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Paul M. Hebert* and Carlos E. Lazaruṣ†

Amendments to Specific Articles

Article 92—Amendment relative to waiver of age limitations on marriage. Under Article 92, as it originally appeared in the Revised Civil Code of 1870, ministers of the Gospel and magistrates, entrusted with the power of celebrating marriages, were prohibited from marrying any male under the age of fourteen years or any female under the age of twelve. These minimum age limits, based on puberty, were changed in 1934 from fourteen to eighteen years for males and from twelve to sixteen years for females. Section 2 of Act 140 of 1934, which made the changes in the minimum age limit did not become a part of the Civil Code. This section provided for waiver of the age limitations on application made to any district judge by either of the parties to a proposed marriage. Under the statute, exception from the age limitations was authorized upon satisfactory evidence being presented to the judge, "in case of extraordinary circumstances when the parents or guardians of the parties to the proposed marriage give their consent." The statute did not define what constituted "extraordinary circumstances," but did specifically provide that the evidence be received in chambers, that the order "shall not contain the reasons for authorizing the marriage," and that the application would not be a matter of record but would be attached to the marriage certificate. This exception of the 1934 act vested a broad discretion in the district judge and was obviously designed to avert hardships that might arise in a wide variety of circumstances should the increased minimum age be applied without consideration of the facts of particular situations. The authorized exception took cognizance of the fact that there were extraordinary circumstances in which

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it would be far sounder social policy to authorize the marriage than to adhere to the age limitation that marriage celebrants are directed to observe. At the time of the 1934 act the status of marriages contracted in contravention of Article 92 was still unsettled.

When the Revised Statutes of 1950 were adopted, Section 2 of Act 140 of 1934 (containing the exception above referred to) was not enacted as part of the revision. Although Section 2 of the 1934 act was not specifically repealed by the revision, there was presented the anomalous situation that the exception to Article 92 was not a part of the Civil Code and was not re-enacted in the Revised Statutes. There existed, therefore, some uncertainty as to whether the provision of Section 2 of Act 140 of 1934 was still in effect.

Act 398 of 1954, by amending and re-enacting Article 92, and by incorporating the amended exception to the operation of the minimum age limitations as a part of the Civil Code article, removes any doubt that might have existed as to whether the former Section 2 of Act 140 of 1934 was still legally effective. In this respect, therefore, the amendment and re-enactment of Article 92 is a desirable clarification of the law.

4. For a discussion of the policy considerations on which the judicial discretion is based see Connor, Child Marriages in Louisiana—Another Word, 4 Loyola L. Rev. 150, 155 (1948).

5. In State v. Golden, 210 La. 347, 26 So.2d 837 (1946), 7 Louisiana Law Review 442 (1947), the court sustained the validity of a marriage of a girl fifteen years of age who married without her parents' consent. See State v. Priest, 210 La. 389, 27 So.2d 173 (1946), affmimg State v. Golden by implication. In In re State in Interest of Goodwin, 214 La. 1062, 39 So.2d 731 (1949), marriage of a fourteen-year old girl was held valid although in violation of Art. 92, La. Civil Code of 1870, prohibiting magistrates and ministers from marrying any female under the age of sixteen and although in violation of statute providing for a waiting period of seventy-two hours following the issuance of a license during which period ministers and magistrates are prohibited from performing marriages. For a discussion of the French Civil Code provisions (Arts. 144 and 156) see Comment, The Validity of Child Marriages in Louisiana, 14 Tulane L. Rev. 106 (1939).

6. Art. 92, La. Civil Code of 1870, as amended and re-enacted, La. Acts 1954, No. 398, § 1 now reads: "Provided, that this act shall not apply, when on application of either of the parties to a proposed marriage, any district judge, except, in the Parish of Orleans, any judge of the First City Court of the City of New Orleans, may, upon satisfactory evidence being presented to him, in case of extraordinary circumstances when the parents or guardians of the parties to the proposed marriage give their consent, provided, however, that said evidence shall be presented in chambers, and provided also, that said order shall not contain the reasons for authorizing said marriage, and the application shall not be a matter of record but the order shall be attached to and made part of the marriage certificate." (Italicized words added by the 1954 amendment.)
It is to be noted that, in the re-enactment of Article 92, the exception provision was not altered in its main substantive provisions. A change was made to provide that on the application for waiver of the age limitation any district judge "except, in the Parish of Orleans, any judge of the First City Court of the City of New Orleans," may authorize the marriage. While the provision is not completely free from ambiguity, it seems clear that the statute has the effect of depriving judges of the Civil District Court in the Parish of Orleans of the authority to set aside the age limitations and the authority is vested instead in the First City Court in New Orleans. The wisdom of departing from the prior law under which all district judges could issue an order in appropriate cases, authorizing the marriage despite the age limitation, seems open to question.

A statute adopted in 1950 established a waiting period of seventy-two hours between the issuance of a marriage license and the performance of the marriage ceremony and made it unlawful for any minister or public officer to perform the marriage ceremony during that period. Exceptions to the waiting period requirement were permitted upon a certificate from a district judge who had discretion, after interviewing the parties, to authorize for serious and meritorious reasons immediate performance of the marriage. The certificate of the district judge for any such exception was required to be attached to the return on the marriage certificate. Act 399 amends these statutory provisions to provide in each instance that the waiver of the seventy-two hour waiting period statute is to be issued in the City of New Orleans by the judges of the First City Court instead of by the district judges. The amendment to these sections of the Revised Statutes corresponds to the change made by its com-

7. Another possible construction would be that civil district court judges may still issue the waiver order, but judges of the First City Court in New Orleans may also issue it. The clause "except, in the Parish of Orleans" would more properly be considered as modifying the term "any district judge." See the statute quoted in note 6 supra.
8. The large number of such matters presented to the civil district courts was, no doubt, the reason for transferring the function to the City Court in New Orleans. But added justification is found in the functions of the City Court of New Orleans in the issuance of marriage licenses and the celebration of marriages. La. Const. Art. VII, § 91.
10. In La. R.S. 9:204-206 (1950), after the authority mentioned in the district judge in each section, there was inserted the qualifying language: "except, in the Parish of Orleans, any judge of the First City Court of the City of New Orleans."
panion legislation in the provision which is now Article 92 of the Civil Code.\textsuperscript{11}

**Articles 138 and 139—Conviction of a felony and sentence to imprisonment at hard labor or death as grounds for separation or divorce.** In *Hull v. Donze*\textsuperscript{12} the Supreme Court held that Article 139 of the Civil Code which provides that either spouse may obtain a divorce when the other spouse has been “sentenced to an infamous punishment” means that to satisfy this requirement a sentence to imprisonment at hard labor or death must have been imposed. The test of whether or not a punishment is *infamous*, therefore, depends upon the nature of the sentence imposed and it was specifically held that sentence to imprisonment in a parish jail is not an “infamous punishment” within the meaning of Article 139.\textsuperscript{13} It is clear that the holding in *Hull v. Donze* would be equally applicable to Article 138(2) of the Civil Code which provides separation from bed and board may be claimed “when the other spouse has been condemned to an infamous punishment.”\textsuperscript{14} By two separate acts, the 1954 legislature amends Articles 138(2) and 139 to clarify these grounds for separation and divorce by expressly providing that conviction of a felony and sentence to death or to imprisonment at hard labor in the state or in a federal penitentiary shall constitute the requisite grounds. The vague terms of condemnation and sentence “to an infamous punishment” have been eliminated in favor of the more exact phraseology above referred to.\textsuperscript{15} In the

\textsuperscript{11} Under the jurisprudence, even where the waiting period is disregarded and the requisite authorization for immediate marriage not obtained, a marriage in contravention of these statutory provisions is nevertheless valid. *In re State in the Interest of Goodwin*, 214 La. 1062, 39 So.2d 731 (1949).

\textsuperscript{12} 164 La. 199, 113 So. 816 (1927).


\textsuperscript{14} Art. 138(2), *La. Civil Code* of 1870; compare Article 138(7) which lists as an additional ground for separation: “When the husband or wife has been charged with an infamous offense, and shall actually have fled from justice, the wife or husband of such fugitive may claim a separation from bed and board, on producing proofs to the judge before whom the action for separation is brought, that such husband or wife has actually been guilty of such infamous offense, and has fled from justice.”

\textsuperscript{15} *La. Acts* 1954, No. 617, amending Arts. 138(2), (7), *La. Civil Code* of 1870, provides that separation may be claimed reciprocally: “2. When the other spouse has been convicted of a felony and sentenced to death or to imprisonment at hard labor in the state or federal penitentiary;” and “7. When the husband or wife has been charged with a felony, and shall actually have fled from justice” upon proof that the spouse who has fled from justice “has actually been guilty of such felony.” Under *Art. 139, La. Civil Code* of 1870, as amended, *La. Acts* 1954, No. 618, immediate divorce may now be claimed for the cause of “Conviction of the other spouse of a felony and his sentence to death or imprisonment at hard labor.”
light of the jurisprudence, this phase of the amendments is merely an enactment of the existing rule.16

**Article 138—Intentional nonsupport as grounds for separation.** In amending Article 138, Act 617 adds to the previously enumerated causes an entirely new ground for separation from bed and board:

"8. On account of the intentional non-support by the husband of his wife who is in destitute or necessitous circumstances, or by the wife of her husband who is in destitute or necessitous circumstances."

A number of American jurisdictions have by statute recognized nonsupport by the husband as grounds for divorce or separation.17 By this amendment Louisiana has broadened considerably the grounds under which separation, usually the prelude to divorce, may be obtained. This act continues the undesirable trend of making it easier to dissolve the bonds of a civil marriage. Similar legislative policy, indicating the more lenient attitude toward divorce, is reflected in the history of the seven-year divorce law under which the requisite time of living separate and apart has been progressively shortened to two years.18 In recognizing intentional nonsupport as grounds for

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16. The Louisiana Criminal Code defines a felony as "any crime for which an offender may be sentenced to death or imprisonment at hard labor." LA. R.S. 14:2 (1950). Generally, a sentence to the parish jail could not be a sentence to imprisonment at hard labor. There has been some conjecture that possibility of imprisonment at hard labor might exist if the parish should have a work farm or other means of providing hard labor. Any uncertainty on this point does not affect the meaning of Arts. 138(2), 139, LA. CIVIL CODE of 1870, as amended, because it is required that there be (1) conviction of a felony, and (2) sentence to death or imprisonment at hard labor in the state penitentiary or in a federal penitentiary. In MACKAY, LAW OF MARRIAGE AND DIVORCE SIMPLIFIED 69 (2d ed. 1951), forty-three American jurisdictions are listed as recognizing conviction for a felony as grounds for divorce. The question may very well be raised as to whether there might be some situations which, though falling within the amendment, ought not to be included as grounds for divorce. There are some lesser crimes for which imprisonment at hard labor may be imposed and which may not have been within the contemplation of the court when it construed "infamous punishment" as used in the article of the Code. See LA. R.S. 14:56 (1950) (simple damage to property to the value of $500); LA. R.S. 14:67 (1950) (theft to the value of $20 but less than $100); LA. R.S. 14:69 (1950) (receiving stolen property to the value of $20 but less than $100); LA. R.S. 14:71 (1950) as amended by La. Acts 1954, No. 442, § 1 (issuing worthless checks for less than $100); LA. R.S. 14:209 (1950) (breaking seals without authority which have been legally affixed to succession property).

17. MACKAY, LAW OF MARRIAGE AND DIVORCE SIMPLIFIED 70 (2d ed. 1951) lists twenty-seven jurisdictions as recognizing nonsupport by the husband as grounds for divorce.

18. LA. R.S. 9:301 (1950) allowing divorce when the spouses have been living separate and apart started with a seven-year term, La. Acts 1916, No. 269, p. 557, which was reduced to four years by La. Acts 1932, No. 31, p. 217, and then reduced to two years by La. Acts 1938, No. 430, p. 1091.
divorce, the legislature was probably influenced by the state of the law under which a wife, during the marriage, was actually without an effective civil remedy to enforce the legal duty of the husband to support her. True, she might demand support as an incident to a criminal action charging her husband with intentional non-support; but if a wife did not desire to file such criminal charges against her husband, she had no civil remedy. This follows from the interpretation that has been placed upon Article 105 of the Code of Practice prohibiting suits between husband and wife during the existence of the marriage. If the husband had abandoned the wife, a suit for alimony as an incident to a pending action for separation on that ground could be maintained, but for intentional non-support unaccompanied by desertion the wife had no remedy. Moreover, the right of the husband to proceed against the wife for support is not recognized under the Criminal Neglect of Family Act. The remedy effected by the 1954 statute in the enlargement of the grounds for separation to include intentional non-support accomplishes the result of providing a reciprocal remedy for intentional non-support in cases in which there is no abandonment of one of the spouses by the other. There is some safeguard in the requirement that the non-support must be "intentional" which exacts that the non-support be knowing and willful and clearly excludes a case of inability to provide. Similarly, the requirement that the non-supported spouse be in "destitute or necessitous circumstances" indicates legislative intent to restrict the application of the new provision to cases of real destitution. If the objective was to

19. Carroll v. Carroll, 42 La. Ann. 1071, 8 So. 400 (1890) held that, during the existence of the marriage, a wife could not sue for support or alimony unless such suit were accompanied by a demand for separation from bed and board, or divorce. The decision was based upon Art. 105, LA. CODE OF PRACTICE of 1870, providing that "a married woman cannot sue her husband as long as the marriage continues, except it be to obtain a separation from bed and board. . . ." The court reasoned that this provision coupled with the failure of the Civil Code to authorize specifically an action for support excluded the possibility of such an action. Arts. 119, 120, LA. CIVIL CODE of 1870, recognize the duty of support, but do not provide a remedy for its enforcement.

20. Arts. 74, 75, LA. CRIM. CODE (1942) dealing with criminal neglect of family, LA. R.S. 14:74-75 (1950). Under these provisions a wife who does not want to divorce or judicially separate from her husband may secure support in addition to the penalties to which the husband is subject for criminal neglect of family. See Zaccaria v. Beoubay, 213 La. 782, 35 So.2d 659 (1948). 21. Arts. 138(5), 148, LA. CIVIL CODE of 1870. See Koir v. Digby, 166 La. 92, 97, 118 So. 711, 712 (1928): "The failure to take care of one's wife and children is a dereliction of duty and a breach of the contract of marriage, but it cannot be said to be a legal cause for separation from bed and board."

22. LA. R.S. 14:75 (1950) makes it clear that the defendant referred to is the husband who is required to furnish support to the wife and children.
provide the spouses with a civil action to enforce the obligation of mutual support when one of the spouses is in necessitous circumstances, the direct approach of providing such action by way of exception to Code of Practice Article 105 would appear to be sounder social policy than adding to the grounds for separation and eventually divorce.

Article 2635—Appointment of a curator ad hoc for a defendant in expropriation proceedings though he might be within the state, if he cannot be located. Article 2635 is part of the chapter of the Civil Code entitled “Of the Compulsory Transfer of Property.” It provides that in proceedings to expropriate property belonging to an absent or unknown owner, the court must appoint a curator ad hoc to represent such owner. The word “absent” meaning “absent from the state,” prior to Act 47 of 1954 the article did not authorize proceedings to continue if the owner was within the state but could not be located. As amended by that act, the article requires the appointment of a curator ad hoc in three instances: (1) if the owner is unknown, (2) if the owner is absent without leaving a known agent within the state, (3) “if he cannot be found and served after diligent effort though he may still reside within the state.”

A second noteworthy change was enacted into Article 2635 by Act 47. Before amendment, the article provided that in a proceeding against property whose owner was represented by a curator ad hoc, the price of the property being expropriated must be deposited into the state treasury and thus become subject to the order of the State Treasurer. The amendment requires that the price be deposited with the court which is conducting the expropriation proceedings, and become subject to the order of that court. This change will apparently facilitate the procedure and is in accordance with the method followed in most states.

Article 3194—Maximum allowable for funeral charges where estate is insolvent increased to $500. Article 3193 provides that when the estate of a deceased is insolvent, the funeral charges may, upon request by other creditors, be reduced by the judge to a reasonable rate, “regard being had to the station in life which the deceased held and which his family holds.”

26. Ibid.
27. JAHR, LAW OF EMINENT DOMAIN VALUATION AND PROCEDURE 300 (1953).
1954,\textsuperscript{28} amending Article 3194 provides that “in case of reduction” the judge cannot allow more than $500 to pay funeral and burial expenses; prior to amendment, this maximum was $200. While Article 3193 appears to leave to the discretion of the court the question of whether there will be a reduction of the charges, it has been held that the maximum amount payable for funeral charges as specified in Article 3194 must be complied with and a judgment was amended insofar as the trial judge had refused to reduce the payment to the maximum allowed.\textsuperscript{29}

\textbf{Article 3541} — Thirty-year acquisitive prescription to run against minors, interdicts and nonresidents. By Act 736 of 1954, Article 3541 of the Civil Code is amended to read as follows:

“The prescriptions mentioned in the preceding article, and those provided in paragraphs I and II of section three (3) of Chapter three (3) of this title, and those of thirty years shall run against married women, minors, and interdicted persons, reserving, however, to minors and interdicted persons recourse against their tutors or curators.

“These prescriptions shall also run against persons residing out of the State.” (Italics supplied.)

The italicized portion of the provision set forth above is added by the amendment. The effect of the 1954 act is to include the prescription of thirty years among the prescriptive periods which are not suspended by minority or other legal incapacity. The act expressly provides that the amendment shall operate retrospectively as well as prospectively. It further provides that in any case in which the prescription of thirty years would accrue within six months of the effective date of the act, no plea of prescription founded upon the act can be asserted in an action commenced before the expiration of such six-month period.\textsuperscript{30}

Under Articles 3522 and 3554 of the Civil Code, minors and persons under interdiction cannot be prescribed against except...
in those cases expressly provided for by law. In the leading case of *Tyler v. Lewis*, the Supreme Court, construing the various articles on prescription, held that the cases in which prescription does not run against minors are specified in Article 3541 and concluded that in the absence of any specified exception, the prescription of thirty years does not run against minors. This result was clearly a correct interpretation and was in harmony with the basic philosophy of the Civil Code of 1870 which considered it socially desirable to protect the interest of the minor in preference to the competing interest of society in achieving certainty through liberative and acquisitive prescription.

The attitude of protecting the minor's interests began to lose ground as balanced against practical difficulties arising when such interests were encountered in a chain of title to real estate. In 1920, the legislature provided that the ten-year acquisitive prescription founded upon possession in good faith under a title translatively of ownership would run against interdicts, married women, absentees and all others excepted by law. As to the effect of minority, the amended Code provision states:

"... as to minors this prescription shall accrue in twenty-two years from the date of birth of said minor; provided that this prescription once it has begun to run against a party shall not be interrupted in favor of any minor heirs of said party."

Subsequent legislation of 1944 and 1950 provided that the accrual of the ten-years' liberative prescription of a mineral servitude for non-user shall not be suspended or interrupted because of the minority or other legal disability of any owner. This legislation did not change the basic rule as declared in *Tyler v. Lewis*. In the interest of settling titles to real estate where the acquisi-
tive prescription of thirty years would not run against persons under legal incapacity, the 1954 act now makes it clear that all thirty-year prescriptions are included within the provisions of Article 3541. It is to be noted, however, that for actions which prescribe in ten years, Article 3541, as amended, makes no provision and the original principle of the Code which contemplates suspension of prescription during legal incapacity is therefore still applicable to any such liberative prescription.

Articles 2634, 3518, 3519—Amended. These amendments are of a procedural nature and are discussed in the commentary on Courts and Judicial Procedure in this survey.

Civil Code Ancillaries

Marriage licenses—Amendment to requirement of medical certificate. Under provisions of the Revised Statutes, it was unlawful for any officer authorized to issue marriage licenses to issue such a license to a male applicant unless the application was supported by a proper medical certificate dated within fifteen days prior to the application showing the applicant to be free from venereal disease. Such medical examination as a prerequisite to marriage was exacted of the man, but not of the woman. By Act 284 the requirement as to medical examination and certification of freedom from venereal disease is broadened to require that both the male and female applicants shall file such a certificate. The act requires that the medical certificate be dated within seven days prior to the application instead of the fifteen days allowed under the previous act. The amendment is a marked

37. It is to be noted that Article 3541 is a part of Section 3 of Chapter 3 of the Civil Code which treats of liberative prescription. Article 3548 establishes a liberative prescription of thirty years as to actions for immovable property, or for the recovery of an estate or a succession. The jurisprudence establishes that this article is merely the counterpart and an affirmation of Article 3499 by which ownership of immovable property is acquired by thirty years' possession. Labarre v. Rateau, 210 La. 34, 26 So.2d 279 (1946) and cases therein cited. There can be no doubt, therefore, that the 1954 amendment, though not mentioning acquisitive prescription, includes within its scope both Articles 3499 and 3548 of the Civil Code.

38. The effect of the 1954 amendment to Article 3541 and La. R.S. 9:5805 (1950) is that minority and other legal incapacities do not suspend or interrupt the following prescriptive periods: (1) the one-year periods which are named in Bk. III, tit. 23, c. 3, § 3, par. 1, La. Civil Code of 1870; (2) the three-year periods named in Bk. III, tit. 23, c. 3, § 3, par. 2, La. Civil Code of 1870; (3) the five-year period applicable to actions on bills and notes; (4) all thirty-year prescriptive periods; (5) the ten-year periods insofar as they affect mineral rights. The legislation does not affect the action of the minor against his tutor for any dereliction of duty.


improvement upon the earlier law which had been in effect since 1924 and reflects a progressive attitude toward safeguarding the health and happiness of the home. It is legislation long overdue.43

Divorce—Uniform Divorce Recognition Act repealed. Act 61644 repeals Act 241 of 1952, through which Louisiana became the ninth state to adopt the Uniform Divorce Recognition Act.45 The previous act was originally recommended in 1948 by the National Conference of Commissioners on Uniform State Laws in an effort to combat the practice of "migratory divorces" by which residents of one state journey to a state with more lenient laws with the avowed purpose of acquiring a new domicile in order to obtain a "quickie divorce." Sections 1 and 2 of the Uniform Act declared (1) that a divorce obtained outside of Louisiana "shall be of no force or effect in this state" if both of the parties were domiciled in Louisiana at the commencement of the suit; and (2) that a person who obtained a divorce in another state shall prima facie be presumed to have been domiciled in Louisiana at the time he commenced the proceedings if he was domiciled here within twelve months before suit and returned to Louisiana within eighteen months after his departure or if he maintained a residence in Louisiana during the time of his absence.46

While the public dissatisfaction with the situation created by migratory divorces and the policy of discouragement reflected in the Uniform Act are entirely commendable, the problem dealt with is one of the most complex areas in the conflict of laws.47 In

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43. The need for this amendment was pointed out some twenty years ago by Professor Harriet S. Daggett. See Daggett, Trends in Louisiana Law of the Family, 9 Tulane L. Rev. 89, 92-93 (1934).
47. Since Williams v. North Carolina II, 325 U.S. 226 (1945), it has been clear that full faith and credit need not be given a divorce granted in a state not the domicile of one of the parties. A divorce decree, obtained upon a false representation of domicile, is not entitled to full faith and credit, and the lack of jurisdictional prerequisite may be shown in a proceeding in another state, despite recital in the decree of the existence of domicile. This case, along with Williams v. North Carolina I, 317 U.S. 287 (1942), and the subsequent cases of Sherrer v. Sherrer, 334 U.S. 343 (1948) and Coe v. Coe, 334 U.S. 378 (1948), gives rise to perplexing questions under the Full Faith and Credit Clause of the Federal Constitution which has evoked widespread consideration of scholars in the field of conflict of laws. For a recent discussion of this problem, see Comment, Jurisdiction to Divorce Non-Domiciliary Plaintiffs, 14 Louisiana Law Review 237 (1953); The Work of the Louisiana Supreme Court for the 1952-1953 Term—Persons, 14 Louisiana Law Review 114-116 (1953).
spite of the attempt of the framers to fit the act into the doctrinal pattern set by Williams v. North Carolina serious question exists as to whether Section 1 of the Uniform Act actually accomplishes anything. This section may be regarded as bad legislation because it necessarily implies a power in Louisiana to recognize an out-of-state migratory divorce when both parties are domiciled in Louisiana. Furthermore, Section 2 of the act is subject to the criticism that it pays only lip service to the concept of domicile and by adopting presumptions for determination of the fact of domicile oversteps the limits permissible under present constitutional doctrine. In the important case of Alton v. Alton the United States Supreme Court had the opportunity to provide definitive answers to some of the questions inherent in the Uniform Act, but the case was dismissed as presenting moot issues.

It is understood that the repeal of the Uniform Act was not prompted by technical legal considerations in the area of conflict of laws. The repeal seems to have been due to apprehension as to the possible clouds on titles to property that could be created as a result of the Louisiana Uniform Act. If property settlements were effected on the basis of an out-of-state divorce decree, the presumptions of invalidity of the divorce proceedings resulting from Section 2 of the act would raise serious problems as to the

49. Section 1 of the Uniform Act must have been enacted in the belief that Louisiana has the power, if it wished, to recognize out-of-state divorces even though both parties were domiciled in Louisiana at the time of the institution of the proceedings. It is arguable that no such power exists under the Full Faith and Credit Clause. If the state is powerless to do otherwise than to deny recognition to a divorce granted where neither party has a domicile, Section 1 of the Uniform Act is useless.
50. See Alton v. Alton, 207 F.2d 667 (3d Cir. 1953), 14 LOuISIANA LAW REVIEW 893 (1954). A statute of the Virgin Islands enacted a legislative prima facie presumption that a person who had been residing in the Islands for six weeks was domiciled there and could obtain a divorce there. The Virgin Islands court refused to grant a divorce to a petitioner who relied upon the statute for proof of domicile, even though the defendant was present before the court and did not contest the fact of domicile. The court of appeals (majority opinion by Goodrich, Circuit Judge) upheld the lower court on the grounds (1) that domicile was a jurisdictional fact without which a divorce judgment not only would not be entitled to full faith and credit, but also would not be valid where rendered, and (2) that a state or territory could not adopt a presumption of domicile, which might not conform to the fact of domicile, for otherwise the requirement of domicile could be avoided. If this decision be correct, it will mean that a state cannot recognize a divorce judgment granted in a state not that of the domicile of a party and that a state may not adopt criteria in the form of presumptions for determining whether it must give full faith and credit to divorces obtained in sister states.
51. 207 F.2d 667 (3d Cir. 1953), cert. granted, 74 Sup. Ct. 478 (1954), dismissed upon the ground that the cause was moot, 74 Sup. Ct. 786 (1954).
validity of titles to such property. The community regime and the prohibition of transactions between husband and wife during the existence of the marriage would present difficulties to title examiners in such situations. The repeal of the Uniform Divorce Recognition Act will avert such difficulties and because of the doubtful validity of the act as a whole, no harm appears to have been done by its repeal.

Adoption—Statute permitting final decree at first hearing amended. Under the prior law, in adoption proceedings, the court was permitted in certain circumstances to render a final decree of adoption at the first hearing without the necessity of an interlocutory decree. It was apparent from the statute that one of the basic conditions contemplated that the child to be adopted should be in the home of the petitioner for six months. The statute was awkwardly worded and required under some circumstances that “both the child and the petitioner seeking to adopt him” have been in the same home for six months to support a final decree at the first hearing on the adoption. Act 324 of 1954 clarifies the adoption statute in R.S. 9:434. As amended, the statute now authorizes an adoption decree at the first hearing if the child has been in the home of the petitioners for at least six months prior to the adoption petition in the four cases expressly provided for in the statute. One of the four instances added by the amendment is that in which a married couple jointly petitions to adopt a child born out of wedlock to one of the petitioners. These amendments may have been unnecessary, but do constitute clarification of the prior law.

Immovable property—Ownership of navigable waters and beds of bayous, rivers, streams, lagoons, lakes and bays. In California Company v. Price, the Supreme Court held that while it may be inimical to the public policy of the state to permit private ownership of the beds of navigable waters, prior to the Constitution of 1921 there was nothing in the law to preclude the legislature from sanctioning such ownership. The court held that the land in question, part of Grand Bay in Plaquemines Parish, had become privately owned under the terms of Act 62 of 1912. That statute established a six-year prescriptive period within which the state could bring an action to vacate and annul any patent previously issued over the signature of the Governor.

53. 74 So.2d 1 (La. 1954). The decision was four to three with Chief Justice Fournet and Justices Ponder and Hawthorne dissenting.
and the Register of the State Land Office.\textsuperscript{54} Thus the court affirmed and followed its previous pronouncement in the so-called \textit{Duck Lake} case,\textsuperscript{55} where it held that the right of the state to assail a grant to the Atchafalaya Basin Levee District of the bed of a navigable lake had prescribed by the very terms of Act 62 of 1912. The question presented in these cases was whether the 1912 act should be interpreted to exclude from its terms any patents which might embrace the beds or bottoms of navigable bays and lakes. Despite the previous landmark decision of \textit{Miami Corporation v. State}\textsuperscript{56} and the policy reflected in the Civil Code sustaining the legal doctrine that beds of navigable waters are insusceptible of private ownership, these cases rejected the view that the 1912 act excluded patents that embraced the beds of navigable waters.

Because these decisions run counter to the policy expressed in the Civil Code and in the Constitution of 1921,\textsuperscript{57} and because it may be cogently argued that the interpretation given to Act 62 of 1912 does violence to the legislative intent,\textsuperscript{58} it is easily under-

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\textsuperscript{54} The provisions of this act are carried forward into the Revised Statutes as \textit{LA. R.S. 9:5661 (1950)} with editorial changes, particularly the change of the original language previously contained in the statute that "suits to annul patents previously issued shall be brought within six years from the passage of this Act."

\textsuperscript{55} \textit{Humble Oil & Refining Co. v. State Mineral Board}, 223 \textit{La. 47}, 64 So.2d 839 (1953), \textit{14 L\textsc{ouisiana} L\textsc{aw} R\textsc{eview} 267}, and commented upon in \textit{The Work of the Louisiana Supreme Court for the 1952-1953 Term—Property}, \textit{14 L\textsc{ouisiana} L\textsc{aw} R\textsc{eview} 133-37 (1953)}.

\textsuperscript{56} 186 \textit{La. 784}, 173 So. 315 (1936). See Arts. 453, 458, \textit{LA. Civ\textsc{al} C\textsc{ode} of 1870}.

\textsuperscript{57} \textit{LA. Const. Art. IV, § 2}, provides: "Nor shall the Legislature alienate, or authorize the alienation of, the fee of the bed of any navigable stream, lake or other body of water, except for purposes of reclamation. In all cases the mineral rights on any and all property sold by the State shall be reserved, except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the State for taxes."

\textsuperscript{58} In \textit{his dissent, in California Co. v. Price}, 74 So.2d 1, 15-16 (La. 1954), Chief Justice Fournet states: "I have no doubt that if this were an original test of legislative intent in adopting Act No. 62 of 1912, the statute could, despite its all-embracing language, very easily be construed to mean that the legislature did not intend thereby to include within its purview the beds of navigable streams, and particularly those connected with or forming a part of or being an arm of the sea, but only such lands as the state would, in the ordinary course of events, have available for sale on the open market. In my opinion, such a construction is logical and sound, leading to no absurd consequences." See also the dissent of Justice Ponder, \textit{id. at 17}: "I believe a reasonable construction of the statute would be that it only applies to property susceptible of ownership and that it has no application to property that cannot be owned. Furthermore, the act is a curative statute and cannot be given the effect of supplying title to the arm of the sea when the patent itself did not and could not convey any semblance of title to it."
standable that the far-reaching effect of these decisions would evoke legislative action during the 1954 sessions. Act 727 of 1954 adding R.S. 9:1107-1109, represents a direct attempt to overrule the two decisions. The act declares that it has always been the public policy of the state that all navigable waters and the beds thereof are insusceptible of private ownership; that no legislative act has been enacted in contravention of that policy; and that the intent and purpose of the legislature in enacting Act 62 of 1912 was, and is, to ratify and confirm only those patents which conveyed public lands susceptible of private ownership. The act further declares that any patent or transfer heretofore or hereafter issued or made is null and void, so far as it purports to include navigable waters and the beds thereof as having been made in contravention of the announced public policy, and that no statute shall be construed to validate by reason of prescription or peremption any patent or transfer issued by the state which includes “navigable or tide waters or the beds of the same.”

As a legislative construction of the act of 1912 intended to have retrospective effect, Act 727 of 1954 will undoubtedly be attacked on the grounds that it divests vested rights and constitutes a violation of both state and federal constitutional provisions. In Illinois Central R.R. v. Illinois it was held that a legislative grant of the state's title to submerged lands under Lake Michigan could be repealed by subsequent legislation because the lands in question were held in trust for the public use.

59. At the conclusion of his well-reasoned dissenting opinion reflecting comprehensive research into the jurisprudence and statutory provisions, Justice Hawthorne, id. at 29, states: “The decision rendered by the majority of the court in the instant case is one of far-reaching effect, and it takes no seer or prophet to foretell that as a result of this decision private individuals will successfully claim title under old patents to the beds of numerous bays on the Gulf, large lakes, etc., from which oil is being or will be produced, and the holding that such properties are susceptible of private ownership will deprive the people of this State of tremendous sums of money, running into millions, which, I say with due respect to the views of the majority, legally belong to them.”

60. LA. CONST. Art. IV, § 15; U.S. CONST. Art. I, § 10. It is to be noted that the majority opinion in California Co. v. Price, 74 So.2d 1, 7 (La. 1954) stated that the Oyster Statutes relied on by the state as containing provisions that the beds and bottoms of navigable waters continued to be property of the State of Louisiana could not be considered as applicable to the 1912 act. In the court's opinion, to construe those statutes as applicable to previously disposed of property would be to open the statutes to a constitutional attack as divesting divested rights.

61. 146 U.S. 387 (1892).

62. ROTTSCHAEFER, HANDBOOK OF AMERICAN CONSTITUTIONAL LAW 595, n. 41 (1939), so interprets the cited case, but he points out that generally public grants made by the state are contracts implying that the grantor will not reassert title within the meaning of the contract clause of the Federal Constitution. Compare Fletcher v. Peck, 6 Cranch 87 (U.S. 1810). COOLEY,
The decision even declared that the state was incapable of abdicating this public trust by conveyance to a private corporation. There may be some comfort to the state's position to be drawn from that decision though distinctions in application have been made in later cases and the logical implications of the Illinois Central R.R. case are inconsistent with the settled system in those states in which private ownership of the beds of navigable waters by conveyance from the sovereign state has been recognized as a matter of policy.63 Question will also be raised as to the competency of the 1954 legislature to make a declaration of what the 1912 General Assembly actually intended.

Regardless of the question of constitutionality that the statute poses, it may be given some effect as a legislative interpretation of the state's policy as to submerged lands under navigable waters when the court is called upon to re-examine the basic soundness of the two cases the statute was designed to overrule.

Of great importance in connection with this subject is the proposed deletion and repeal of that provision of the Constitution of 1921 which prohibits the alienation of beds of navigable waters, except for purposes of reclamation, and which guarantees to the state the reservation of mineral rights on all property sold by the state.64 In view of the decisions in the Duck Lake case and California Co. v. Price, and because prior to 1921, there was no express constitutional prohibition regarding the alienation of the beds of navigable streams and no express provision reserving to the state the minerals on lands sold by it, a way would be opened for strong argument that there is no longer any impediment to perfecting title to the beds of navigable waters conveyed by the state. This may follow from the emphasis placed in the

Constitutional Law 380, n. 30 (Bruce's ed. 1931) states: "The soil under navigable waters is held by the people of the State in trust for the common use, and as a portion of their sovereignty, and any act concerning its use affects the public welfare. The legislature cannot by irrepealable contract convey such property in disregard of the public trust. Illinois Cen. R.R. Co. v. Illinois, 146 U.S. 387."


64. This repeal will be effected if Act 758 proposing an amendment to La. Const. Art IV, § 2, is adopted. The purpose of this constitutional amendment was to ratify and validate the highway and building authority bond issues authorized by La. Acts 1954, Nos. 5, 13. It is obvious that the omission of the language quoted in note 57 supra was not intentional. See also page 101 infra. After this article went to press, it appears from the unofficial returns that the constitutional amendment was rejected by a close vote.
Price case on the constitutional provision referred to as the only prohibition standing in the way of the acquisition by private parties of the beds of navigable waters. Even if Act 727 of 1954 be sufficient to prevent future alienations of beds of navigable waters, nothing is said therein concerning the non-alienability of mineral rights on property conveyed by the state. If the minerals are not expressly reserved, danger exists that where the state conveys property, not necessarily the beds of streams, lakes or bayous, these valuable rights would be lost to the state.65

Act 443 of 1954, amending R.S. 9:1101, adds the following provision to the original section:

“All transfers and conveyances or purported transfers and conveyances made by the state of Louisiana to any levee district of the state of any navigable waters and the beds and bottoms thereof are hereby rescinded, revoked and canceled.”

This statute does not by its terms seek to revoke transfers of such lands where the rights of third persons are concerned though the similar provision of Act 727, discussed above, is intended to have that effect. It rather contemplates the situation in which the land is held by a levee board under one of the various state grants, the six-year prescriptive period of Act 62 of 1912 being inapplicable to that situation. So construed the statute constitutes a valid revocation of legislative grants of public lands and will clarify any uncertainty as to the authority of the State Mineral Board to lease such lands for mineral development.66

65. Cf. Sims v. State Mineral Board, 219 La. 342, 351, 53 So.2d 124, 127 (1951) where the court states: “Appellant, the mineral board, contends that under Act 237 of 1924, as amended, LSA-RS 47:2189, when the sheriff adjudicated the property to Poe, a sale, not a redemption, was consummated, and that, when the patent was issued pursuant to this sale, a new title was created, in which must be read the constitutional restriction that in all sales of state property the minerals must be reserved. In our opinion it is immaterial whether the adjudication be considered a sale or a redemption, for the article of the Constitution relied on provides that the minerals shall be reserved except where the owner or other person having the right to redeem may buy or redeem property sold or adjudicated to the state for taxes. . . .

“We do not, however, think that the judgment of the lower court was correct insofar as it recognized the plaintiff Sims to be the owner of the mineral rights in the oil, gas, and other minerals under the property.”

66. As applied to lands transferred to the various levee boards by the state, where the lands are still held by the levee boards and the rights of no third parties have attached to such lands, it would be competent for the state to revoke any grants made by it. Board of Commissioners of Caddo Levee District v. Pure Oil Co., 167 La. 801, 120 So. 373 (1928); Atchafalaya Land Co. v. F. B. Williams Co., 146 La. 1047, 84 So. 351 (1920); cf. State ex rel. Fitzpatrick v. Grace, 187 La. 1028, 175 So. 656 (1937).
Movable property—Storage tanks placed on land by some one other than the owner declared movable property. Two diametrically opposed decisions emanated from the Court of Appeal for the Second Circuit on the question as to whether a gas tank, placed upon the premises by a butane gas company, pursuant to a contract with the owner of the realty to supply him with gas for cooking and heating purposes, had become immobilized so that the tank passed to a third purchaser of the realty. In *Holicer Gas Co. v. Wilson* 67 the court held that the gas tank in question had become an immovable under Articles 467 and 468 of the Civil Code, even though not placed on the realty by the owner thereof. In *Edwards v. S. & R. Gas Co.*, 68 the court reversed its position, holding that the tank retained its movable character, so that the owner of the tank could remove it from the premises after the sale of the realty to a third party. Lest the court be inclined to follow the decision in the *Holicer* case, 70 the legislature enacted Act 49 of 1954, 71 which codifies the rule announced in the *Edwards* case, to the effect that tanks, placed on the land by a person who is not the owner of the land, for the storage of liquefied gases or fertilizers, will retain their character as movables, and that the owner of the tanks will not be affected by the sale of the land on which they have been placed.

Trust Estates Act—List of trust fund investments amended. The Trust Estates Act establishes a "legal list" of authorized classes of securities and provides that unless otherwise stipulated in the terms of the trust, or unless court authority for deviation from the list is obtained, or unless the investment falls within

68. 45 So.2d 96 (La. App. 1950).
69. 73 So.2d 590 (La. App. 1954). In reversing its former stand, the court said: "Our difference from the author of the Holicer opinion is first, the tank was not truly an accessory to the fundus; second, it was not employed in the service of the fundus, but in the service of the person who owned the fundus; and third, it was not placed on the fundus by the owner of both the fundus and the movable." *Id.* at 592.
70. Hardy, J., who rendered the opinion in the *Holicer* case, dissented in the *Edwards* case, saying: "The opinion in the Holicer case expressed the views of this court at the time, and I remain unchanged in my belief of its soundness. . . ."

"I further strongly and emphatically disagree with the conclusion that a gas system for use in furnishing fuel for cooking and heating in a dwelling house is designed for the service of the owner and not for the service and improvement of the building. Pursuing the same analogy as above used, we might say that a bath tub is intended for the service and convenience of the owner and his guests rather than for the service and improvement of the building. I respectfully dissent." *Id.* at 595.
statutory provisions relative to a joint investment fund, the trustee shall invest the trust funds only in securities on the legal list. By Act 236 of 1954 obligations issued or guaranteed by the International Bank for Reconstruction and Development were added to the authorized legal list of investments.\textsuperscript{72}

**Domestic corporations—Specific authority to make donations to corporations and organizations created and operated exclusively for religious, charitable or educational purposes.** Act 638 of 1954 adds a new section to the Revised Statutes specifically authorizing domestic corporations, when authorized by the board of directors or executive committee, to make donations to any corporation, trust, fund or foundation, created or organized exclusively for religious, charitable or educational purposes. No part of the net earnings of the donee may inure to the benefit of a shareholder of the donee and no substantial part of the activities may be "carrying on propaganda, or otherwise attempting to influence legislation."\textsuperscript{73} It is provided that a donation shall not be authorized if the donee institution shall own more than ten percent of the voting stock of the donor or one of its subsidiaries. The additional section will modify the power of domestic corporations unless otherwise provided in the charter. The act contemplates that any existing authority under the general principles of corporate law as to donations is not set aside by enacting: "The provisions of this Part shall not be construed as interpreting the rights and powers of corporations as heretofore existing." This latter provision was inserted to make it clear that by enacting this affirmative authority there is no legislative interpretation implied that the authority to make such donations did not previously exist. It is likewise intended to avert any attack on the act as an unconstitutional modification of existing charters. The obvious purpose of the statute is to remove all doubt as to the power of the corporate directors to make corporate gifts for charitable, religious and educational purposes. It seeks to avoid the possibility of stockholder attacks on such corporate donations on the grounds that such donations are *ultra vires*. Under the act it would not be necessary to show that the donation would result in a direct benefit to the corporation. While the courts have been liberal in sustaining corporate do-

nations of this type\textsuperscript{74} the large increases in the amounts of corporate gifts for religious, educational and charitable purposes make it likely that minority shareholders will be more prone to question the validity of such substantial donations.\textsuperscript{75} By this enactment, Louisiana joins the large number of states enacting specific statutes to make the authority absolutely clear.\textsuperscript{76} The Louisiana statute meets the standard set for income tax deductions under both the new Internal Revenue Code and the former law.\textsuperscript{77} This legislation reflects a desirable social attitude toward a form of corporate philanthropy which bears an intimate relationship to the very maintenance of our free enterprise system itself.

Trusts—Statutory recognition of the cy pres doctrine. The “cy pres” doctrine, as applied to the law of charitable trusts, means that when the settlor’s purpose cannot be fulfilled because it has become impossible or impracticable to do so, it will nevertheless be carried out as near as possible and give effect to the trust.\textsuperscript{78}

In the case of \textit{Da Pontalba v. New Orleans},\textsuperscript{79} the plaintiff sought to annul a donation made to the Ayuntamiento of New

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\item \textsuperscript{75} “Corporations have risen to sudden prominence in the field of philanthropy. Their ‘gifts and contributions’ as reported to the Bureau of Internal Revenue leaped from a level of $30 million in 1936 and $31 million in 1939 to a plateau of over $200 million in every year since 1944, with the probability that 1951 exceeded $300 million.” Andrews, \textit{Corporate Giving} 15 (1952).
\item \textsuperscript{76} The state permissive legislation of this type is surveyed in \textit{id.} at 233-39.
\item \textsuperscript{77} INT. REV. CODE § 170(c); formerly INT. REV. CODE, 26 U.S.C.A. § 23(q) (Supp. 1953).
\item \textsuperscript{78} Fisch, \textit{The Cy Pres Doctrine in the United States} 1, § 1.00 (1950). The term “cy pres” the author explains, is derived from the Norman French “cy pres comme possible,” meaning “as near as possible.” The doctrine, the author further points out, “arose so far back in antiquity that its origins are obscure. It was known and used in Rome before Constantine and thus was not an innovation of Christianity. A case applying the cy pres principle appears in the \textit{Digest of Justinian}. In the early part of the third century a legacy was left to a city for the purpose of preserving the memory of the donor by using the income to conduct yearly games. Such games being illegal at that time, the question arose of what was to be done with the legacy. The solution of Modestinus, a celebrated jurist, was as follows: ‘Since the testator wished games to be celebrated which are not permitted, it would be unjust that the amount which he has destined to that end should go back to the heirs. Therefore, let the heirs and magnates of the city be cited, and let an examination be made to ascertain how the trust may be employed so that the memory of the deceased may be preserved in some other and lawful manner.’ Eventually the cy pres doctrine found its ways into French and also Spanish civil law.” \textit{id.} at 3-4, § 1.02.
\item \textsuperscript{79} 3 La. Ann. 660 (1848). This case was decided under the Spanish
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Orleans on the grounds that the conditions under which the donation had been made had failed. It appeared that the father of the plaintiff had donated property on which he had built leper hospitals and which he stipulated should continue to be used for that purpose. The donation was unconditionally accepted and applied to the contemplated use; but later, after the buildings burned down, the property was turned into a cemetery, subsequently sold and the proceeds deposited in the public treasury. The plaintiffs, heirs of the donor, claimed these proceeds, claiming the conditions of the donation had failed. It was held, however, that since the donation had not been made solely and exclusively for the use mentioned, it did not fail upon the failure of the donee to continue to use it for the purpose intended. Similarly, in Succession of Vance, the City of New Orleans sued for a legacy which the court construed to have been made for the benefit of the indigent insane, though it had been made to a special charity named as the donee which, however, did not exist at the time of the donor's death.

Interpreting these two cases, the Federal Court of Appeals in Sickles v. New Orleans, after reviewing the authorities and the civil law which was in effect at the time of the donation in the territory of Louisiana. Cf. the language of the court, referring to earlier decisions, in Board of Trustees v. Richardson, 216 La. 633, 644, 44 So.2d 321, 325 (1950), to the effect that in a donation containing the stipulation that it was made for religious purposes, the stipulation was merely indicative of the motive for making the donation, and not a condition the nonfulfillment of which would cause the donation to fail: “This holding is not only at variance with our civil law, as hereinabove demonstrated, but is also not supported by the authorities relied on by the author of the opinion and we will not, therefore, follow it.”

80. 39 La. Ann. 371, 2 So. 54 (1887).
81. Two other cases following the doctrine of Da Pontalba and Vance cases are Hutchinson v. Tulane University of Louisiana, 171 La. 653, 131 So. 838 (1930) and Board of Trustees of Ruston Circuit, Methodist Episcopal Church v. Rudy, 192 La. 200, 187 So. 549 (1939). In the Rudy case, the donor executed a transfer of land to the church. The need arose, however, to build a new church in a different location, and the trustees elected to sell the property. This, the heirs of the donor opposed on the grounds that, under Article 1559 of the Civil Code, the donation had fallen under the resolutory condition thereof. Sustaining the judgment of the lower court in favor of the donation, it was held that the stipulation was not a condition contemplated by the article of the Civil Code and that the rule applicable was that applied to donations of land for public use in which the donor parts with his title and his heirs have no further interest in the property.
82. 80 Fed. 868 (5th Cir. 1897). In the course of the opinion the court said: “The real beneficiaries to charitable donations are generally the unorganized poor, and the administration of the charity is necessarily confided to agents. If such charities are not properly administered, or by neglect are allowed to lapse, the fault is not attributable to the beneficiaries, nor always to the public, but generally to the bad judgment or neglect of administrators. The state, as parens patriae, can and should protect all such charities by legislation and through the courts, as is the universal rule in civilized states...” Id. at 877-78.
doctrines of both the civil and common law, held that the Louisiana Civil Code was not intended to, and did not include, among the donations subject to revocation, those made for charitable or other eleemosynary purposes.\(^8\) Though these cases went no further than to declare irrevocable donations or bequests for charitable purposes, and though nothing was said concerning the administration of the trust established where the purpose for which they were made was no longer possible, these cases indicate, at least, that Louisiana was not unfavorably disposed toward the *cy pres* doctrine. A diametrically opposed decision seems to have been rendered, however, by the Louisiana Supreme Court in *Board of Trustees v. Richardson*,\(^4\) where it was held that a donation for religious purposes would be subject to revocation and dissolution under Article 1559 of the Civil Code, if the conditions imposed by the donor that the property be used for religious purposes were not complied with. So holding, the court refused to follow and overruled its previous position announced in *Board of Trustees v. Rudy*.\(^5\)

This undesirable result has been remedied by the enactment of Act 592 of 1954,\(^6\) whereby the *cy pres* doctrine is now made a part of the general statutory law of Louisiana. Under its provisions, where the circumstances have so changed since the execution of a donation as to render it impractical or impossible to comply literally with the terms thereof, adequate proceedings are prescribed whereby the court may decree that the donation be administered in such a manner to accomplish "as nearly as practicable under existing conditions" the general purpose of the bequest or donation. The statute contemplates a contradictory hearing with the heirs and legatees of the decedent, upon the filing of a petition by the trustee setting forth the facts and circumstances which, in his opinion, render it impractical, impossible or illegal to comply with the terms of the donation or trust, and the method in which he proposes to administer the same. In rendering its judgment, however, the court is required to give preference to proper suggestions, if any, offered by the

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83. "Enough has been cited and said to show why we find that article 1559 Rev. Civ. Code, was not intended to, and does not, include among donations liable to be revoked, those donations to pious uses which, otherwise absolute and unconditional, merely specify or direct the particular charity favored by the donee, and why we conclude that, under the recognized jurisprudence of Louisiana, such donations are not revocable." Id. at 878.
84. 216 La. 633, 44 So.2d 321 (1950).
85. 192 La. 200, 187 So. 549 (1939).
heirs or legatees as to the method of administration. It cannot in any case decree the invalidity of the bequest because the conditions imposed cannot be complied with. The judgment, which can only be appealed from suspensively and then only when application is made within thirty days after the signing thereof, protects the trustee from personal liability in his administration of the trust, and on proper showing that the administration has been made in accordance with the judgment, the trustee is entitled to a final discharge from all responsibility in the premises.

Tax certificates—Requirement that certificate state whether or not the current taxes have been paid. There is a statutory requirement that no public officer shall convey real property located within the City of New Orleans unless the state, parish, municipal and levee district taxes due thereon, as well as the past due charges for local improvements and assessments, are paid. Payment must be made to appear by a tax certificate showing the payment of the taxes and covering the research period required by the statute. By Act 596 of 1954, the statute was amended to require that the tax certificates issued in connection with sales of real property shall indicate "whether or not the current taxes have been paid." This added certification should facilitate collection of current taxes when due and assist in clarification of the facts necessary in any exact agreement as to proration. Under the statute it would appear that taxes not due would not have to be paid in the current year in which the act is executed despite the added certification requirement.

Incorporeal rights—Assignments of accounts receivable to be recorded in the conveyance records. In 1952 Louisiana adopted an additional comprehensive method of making assignments of accounts receivable. By Act 725 of 1954 the provisions relative to recordation of the statement of assignment were amended in two minor respects: (1) in parishes of the state other than Orleans Parish, the statement of assignment is to be recorded in the conveyance records rather than in the Sale of Movables Book; (2) the effective time of the assignment is when the statement

is "filed" rather than when the statement is "received" by the recorder as formerly provided.

Privileges and mortgages—Ranking of laborer and materialman's privilege clarified. Louisiana R.S. 9:4801 carried forward into the revision the provisions of Section 1 of Act 298 of 1926, as amended, ranking the laborer's and materialman's privilege over a prior mortgage, unless the mortgage had been recorded before the work or materials had been furnished, regardless of the time when the contract for such work had been recorded.90

Although the statute did not specifically so provide, the Supreme Court had held in the Hortman-Salmen case91 that where a conventional mortgage to secure future advances had been recorded before the labor or materials had been furnished, the mortgage would prime the materialmen, even though the advances had been made thereafter. It was possibly with the intention to codify this holding that the legislature of 1952 amended R.S. 9:4801. Since the amendment provided that, where the mortgage was given for the purpose of securing future advances in order for the mortgage to prime the privilege of the materialmen it had to be recorded before any work or labor had begun or material furnished, or before the recordation of the contract for such labor or materials,92 the 1952 amendment restricted the rule previously announced by the court.

The 1952 amendment also changed the existing law relative to the rank of the vendor's privilege and that of the mortgage creditor, because the requirement of recording the mortgage prior to the recordation of a building contract where the mortgage was given to secure future loans was also required in the

90. La. Acts 1926, No. 298, § 1, p. 540, as amended, La. Acts 1946, No. 281, § 2, p. 843, substantially providing as follows: "Every contractor, ... workman, laborer or furnisher of material . . . who performs work or furnishes materials for the erection . . . of any building . . . has a privilege for the payment . . . of such work or labor performed, or materials . . . furnished . . . upon the land and improvements on which the work or labor has been done . . ., which privilege, if evidenced as herein provided, is superior to all other claims against the land and improvements except taxes or local assessments . . . or a bona fide vendor's privilege . . . or a bona fide mortgage, provided said mortgage or vendor's privilege exists and is recorded before the work or labor is begun or any material is furnished."

91. Hortman-Salmen Co. v. White, 168 La. 1057, 123 So. 711 (1929).

92. La. R.S. 9:4801 (1950), as amended, La. Acts 1952, No. 291, p. 750. It is submitted that the amendment was unnecessary in view of the holding of the court in Hortman-Salmen Co. v. White, 168 La. 1057, 123 So. 711 (1929), wherein a conventional mortgage recorded before work or labor had begun or materials furnished was held to secure future advances made thereafter with priority over the materialman's privilege arising subsequent to the recordation of the mortgage.
case of a vendor's privilege and mortgage. Under the amendment, therefore, if a building contract under which the labor or materials to be furnished were recorded prior to the recordation of a vendor's mortgage, the materialmen would prime the mortgagee even though no labor or materials had actually been furnished prior to the recordation of the mortgage, which, to say the least, is illogical.

This hiatus was resolved by Act 477 of 1954 which again amends R.S. 9:4801, restoring the original intent of the section regarding the rank between the materialmen and the vendor, and clarifying the original legislative intent regarding the rank of any other conventional mortgage given simply to secure future advances for construction purposes. The original one-sentence provision has been broken down into four subsections: Subsection A grants the privilege to the laborer and materialman, Subsection B ranks the materialman's privilege with respect to (1) taxes and local assessments for public improvements, if any, and (2) the vendor’s privilege or mortgage. Here some editorial changes were made: instead of referring to the vendor's privilege as "whether arising from a sale, or arising from a sale and resale to and from a regularly organized homestead or building and loan association," the idea has been expressed in a separate sentence. Subsection C embodies the substance of the 1952 amendment and provides that where a mortgage note has been executed for the purpose of securing advances to be made in the future, and the mortgage has been recorded before the work or labor has begun or material furnished, the amount of the advances subsequently made will be secured by the mortgage with priority over the privilege of the materialmen. Subsection D makes it clear that the laborer’s privilege primes the rights of mortgagees and vendors in all cases.

**Chattel mortgages—Bona fide retail purchaser from dealer of motor vehicles, chattel, property or merchandise not subject**

93. "... provided said mortgage or vendor's privilege exists and is recorded before the work or labor is begun or any material is furnished or any building contract placed of record..." La. R.S. 9:4801 (1950), as amended, La. Acts 1952, No. 291, p. 750. See Louisiana Legislation of 1952, 13 Louisiana Law Review 21, 35-37 (1952).


95. The language has been clarified to read as follows: "For the purposes of this Sub-Section, a vendor's privilege or a mortgage resulting from a sale and resale to and from a regularly organized homestead or building and loan association also constitutes a vendor's privilege or mortgage, respectively, within the intendment of this Sub-Section." La. R.S. 9:4801 (1950), as amended, La. Acts 1954, No. 477.
to chattel mortgage lien. Acts 480 and 481 of 1954 amend the Motor Vehicle Certificate of Title Act and the Chattel Mortgage Act by adding new provisions that are designed to protect the purchaser who buys from a dealer in good faith without knowledge of the existence of a chattel mortgage. If he does not in fact know of the existence of the chattel mortgage, the bona fide purchaser at retail from a licensed dealer, wholesaler or retailer will hold the property free of the chattel mortgage lien where the holder of the mortgage expressly or impliedly consents to the chattel being placed on sale in the usual course of business. The acts provide that such consent is implied whenever the mortgagor is a licensed wholesaler, retailer or dealer and may not be negatived by any clause in the mortgage. From the language of the acts, it is made clear that the purpose is to protect only retail purchasers for individual or business use and that the chattel mortgage may be enforced against "group or bulk purchasers" whether such purchasers are in good faith or not.

The amended acts overturn the leading case of Palmisano v. Louisiana Motor Car Co. and the subsequent case of Commercial Securities Co. v. Luke. They accept the view that the purchaser

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97. "For purposes of this Section a bona fide retail purchaser in actual good faith shall be deemed to be any person, firm, partnership or corporation purchasing a motor vehicle, chattel or merchandise for individual or business use and not for resale from a licensed dealer, wholesaler or retailer, who does not in fact know of a chattel mortgage existing upon the property purchased. . . ." La. Acts 1954, No. 481, amending La. R.S. 9:5354 (1950); La. Acts 1954, No. 480, amending La. R.S. 32:710 (1950).
98. In Palmisano v. Louisiana Motor Car Co., 166 La. 416, 117 So. 446 (1928), plaintiff instituted proceedings by executory process under the Chattel Mortgage Act against new automobiles which had been sold by defendant to intervenors. Intervenors contended that plaintiff was estopped from so proceeding because when he sold to defendant, a dealer, he knew that the automobiles were to be placed on the dealer's floor for sale, and that, having such knowledge, the said plaintiff mortgagee in effect agreed that it might be sold free of the mortgage, and that he should look to the proceeds of the sale in the hands of the dealer. The court held that under those circumstances there was no estoppel and the chattel mortgage could be enforced against the innocent purchaser.

Estoppel or waiver might be found in a specific agreement consenting to the sale of property subject to a chattel mortgage. Security Credit Corp. v. Menefee Motor Co., 14 La. App. 1, 129 So. 174 (1930), but not in mere knowledge that the car will be exhibited for sale by a dealer in the usual course of business. Commercial Securities Co. v. Luke, 54 So.2d 893 (La. App. 1951).
99. 54 So.2d 893 (La. App. 1951). A used car dealer purchased a car, placed a chattel mortgage on it for the purchase money paid to the vendor, exhibited it for sale on his used car lot, and subsequently sold it to a purchaser who, in turn, transferred it to other purchasers. The dealer did not remit the money to the mortgagee. Held, the fact that the mortgagee knew the car would be exhibited for sale by dealer did not operate as estoppel or waiver and mortgagee could enforce the chattel mortgage lien against the purchaser.
from a dealer should not be bound by constructive notice of a properly recorded chattel mortgage.\textsuperscript{100}

As applied to movable property constituting stock in trade other than motor vehicles, the amendment appears to be largely unnecessary. Legislation passed in 1948 and clarified in 1950 provides in effect that the chattel mortgage lien ceases to exist as to property sold from stocks of merchandise in retail, wholesale or manufacturing establishments.\textsuperscript{101} The 1948 and 1950 provisions, however, could not now be construed to cover motor vehicles covered by the Certificate of Title Act and there are, no doubt, additional factual situations involving mortgages of chattels not within the terms of the Chattel Mortgage Act as it existed prior to Act 481 of 1954.

As applied to motor vehicles, the adoption of the Motor Vehicle Certificate of Title Act\textsuperscript{102} lessened considerably the hazards to which purchasers from used car dealers may be exposed when chattel mortgage financing is involved. Normally, the notation of the chattel mortgage on the face of the certificate of title would bring actual notice of the existence of the chattel mortgage to the attention of the alert buyer. But mortgages may also be given by automobile dealers on vehicles for which no certificate of title has been applied for under floor plan loans. Under the statute making mortgage to secure floor plan loans effective against third persons from the time they are entered in the register of floor plan mortgage by the Commissioner of Motor Vehicles, there is continued possibility of good faith purchase of mortgaged automobiles under which the purchaser's

\textsuperscript{100} As stated in a leading case in opposition to the doctrine of constructive notice, Boice v. Finance & G. Corp., 127 Va. 563, 570, 102 S.E. 591, 593 (1920): "[I]t would be unreasonable to require a purchaser to determine what could be mortgaged and what could not. To require an examination of the record for liens in such cases would break up business, and indeed be an embargo on legitimate trade. Capital must seek a more substantial security for its protection. Otherwise it were better that the few should suffer than the general public, who had been lured into purchasing from a dealer who has been intrusted with the indicia of ownership."

\textsuperscript{101} La. Acts 1948, No. 474, p. 1320, and La. Acts 1950, No. 515, p. 940, now LA. R.S. 9:5351 (1950), provides in part "In the case of stocks of merchandise, including those in retail, wholesale and manufacturing establishments, as well as other movable property in bulk, but changing in specifics, the effect of the mortgage shall cease as to all articles disposed of by the mortgagor up to the time of foreclosure but shall attach to the purchases made to supply their place and to other after acquired additions to the original stock of goods, merchandise or other things in bulk ordinarily mortgaged to secure the debt."

rights would be subordinate to the rights of the mortgagee.\textsuperscript{108} These statutes reflect desirable policy and are in harmony with analogies to be drawn from the Civil Code.\textsuperscript{104} Act 480, amending the Motor Vehicle Certificate of Title Law, reflects undesirable haste in draftsmanship in including "chattels, property or merchandise" as subject to chattel mortgages while the basic statute it amends applies only to motor vehicles. Similarly, Act 481 becomes confusing by including motor vehicle chattel mortgages which are no longer within the scope of the chattel mortgage law. Since, however, the two statutes duplicate the same provisions the legislative intent is made apparent to cover the entire field of permissible Louisiana chattel mortgages and no harm is done by the lack of technical accuracy.

Chattel mortgages—Default in payments on mortgage debt following unauthorized removal made evidence of fraudulent intent to defeat mortgage. Act 391 of 1954 amends the Chattel Mortgage Act to provide that when mortgaged property is removed from the state without consent of the mortgagee, the failure of the mortgagor to pay, within thirty days after such removal, any amount that is past due or that becomes due during the said thirty-day period "shall constitute evidence of fraudulent intent to defeat the mortgage."\textsuperscript{105} The act does not specifically use the term prima facie evidence, but that interpretation is clearly implied and it would follow that the defaulting mortgagor could, in a proper case, rebut the presumption from his default by showing a lack of any actual fraudulent intent. If default occurs within the thirty days following the removal, the statute does not provide that the mortgagor must be in default for a period of thirty days for the presumption of fraudulent intent to attach. If, e.g., default occurred on the twentieth day after unauthorized removal from the state, the effect of the statute would be operative within ten days from such default, as the thirty-day period is to be calculated from the date of removal from the state. The statute is silent as to defaults occurring after the thirty-day period following removal, so any such subsequent default would be no evidence of fraudulent intent to defeat the


mortgage. The act amends only the Chattel Mortgage Law and does not amend the Motor Vehicle Certificate of Title Law. As a consequence, the presumption of fraud from default in payments following unauthorized removal from the state would have no application to motor vehicles.