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## Family Law - Illegitimate Children - Proof of Paternity

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prescription of the prosecution for simple battery. It is submitted that the result would probably be the same in Louisiana, since manslaughter and simple battery are distinct offenses belonging to different generic classes.<sup>9</sup> This position finds additional support in Article 386 of the Code of Criminal Procedure dealing with responsive verdicts, which provides that a verdict of simple battery is not responsive to an indictment charging manslaughter.<sup>10</sup>

Ronald L. Davis, Jr.

FAMILY LAW—ILLEGITIMATE CHILDREN—  
PROOF OF PATERNITY

Plaintiff sued to have the defendant declared the father of her illegitimate child and to obtain support of the child. Defendant admitted his intimacies with the plaintiff and also admitted that he had contributed to the support of the child. During the trial the plaintiff admitted that she had attempted intercourse with a man other than the defendant. The trial court found that the plaintiff was not a woman of dissolute manners and held that since the plaintiff had never had an unlawful connection with any man other than the defendant her oath was sufficient to establish the paternity of the child. On appeal, *held*, affirmed. The trial court was correct in giving judgment on the basis of the mother's oath, but should also have held that the defendant's support of the child, his admission that he might be the father, and his failure to deny paternity constituted an acknowledgment of paternity. *Rousseau v. Bartell*, 224 La. 601, 70 So.2d 394 (1954).

9. For a discussion of the "generic" classification of offenses, see Comment, 5 LOUISIANA LAW REVIEW 603, 604 (1944).

10. Art. 386, LA. CODE OF CRIM. PROC. (1928): "The only responsive verdicts which may be rendered, and upon which the judge shall charge the jury, where the indictment charges the following offenses are: . . . Manslaughter: Guilty as Charged. Not Guilty."

Different considerations are involved in the problem of former jeopardy. There a distinction is drawn between the situation where two separate crimes having some common characteristics arise out of the same series of acts, and where a single criminal act constitutes a violation of two or more statutes or articles of the Criminal Code. Former jeopardy principles should bar subsequent action under the latter circumstance but not the former. See *The Work of the Louisiana Supreme Court for the 1946-1947 Term—Criminal Law and Procedure*, 8 LOUISIANA LAW REVIEW 281, 290 (1948). In the instant case a prosecution or acquittal for manslaughter would definitely bar a prosecution for the battery.

Articles 209 and 210 of the Civil Code permit the paternity of an illegitimate to be proved only by:

- (1) Private writings in which the alleged father has called the illegitimate his child.<sup>1</sup>
- (2) Public or private acknowledgment by the alleged father in his conversations.<sup>2</sup>
- (3) The alleged father's having educated the child as his own.<sup>3</sup>
- (4) The alleged father's having been living with the mother in open concubinage when the child was conceived.<sup>4</sup>
- (5) The oath of the mother if she has never had an "unlawful connection" with any man other than the accused before or since the birth of the child and if she is not "a woman of dissolute manners."<sup>5</sup>

Although the appellate courts have decided few cases concerning alimony for illegitimates, Articles 209 and 210 have been used to regulate the manner of proving paternity in several cases involving informal acknowledgment and incapacity to inherit.<sup>6</sup> The court has held that the following acts of the alleged father constituted admissions of paternity under Article 209: calling the child his own throughout his life;<sup>7</sup> giving the child his name, publicly introducing her as his daughter and taking her to his mother's home;<sup>8</sup> "habitually acknowledging" the child as his own and calling her so in his conversation;<sup>9</sup> saying that a doctor who had told him that his children would be afflicted did not know what he was talking about, "for there is Turner's wife as healthy as anybody," coupled with the fact that he was generally reputed to be the father;<sup>10</sup> and permitting

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1. Art. 209(1), LA. CIVIL CODE of 1870.

2. Art. 209(2), LA. CIVIL CODE of 1870.

3. *Ibid.* "Educating" seems to be a mistranslation of the French "*élever*." It is submitted that a better translation would be *to raise, or to rear.*

4. Art. 209(3), LA. CIVIL CODE of 1870.

5. Art. 210, LA. CIVIL CODE of 1870.

6. Arts. 209, 210, LA. CIVIL CODE of 1870, also regulate the proof of paternity or maternity in prosecutions under Art. 74, LA. CRIM. CODE (1942). No questions of evidence have arisen under that article, however. See Note, 14 LOUISIANA LAW REVIEW 898 (1954).

7. Succession of Corsey, 171 La. 663, 131 So. 841 (1930) (acknowledgment case).

8. Succession of Jones, 185 La. 377, 169 So. 440 (1936) (acknowledgment case).

9. *Gibney v. Fitzsimmons*, 5 La. Ann. 250 (1850) (alimony case).

10. Succession of Vance, 110 La. 760, 762, 34 So. 767, 768 (1903) (incapacity to inherit).

children to bear his name, educating them, expressing concern for their future, and keeping them at his house.<sup>11</sup> On the other hand, the court has held that the following acts of the alleged father did not constitute admissions of paternity under Article 209: referring to the child as his son more than fifty years before the trial in the presence of witnesses who were then young boys unable to tell whether the remarks were made "in an affectionately playful manner or with serious intent—or perhaps in the nature of braggadocio";<sup>12</sup> and calling the children his own when no one was present but the children.<sup>13</sup> In the latter case the court in a dictum implied that only oral admissions of paternity made in "habitual conversations with others"<sup>14</sup> could be used to prove paternity under Article 209.

In the instant case the court held that the giving of checks drawn to "cash" to aid in supporting the child, the defendant's admission that the child was possibly his, and his failure to deny paternity "emphatically" constituted "sufficient acknowledgment in compliance with Article 209. . . ."<sup>15</sup> It is submitted that checks drawn to "cash" on which there is no writing to indicate for what purpose they were given are not written admissions of paternity and that the defendant's oral admission that the child was possibly his was not an oral admission that he was the father. It is further submitted that the fact that the defendant failed to deny paternity is immaterial since the defendant is not required to disprove paternity.

The court in the instant case also held that although the mother admitted that she had once attempted an unlawful connection, "the act committed . . . did not result in sexual intercourse and there was no unlawful connection. . . ."<sup>16</sup> and therefore no reason to refuse credence to her oath. This is the first case in which the court has discussed what constitutes an "unlawful connection" or "dissolute manners." The court could have held that the mother's attempt to have an "unlawful connection" with a man other than the defendant was conclusive evidence of dissolute manners. There is as much reason for the court to doubt the oath of a woman who has attempted an

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11. *Bourriaque v. Charles*, 107 La. 217, 31 So. 757 (1902) (acknowledgment case).

12. *Succession of Wallace*, 219 La. 297, 306, 52 So.2d 858, 861 (1951) (incapacity to inherit).

13. *Badillo v. Tio*, 6 La. Ann. 129 (1851).

14. *Id.* at 131.

15. 224 La. 601, 608, 70 So.2d 394, 397 (1954).

16. 224 La. 601, 610, 70 So.2d 394, 398 (1954).

unlawful connection as there is for the legislature<sup>17</sup> to doubt the oath of a woman who has had an unlawful connection since the birth of the child. As stated by the court, however, no witnesses were introduced to show that the mother was known as a dissolute woman; and the attempt to have an unlawful connection was not an unlawful connection within the strict language of the Code.

Robert J. Jones

FAMILY LAW—THE DIFFERENT USES OF THE TERM "NATURAL CHILD" IN THE CIVIL CODE

The term "natural child" appears in a number of articles of the Louisiana Civil Code. The use of the term, however, does not seem to be consistent and has caused some confusion in our jurisprudence, as for instance in *Minor v. Young*<sup>1</sup> and *Taylor v. Allen*.<sup>2</sup> In this paper the uses and meanings of "natural child" in our successive Civil Codes are considered and an attempt is made to determine whether it is necessary to use the term for an understanding of the law.

In France all illegitimate children are called natural children.<sup>3</sup> Children born of parents who could have married each other at the time the child was conceived are called simple natural children.<sup>4</sup> Children born of parents who could not have married each other at the time the child was conceived are called adulterous or incestuous natural children.<sup>5</sup> Only simple natural children can be acknowledged.<sup>6</sup> There is no specific term to designate children who have been acknowledged; they are merely called acknowledged natural children.

In the Spanish law as it existed at the time of Louisiana's first Civil Code the term "natural child" seems to have been used in several ways. *Las Siete Partidas* calls natural all those

17. Art. 210, LA. CIVIL CODE of 1870.

1. 149 La. 583, 89 So. 757 (1921).

2. 151 La. 82, 91 So. 635 (1922).

3. 2 PLANIOL ET RIPERT, TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS n° 709 (2d ed. 1952). Before the French Civil Code the term "*bâtard*" was used as the term "*enfant naturel*" is now used. There were "*bâtards simples*" and "*bâtards incestueux ou adulterins*." 1 MERLIN, RÉPERTOIRE DE JURISPRUDENCE—"BATARDS" 691 (4th ed. 1812).

4. *Ibid.*

5. *Ibid.*

6. Art. 335, FRENCH CIVIL CODE.