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Civil Code and Related Subjects: Persons

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Civil Code and Related Subjects

PERSONS

*Robert A. Pascal**

Appeals in cases pertaining to the law of persons and the family now go to the courts of appeal and, in principle, the Supreme Court reviews only those cases in this field in which it grants writs. No such decisions on review were reported during the 1960-61 term, but an issue involving the law of persons and the family was decided in a case appealed on constitutional grounds.

In *Hays v. Hays*¹ a husband ordered to pay alimony after divorce, under Article 160 of the Civil Code, argued that Article 160 violated the Federal and State Constitutions by permitting the taking of private property (his) for private (his wife's) purposes. The basis of his argument was the construction of Article 160 frequently repeated by the Supreme Court, that the alimony thereunder allowable to the wife is a "gratuity" in the nature of a pension, awardable in the discretion of the court. The court repeated this construction in its opinion, but rejected the argument of the husband on the ground that "Alimony is incidental and related to divorce, and its imposition is within the power which the lawmakers have to regulate and impose conditions for a divorce. . . . By paying this alimony the husband is discharging an obligation imposed upon him *by the court* under authority of the law, and his property is in no sense being unconstitutionally taken."² (Emphasis added.) It is submitted that the opinion of the court fails to answer the argument of the husband. The legislature cannot authorize any person or persons, including judges, to make a "gratuity" of one person's property to another. Article 160, however, need not be construed to authorize this. A more appropriate and constitutional construction of Article 160 would seem to be that it grants alimony to the divorced wife *as a matter of right*, under certain

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1. 240 La. 708, 124 So.2d 917 (1960).

2. *Id.* at 711, 124 So.2d at 918.

circumstances, leaving only the *amount* of the alimony to the discretion of the court.³

CIVIL LAW PROPERTY

*Joseph Dainow**

Accession

Accession is the means whereby a person acquires ownership of a new thing by reason of its relationship to something else already belonging to him.¹ This determination of ownership may be separate and distinct from the idea of compensation to some other person pursuant to the general doctrine of unjust enrichment.² Thus, if a landowner makes a construction with materials belonging to somebody else, the *ownership* of the improvement vests in the landowner but subject to *adjustment* in favor of the other person for the value of the materials.³ Conversely, if a person makes a construction with his own materials on somebody else's land, the *ownership* of the improvement vests in the landowner subject to *adjustment* in favor of the other person, unless the latter was not a possessor in good faith, in which event, the landowner can demand demolition of the construction.⁴

In the case of *Prevot v. Courtney*,⁵ there was such a situation of improvements constructed by a person who was not the landowner, but it was somewhat complicated by the fact that the property (described as including improvements) was sold to a new owner after the original owner's election to keep the improvements but before they had been paid for. The district court

3. In 1957 the writer had the opportunity to comment on the Supreme Court's construction of Article 160 and did so in these words: "This kind of statement can give rise to the impression the Supreme Court wishes to justify whatever it does in awarding alimony after divorce by denying that the wife, though in necessitous circumstances, has any *right* to alimony. Certainly the court cannot intend this meaning any more than it would be conceivable that the legislatures since 1827 intended to grant such power to the judiciary. It would seem more reasonable to recognize that Article 160 creates a *right of alimony* in favor of the divorced wife in necessitous circumstances, and gives discretion to the judge only as to the amount to be paid." *The Work of the Louisiana Supreme Court for the 1956-1957 Term—Persons*, 18 LOUISIANA LAW REVIEW 24 (1957).

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1. LA. CIVIL CODE arts. 498, 504 (1870).

2. Cf. *id.* arts. 501, 507, 508, 521, 526, 529.

3. *Id.* art. 507.

4. *Id.* art. 508.

5. 241 La. 313, 129 So.2d 1 (1961).