

Louisiana Law Review

Volume 15 | Number 2

The Work of the Louisiana Supreme Court for the

1953-1954 Term

February 1955

Legislation - Louisiana Revised Statutes of 1950 - Effect

John S. White Jr.

Repository Citation

John S. White Jr., *Legislation - Louisiana Revised Statutes of 1950 - Effect*, 15 La. L. Rev. (1955)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol15/iss2/37>

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 kayla.reed@law.lsu.edu.

who owes them nothing, but should look only to property purchased with community funds.

Problems involving credit sales to married women will probably diminish in the future. In 1944, the Civil Code was amended to provide that the revenues from the separate property of the wife accrue to the community unless the wife registers a document stating her intent to maintain separate administration.²⁴ Income from a wife's occupation, trade, or business also falls into the community unless the husband and wife are living separate and apart.²⁵ Thus, a wife living with her husband who has not filed a document indicating that she retains separate administration of her property can obtain funds to meet payments on separate property only by selling other property or by inheritance or gift.

James M. Dozier, Jr.

LEGISLATION—LOUISIANA REVISED STATUTES OF 1950—EFFECT

The jurisprudence concerning the effect of the Louisiana Revised Statutes of 1950 has two branches, emphasizing the two significant characteristics of the revision.¹ The first group of cases stands for the proposition that there is a presumption against any intended change in the *substance* of prior statutes. The second group of cases holds that since the prior statutes which were revised have been repealed expressly,² a source statute may not be used to alter a clear provision of the Revised Statutes. The purpose of this note is to discuss the basis of these decisions.

One purpose in enacting the Revised Statutes was to reorganize and to clarify the general statute law so as to simplify its use without changing its substance. The Louisiana Law Institute was directed by legislative act, "to prepare a comprehensive revision of the statutes of the State of a general character, including those contained within the revision of 1870, to

24. Art. 2386, LA. CIVIL CODE of 1870, as amended, La. Acts 1944, No. 286, p. 836.

25. Art. 2334, LA. CIVIL CODE of 1870; *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933).

1. For a comprehensive discussion indicating the purpose and scope of the Revised Statutes, see Bennett, *Louisiana Revised Statutes of 1950*, 11 LOUISIANA LAW REVIEW 4 (1950).

2. La. Acts 1950(1 E.S.), No. 2, § 2, printed in 5 LA. R.S. 870 (1950).

simplify their language, to correct their incongruities, to supply their deficiencies, to arrange them in order, the sections thereof being numbered so as to provide for additions and amendments, and to reduce them to one connected text with a view to their adoption. . . .”³ The Law Institute adopted a conservative general policy regarding the revision of existing laws.⁴ In a letter⁵ from the Law Institute to the Governor accompanying the proposed revision, it was stated that, “[w]hile the Institute believes this revision has reduced the volume of the general statutory law of this state by at least fifty percent, nothing has been done which would change the present law.” The statute enacting the Louisiana Revised Statutes of 1950 announced in its title that it was a *revision* and *consolidation* of the general and public laws.⁶ Revised Statutes 1:16 provides the rule of construction to be applied to the Revised Statutes: “The Louisiana Revised Statutes of 1950 shall be construed as continuations of and as substitutes for the laws or parts of laws which are revised and consolidated herein.”

Professor Bennett, a member of the Council of the Law Institute and general coordinator of the revision work, has stated the meaning of Section 16 in the following words: “This saving clause, by expressly stipulating that the Revised Statutes ‘shall be construed as continuations of and as substitutes for’ the statutes incorporated therein, also serves to make it clear that the provisions carried over into the revision are subject to the same judicial interpretation which they were formerly accorded. Thus the wealth of prior jurisprudence construing Louisiana’s general statutes is preserved.”⁷ Adoption of this rule of con-

3. La. Acts 1942, No. 42, p. 136.

4. Policy statement adopted at May 1947 meeting of Law Institute membership: “The Revision is not to be a mere compilation of existing laws. Neither is it to embody policy changes in the substance of the law. Existing laws are to be worked into a consistent and logical pattern. Obsolete provisions are to be deleted, but only after a careful check as to any possible utility. Incongruities are to be resolved, but only after a careful analysis of the statutes involved and with a conscientious effort to effectuate the true legislative intent. The Revision will attempt, in many instances, to bring some semblance of order out of chaos; but it will not pattern that order upon the Reporters’ or Council’s concept of what the substantive law should be.” Printed in 1 LA. R.S. xiii (1950).

5. Letter, Law Institute, Dec. 27, 1949.

6. La. Acts 1950, No. 2, § 1, printed in 1 LA. R.S. 2 (1950): “An Act, to revise the laws of the State of Louisiana of a general or public nature and to consolidate them into a system of laws to be known as the Louisiana Revised Statutes of 1950; to enact the necessary legislation in connection therewith; to provide for the continuous revision of the laws; and to repeal certain enumerated statutes.”

7. Bennett, *Louisiana Revised Statutes of 1950*, 11 LOUISIANA LAW REVIEW 4, 7 (1950).

struction concerning the effects of a revision is common in other states.⁸ "A statute incorporated into a code⁹ is presumed to be incorporated without change even though it is reworded and rephrased and in the organization of the code its original sections are separated."¹⁰

Consistent with this presumption against change, the Louisiana courts have held that an article of the Criminal Code, which was specifically repealed by Section 2 of the Revised Statutes and re-enacted bodily in Title 14, continued its operation without interruption;¹¹ that the time limit for filing an application for rehearing provided by a prior statute (fourteen days after notice of judgment received by counsel) was not changed by the provision's being reworded in the Revised Statutes (fourteen days after rendition of judgment);¹² that the omission in the Revised Statutes of qualifying words found in a prior statute did not effect a change, the qualification being made clear by new language;¹³ that incorporation of a rule of venue formerly applicable only to foreign corporations into the Revised Statutes did not make the old rule applicable to domestic corporations, even though the new provision, appearing out of its old context, could have been interpreted differently.¹⁴

The second purpose of the revision was to resolve the ambiguities and uncertainties arising from overlapping and conflicting statutes. To accomplish this end, a careful analysis of the prior statutes was made before writing the new provisions. After this was done, all the statutes which had been revised and consolidated were repealed. Thus, the Revised Statutes stand as the new law, supplanting all of the source statutes. The implications of this repeal become important when considered with the first purpose of the revision. The provisions of the Revised Statutes were intended as continuations of and substitutes for

8. A contrary rule is commonly applied to amendatory acts when no general revision is involved. "Therefore, any material change in the language of the original act is presumed to indicate a change in legal rights." 1 SUTHERLAND, STATUTORY CONSTRUCTION 412 (3d ed., Horack, 1943).

9. "A revision of previously enacted legislation with the elimination of repealed laws, the inclusion of proper amendments, and the systematic arrangement of the laws by subject matter when enacted by the legislature becomes an official code." 2 SUTHERLAND, STATUTORY CONSTRUCTION 250 (3d ed., Horack, 1943).

10. *Id.* at 255, and cases there cited.

11. *State v. Mathe*, 219 La. 661, 53 So.2d 802 (1951).

12. *Newsom v. Caldwell & McCann*, 51 So.2d 393 (La. App. 1951).

13. *State v. Rones*, 223 La. 339, 67 So.2d 99 (1953).

14. *Perkins v. Brothers of Christian Schools of Lafayette, Inc.*, 71 So.2d 400 (La. App. 1954).

the incorporated statutes. Whenever there is direct and unequivocal conflict between an existing provision and a prior law, however, the existing provision must prevail, because the prior one has been repealed.¹⁵ Following this principle, the courts have held that a conflict between a prior statutory delegation of authority to municipalities of certain populations to define gambling, and the Revised Statutes, which provided no such delegation, must be resolved in favor of the Revised Statutes;¹⁶ that all sections of the Revised Statutes must be given effect, if at all possible, without regard to the date of enactment of the respective source provisions thereof;¹⁷ and that the possibility that a prior statute which was unconstitutional because the act was broader than its title does not affect the validity of like provisions enacted into the Revised Statutes;¹⁸ and that where one statute had repealed another statute before enactment of the Revised Statutes, but both statutes were included in the Revised Statutes, both provisions were of equal dignity.¹⁹ The Supreme Court has been criticized for failing to follow this rule of construction in only one case.²⁰

At first blush the two principles underlying the revision might seem inconsistent. They are readily reconcilable, however, when the nature and purposes of the revision are considered. On the one hand, the general benefits of prior jurisprudence are still available and no presumption of change is indulged. On the other, the Revised Statutes is the law, and not mere prima facie evidence thereof, and the provisions of repealed prior statutes may not be used to contradict the existing provisions. It is

15. In order to rectify any inadvertent errors or omissions in the new Revised Statutes, the Louisiana Law Institute sponsored a general *erratum* bill in the 1952 session of the legislature. It was enacted as La. Acts 1952, No. 127, p. 303.

16. *City of Alexandria v. Lacombe*, 220 La. 618, 57 So.2d 206 (1952).

17. *Chappuis v. Reggie*, 222 La. 35, 62 So.2d 92 (1952); *Babineaux v. Lacobie*, 222 La. 45, 62 So.2d 95 (1952); *State ex rel. Fudickar v. Heard*, 223 La. 127, 65 So.2d 112 (1953); *State ex rel. Fudickar v. Norris*, 223 La. 135, 65 So.2d 115 (1953).

18. *State v. Rones*, 223 La. 839, 67 So.2d 99 (1953).

19. *Guillot v. Nunez*, 225 La. 301, 72 So.2d 513 (1954). This case would have resolved itself into an interpretation of two conflicting provisions of the Revised Statutes, if one of the provisions had not been amended shortly after enactment of the Revised Statutes, and the legislative intent thus made clear.

20. *Gabriel v. United Theatres*, 221 La. 219, 59 So.2d 127 (1952). See *The Work of the Louisiana Supreme Court for the 1951-1952 Term—Civil Procedure*, 13 LOUISIANA LAW REVIEW 306, 323 (1953); Note, 13 LOUISIANA LAW REVIEW 518, 521 (1953). A possible explanation of the *Gabriel* case may be that the inclusion of the provision in question in the Revised Statutes apparently was not brought to the court's attention.

submitted that the Louisiana courts, with the one exception noted, have implemented the true purposes of the Revised Statutes by their decisions.

John S. White, Jr.

LOUISIANA PRACTICE—ISSUANCE OF WRITS OF INJUNCTION—
VALIDITY OF LEGISLATIVE LIMITATIONS
UPON THE COURTS

Plaintiff employer brought suit against twenty-one named defendants individually, and as officers, agents, and members of a union to restrain them from trespassing on or damaging its properties, or from pursuing any course involving the intimidation, molesting, threatening, or abuse of petitioner's officers, agents, employees, or customers. The court sustained defendants' exceptions of prematurity and no cause of action because plaintiff had not complied with the requirements of the Louisiana "Little Norris-LaGuardia Act" of 1934.¹ The Supreme Court granted writs to review the trial judge's ruling. *Held*, exceptions overruled. A statute such as Act 203 of 1934 which limits the jurisdiction of courts in granting immediate injunctive relief when necessary for the protection of rights and property is "illegal and ineffective."² *Douglas Public Service Corp. v. Gaspard*, 74 So.2d 182 (La. 1954).³

1. LA. R.S. 23:841-849 (1950). In the declaration of public policy contained in Section 843 the reasons for limiting the issuance of injunctions in cases arising out of labor disputes are clearly stated: "Legal procedure that permits a complaining party to obtain sweeping injunctive relief that is not preceded by or conditioned upon notice to and hearing of the responding party or parties . . . is peculiarly subject to abuse in labor litigation. . . ."

Two of the most important provisions are Sections 841 and 844. Section 841 prohibits the issuance of any restraining order or temporary or permanent injunction to prohibit such things as becoming or remaining a member of a labor union or peaceful picketing, *etc.* Section 844 prohibits the issuance of temporary or permanent injunctions in labor disputes except after hearing testimony of witnesses in open court, with opportunity for cross-examination, *etc.*, and except after such findings of fact to the effect that unlawful acts have been threatened or committed, and that "substantial and irreparable injury to complainant's property will follow unless the relief requested is granted," *etc.* In no instance will a temporary restraining order be granted unless at least 48 hours' notice is given.

2. The court did not, in so many words, declare any portion of the act unconstitutional. In fact, the opinion does not make it clear whether or not the constitutional issue was raised at all, by either party to the suit.

3. For a discussion of the due process aspect and other ramifications involved in the case, see *The Work of the Louisiana Supreme Court for the 1953-1954 Term—Constitutional Law*, 15 LOUISIANA REVIEW 321 (1955).