whose property has been placed in the absolute possession of others would apply. This protection, however, is none too adequate, since absolute possession amounts in essence to absolute ownership. Sureties are discharged, and upon reappearance the absentee may only "recover his estate, such as it may happen to be, the price of such part of it as has been sold, or such property as has been bought with the proceeds of his estate which may have been sold."[8] The chances of reappearance after absolute possession were relatively small under the old rule of thirty or more years of provisional possession. There may be some instances of signal hardship for returning veterans under the new rule, but doubtless the balance is heavily

7. Williams v. North Carolina, 317 U.S. 287, 63 S.Ct. 207, 87 L.Ed. 279 (1942); Williams v. North Carolina, 325 U.S. 226, 65 S.Ct. 1092, 89 L.Ed. 1577 (1945).

8. Art. 73, La. Civil Code of 1870.

weighted in favor of the amendment as it will prove to be expeditious in the great majority of cases and will relieve the heirs of the long wait and commerce tieup of property which in but a small percentage of cases would after all have proved to have been unnecessary. The result will be like unto the court's application of Article 77 in decisions where property accruing to absentees after their existence became unknown was involved.[9] The safeguards for this situation are found in Articles 78 and 79.[10] The question of provisional possession will also be removed when direct descendants are involved under Article 77.[11] The difficulties of Article 76, reading "Whoever shall claim a right accruing to a person whose existence is not known, shall be bound to prove that such person existed at the time when the right in question accrued, and until this be proved, his demand shall not be admitted," appear to be unaffected by the amendment.[12]

CIVIL PROCEDURE

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Abatement of Actions. Since 1825 the positive law of Louisiana has provided that "Actions do not abate by the death of one of the parties after answer filed."[1] Despite this sweeping language, it was held in *Chivers v. Roger*[2] that when a beneficiary designated by the pertinent code provision[3] brought an action to recover damages for wrongful death and died after answer filed, the right of action was not transmitted to plaintiff's heirs. The action was held to have abated upon the death of plaintiff. Although the *Chivers* case has been followed in Louisiana,[4] the state courts have never extended the rule beyond the precise factual limits of the case.[5] The probabilities are that the sole

9. Pfister v. Casso, 161 La. 940, 109 So. 770 (1926); Succession of Butler, 166 La. 224, 117 So. 127 (1928).

10. See Dugas v. Powell, 21 So.(2d) 366 (1945).

11. See Succession of Williams, 149 La. 198, 88 So. 791 (1920).

12. See Dolhonde v. Lemoine, 32 La. Ann. 251 (1880).

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1. Art. 21, La. Codes of Practice of 1825 and 1870.

2. 50 La. Ann. 57, 23 So. 100 (1898).

3. Art. 2315, La. Civil Code of 1870.

4. Hardtner v. Aetna Casualty & Surety Co., 189 So. 365 (La. App. 1939); Hebert v. United States, 39 F. Supp. 267 (D. C. La. 1941). See also Kerner v. Trans-Mississippi Terminal R. Co., 158 La. 853, 104 So. 740 (1925).

5. Both before and after the *Chivers* decision, the supreme court held that if plaintiff had obtained judgment on his claim for wrongful death, and died pending defendant's appeal therefrom, the action did not abate. Vincent v. Sharp, 9 La. Ann. 463 (1854); Castelluccio v. Cloverland Dairy Products Co., 165 La. 606, 115 So. 796 (1928). To the same effect: Williams v. Campbell, 185 So. 683 (La. App. 1938). In Durbridge v. State, 117 La. 841, 42 So. 337