

Louisiana Law Review

Volume 15 | Number 1

Survey of 1954 Louisiana Legislation

December 1954

Family Law - The Different Uses of the Term "Natural Child" in the Civil Code

James M. Dozier Jr.

Repository Citation

James M. Dozier Jr., *Family Law - The Different Uses of the Term "Natural Child" in the Civil Code*, 15 La. L. Rev. (1954)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol15/iss1/33>

This Note 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 kreed25@lsu.edu.

unlawful connection as there is for the legislature¹⁷ 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*¹ and *Taylor v. Allen*.² 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.³ Children born of parents who could have married each other at the time the child was conceived are called simple natural children.⁴ 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.⁵ Only simple natural children can be acknowledged.⁶ 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.

children not born of a lawfully contracted marriage,⁷ but in the next sentence excludes from this classification those born of an adulterous, incestuous or sacrilegious connection (called *fornezinos*).⁸ Other classifications of illegitimates are also given,⁹ but it is not clear from the text of the law whether those other than the *fornezinos* are included within the class of natural children. The *Leyes de Toro*, enacted after *Las Siete Partidas*, provided:

"In order that it may not be doubted which ones are natural children, we do order and command that they then be said to be natural children when, at the time that they were born or were conceived, their fathers could have rightly married their mothers without dispensation, *provided that the father acknowledge him as his child*, although he may not have had the woman by whom he had it in his house. . . ."¹⁰ (Italics supplied.)

This definition does not seem to have ended the confusion. White, writing in 1839, includes even *fornezinos* as natural children.¹¹ But in a footnote he quotes Palacios as holding the view that the proper definition of natural children is that found in the *Leyes de Toro*.¹² Manresa, however, discussing the history of the Spanish law on the subject, makes no mention of the requirement in the *Leyes de Toro* that a natural child be an acknowledged one.¹³

The confusion was removed by the Spanish Civil Code of 1889, which defined the term to mean "those born out of wedlock of parents who, at the time of the conception of such children, could have married with or without dispensation."¹⁴ It should be noted that the term in the present Spanish law merely describes those children who may be acknowledged and who can prove paternity. It is the acknowledgment or the proof of paternity, not the status of being a natural child, which confers legal rights.

7. LAS SIETE PARTIDAS 4.15.1.

8. *Ibid.*

9. *Ibid.*

10. Translation by author. LEY 11 DE TORO; RECOPIACION 5.8.9; NOVÍSIMA RECOPIACION 10.5.1.

11. 1 WHITE, RECOPIACION 64 (1839).

12. *Id.* at 64, n. 2.

13. 1 MANRESA, COMENTARIOS AL CODIGO CIVIL ESPAÑOL 586 *et seq.*, Art. 119 (6th ed. 1943).

14. Art. 119, SPANISH CIVIL CODE of 1889 (5th ed. Fisher transl. 1947).

The definition of the term "natural child" in Louisiana law has remained the same since the Code of 1808, which provided:

"Illegitimate children who have been acknowledged by their father are called natural children. . . ."¹⁵

This is similar to the definition of natural children found in the *Leyes de Toro*. Since the *Leyes de Toro* were in force in Louisiana in 1808,¹⁶ it is likely that they are the source of this definition.

Despite the definition of a natural child as one acknowledged by his father, there was an indication in the Code of 1808 that either parent might acknowledge, and that the child so acknowledged would be considered "natural" as to that parent. Article 1.7.29 read: "Every acknowledgment made by either father or mother, and likewise every claim set up by natural children, may be contested by all those who are therein concerned." Article 1.7.63 implies that an acknowledgeable, but unacknowledged, illegitimate is a natural child. This article states in part:

"But in order that they [natural children] may have a right to sue for this alimony, they must—

"1. Have been legally acknowledged by both their father and mother, or by the parents [parent] from whom they claim alimony. . . ."

Thus, in the same title of the Code of 1808 in which the term "natural child" was limited to one who had been acknowledged by its father, the term was used to indicate an unacknowledged child.

Most of the other articles in the Code of 1808 which contained the phrase "natural child" were found in the titles on successions and donations. Here also the use of the phrase seems to indicate a reference to an unacknowledged illegitimate. Under Article 3.1.48, "The estate of a natural child deceased without posterity, belongs to the father or mother *who has acknowledged him. . . .*" (Italics supplied.) If natural child meant one acknowledged by the father, there would have been no need for this additional clause. Other instances of what would be meaningless redundancy if a natural child were an acknowledged child are found in Paragraph (1) of Article 3.1.50, which (when cor-

15. LA. CIVIL CODE of 1808, 1.7.24, p. 48.

16. Ley 11 of the *Leyes de Toro* was incorporated into the *Recopilación* as L. 9, tit. 8, lib. 5. According to Moreau-Lislet, one of the redactors of the Louisiana Code of 1808, and Carleton, the *Recopilación*, was one of the Spanish codes in force in the Louisiana territory. 1 LAWS OF LAS SIETE PARTIDAS xvii (Moreau-Lislet and Carleton transl. 1820).

rectly translated)¹⁷ provides that a man's wife "shall inherit from him to the exclusion of any *natural child* or children *duly acknowledged* by him"; in Article 3.2.14,¹⁸ which speaks of "*natural child* or children *acknowledged* by him"; in Article 3.1.51,¹⁹ which refers to "*acknowledged natural children*"; and in Article 3.1.47,²⁰ which in the French text refers to "*enfants naturels, même reconnus.*" (Italics supplied.)

As mentioned above, in the French Code, all illegitimates are called natural children. Most of the articles of the Louisiana Code of 1808 which use "natural child" to mean any illegitimate come from the French Code.²¹ The redactors seem to have adopted the definition of the term "natural child" from the Spanish *Leyes de Toro* and then failed to alter the text of the articles taken from the French Code to correspond to this definition.

The Civil Code of 1825 did very little to clarify the meaning of the term. Article 1.7.29 was changed to read: "Every claim, set up by natural children, may be contested by those who have any interest therein."²² Thus one provision recognizing acknowledgment by the mother separately from the father was eliminated. The addition of a new article, 274, however, seems to indicate that the redactors thought that any illegitimate was a natural child: "The father is of right the tutor of his natural child acknowledged by him. The mother is of right the tutrix of her natural child not acknowledged by the father. . . ." Another new article, Article 921,²³ spoke of "natural children by him

17. The French reads: ". . . elle succédera à l'exclusion de tout enfant ou enfants naturels dudit mari, quoique par lui dûment reconnus."

18. "When the natural father has not left legitimate children or descendants, the natural child or children acknowledged by him, may receive from him by donation *inter vivos* or *mortis causa*, to the amount of the following proportions, to-wit: . . ." LA. CIVIL CODE OF 1808, 3.2.14, p. 210.

19. "In defect of lawful relations, or of a surviving husband or wife, or acknowledged natural children, the estate belongs to the territory." LA. CIVIL CODE OF 1808, 3.1.51, p. 156.

20. The English reads: "The law does not grant any right of inheritance to natural children, to the estate of the lawful relations of their father or mother." LA. CIVIL CODE OF 1808, 3.1.47, p. 156.

21. LA. CIVIL CODE OF 1808, 3.1.48, p. 156, derived from Art. 765, FRENCH CIVIL CODE; LA. CIVIL CODE OF 1808, 3.1.50, p. 156, derived from Art. 767, FRENCH CIVIL CODE; LA. CIVIL CODE OF 1808, 3.1.51, p. 156, derived from Arts. 724, 767-768, FRENCH CIVIL CODE; LA. CIVIL CODE OF 1808, 3.1.47, p. 156, derived from Art. 756, FRENCH CIVIL CODE.

22. Art. 225, LA. CIVIL CODE OF 1825.

23. "If the succession be that of the natural father, the natural children by him acknowledged cannot be put into possession of the succession which they claim, until a faithful inventory has been made. . . ."

acknowledged." Clearly, the natural child was thought of as an unacknowledged illegitimate.

The changes made in the revision of the Civil Code of 1870 indicate a tendency to define natural child in this latter fashion. Article 203,²⁴ prescribing the method of acknowledgment, was amended to read that the act of acknowledgment could be made "by the father or mother, or either of them." A new provision on legitimation, Article 200,²⁵ speaks of natural children "who are the offspring of parents who, at the time of conception, could have contracted marriage." This phraseology could have no meaning unless natural meant any illegitimate, for only children whose parents could have married at the time of the child's conception can be acknowledged.²⁶ Yet, there seems to have been some feeling that a natural child is an acknowledged child, for all references to natural children in Articles 239-244,²⁷ formerly Articles 1.7.60-66 of the Civil Code of 1808, were changed to read "illegitimate children." Moreover, natural children were still defined as illegitimates who had been acknowledged by their father.²⁸ No changes of any importance have been made since the revision of 1870.

24. "The acknowledgment of an illegitimate child shall be made by a declaration executed before a notary public, in presence of two witnesses, by the father and mother or either of them, whenever it shall not have been made in the registering of the birth or baptism of such child."

25. "A natural father or mother shall have the power to legitimate his or her natural children by an act passed before a notary and two witnesses, declaring that it is the intention of the parent making the declaration to legitimate such child or children. But only those natural children can be legitimated who are the offspring of parents who, at the time of conception, could have contracted marriage. . . ."

26. Art. 204, LA. CIVIL CODE of 1870.

27. Art. 239, LA. CIVIL CODE of 1870: "Nevertheless nature and humanity establish certain reciprocal duties between fathers and mothers and their illegitimate children."

Art. 240, LA. CIVIL CODE of 1870: "Fathers and mothers owe alimony to their illegitimate children when they are in need;

"Illegitimate children owe likewise alimony to their father and mother, if they are in need, and if they themselves have the means of providing it."

Art. 241, LA. CIVIL CODE of 1870: "Illegitimate children have a right to claim this alimony, not only from their father and mother, but even from their heirs after their death."

Art. 243, LA. CIVIL CODE of 1870: "The obligation of giving such alimony ceases, when the illegitimate child is able to earn his subsistence by labor. . . ."

"The debt of alimony ceases likewise to be due from the estate of the father or mother of the illegitimate child whenever either of them has provided during his or her life a sufficient maintenance for his or her illegitimate child. . . ."

Art. 244, LA. CIVIL CODE of 1870: "The other rules established respecting alimony to be granted to legitimate children take place likewise with respect to illegitimate children, except so far as they may be contrary to the foregoing provisions."

28. Art. 202, LA. CIVIL CODE of 1870.

Although the term "natural child" is used in the Code to convey two distinct meanings, this confusion in the use of the term does not prevent us from determining the correct interpretation of the articles of the Code. The writer believes that the term "natural child" may be disregarded completely and that it is sufficient to speak entirely in terms of illegitimate children who have or have not been acknowledged by, or who have or have not proved their filiation to the parent from whom they claim. Acknowledgment and proof of illegitimate filiation are the factors which make the difference between possession of rights and lack of them. Ignoring the mention of "natural child," it is seen by Articles 918,²⁹ 919³⁰ (concerning inheritance by the child), and 922³¹ (concerning inheritance from the child) that there must be acknowledgment by the parent or parents from whom the child inherits or by whom the child's succession is inherited. Article 1483,³² concerning donations, provides that "Natural children or acknowledged illegitimate children cannot receive from their natural parents by donations" beyond their necessities when there are legitimate children or descendants. Article 1484,³³ on the other hand, permits natural children to acquire by donation the mother's entire succession where there are no legitimate children or descendants. Although nothing is said of acknowledgment in Article 1484, it may certainly be inferred from the preceding article. Article 1486³⁴ provides for

29. "Natural children are called to the legal succession of their natural mother, when they have been duly acknowledged by her, if she has left no lawful children or descendants, to the exclusion of her father and mother and other ascendants or collaterals of lawful kindred. . . ."

30. "Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State. . . ."

31. "The estate of a natural child deceased without posterity, belongs to the father or mother who has acknowledged him, or in equal portions to the father and mother, when he has been acknowledged by both of them."

32. "Natural children or acknowledged illegitimate children cannot receive from their natural parents, by donations *inter vivos* or *mortis causa* beyond what is strictly necessary to procure them sustenance, or an occupation or profession which may maintain them, whenever the father or the mother who has thus disposed in their favor, leaves legitimate children or descendants. . . ."

33. "When the natural mother has not left any legitimate children or descendants, natural children may acquire from her by donation *inter vivos* or *mortis causa*, to the whole amount of her succession."

34. "When the natural father has not left legitimate children or descendants, the natural child or children acknowledged by him may receive from him, by donation *inter vivos* or *mortis causa* to the amount of the following proportions, to wit:

"One-fourth of his property, if he leaves legitimate ascendants or legiti-

donations by the father to his acknowledged children. These are the two main instances where rights are conferred or denied solely on the basis of acknowledgment or lack of it.

Article 242 permits an illegitimate to sue for alimony if he has been acknowledged or if his filiation has been determined by a judgment. As has been shown, this article once referred to "natural child" instead of "illegitimate." But the child's having been considered a "natural child" was not the basis for his possessing this right, and no substantive change resulted when the term "illegitimate" was substituted for the term "natural child," in the Revision of 1870.

Thus, it is seen that it is not necessary to speak of a natural child as one acknowledged by the father, as Article 202 does. The existing confusion can therefore be avoided by disregarding the term altogether, and speaking instead of an illegitimate child, acknowledged or unacknowledged, as the case may be.

James M. Dozier, Jr.

INSURANCE—WARRANTIES AND REPRESENTATIONS—

LA. R.S. 22:619¹

In a suit brought by plaintiff beneficiaries of a life insurance policy, defendant insurance company sought avoidance of the policy, alleging that the deceased had given false and fraudulent answers to questions asked by the examining physician. These answers had been recorded on an application form which was made part of the policy. The evidence indicated that the answers concerning a heart disease and visits to a physician were false, and the trial court rendered judgment in favor of the defendant. On appeal, *held*, affirmed. The insurer may avoid the policy, because the answers given by the insured on the application form were false and material. *Flint v. Prudential Ins. Co.*, 70 So.2d 161 (La. App. 1954).

Under the common law rules of insurance² whether a par-

mate brothers or sisters or descendants from such brothers and sisters; and one-third, if he leaves only more remote collateral relations."

1. LA. R.S. 22:219 (1950), pertaining to health and accident insurance, is similar to LA. R.S. 22:619 (1950), but a comparison of the two provisions is beyond the scope of this discussion.

2. For a discussion of these principles, see VANCE, HANDBOOK OF THE LAW OF INSURANCE 386 *et seq.* (2d ed. 1951), and collected cases therein; APPLEMAN, INSURANCE LAW AND PRACTICE § 7291 *et seq.* (1943).