

# Louisiana Law Review

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Volume 20 | Number 2

*The Work of the Louisiana Supreme Court for the*

*1958-1959 Term*

*February 1960*

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## Civil Code and Related Subjects: Property

Joseph Dainow

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### Repository Citation

Joseph Dainow, *Civil Code and Related Subjects: Property*, 20 La. L. Rev. (1960)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol20/iss2/4>

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for the maintenance and support of the dependent. But can one be considered justified in voluntarily decreasing his income (or assuming additional obligations) if his alimony payments are not sufficient to support the dependent? To maintain the affirmative would be to deny the obligation itself. Thus the decision, in the writer's opinion, should be taken to mean that one may not obtain the reduction of his alimentary obligations beyond the point of adequacy for the dependent by voluntarily reducing his ability to pay.

The decision in *White v. Morris*,<sup>16</sup> however, is one with which the writer cannot agree. There it was declared that an alimony award in favor of children made in a judgment of separation was cancelled by a judgment of divorce between these parents which simply made no provision for alimony. The writer expressed his views on this subject in reviewing a similar case decided three years ago and they need not be repeated here.<sup>17</sup>

## PROPERTY

*Joseph Dainow\**

In *Roy v. Board of Commissioners*<sup>1</sup> a claim was made for property on Lake Pontchartrain which had been appropriated for levee purposes. The private ownership interests and limitations in riparian property depend primarily on the legal classification of the adjacent or superjacent body of water (i.e., river, lake, sea, etc.; navigable or non-navigable). While the immediate case resulted in a remand for further facts essential to final determination, the court made the statement: "It is immaterial whether the property be classified as sea shore, which, being common property, belongs to no one in particular and is insusceptible of private ownership, or as the bed of a navigable lake, ownership to which is vested in the state up to the high-water mark, since in either event plaintiff would not be entitled to compensation."<sup>2</sup>

There have been conflicting opinions concerning the classi-

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16. 236 La. 767, 109 So.2d 87 (1959).

17. See the writer's remarks on the decision in *Thornton v. Floyd*, 229 La. 237, 85 So.2d 499 (1956), in 17 LOUISIANA LAW REVIEW 311-13 (1957).

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1. 237 La. 541, 111 So.2d 765 (1959).

2. *Id.* at 550, 111 So.2d at 768 (court's footnotes omitted).

fiction of Lake Pontchartrain, and some of the stronger decisions classify it as an arm of the sea thereby making the land at the water's edge "sea shore."<sup>3</sup> Even though it would make no difference to the plaintiff in a particular case, the above language of the court would tend to accentuate confusion concerning the legal classification of Lake Pontchartrain. It would be more helpful in the stabilization of the jurisprudence on Lake Pontchartrain and the Louisiana rules of property if the court maintained consistency on the classification of this body of water.

## SUCCESSIONS, DONATIONS, AND COMMUNITY PROPERTY\*

*Harriet S. Daggett\*\**

### SUCCESSIONS

In *Roy O. Martin Lumber Company v. Strange*<sup>1</sup> suit was instituted under the provisions of R.S. 9:171 *et seq.*,<sup>2</sup> dealing with the partition of an absentee's property by private sale, seeking the partition of certain property in which the plaintiff owned a 31/32d interest, and a 1/32d interest being owned by the defendant. The defendant contended that the statutes were not applicable for the reason that her domicile was well known to the plaintiff, and that because of her appearance through counsel of her own choice, having been made counsel of record, she was not an absentee within the meaning of the statute. The court, on rehearing, held that the whole tenor of R.S. 9:171 *et seq.* clearly demonstrates that the provisions were only meant to apply to an absentee whose whereabouts are unknown, who remains unknown, and who has made no appearance, either in person or by counsel of record. The court supported its conclusion by reference to particular provisions of the statute requiring publication of the notice of the filing of the petition in a newspaper and the appointment of an attorney at law to "represent the absent, unlocated or deceased owner," stating that the former were intend-

3. See Comment, *Seashore in Louisiana*, 8 TUL. L. REV. 272 (1934).

\*Grateful acknowledgment is hereby registered to my student and friend Dale Powers for his work in the preparation of these materials.

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1. 236 La. 77, 106 So.2d 723 (1958).

2. After institution of this suit, LA. R.S. 9:171 *et seq.* (Supp. 1959) were amended by La. Acts 1956, No. 534.