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COMMENTS

Administration of the Minor's Property in Louisiana Under Paternal Authority

Under certain conditions a minor's property may be administered either by the minor,¹ his parent,² a tutor,³ a trustee,⁴ or a custodian.⁵ The primary concern of this Comment is to dis-

1. The minor may enter into a contract or quasi contract for necessities for his support or education; he may accept the contract of mandate under certain restrictions, and he may contract in other cases as provided by law. LA. CIVIL CODE art. 1785 (1870). Also, he may be bound for obligations arising from his occupation or employment. See Pascal, *Contracts of the Minor or his Representative Under the Louisiana Civil Code*, 8 LOUISIANA LAW REVIEW 383 (1948); Comment, 12 TUL. L. REV. 419 (1938).

2. LA. CIVIL CODE art. 221 (1870).

3. *Id.* art. 246.

4. Louisiana Trust Estates Law, LA. R.S. 9:1791-9:2212 (1950).

5. Uniform Gifts to Minors Act, LA. R.S. 9:735-9:742 (Supp. 1961), La. Acts 1958, No. 195, § 1.

cuss administration under paternal authority and to suggest needed legislation in this area.

Two statutory provisions furnish the framework upon which a consideration of paternal authority to administer a minor's property must be based. Article 221 of the Civil Code provides that during the marriage of the parents, when the spouses are not judicially separated or divorced, the father is the administrator of the estate of his minor children.⁶ In case of the father's absence or interdiction the mother acts as administrator. Article 4501 of the Code of Civil Procedure provides that under paternal authority "property belonging to a minor may be sold or mortgaged, a claim of a minor may be compromised, and any other step may be taken affecting his interest, in the same manner and by pursuing the same forms as in case of a minor represented by a tutor, the father occupying the place of and having the powers of a tutor." The legislative history of these articles and surrounding jurisprudence will be reviewed in order to evaluate the present status of paternal administration of a minor's property. Since the father must, under Article 4501 of the Code of Civil Procedure, act in some instances in the same manner as a tutor, extensive comparisons with tutorship are appropriate.

One of the basic differences between tutorship and paternal authority lies in the institution of the legal representative. Qualification under paternal authority is automatic, whereas the tutor must be appointed by the court.⁷ Besides court appointment, there are other steps that a tutor must take prior to administering a minor's property that a parent need not take. He must take an oath to discharge faithfully his duties, cause

6. LA. CIVIL CODE art. 221 (1870) provides: "The father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence during said interdiction or absence.

"He or she shall be accountable both for the property and revenues of the estates the use of which he or she is not entitled to by law and for the property only of the estate the usufruct of which the law gives him or her.

"This administration ceases at the time of the majority or emancipation of the children, and also ceases upon judicial separation from bed and board either of the father from the mother or of the mother from the father."

7. *Id.* art. 248 provides: "Tutorship by nature takes place of right, but the natural tutor must qualify for the office as provided by law. In every other kind of tutorship the tutor must be confirmed or appointed by the court, and must qualify for the office as provided by law." Even the natural tutor becomes tutor only by order of the court. While both parents are living and not judicially separated, the father is not a tutor and does not need judicial approval in order to administer his minor children's estates. *Id.* art. 221; *Cleveland v. Sprowl*, 12 Rob. 172 (La. 1845).

an inventory to be taken of the minor's property, and furnish security.⁸ Furthermore, the tutor is subject to supervision by an undertutor.⁹

However, the parent is governed by the rules of tutorship in other phases of his administration. To what extent the paternal administrator must follow tutorship rules is the major inquiry of this Comment.

Court Approval of Administrative Acts Under Paternal Authority

One of the most effective controls over tutorial administration is the necessity for court approval in order to perform certain acts. If court approval is required for acts by the father under Article 4501 of the Code of Civil Procedure in all cases in which it is required under tutorship, then the father must, among other things, obtain court approval in order to sell or exchange any of the property belonging to his child.¹⁰ The property referred to in the pertinent articles of the Code of Civil Procedure are defined as including both movables and immovables.¹¹ As written, the law seems to require court approval in order to sell even a child's bicycle. However, in practice, it appears that tutors do not customarily obtain prior court approval for such small transactions.¹² To do so would often result in legal cost exceeding the value of the thing sold or exchanged. The same would be true under paternal authority. The parent is governed by the same rules as a tutor in selling or mortgaging property of the minor. But what of other acts? The tutor must have court approval in order to lease his ward's property¹³ or to

8. LA. CODE OF CIVIL PROCEDURE art. 4061 (1960). However, there is no requirement for the father to subscribe to an oath, take an inventory, or post security in order for him during paternal authority to exercise his authority over the property of his children. *Darlington v. Turner*, 202 U.S. 195 (1906). *Cleveland v. Sprowl*, 12 Rob. 172 (La. 1845), decided before the enactment of LA. CIVIL CODE art. 222 (1870), was to the same effect. See also LA. CODE OF CIVIL PROCEDURE arts. 4131-4136 (1960).

9. LA. CIVIL CODE art. 273 (1870). "At the time judgment is rendered appointing a tutor, the court shall also appoint a responsible person as undertutor." LA. CODE OF CIVIL PROCEDURE art. 4201 (1960).

10. In fact, LA. CODE OF CIVIL PROCEDURE art. 4501 (1960) specifically requires the father to proceed in the same manner as a tutor in order to sell his minor's property.

11. *Id.* art. 5251: "Property' includes all classes of property recognized under the laws of this state: movable or immovable, corporeal or incorporeal."

12. This conclusion is drawn from discussion with practicing attorneys, professors, and judges.

13. LA. CODE OF CIVIL PROCEDURE art. 4268 (1960); LA. R.S. 9:711-9:713 (1950).

make a new investment or change an old one.¹⁴ The courts have not yet determined if a father administering under paternal authority must likewise obtain prior court approval in order to do these and other acts.

There are certain acts of administration that a tutor may perform without court approval. Apparently he can do all acts of administration which are not specifically enumerated as requiring court approval so long as he does not deplete the capital of the minor and so long as he acts as a prudent administrator. Among other things he may pay taxes, contract for insurance, and expend the minor's revenues for necessary repairs.¹⁵ If he is administering a business for the minor or managing a plantation, he may make those contracts which are necessary for supplies and produce to continue successfully the operation.¹⁶ Although he may expend the minor's revenues for these things, if the revenues are insufficient he must obtain court approval before alienating any of the minor's capital.¹⁷ Accordingly, under paternal authority it would seem that the administrator can, without court approval, do at least those acts which a tutor can do without court approval.

In order to ascertain if it was intended that paternal administration should be controlled by the rules on tutorial administration a short review of the legislative history of pertinent code articles is helpful. In 1855 the legislature passed¹⁸ what was later to become Article 222 of the Civil Code of 1870. It provided:

"[P]roperty belonging to minors, both of whose parents are living, may be sold or mortgaged, and any other step may be taken affecting their interest in the same manner, and by pursuing the same forms as in case of minors represented by tutors, the father occupying the place and being clothed with the powers of the tutor.

"An under tutor, ad hoc, shall be appointed by the court, contradictorily with whom the proceedings shall be carried on."

14. LA. CODE OF CIVIL PROCEDURE art. 4270 (1960).

15. *Mahony v. Mahony*, 41 La. Ann. 135, 5 So. 645 (1889).

16. *Payne v. Scott*, 14 La. Ann. 760 (1859).

17. *Ibid.*; *Hall v. Courtney*, 184 La. 80, 165 So. 458 (1935); *Wise v. Van Snider*, 16 La. App. 418, 134 So. 715 (La. App. 2d Cir. 1931).

18. La. Acts 1855, No. 324, § 17, later incorporated into La. Rev. Stats. (1870) as Section 2342.

The 1855 legislation placed this article with several others on tutorship under the topic heading, "Tutorship of Minors and the Administration of Their Property." At this time Article 267, Civil Code of 1825, which later became Article 221 of the Civil Code of 1870, set forth the substantive law on paternal authority. That article was under the chapter on natural tutorship, not under the chapter on paternal authority.¹⁹ However, in the 1870 revision of the Civil Code both Articles 221 and 222 were placed in the chapter on paternal authority. No new or separate details for paternal administration were set out in the legislation. Perhaps this is because the articles were meant to serve as a cross reference to the tutorship articles for details on administration.

The cases on the subject are few. Until recently the Supreme court seems to have equated the administrative powers of the father with those of a tutor.²⁰ Then in *Blades v. Southern Farm Bureau Casualty Ins. Co.*,²¹ the Supreme Court was presented the question of a parent's authority to compromise a tort claim of a minor without prior court approval. Minor children had sustained injuries in an automobile accident involving the defendant's insured. Their fathers concluded a compromise agreement on their behalf and released the defendant from liability. The plaintiffs sought to have the release set aside on the ground that it had been obtained by fraud. The trial court upheld the settlement and dismissed the suit. Upon appeal, the court of appeal was of the opinion that the articles of the Civil Code dealing with tutorship of minors were applicable. Since a tutor could not compromise a minor's rights without prior court approval, neither could the father under paternal authority. Consequently, the release was held ineffective.²² Upon review, however, the Supreme Court reversed, indicating that the article of the Civil Code requiring court approval of the father's acts

19. LA. CIVIL CODE art. 221 (1870) was incorporated in substantially the same form as its predecessors, La. Civil Code art. 267 (1825) and La. Civil Code of 1808, tit. VIII, art. 5, both of which were placed under *Natural Tutorship*, not under *Paternal Authority* where it is in the Civil Code of 1870.

20. In *Dauterive v. Shaw*, 47 La. Ann. 882, 17 So. 345 (1895), the court indicated that Article 222 was so plain that it did not need comment, and further stated: "[T]he father, during the marriage, is clothed, in regard to the property of his minor child, with all the power of the tutor." *Id.* at 888, 17 So. at 345. *Succession of Allen*, 48 La. Ann. 1240, 20 So. 683 (1896) indicated that Article 222 "merely . . . put the father — in case both the mother and father are living — in the place and stead of a tutor pro hac vice." *Id.* at 1243, 20 So. at 685.

21. 237 La. 1, 110 So.2d 116 (1959).

22. *Blades v. Southern Farm Bureau Casualty Ins. Co.*, 95 So.2d 209 (La. App. 1st Cir. 1957).

as administrator applies in instances where he proposes to sell or mortgage the property of the minor.²³ These acts, the court explained, by their very nature extend beyond mere administration of the minor's property, but the settlement of a claim for damages for personal injuries by the minor against another does not fall into the same category.

The new Code of Civil Procedure purports to alter somewhat the law as announced in the *Blades* case. Article 4501 specifically provides that under paternal administration the parent must pursue the same forms as does a tutor in compromising a minor's claim. The comments under this article state, "No change, except to overrule legislatively *Blades v. Southern Farm Bureau Casualty Ins. Co.* . . ." It seems that the drafters of the legislation intended for the article to overrule the entirety of the *Blades* case and exclude it from the jurisprudence which would be used in interpreting Article 4501.²⁴ Despite the fact that the *Blades* case would be decided differently today, it is arguable that its rationale lives on. Under this interpretation there may be acts, other than sale, mortgage, or compromise (such as granting of a lease, giving of a servitude, and investing the minor's funds), which would require no court approval when performed by a parent, though a tutor would have to obtain such approval to perform them. It is suggested that this interpretation is not in accord with Article 4501 requiring the father to proceed as a tutor in *any* step affecting the minor's interest. However, until the Supreme Court reconsiders the problem or until there is new legislation on the subject, this uncertainty will remain.

One approach to the problem is legislation to require court approval under paternal authority in all cases where it is required for tutors, except to allow the parent to sell, exchange, or otherwise dispose of movables up to a certain value without prior court approval. Under French law the father must obtain court approval in order to alienate movables valued in excess of 5000 new francs (approximately \$1000).²⁵ Of course, obvious

23. *Blades v. Southern Farm Bureau Casualty Ins. Co.*, 237 La. 1, 110 So.2d 116 (1959).

24. This conclusion is supported by the comment under Article 4501 of the Code of Civil Procedure (1960), which states: "The retention of most of the language of Article 222 of the Civil Code was intended to retain the remainder of the jurisprudence construing this Civil Code article." Having thus indicated an intention to overrule the *Blades* case and to retain the *remainder* of the jurisprudence, it seems the drafters meant to exclude it from the jurisprudence which would be used in interpreting Article 4501.

25. FRENCH CIVIL CODE art. 389, as amended by Ordinance Number 59-23 of

difficulties in valuation might result from such a rule. Also, valuable property might be divided so that each transaction would involve an amount less than the arbitrary figure set by statute. In this area much discretion must, of necessity, be left to the trial judge. By allowing for disposition of some articles without court approval the law would allow parents to dispose of such things as their children's old toys or clothes without technically violating the law.

Rights of the Parent in the Property of the Minor

Except in compensation for his services, the tutor has no rights in the minor's property.²⁶ On the other hand, the tutor, as such, has no obligation to contribute to the minor's support. Support is obtained from the minor's revenues and property, or, if necessary, from his ascendants.²⁷

Parents, on the other hand, are given the right of enjoyment in the estates of their children who are subject to paternal authority.²⁸ However, this right of enjoyment does not extend to property which the minor may acquire by his own labor and industry,²⁹ or which is given to him under the express condition that the father and mother shall not have such enjoyment.³⁰ Moreover, the parents are precluded from the enjoyment of property given their child by one of the parents inter vivos, unless the right of enjoyment is expressly reserved in the written act of donation.³¹ Generally, the rights and obligations of parents, in relation to the enjoyment of their children's estates,

January 3, 1959. Each new franc (NF) on the date of passage of this act was worth slightly less than 20.3 cents in United States currency. Therefore, the father needed court approval in order to alienate movables valued in excess of about one thousand dollars (\$1,000.00).

26. LA. CODE OF CIVIL PROCEDURE art. 4274 (1960) provides: "The tutor may retain as compensation for his services a sum to be fixed by the court, not to exceed ten percent of the annual revenue from the property committed to his charge."

27. LA. CIVIL CODE art. 229 (1870) provides: "Children are bound to maintain their father and mother and other ascendants, who are in need; and the relatives in the direct ascending line are likewise bound to maintain their needy descendants, this obligation being reciprocal. They are also bound to render reciprocally all the services which their situation can require, if they should become insane." LA. CODE OF CIVIL PROCEDURE art. 4261 (1960) provides for expending the minor's revenues for the care of his person and expenses and for expending the minor's capital if necessary but only after court approval.

28. LA. CIVIL CODE art. 223 (1870).

29. *Id.* art. 226; *Ouliber v. His Creditors*, 16 La. Ann. 287 (1861).

30. See note 29 *supra*.

31. LA. CIVIL CODE art. 226 (1870), as amended, La. Acts 1952, No. 265,

are governed by the laws of usufruct.³² However, the parents' enjoyment is not subject to seizure by creditors, cannot be mortgaged, and is non-transferable.³³ In return for this right of enjoyment the parents have the primary obligation to support the minor.³⁴

Legal Mortgage on Parents' Property Resulting from the Recordation of Inventory

In the latest applicable ruling of the Supreme Court it was held that there is no legal mortgage in favor of the minor on the property of parents who have the enjoyment of his estate.³⁵ However, this was not always the case.

In 1845 the Supreme Court in *Cleveland v. Sprowl*³⁶ held that the father and mother during paternal authority had the enjoyment of their children's estates without being required to furnish a legal mortgage or other security. Under the Civil Code of 1825, which was then effective, there was no provision requiring an inventory of the minor's property by the parents or indicating that a legal mortgage would exist upon the parents' property in favor of the minor. Subsequently, in 1869, the legislature passed an act³⁷ requiring the parents to take an inventory and file it in the public records. This act provided that the recordation would operate a mortgage on the property of the parents in the parishes where recorded. In 1870 this act was incorporated into the Revised Statutes.³⁸ In that year a similar provision was placed in the Civil Code as Article 3350, but this article contained no provision that such recordation would operate as a legal mortgage against parental property. However, Article 3357, which was incorporated into the Code at the same time, provided that the recordation of instruments mentioned in the nine preceding articles would preserve the mortgage. At

32. *Young v. Carl*, 6 La. Ann. 412 (1851); *Handy v. Parkison*, 10 La. 92 (1836); *Breeding v. Breeding*, 5 Orl. App. 263 (La. App. 1908); LA. CIVIL CODE arts. 533-625 (1870).

33. *Davis v. Carroll*, 11 La. Ann. 705 (1856). Also, for a discussion of a similar article in the French Civil Code see 1 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1699 (1959).

34. LA. CIVIL CODE arts. 224, 227, 229 (1870).

35. *In re Monroe*, 187 La. 739, 175 So. 475 (1937). For a critical analysis of this holding and a discussion of possible legislative intention as to the purpose of Article 3350 of the Civil Code, see Comment, 20 TUL. L. REV. 163 (1945).

36. 12 Rob. 172 (La. 1845).

37. La. Acts 1869, No. 95, § 12.

38. LA. R.S. 2367 (1870), repealed by La. Acts 1950 (2 E.S.), No. 2.

the time these articles were added no addition was made in the Civil Code to the section "Of Legal Mortgages" which enumerates the legal mortgages and provides that "no legal mortgage shall exist, except in the cases determined by the present Code."³⁹ Under Articles 3350 and 3357 it was clear that the recordation of an inventory was required before the parents would be entitled to the enjoyment of the minor's property.⁴⁰ However, the court experienced some difficulty in seeking to answer the question of whether such a recordation would have the effect of a legal mortgage upon the parents' property.

In the first Louisiana case to consider this problem, *Aaron v. Bayon*,⁴¹ the Supreme Court held that the recordation of inventory by the parents created a legal mortgage upon their property. This decision was based on the Revised Statutes, not on the Civil Code articles. A quarter century later *Aaron v. Bayon* was overruled by *In re Monroe*.⁴² In the latter case the court reached the conclusion that the codifiers and the legislators deliberately enacted Article 3350 of the Civil Code of 1870 without mentioning the creation of a legal mortgage. This, the court felt, was to place Louisiana law in accord with the French which did not create such a mortgage. Since under the court's interpretation of Article 3350 there was a direct conflict with the 1870 Revised Statutes providing for a legal mortgage, the Civil Code impliedly repealed the provision in the Revised Statutes.⁴³

Subsequent to *In re Monroe*⁴⁴ new legislation was passed which repealed the old statute providing for the mortgage under paternal authority. This eliminates any conflict between the Civil Code and Revised Statutes, but there is still the considera-

39. LA. CIVIL CODE art. 3312 (1870).

40. The Supreme Court of the United States in *Darlington v. Turner*, 202 U.S. 195 (1906) recognized that the full significance to be given to Article 3350 of the Louisiana Civil Code of 1870 was a question of local law, but went on to indicate: "[W]e think that Article 3350 simply implies that unless an inventory is made and an abstract recorded the usufruct which otherwise would exist shall not obtain." The Louisiana Supreme Court in the *Monroe* case, though considering specifically whether a legal mortgage was created or not, quoted the above statement of the United States Supreme Court along with other statements. In its holding the Louisiana Supreme Court indicated that *Darlington v. Turner* is a correct expression of the law of this state.

41. 131 La. 228, 59 So. 130 (1912).

42. 187 La. 739, 175 So. 475 (1937).

43. *Id.* at 758, 175 So. at 481. La. R.S. art. 3990 (1870) provided that in case of conflict between the Revised Statutes of 1870 and the Civil Code of 1870, the Code should prevail.

44. 187 La. 739, 175 So. 475 (1937).

tion that Article 3357 of the Civil Code indicates that some sort of security interest is "preserved" by the recording of the mortgage under Article 3350.⁴⁵ As the law is now interpreted, no mortgage comes into existence upon recordation of inventory by the parent who is acting under paternal authority.⁴⁶ In practice, it seems that parents do not record the inventory required under Article 3350. In the case of tutorship the inventory is recorded as part of the tutorship proceedings where the prospective tutor is of necessity before the court. However, under paternal authority there is no such court proceeding. Perhaps few parents would knowingly record the inventory and suffer the restrictions of legal mortgages on their property where no penalties for violation would be in prospect. Since the recordation of an inventory of the minor's property would provide a public record of his estate, it seems this requirement should be retained. The parents' right of enjoyment arises only upon the recordation of inventory. Therefore, upon reaching majority a child could demand an accounting and, if no inventory had been recorded, recover for any expenditures of revenues from his estate.⁴⁷ This possibility of future liability on the part of the parents for expenditures from the minor's revenues should be adequate protection without the added requirement of a legal mortgage.

*Procedural Capacity to Protect the Minor's Interest
Under Paternal Authority*

Article 683 of the Code of Civil Procedure provides that an unemancipated minor does not have the procedural capacity to sue. It further provides that during paternal authority the father is the proper plaintiff to enforce a right of the minor.⁴⁸

45. LA. CIVIL CODE art. 3357 (1870) provides: "The recording of the instruments mentioned in the nine preceding articles, shall have the effect of preserving the mortgage or privilege; but they shall in no manner be evidence of the validity of the debt or claim, other than the law may award to acts of the kind when recorded."

46. *In re* Monrose, 187 La. 739, 175 So. 475 (1937).

47. Under LA. CIVIL CODE art. 221 (1870) the father or mother as administrator is accountable for both the property and revenues of the minor's estate, the use of which he or she is not entitled to by law. Under Article 3350 fathers and mothers are not entitled to the usufruct of property belonging to their minor children unless they cause an inventory and appraisalment to be made of such property and cause them to be recorded in the mortgage book of every parish in the state where either of them has immovable property.

48. LA. CODE OF CIVIL PROCEDURE art. 683 (1960) provides: "An unemancipated minor does not have the procedural capacity to sue. . . . The father, as administrator of the estate of his minor child, is the proper plaintiff to sue to enforce a right of an unemancipated minor who is the legitimate issue of living

Even if the minor has a substantive *cause* of action against his parents during paternal authority, it seems that he does not have a *right* of action. In case of the father's maladministration of the minor's property, who then can sue to protect the interest of the minor? There is no undertutor, except for special acts where the father voluntarily comes into court and seeks permission for a contemplated act.⁴⁹ Under Revised Statutes 9:291 the wife has no right of action against the husband prior to judicial separation. Other relatives might have difficulty in establishing a real and actual interest justifying them to bring the action.

One solution would be to amend Revised Statutes 9:291 so as to allow the wife on behalf of the minor to sue the father to prevent his maladministration of the minor's property. Another possible solution would be legislation allowing the minor, his mother, or any other interested party to present the court with affidavits of facts sufficient to establish a *prima facie* case of the father's gross mismanagement. If the court found this to be the case, then it could appoint an agent of the court, in the nature of an undertutor, who would investigate the charges and if necessary bring an action against the father on behalf of the minor. After a contradictory hearing relief could be granted which might include depriving the father of the administration of the minor's estate and placing it under the mother, a custodian, a trustee, or a similar agent. Such a measure allowing interference with paternal administration should be strictly limited to those cases where irreparable injury would result if the father were allowed to continue his administration without supervision.

Summary

During the marriage, when the spouses are not judicially separated or divorced, the father is administrator of his minor's property by operation of law without any necessity for prior court approval. However, in order for parents to enjoy the minor's property, they must record an abstract of inventory in the mortgage records of the parishes where they have immov-

parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is the proper plaintiff in such an action, when the father is a mental incompetent or an absentee."

49. The second paragraph of *id.* art. 4501 provides: "Whenever the action of an undertutor would be necessary, an undertutor *ad hoc* shall be appointed by the court, who shall occupy the place of and have the powers of an undertutor."

able property. Under the jurisprudence this does not result in a legal mortgage on the parents' property.

In administering a minor's property the father must proceed in the same manner and pursue the same forms as does a tutor in order to sell or mortgage property of the minor, or to compromise a claim of the minor. Furthermore, it is submitted that a literal interpretation of the statute requires the father to proceed as would a tutor in all other acts of administration affecting the minor's interest. Under the present law, if the father mismanages the minor's property there appears to be no one who has procedural capacity to bring an action to protect the minor's interest. A procedure should be available to allow someone to bring an action to protect the minor's estate against maladministration by a parent during paternal authority. It is further suggested that parents should be allowed to dispose of inexpensive movable property belonging to their children without court approval, and that the requirement for recordation of inventory should be retained as a suspensive condition to parents' right to enjoyment of their children's estates, but that the Civil Code should be amended so as to provide expressly that no legal mortgage on the parents' property results from this recordation.

Sydney B. Nelson

“Omnibus Clause”—Problems in Louisiana Jurisprudence

The so-called “omnibus clause” of the standard automobile liability insurance policy extends coverage to any person using the insured vehicle, provided the actual use thereof is with the permission of the named insured.¹ This clause is intended to

1. Prior to the 1930's, the omnibus clause of automobile insurance policies read substantially as follows: “The term ‘named insured’ shall mean only the insured as specified in Statement One, but the term ‘insured’ shall include the named insured and any person while riding in or legally operating such automobile, and any other person or organization legally responsible for its operation, provided, . . . (8) it is being used with the permission of the named insured.” Rowe, *The Standard Policy*, 1 INS. COUNSEL J. 19 (1934).

Since the late 1930's, the clause has read substantially thus: “Definition of ‘Insured’. The unqualified word ‘insured’ . . . includes not only the named insured, but also any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is business and pleasure, or commercial, as defined herein, and provided further, that the *actual*