

# Louisiana Law Review

---

Volume 12 | Number 2

*The Work of the Louisiana Supreme Court for the  
1950-1951 Term*

January 1952

---

## Private Law: Persons

Robert A. Pascal

---

### Repository Citation

Robert A. Pascal, *Private Law: Persons*, 12 La. L. Rev. (1952)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol12/iss2/6>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kayla.reed@law.lsu.edu](mailto:kayla.reed@law.lsu.edu).

lease, a sublease and not an assignment has been confected, regardless of other provisions in the instrument purporting to relinquish control to the transferee. Thus, the criteria of *Stacy v. Midstates Oil Corporation*<sup>15</sup> in the original hearing on exceptions did not stand.

A great deal of evidence was examined in *Texas Company v. Leach*,<sup>16</sup> and the court found that the lessors desiring cancellation had not sustained their burden of proof of breach. The court refused to insert the word uninterruptedly into a phrase of the lease calling merely for *continued* production.

## PERSONS

Robert A. Pascal\*

Most of the decisions in the field of family law were on separation, divorce, and alimony issues. None is of great importance. A few involved questions of fact only, such as whether the alleged grounds for separation<sup>1</sup> or divorce<sup>2</sup> were indicated by the evidence, or whether the changed circumstances of the parties warranted a decrease in alimony previously allowed.<sup>3</sup> Some applied previously accepted interpretations of law. Thus "cruelty" again was said to include the wilful refusal of the husband to provide a home for his wife separate and apart from that of his family who mistreat her.<sup>4</sup> Act 24 of 1930 (now Revised Statutes 13:4452), which limits to thirty days the time for appeal from separation and divorce judgments, again was interpreted not to apply to appeals from those parts of separation or divorce judgments not pertaining to the separation or divorce issue proper.<sup>5</sup> The wife's right to alimony pendente lite regardless of the outcome of the suit for separation or divorce was reemphasized.<sup>6</sup> And, finally,

15. 214 La. 173, 36 So. 2d 714 (1947).

16. 219 La. 613, 53 So. 2d 786 (1951).

\* Assistant Professor of Law, Louisiana State University.

1. Pugh v. Pugh, 218 La. 395, 49 So. 2d 738 (1950).

2. Creel v. Creel, 218 La. 382, 49 So. 2d 617 (1950) and Savin v. Savin, 218 La. 754, 57 So. 2d 41 (1951).

3. Graham v. Graham, 218 La. 928, 51 So. 2d 392 (1951).

4. Bonvillion v. Papa, 218 La. 203, 48 So. 2d 897 (1950). See the previous decision in Cormier v. Cormier, 193 La. 158, 190 So. 365 (1939) and the cases therein cited.

5. Scott v. Scott, 218 La. 211, 48 So. 2d 899 (1950), involving an appeal from the alimony portion of the decree. See also Cressione v. Millet, 212 La. 691, 33 So. 2d 193 (1947) and Cure v. Tobin, 217 La. 713, 47 So. 2d 329 (1950) (custody and community property aspects of the decree granting the divorce or separation).

6. St. Martin v. Messersmith, 218 La. 239, 48 So. 2d 909 (1950).

the supreme court once more refused to permit the filing of a reconventional demand for separation on the ground of abandonment.<sup>7</sup>

The only decision not on divorce or separation involved simple applications of the provisions of Section 13 of Act 228 of 1948 (Revised Statutes 9:433) and Article 7, Section 96 of the Constitution, as amended by Act 513 of 1948, on appeals and custody in adoption cases.<sup>8</sup>

## PRESCRIPTION

*Joseph Dainow\**

### LIBERATIVE PRESCRIPTION

The case of *Antley v. Smith*<sup>1</sup> was an action for the reformation of a title description. One of the defenses was the liberative prescription of ten years against personal actions.<sup>2</sup> If the time ran from the date of the deed, the prescription would have elapsed. However, the court held that the prescription did not start to run until the date of the discovery of the error, and since the evidence established the discovery of the error only in 1948, the suit was timely brought in 1950.

In its opinion the court added "Further, this prescription does not run as long as possession of the land is exercised," and the facts showed an unbroken possession of the property. It is not clear whether this case requires an existence of both of the following elements before prescription will begin to run: discovery of the error and interruption of the possession. In the present case, it did not matter because there was no elapsed period of ten years anyway. However, there might be some question in the situation where there had been no break in the possession of the land, but ten years had elapsed since the discovery of the error.

---

7. *Bonvillion v. Papa*, 218 La. 203, 48 So. 2d 897 (1950). Previous decisions to the same effect are *Bullock v. Bullock*, 174 La. 839, 141 So. 852 (1932), and *Williams v. Williams*, 212 La. 334, 31 So. 2d 818 (1947), appraised in 9 LOUISIANA LAW REVIEW 197-199 (1949).

8. *Ball v. Campbell*, 219 La. 212, 52 So. 2d 754 (1951).

\* Professor of Law, Louisiana State University.

1. 219 La. 525, 53 So. 2d 401 (1951).

2. Art. 3544, La. Civil Code of 1870.