Louisiana's Contribution to the 1852 Projet of the Spanish Civil Code

Shael Herman
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The title of this paper may surprise many readers. When I mentioned the topic to a colleague, he replied "How convenient," as if to imply that some of us had willingly succumbed to flights of fancy simply to justify a trip to Spain. If your reaction is similar, and even though I am here concerned with historic irony, not poetry, I ask you to follow Coleridge's injunction "to engage in a willing suspension of disbelief... which constitutes poetic faith." Professor Rodolfo Batiza, among the most distinguished of civil code scholars, suggested this topic to me. He had chanced upon it in the course of research for his monumental study of the sources of the Mexican Civil Code, but had not had enough time to pursue it. My reaction was disbelief. At least I was surprised. I knew that Louisiana law bore a Spanish imprint, but I had not imagined that the influence between Spanish and Louisiana law was reciprocal. How could it be so? Chronologically, could the Louisiana Civil Code have influenced the development of Spanish law? Yes, because the Louisiana Civil Code was first enacted in 1808, and the Spanish Civil Code in 1889.

A SHORT ACCOUNT OF LOUISIANA'S LEGAL HISTORY

Louisiana's civil law tradition dates from 1712, the year France granted Antoine Crozat a monopoly on commerce throughout the Louisiana territory. The royal charter that established Crozat's monopoly allowed him to confiscate all goods traded in Louisiana without his authority and declared that the royal proclamations of France and the Custom of Paris were the law of the territory. Despite the financial advantages of Crozat's monopoly, his venture failed and France revoked his charter in 1717. By then, however, the inhabitants of Louisiana were already living under the banner of the civil law, specifically the pre-Revolutionary French law embodied in the Custom of Paris. Though other states in the United States such as Texas and California felt civilian influences, Louisiana is the only state with a civil code derived from the continental tradition. So much for Louisiana's initial turn toward civil law.

In August, 1769, Don Alejandro O'Reilly took possession of Louisiana for Spain. For the rest of the eighteenth century, Louisiana was

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* Member, Louisiana Bar; Adjunct Professor, Tulane Law School; MA, JD, Tulane University.
1. S.T. COLERIDGE, BIOGRAPHIA LITERARIA ch. XIV (J. Shawcross ed. 1907).
subject to the same law as Spain's other possessions in the New World. In 1800, Spain ceded Louisiana to France by virtue of the Treaty of San Ildefonso. The formal transfer of the territory occurred on November 30, 1803, when Don Manuel de Salcedo and the Marquis de Casa Calvo, both temporary governors of the territory, ceded Louisiana to Laussat, the French colonial prefect. From 1803 until 1806 (some would say from 1803 until today) there was intense rivalry between proponents of the Anglo-American common law and partisans of the civil law. Even schoolchildren know who won the contest. In June, 1806, the Louisiana Legislative Council authorized James Brown and Louis Moreau-Lislet to write a code with "civil law by which the territory is now governed" as its groundwork. Over the objections of Governor Claiborne, the legislature enacted Louisiana's first civil code, entitled A Digest of the Civil Laws Now in Force in the Territory of Orleans, with Alterations and Amendments.

The Digest became the basis for all later versions of the Louisiana Civil Code, including the Civil Code of 1825, which in most respects constitutes the basis of our current Civil Code. The imprint of Spanish law was apparent in many articles of the Civil Code of 1825, notably in community property, which was to an extent inspired by a Spanish institution, the sociedad de ganancias or gananciales. As Professor Rabalais has shown, Louisiana's early jurisprudence is studded with references to the Recopilación de Castilla, the Novísima Recopilación, and Las Siete Partidas. Perhaps the clearest evidence of Louisiana jurists' high esteem for Spanish law in those early days of Louisiana's history is that in 1819 the Louisiana Legislature authorized Louis Moreau-Lislet and Henry Carleton to translate Las Siete Partidas, a celebrated compilation of laws executed in the mid-thirteenth century by the Spanish king, Alfonso el Sabio. According to Carleton and Moreau-Lislet's introduction to their translation, the Siete Partidas were the most perfect system of law, "comparable to any code published in the most enlightened ages of the world."

SPAIN'S CODIFICATION EXPERIENCE

If I may invoke a favorite word of Professor Mitchell Franklin's, the Spanish "struggle" for codification occurred later than that of Louisiana, and a long time elapsed between initial discussion and final execution of the first Spanish Civil Code. In contrast, the Louisiana

Civil Code burst forth practically overnight and full blown from the collective head of the legislature. In Spain, the earliest discussions of a codification to unify Spanish private law were under way by around 1800. But the first Spanish Civil Code did not emerge until 1889. Spain's legal system, like those of France and Germany before the passage of their respective codes, was characterized by a remarkable disunity—chiefly because of a tension between German customary impulses and a "foreign" Roman impulse. As my colleague, Don José María Morenilla, has explained, this tension was similar to that generated in France between the law of the _pays de droit écrit_ and the _pays de droit coutumier_. In Spain's long pre-codification history, only King Alfonso XI's _Ardenamiento de las Cortes de Alcalá de Henares_ of 1348 succeeded well enough in harmonizing the two elements of customary and Roman law and in quelling the "fearful anarchy of Derecho patrio." In the preface to García Goyena's work, Gonzalez Romero, President of the Commission on Codes, noted the confusion produced by this anarchy:

The existence of the _fueros_ and special legislation, usages and various and complicated customs in certain territories that formerly formed independent states ... in which generally the codes of Castille were followed augments considerably the difficulties and obstacles ... offered by the publication and execution of any general code.\(^5\)

According to the Spanish historian Sanchez Román at least six different bodies of legislation vied for authority over the country.\(^6\) The applicability of whole codes was conditional and hypothetical, requiring special justification in each case where they were invoked. By contrast, although Louisiana law was not well unified before the enactment of the Louisiana Civil Code, Louisiana lawyers, unlike their Spanish counterparts, must have at least felt a certain unity of purpose in their drive to preserve the civil law in the face of federal demands for application of Anglo-American law. Unlike Louisiana, Spain was not at any single, crucial moment a civil law island in a common law sea; Spain was not threatened with conversion to an entirely alien system.

In 1812, the establishment in Spain of a constitutional system introduced codification to the country. According to article 258 of the

\(^4\) The phrase was coined by Sanchez Román, whose work has been relied upon for the historical background of Spain's civil codification. F. SANCHEZ ROMÁN, HISTORIA GENERAL DE LA LEGISLACIÓN ESPAÑOLA 511 (1889-1910).

\(^5\) I F. GARCÍA GOYENA, CONCORDANCIAS, MOTIVOS Y COMENTARIOS DEL CÓDIGO CIVIL ESPAÑOL 7 (1852) [hereinafter cited as I. (GARCÍA GOYENA].

\(^6\) SANCHEZ ROMÁN, supra n. 4, at 511.
Spanish constitution, “un solo código regirá en todos los dominios de la Monarquía española” (a single code will govern in all dominions of the Spanish monarchy). If the Spanish Civil Code had been drafted and passed immediately after this constitutional mandate, there might never have been an opportunity for the Louisiana Civil Code to influence Spanish law. But a general commission on codes, consisting of some of the most distinguished jurists of the time, was not established until 1843. Sanchez Román attributed the delay in establishing the commission at least partly to the Napoleonic period, during which legislative processes could not operate normally. In 1851, the Commission on Codes, under the intellectual leadership of Don Florencio García Goyena produced a projet complete with exhaustive and scholarly “concordancias, motivos, y comentarios.” In this projet, the civil law traditions of Spain and Louisiana crossed paths, for García Goyena’s work was replete with references to Roman law; commentators like Pothier, Domat, Voet, Heineccius; and, to our great delight, the Louisiana Civil Code of 1825. While García Goyena apparently did not have at hand an original of that 1825 code during his research for the Spanish legislation, he had a reliable concordance that incorporated the Louisiana Code. This was the “Concordance Between the French Civil Code and the Foreign Civil Codes,” whose translation into Castilian by Verlanga Huerta and Muñiz Miranda was published by the Universal Library of Madrid in 1852, the year García Goyena published his work. In the preface, García Goyena himself explained the genesis of his work:

From the first sessions of the general commission on codes it was customary for me to present in writing not only my own work but all my observations on related matters. In view of them some of my dear colleagues encouraged me to continue and to organize them to form a work to testify to and to illustrate the commission’s work.

In the rest of this paper, I shall describe briefly the projet and illustrate instances where García Goyena acknowledges the direct influence of the Louisiana Civil Code.

References to Louisiana Law in the 1852 Projet

Like the Code Napoleon of 1804 and the Louisiana Civil Code, the Spanish draft of 1889 appears to have a Roman pedigree suggested

7. Id. at 519.
by Gaius's maxim "Omne autem ius quo utimur vel ad personas pertinet, vel ad res, vel ad actiones" (The whole of the law we observe relates either to persons, things, or actions).\(^{10}\) The Spanish projet consisted of a preliminary title on the law and its effects, and then three books entitled "Of Persons," "Of the Division of Goods and Ownership," and "Of the Modes of Acquiring Ownership." A topical analysis reveals that the subjects covered by the various books of the Spanish Civil Code are nearly identical to those covered by the Louisiana Civil Code. Working with the various committees of the Louisiana State Law Institute on revision of our Civil Code, I have come to appreciate the value of full commentaries that present background sources and highlight the drafter's thought processes. Louisiana jurisprudence over the last 160 years might have avoided many pitfalls if the various editions of our civil code had included legislative histories like those produced by Garcia Goyena.

García Goyena's comments are fascinating to read; as can be seen in the appendices, they are erudite disquisitions on the civil law. They teach, illustrate, and criticize. They explain the reasons for conscious deviations from earlier codes and from tradition. They display an enormous range of sources, including the French, Dutch, and German Codes and, of course, the works of various national scholars. García Goyena himself described the structure of his comments:

At the foot of each article [of the projet] there is an epitome, resumé, or summary of whatever Roman law provided on the tenor of the article, always citing and often copying the Roman laws; then follow our códigos patrias from the Fuero Juzgo and all the best known modern ones; that is, at a simple glance will be discovered the legislation that can be considered universal on the substance of the article. . . . This is what I understand by the word "concordance." Then come the motifs. . . . This is the most noble and useful aspect of the study of legislation and often it is laced with history. In knowing the origin, the causes and the goals of the law, in a word, its spirit, it is not hard to apply it with certainty even to the cases that at first seem doubtful. In the motifs will also be discovered why one code has been preferred over others or why we departed from all of them.\(^{11}\)

What interests us today in García Goyena's commentaries is his eclectic use of sources and especially of the Louisiana texts themselves. The greatest influence of the Louisiana Civil Code appears in obligations and special contracts. It figures less prominently in persons,

\(^{10}\) Herman & Hoskins, Perspectives on Code Structure: Historical Experience, Modern Formats, and Policy Considerations, 54 Tul. L. Rev. 987, 992 (1980).

\(^{11}\) I García Goyena, supra n. 5, at 9-10.
domicile, and marriage. Of approximately 2,000 comments after the various articles in the projet, around 1,500 refer to the Louisiana Civil Code. García Goyena reports that his projet reproduced the policy of a number of articles in the Louisiana Civil Code. A glance at the appendices to this paper reflects that he even duplicated a few Louisiana provisions verbatim.

Drafting legislation, like drafting documents, can be tedious. Before going out on uncharted waters, lawyers, because they are conservative by training and outlook, naturally search for legal formulations that have been tested already. Drafters, like practitioners, constantly look for reliable precedents. Sometimes the most reliable formulations appear in other codes, and this is especially so when a helpful body of case law has grown up around a particular provision. García Goyena’s experience was no exception to these generalizations. If he was exceptional at all, it was because he freely credited as sources the texts from which he borrowed. He was impressed by many provisions of the Louisiana Civil Code, and especially those concerning the consent and cause of contracts. In the part of the Spanish projet concerning these subjects, he commented:

The code of Louisiana has 28 articles on error which also distinguishes error of fact and law, defining the latter: “That which consists of drawing false legal conclusions from facts about which one is well informed.” Article 1816. The following [article] provides [on error of fact] “that, to affect the validity of the contract, it must affect a point that has been the principal cause of the convention, or with regard to the person with whom one contracts or with regard to the very object of the contract.” Then it [the Louisiana Civil Code] devotes seven articles to error as to motive of the contract; four to error as to the person; five to error as to the nature and object of the contract and finally it closes the subject with paragraph 7, Of Errors of Law, in a single article [1840]: “Error of law, like error of fact, impedes the validity of the contract, when this error is its principal cause.”

Like many Louisiana lawyers, García Goyena and his colleagues disagreed on a correct formulation of the concept of cause. They must have received little help from the French Civil Code, which barely addresses cause, thus leaving the subject to the exclusive domain of the doctrinal writers. In the chapter from which I have already quoted, García Goyena wrote:

Articles 1829 and 1830 of the Louisiana [code] say that in contracts of beneficence the law presumes that the consideration of

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12. III F. García Goyena, Concordancias, Motivos y Comentarios del Código Civil Español 19 (1852) [hereinafter cited as III García Goyena].
the person is its principal cause and in the onerous ones, like sale, exchange, loan at interest . . . the accessory cause; this provision should serve as a rule because it is ingenious and well founded.\textsuperscript{13}

The distinction between onerous and gratuitous contracts based on the "consideration of the person" was eventually embodied in articles 976 and 997 of his projet.\textsuperscript{14} In his discussion of the doctrine of "illicit cause," he characterized Louisiana Civil Code article 1886 as "pious elegance."\textsuperscript{15}

García Goyena attributed the inspiration and even the wording of many other provisions in his projet to the Louisiana Civil Code. He based article 1023, concerning the interpretation of contracts, upon Louisiana article 1955, because of the latter's "simplicity and clarity."\textsuperscript{16} He reported that article 1049 of his projet, concerning obligations subject to a term, was "in conformity with Louisiana articles 2052 and 2053;"\textsuperscript{17} that article 1747 in the Spanish title on suretyship was derived from Louisiana article 3020;\textsuperscript{18} that Spanish article 1594, concerning partnership debts, was based largely upon article 2794 of the Louisiana Civil Code;\textsuperscript{19} that Spanish article 1963 concerning prescription for movables was based on article 3475 of the Louisiana Civil Code, "unique among the modern codes that speak of this case;"\textsuperscript{20} and that Spanish article 1967 embodied the rule of Louisiana article 3508, because it was more "\textit{consecuente y equitativo}" (consistent and equitable).\textsuperscript{21}

Much more often than García Goyena attributed an article in his draft solely to the Louisiana Civil Code, he credited several codes, including the Louisiana Civil Code, as sources. Thus, for example, his typical entries are like the following:

\begin{itemize}
\item 13. Id. at 22.
\item 14. Article 976 of the Spanish projet provided: "The contract is gratuitous when one of the parties grants the other a benefit for the sake of liberality; and onerous when the contracting parties acquire rights and contract obligations." \textit{Id.} at 5 (author's translation).
\item 15. Id. at 29.
\item 16. Id. at 58.
\item 17. Id. at 86.
\item 18. IV F. GARCÍA Goyena, \textit{Concordancias, Motivos y Comentarios del Código Civil Español} 153 (1852) [hereinafter cited as IV GARCÍA Goyena].
\item 19. Id. at 28.
\item 20. Id. at 323.
\item 21. Id. at 325.
\end{itemize}
Art. 1632
The obligations and rights arising from commodatum pass to the heirs of both contracting parties, although the loan may have been made in contemplation only of the person of the "commodatory" in which case the heirs of the latter do not have the right to continue the use of the thing that has been loaned.

Comment: 1879 French, 1751 Neapolitan, 2868, Louisiana, 1902 Sardinian, 1363 Vaud, 1780 Dutch.20

García Goyena apparently considered himself in the international mainstream of civilian drafters. He sometimes said that his "comments were no more than effects and applications of the spirit of the article,"21 To understand this spirit, the reader needed the context of a particular rule or institution and García Goyena often cited the Louisiana Civil Code along with other codes to highlight an international trend. Thus, for example, under article 48 of the Spanish draft, which provides that marriage must be celebrated according to the canons of the Catholic Church in Spain, he noted that the French, Dutch, and Louisiana Codes treated marriage strictly as a contract, while the remaining codes considered marriage a sacrament.22 Sometimes, the Louisiana Civil Code indicated to García Goyena the direction in which he did not want to go. For example, his article 1580 provided: "Every partner must answer to the partnership for damages caused it by his fault; and he cannot pay them with profits which his industry produced in other affairs."23 This provision reproduced the first lines of article 2833 of the Louisiana Civil Code. But, as García Goyena noted: "Article 2833 of the Louisiana [code] adds: 'no partner shall be held liable for any loss which happened in consequence of any act done by him in good faith.' Which I disapprove because there can be good faith with fault or negligence."24 Similarly article 1765 of the Spanish draft provided: "The extension of time conceded to the debtor by the creditor without the surety's consent extinguishes the suretyship."25 García Goyena comments (mistakenly): "Contrary to articles 2039 French [code], 2077 Sardinian [code], 3032 Louisiana [code] ... according to them the suretyship is not extinguished and the surety is allowed only to pursue the debtor to force him to pay."26

22. Id. at 61 (author's translation).
23. I GARCIA GOYENA, supra n. 5, at 9-10 (author's translation).
24. Id. at 57-58.
25. IV GARCIA GOYENA, supra n. 18, at 14 (author's translation).
26. Id.
27. Id. at 166.
28. Id. For the Louisiana Civil Code, this statement is surely wrong. Article 3032 of the 1825 code provided: "The prolongation of the term granted to the principal debtor, without the surety's consent, operates a discharge of the latter."
It is generally thought that the French Civil Code was more graceful and musical than the Louisiana Civil Code, partly because the Louisiana drafters, lacking any guarantee that readers of their draft would have at hand many doctrinal works from France, chose to incorporate verbose illustrations from pre-Revolutionary scholarship. So, it is with pride that a Louisiana lawyer hears a disinterested witness testify that he preferred a formulation of a particular concept in the Louisiana Civil Code over its French counterpart. Referring to article 1007 in a title on effects of obligations arising from contracts, García Goyena wrote that “our [the Spanish article] 1007 is more explicit than the French, and it approximates more nearly that of Louisiana.”

Lest the reader conclude that García Goyena gave the Louisiana Civil Code unqualified praise, he should hear him out on Louisiana’s provisions on slavery. As will be recalled, these provisions were not excised from our code until the 1870 revision, that following the Civil War. Article 34 of García Goyena’s draft provided that slaves belonging to a Spaniard acquired the quality of freemen the moment they were imported into the continental territory of the king or into the adjacent islands. His comment under the Louisiana provision was untempered criticism: “By a monstrous inconsistency the freest country of the world, the United States, keeps this pattern of infamy and barbarism. Among the modern codes, only Louisiana’s treats slaves.”

He also found that Louisiana’s racial prejudices were reflected in the code provisions on proof of filiation. “Article 226 of the Louisiana code allows the determination of maternity or paternity in favor of free white children and even for free colored children if the one being searched for is a colored man . . . in the Louisiana code justice varies according to the different colors of persons.” Assuming the object of a deposit had to be a movable, under the Louisiana provision the category of movables “logically” included slaves. No one could desire more acerbic criticism than this. Fortunately, García Goyena and his colleagues admired much more of the Louisiana Civil Code than they despised.

Although García Goyena’s projet was never enacted, it became the intellectual foundation for the Spanish Civil Code finally enacted in 1889. Thus García Goyena’s projet was to the Spanish Civil Code what the Louisiana Digest of 1808 was to the Louisiana Civil Code. The influence of García Goyena’s draft upon the Spanish Civil Code

29. III GARCÍA GOYENA, supra n. 12, at 45 (author’s translation).
30. I GARCÍA GOYENA, supra n. 5, at 44.
31. Id. at 45.
32. Id. at 141 (author’s translation).
33. IV GARCÍA GOYENA, supra n. 18, at 84.
is unmistakable. Predictably, many provisions of the Spanish Civil code bear a strong resemblance to articles García Goyena had attributed to the Louisiana Civil Code. As pointed out earlier, the Louisiana Civil Code left its deepest imprint on the Spanish formulations having to do with cause and consent. The Spanish Civil Code articles on cause, strikingly like those of both García Goyena’s draft and the Louisiana Civil Code, provided:

1274 In onerous contracts cause is for each contracting party the prestation or promise of a thing or service for the other party; in remunerative [contracts], the service or benefit that is remunerated, and in [contracts] of pure beneficence, the mere liberality of the donor.

1275 Contracts without cause or with an illicit cause, produce no effects. The cause is illicit when it is opposed to law or morality.

1276 The expression of a false cause in contracts will give rise to their nullity, if it is not proved that they were based on another true and licit cause.

1277 Although the cause is not expressed in the contract, it is presumed to exist and to be licit so long as the debtor does not prove the contrary.34

Article 1274 virtually duplicated article 997 of the Spanish projet whose source García Goyena acknowledged to be the Louisiana Civil Code. Articles 1275 through 1277 were likewise very close to both the Spanish projet and the Louisiana Civil Code. According to the distinguished jurist José María Manresa y Navarro, the Spanish provisions on cause corresponded to articles 997 through 1000 of García Goyena’s projet and conformed with articles 1887 through 1894 of the Louisiana Civil Code.35 These are by no means isolated instances of Louisiana influence upon current Spanish law. The articles in the Spanish Civil Code on consent likewise corresponded to articles of the García Goyena projet, which, as Manresa reported, were in conformity with Louisiana provisions.36 These citations and many others show that the legal formulations of the Louisiana Civil Code entered the legal culture and vocabulary of Spain and that they survive today in Spanish legal thought. In 1948, Professor Royo Martínez underscored this point: “The Spanish codifier found the Louisiana Civil Code a work in which the French archetype had already undergone Spanish influence, as a result of which the Louisiana Code was, after

34. II J. Santamaría, Comentarios al Código Civil 246 (1958) (author’s translation).
36. Id. at 594-95 (author’s translation).
the French, the primordial inspiration of the Spanish projet."\textsuperscript{37} According to Professor Royo Martinez, the Spanish Civil Code borrowed at least thirty basic ideas and institutions from the Louisiana Civil Code, some of which I have already mentioned.\textsuperscript{38}

Professor Martinez's remark was recognition of poetically just compensation from an American colony that, just after acquiring statehood, chose to translate \textit{Las Siete Partidas} because the Spanish work was the most perfect system of law, "comparable to any code published in the most enlightened ages of the world."

\textsuperscript{37} Royo Martinez, \textit{supra} n. 8, at 485.

\textsuperscript{38} According to Professor Royo Martinez, the Louisiana Civil Code contributes substantively to the Spanish Civil Code in the areas of a tutor's incapacity, use and habitation, servitudes, strict liability under article 667, \textit{omnium bonorum} donations, testamentary forms, acceptance of inheritances, community property, rent reduction on account of \textit{force majeure}, mandate, and \textit{causa}. The full list appears in \textit{id.} at 483-508. I am indebted to Mr. Louis de la Vergne for providing a copy of Professor Royo Martinez's article.
APPENDIX A

A SAMPLING OF PROJET REFERENCES TO THE LOUISIANA CIVIL CODE OF 1825*

Spanish Projet

Artículo 578

En alta mar y durante el viaje, los testamentos serán otorgados en la forma siguiente:

Si el buque es de guerra, ante el contador ó el que ejerza sus funciones, en presencia de dos testigos; el capitán del buque, ó el que haga sus veces, pondrán además el visto bueno.

En los buques mercantes será autorizado por el capitán ó el que haga sus veces, con asistencia de dos testigos.

En uno y otro caso los testigos serán tomados con preferencia de entre los pasajeros, caso de haberlos.

La disposición de este artículo es aplicable, no solo á la tripulación, sino también á los pasajeros; pero cesa para todos, cuando el buque se halla en un puerto español ó extranjero.

Es claro que el artículo habla del simple viaje en alta mar, fuera de los casos extraordinarios del anterior.

Nada mas breve y sencillo en esta materia que el artículo 994 Holandes y el 1594 de Luisiana, únicos en que se trata de ella: dos testigos según el primero; tres según el segundo, y el capitán ó patron, ó el que haga sus reces. . . .

Translation

Article 578: On the high seas and during the voyage, wills may be made in the following form:

In a war vessel, before the steward or the person
who discharges his functions, in the presence of two witnesses; the captain of the vessel, or the person who occupies his role will give approval.

On merchant vessels, (testaments) will be authorized by the captain or the one who occupies his office, in the presence of two witnesses.

In both cases, the witnesses will be selected by preference from among the passengers if there are any.

The rule of this article applies not only to the crew but also to the passengers; but it ceases (to apply) to everyone when the vessel is in a Spanish or foreign port.

Comment: It is clear that the article speaks of a simple voyage on the high seas... .

There is nothing shorter or simpler on the subject than Article 994 of the Dutch (Code) and Article 1594 of the Louisiana (Code), the only ones that treat the matter: two witnesses according to the first, three according to the second, and the captain or master or the person who occupies his role.

Louisiana Civil Code (1825)

Art. 1594—Les testaments faits sur mer, dans le cours d'un voyage, peuvent être reçus par le capitaine ou maître, en présence de trois témoins pris de préférence parmi les passagers, et à défaut de passagers, parmi les gens de l'équipage.

Art. 1594—Testaments, made during a voyage at sea, may be received by the captain or master, in presence of three witnesses taken by preference from among the passengers, and in the absence of passengers, from among the crew.

Spanish Projet

Artículo 593

El testamento ológrafo será abierto por el juez si estuviere cerrado. En seguida lo leerá y procederá al examen de testigos que reconozcan el testamento, declarando, si por el conocimiento que tenían de la letra del testador, lo tienen como escrito y firmado de mano propia del mismo.

Resultando la identidad en concepto de los testigos, el juez rubricará al principio y fin de cada una de sus páginas, y lo mandará entregar con todas las dilligencias al escribano actuario, para que obre en sus protocolos y se den copias á quien corresponda.
Esta tomando de los artículos 1648 y 1650 del Código de la Luisiana.

Translation

Article 593: The olographic will shall be opened by the judge if it is sealed. Then he shall read it and proceed to examine the witnesses who recognize the will declaring whether by their knowledge of the testator's writing, they consider it to have been written and signed by his own hand.

If the witnesses agree, the judge shall paraph the top and bottom of each page and shall send it with all diligence to the clerk of records so that it can be filed in his protocols and so that copies can be given to those needing them.

Comment: This is taken from Articles 1648 and 1650 of the Code of Louisiana.

Louisiana Civil Code (1825)

Art. 1648—Le testament olographe sera ouvert, s'il est cacheté, et il devra être reconnu, et prouvé par la déclaration de deux personnes dignes de foi qui devront attester qu'ils reconnaissent le testament comme étant entièrement écrit, daté et signé de la main du testateur, comme l'ayant vu souvent écrire et signer pendant sa vie.

Art. 1648—The olographic testament shall be opened if it is sealed, and it must be acknowledged and proved by the declaration of two credible persons, who must attest that they recognize the testament as being entirely written, dated, and signed in the testator's handwriting, as having often seen him write and sign during his lifetime.

Art. 1650—Lorsque le juge aura rempli toutes les formalités requises pour l'ouverture et la preuve des testaments, il en ordonnera l'exécution, et il prescrira de plus que ceux de ces testaments qui n'ont pas été passés par acte public, seront déposés après les avoir parapliés ne varietur au commencement et à la fin de chaque page.

Art. 1650—When the judge has complied with all the formalities required for opening and proving a testament, he shall order its execution, and he shall moreover direct that such testaments as have not been passed by public act be filed, after having inscribed on them his paraph ne varietur, at the top and bottom of each page.
Spanish Project

Artículo 702

Si los bienes de la herencia no alcanzan para cubrir todos los legados, serán preferidos los de cosa específica y determinada; y el resto de los bienes se repartirá á prorata entre los legatarios de cantidad de dinero.

Los legados hechos en recompensa de servicios no estarán sujetos á este descuento, y se pagarán con preferencia: lo mismo se observará siempre que así lo determine expresamente el testador.

Es el artículo 1628 de Código de la Luisiana, que parece muy conforme á razón y á derecho. . . .

Translation

Article 702: If the assets of the inheritance are insufficient to cover all the legacies, the legacies of a specific and determined thing will be preferred; and the rest of the assets will then be divided proportionally among the legatees of sums of money.

Legacies made in repayment for services will not be subject to this discount and will be paid preferentially: the same (rule) will always apply when the testator has expressly established it.

Comment: This is article 1628 of the Code of Louisiana that seems very much in conformity with reason and right.

Louisiana Civil Code (1825)

Art. 1628—Si les biens ne suffisaient pas pour acquitter les legs particuliers, les legs d’un corps certain doivent d’abord être prélevés. Le surplus des biens doit ensuite être reparti au prorata entre les légataires de sommes d’argent, à moins que le testateur n’ait expressément déclaré que tel legs sera acquitté de préférence aux autres, ou que le legs ne soit donné pour récompense de service.

Art. 1628—If the effects do not suffice to discharge the particular legacies, the legacies of a certain object must be first taken out. The surplus of the effects must then be proportionally divided among the legatees of sums of money, unless the testator has expressly declared that such a legacy shall be paid in preference to the rest, or that the legacy is given as a recompense for services.
Spanish Projet

Artículo 822

La aceptación ó repudiación no puede hacerse condicional ni parcialmente.

La repudiación no perjudica á los que tengan derecho a porción legítima para reclamarla.

El artículo 1980 de la Luisiana dice: “El que tiene la facultad de aceptar una herencia por entero, no pueda dividir su aceptación, y no aceptarla sino en parte.” el 1009: “No se pueda aceptar ni repudiar una herencia bajo condición...”

Translation

Article 822: The acceptance or rejection cannot be made conditionally or partially. Rejection cannot bar those entitled to the legitime to claim it.

Comment: Article 980 of the Louisiana (Code) says: “He who has the power of accepting the entire inheritance cannot divide his acceptance and cannot accept it in part.” Article 1009: “An inheritance cannot be accepted or rejected conditionally.”

Louisiana Civil Code (1825)

Art. 980—Celui qui a la faculté d’accepter une succession en entier, ne peut point morceler son acceptation et ne l’accepter qu’en partie.

Art. 980—He who has the power of accepting the entire succession, cannot divide his acceptance and only accept a part.

Art. 1009—On ne peut ni accepter, ni répudier une succession sous condition.

Art. 1009—A succession can neither be accepted nor rejected conditionally.

Spanish Projet

Artículo 823

Nadie puede aceptar ni repudiar sin estar cierto de haber muerto aquel de cuya herencia se trata, y de su derecho de heredero.
Translation

Article 973: No one may accept or reject without being certain of the death of the de cujus and of his right as heir.

Comment: The same rule is established in articles 973 to 979 of the Louisiana (Code).

LOUISIANA'S CONTRIBUTION

Art. 973—On ne peut accepter une succession avant qu'elle soit déferée.

Ainsi, le parent qui ne se trouvée qu'au second degré, ne peut ni accepter ni renoncer, tant que celui qui est placé au premier degré, ne s'est pas expliqué.

De même, dans les successions testamentaires, l'héritier ab intestat ne peut ni accepter, ni renoncer tant que l'héritier institué, délibéré et ne s'est pas décidé sur l'acceptation ou la répudiation.

Art. 973—A person can not accept a succession before it has fallen to him.

Thus, a relation to the deceased in the second degree can neither accept nor renounce the succession, until he who is related in the first degree, has expressed his intention on the subject.

And in testamentary successions, the heir ab intestato can neither accept nor renounce, until the instituted heir has decided to accept or renounce the succession.

Art. 974—Ce n'est pas assez que la succession soit déferée, il faut aussi pour la validité de l'acceptation, que l'héritier sache d'une manière certaine qu'elle est ouverte ou déferée.

Ainsi, celui qui ignore la mort du défunt, quoique la succession soit réellement ouverte, ne peut ni l'accepter ni la répudier.

Art. 974—It is not sufficient that the succession be fallen, it is also necessary, for the validity of the acceptance, that the heir know in a certain manner that it is opened or fallen to him.

Thus he who is ignorant of the death of the deceased, though the succession be really opened, can neither accept nor renounce it.

Art. 975—Si l'héritier ab intestat accepte la succession, dans l'opinion qu'il n'y avait pas de testament, son acceptation sera nulle, si l'on découvre ensuite un testament, dont on ignorait l'existence.
Art. 975—If the heir *ab intestato* accepts the succession, under the impression that there is no will, his acceptance is null, if a will be discovered, of the existence of which he was ignorant.

Art. 976—Celui qui accepte doit savoir à quel titre la succession lui est déférée, en sorte que si l’héritier institué accepte la succession comme lui étant due *ab intestato*, il fait un acte nul.

Art. 976—He who accepts ought to know under what title the succession is left to him, so that if the instituted heir accepts the succession as coming to him *ab intestato*, the act is null.

Art. 977—Il suffit pour la validité de l’acceptation que l’héritier sache que la succession est ouverte et qu’il y est appelé. Il n’est pas nécessaire qu’il sache pour quelle part elle lui est déférée.

Peu importe aussi qu’il se trompe sur le degré de parenté qui le lie au défunt, et qui lui donne droit à lui succéder; quoique cela puisse influer sur le montant de la portion qu’il a à y prétendre, son acceptation n’en est pas moins valable, puisqu’il est véritablement héritier.

Art. 977—It is sufficient to establish the validity of the acceptance, that the heir knows that the succession is opened, and that he is called to it. It is not necessary that he should know what portion of it is left to him.

It is of no moment, if he be mistaken as to the degree of relationship which he bears to the deceased, and which gives him the right to inherit from him; though it may affect the amount of the portion coming to him, his acceptance is not the less valid on that account, since he is an heir.

Art. 978—L’acception ou la répudiation faite par l’héritier avant que la succession soit ouverte ou déférée, est absolument nulle; elle ne peut pondre aucun effet; mais cela n’empêche oint celui qui l’a fait, d’accepter ou de répudier valablement la succession, quand son droit sera ouvert.

Art. 978—The acceptance or rejection made by the heir, before the succession is opened or left, is absolutely null and can produce no effect; but this does not prevent the heir who has thus accepted, from accepting or rejecting validly the succession when his right is complete.

Art. 979—L’héritier qui est institué sous condition, ne peut accepter la succession ou y renoncer, tant que la condition n’est point encore arrivée, ou qu’il ignore son événement.

Il en est de même s’il ignore l’institution qui est faite en sa faveur.

Art. 979—The heir who is instituted under a condition can not
accept nor renounce the succession, before the condition has happened, or while he remains in ignorance of the condition having happened.

It is the same, if he be ignorant of the institution which is made in his favor.

Spanish Projet

Artículo 875(3)

Los acreedores y legatarios que obtuvieren la separacion, no pueden repetir contra los bienes propios del heredero sino despues de pagados todos los acreedores de este.

Nuestro artículo se aparta en este punto del Derecho Romano, prefiriendo el artículo 1413 de la Luisiana, en el que se dispone lo mismo que en el número 3 del nuestro; pues por la simple aceptacion de la herencia, que viene á ser un quasi contrato, quedó tambien obligado el heredero á los acreedores del difunto.

Translation

Article 875(3): The creditors and legatees who obtained a separation do not have recourse against the heir's own assets until after his own creditors have been paid.

Comment: Our article departs on this point from Roman Laws preferring article 1413 of the Louisiana (Code) which provides the same as number 3 of ours; thus, by the simple acceptance of his inheritance, which amounts to a quasi-contract, the heir also remains obligated to the decedent's creditors.

Louisiana Civil Code (1825)

Art. 1413—Lorsque les créanciers de la succession ont demandé la séparation des patrimoines, s'ils n'ont pas trouvé dans les biens qui la composent, de quoi se payer entièrement, ils peuvent recourir sur les biens de l'héritier, après que les créanciers de celui-ci ont été payés.

Art. 1413—When the creditors of the succession have sued for a separation of patrimony, if there are not effects therein sufficient to pay them, they have their recourse against the property of the heir, after his own creditors have been paid.
Spanish Projet

Artículo 899

Cuando el difunto hizo por acto entre vivos ó por última voluntad la partición de sus bienes, se pasará por ella en cuanto no perjudique á la legítima de los herederos forzosos.

Conforme con el 1225 de la Luisiana: "no há lugar á la partición, si el difunto lo ha arreglado entre sus herederos legítimos ó extraños."

Translation

Article 899: When the decedent, by inter vivos act or last will, has partitioned his assets, the partition is effective to the extent that the legitime of the forced heirs is not prejudiced.

Comment: In conformity with 1225 of the Louisiana (Code): "there is no occasion for partition if the decedent has regulated it between his legitimate heirs or strangers."

Louisiana Civil Code (1825)

Art. 1225—Il n'y a pas lieu à partage, si le défunt l'a réglé entre ses héritiers légitimes ou étrangers, et à cet égard le juge doit suivre la volonté du défunt.

Il en est de même, si le testateur a indiqué la légitimité paternelle de ses enfants a prendre sur une ou plusieurs espèces de biens.

Art. 1225—There is no occasion for partition, if the deceased has regulated it between his lawful heirs, or strangers; and in such case the judge must follow the will of the testator.

The same thing takes place where the testator has assigned distinct parts of the estate for the paternal legal portion of his children.

Spanish Projet

Artículo 939

El coheredero acreedor del difunto puede reclamar de los otros el pago de su crédito, deducida su parte proporcional como tal heredero, y sin perjuicio de lo establecido en la sección 4, capítulo l de este título.

Tomado del 1378 de la Luisiana que dice: "Si uno de los herederos es acreedor del difunto, no confundirá sino su parte en este crédito,
y podrá reclamar de sus coherederos la parte con que cada uno de ellos debe contribuir para el pago de esta deuda."

Translation

Article 939: A co-heir who is also creditor of the decedent may require the payment of the claim from the others, deducting his pro-rata share as such heir and without prejudice to the rule established in section 4, chapter 1 of this title.

Comment: Taken from 1378 of the Louisiana (Code) which says: "If one of the heirs is creditor of the decedent, confusion will take place only for his part of the debt, and he may demand that each of his co-heirs contribute toward the payment of this debt."

Louisiana Civil Code (1825)

Art. 1378—Si l'un des héritiers était créancier du défunt, il ne confondra que sa part dans cette créance, et il pourra réclamer de ses co-héritiers la part dont chacun d'eux doit contribuer dans le payement de cette dette.

Art. 1378—If one of the heirs be a creditor of the deceased, confusion will only take place for his part in the debt, and he may claim from the co-heirs the part which each is bound to contribute for the payment of this debt.

Spanish Projet

Artículo 999

El contrato será válido, aunque la causa en el expresada sea falsa con tal que se funde en otra verdadera.

Es el 1891 de la Luisiana. "Si la causa expresada en el contrato no existia, el contrato será válido, si la parte prueba que hubo otra causa válida y suficiente."

Translation

Article 999: The contract will be valid although the cause expressed in it be false, if it is based on another true cause.

Comment: This is 1891 (sic) of the Louisiana (Code): "If the cause expressed in the contract did not exist, the con-
tract would be nonetheless valid if the party defend-
ing the contract's validity proves that there was
another valid and sufficient cause."

**Louisiana Civil Code (1825)**

Article 1894—Si la cause exprimée dans le contrat n'existait pas, le contrat n'en serait pas moins valide, si la partie prouvait qu'il y a eu une autre cause véritable et suffisante pour le contrat.

Art. 1894—If the cause expressed in the consideration (sic) should be one that does not exist, yet the contract cannot be invalidated if the party can show the existence of a true and sufficient consideration.

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**Spanish Projet**

*Artículo 1049*

*En las obligaciones cumplideras á cierta fechá contada desde el día en que se otorga la obligación ó desde otro determinado no se computa el del otorgamiento.*

Conforme con los artículos 2052 y 2053 de la Luisiana... 

**Translation**

Article 1049: In obligations to be due on a certain date counted from the day on which the obligation is created or from another fixed day, the day on which the obligation is created is not counted.

Comment: In conformity with articles 2052 and 2053 of the Louisiana (Code).

**Louisiana Civil Code (1825)**

Art. 2052—Lorsqu'un terme est donné ou limité pour l'exécution d'une obligation, le débiteur a jusqu'au coucher du soleil du dernier jour de ce terme, pour remplir son obligation, à moins que l'objet du contrat ne puisse s'exécuter après que de certaines heures de ce jour sont passées.

Art. 2052—Where a term is given or limited for the performance of an obligation, the obligor has until sunset of the last day limited for its performance, to comply with his obligation, unless the object of the contract cannot be done after certain hours of that day.

Art. 2053—Lorsque le contrat consiste à faire un acte dans un
certain nombre de jours fixé, ou dans un certain nombre de jours après la date du contrat, le jour du contrat ne doit pas être inclus dans le nombre des jours qui doivent être ainsi accordés, et le débiteur a jusqu'au coucher du soleil du dernier jour ainsi calculé, pour accomplir le contrat, sauf l'exception dont il est fait mention dans l'article précédant.

Art. 2053—When the contract is to do the act in a certain number of days, or in a certain number of days after the date of the contract, the day of contract is not included in the number of days to be counted, and the obligor has until sunset of the last day of the number enumerated, for the performance of his contract, with the exception contained in the last preceding article.

Spanish Projet

Artículo 1580

Todo socio debe responder á la sociedad de los daños y perjuicios que por su culpa le haya causado y no puede compensarlos con los beneficios que por su industria le haya proporcionado en otros negocios.

1850 French, 1722 Neapolitan, 1873 Sardinian, 1327 Vaud, 1668 Dutch. Article 2833 of the Louisiana (Code) adds: “But no partner shall be liable for the loss that has occurred in consequence of anything he has done in good faith” which I do not approve, because there can be good faith along with fault or negligence.

Translation

Article 1580: Every partner is answerable to the partnership for the damages caused it by his fault; and he cannot compensate (these damages) with the profits earned by his industry in other affairs.

Comment: 1850 French, 1722 Neapolitan, 1873 Sardinian, 1327 Vaud, 1668 Dutch. Article 2833 of the Louisiana (Code) adds: “But no partner shall be liable for the loss that has occurred in consequence of anything he has done in good faith” which I do not approve, because there can be good faith along with fault or negligence.

Louisiana Civil Code (1825)

Art. 2833—Chaque associé est débiteur, envers la société, des dommages qu'elle peut avoir soufferts par sa faute, sans pouvoir compenser ces dommages avec les profits que son industrie, ses talens ou son crédit, peuvent avoir procurés à la société. Mais nul associé ne sera
responsible de la perte qui serait arrivée par suite de ce qui aurait été fait par lui de bonne foi, ou qu'il aurait omis de faire dans l'exercice de ses pouvoirs comme administrateur, ou comme associé, quoique cette omission ou cet acte ait été imprudent et préjudiciable à la société.

Art. 2833—Every partner is answerable to the partnership for the damages which it may have suffered by his fault, without being able to compensate such damages by the profits which his industry, skill, or credit may have produced in the business of the partnership; provided that no partner shall be held liable for any loss which has happened in consequence of any thing bona fide done or omitted by him in the legal exercise of his power, either as administrator or partner, although such act or omission should be injudicious and injurious to the partnership.

Spanish Projet

Artículo 1607

No se considerán traspasados los limites del mandato, en cuanto ha sido cumplido de una manera más ventajosa para el mandante que la señalada por este.

Es el 2980 de la Luisiana y 9 Bavaro, capítulo 9, libro 4.

Translation

Article 1607: The limits of the mandate are not deemed to have been exceeded when it has been fulfilled in a manner more advantageous to the principal than was specified in it.

Comment: It is 2980 of the Louisiana (Code) and 9 Bavarian, Chapter 9, Book 4.

Louisiana Civil Code (1825)

Art. 2980—Le mandataire n'est pas considéré comme ayant excédé les bornes de son mandat, lorsqu'il a rempli la commission qui lui était donnée, d'une manière plus avantageuse pour le mandant que celle qui était exprimée dans la procuration.

Art. 2980—The mandatory is not considered to have exceeded his authority, when he has fulfilled the trust confided to him, in a manner more advantageous to the principal, than that expressed in his appointment.
Spanish Projet

Artículo 1616

El mandatario que obra bajo este concepto, no es responsable á la otra parte, sino cuando se obliga expresamente á ello ó traspasa los limites del mandato, sin darle conocimiento suficiente de sus poderes.

Viene á ser el 2982 de la Luisiana: "El mandatario no es responsable hacia aquellos con quienes ha contraido, sino cuando se ha obligado personalmente, ó ha escedido los limites del mandato sin haberle dado conocimiento de sus poderes."

Translation

Article 1616: The mandatory who acts according to this concept is not responsible to the other party unless he obliges himself expressly to it or exceeds the limits of the mandate without exhibiting the extent of his powers.

Comment: Equivalent of 2982 of Louisiana (Code): "The mandatory is not responsible to those with whom he contracts unless he has obliged himself personally or has exceeded the limits of his mandate without having given him knowledge of his powers."

Louisiana Civil Code (1825)

Art. 2982—Le mandataire n’est responsable envers ceux avec qui il a contracté que lorsqu’il s’est obligé personnellement, ou qu’il a excédé les bornes du mandat, sans leur avoir donné connaissance de ses pouvoirs.

Art. 2982—The mandatory is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without having exhibited his powers.

Spanish Projet

Artículo 1747

El acreedor puede perseguir en un mismo juicio al deudor principal y al fiador, pero quedará este salvo el beneficio de escusión, aunque se de sentencia contra los dos.

Se ha tomado este artículo del 3020 de la Luisiana, por parecer razonable y que aclara la materia de escusión.
Translation

Article 1747: The creditor may pursue in the same lawsuit both the debtor and the surety. But the latter will have the benefit of discussion, even though the judgment has been rendered against both of them.

Comment: This article has been taken from Louisiana article 3020, because it seems reasonable and clarifies the subject of discussion.

Louisiana Civil Code (1825)

Art. 3020—Le créancier peut poursuivre, par une seul et même action, le débiteur et la caution. S'il obtient jugement contre les deux, la caution, qui a droit au bénéfice de la discussion, peut exiger que le jugement soit d'abord exécuté contre le débiteur principal.

Art. 3020—The creditor may include in the same suit, both the debtor and the surety. If he obtains judgment against both, the security, who is entitled to the benefit of discussion, may insist that the judgment shall be first executed against the principal debtor.

Spanish Projet

Artículo 1965

El poseedor de un bien mueble, por diez años no interrumpidos, residiendo su dueño en la provincia, ó por veinte años fuera de ella prescribe la propiedad, sin necesidad de presentar título, y sin que pueda oponérsele su mala fé.

Lo dispuesto en este artículo no se entiende respecto del que hurtó la cosa, ni dé sus cómplices ó encubridores para los cuales se estará á lo dispuesto en el Código penal.

Viene á ser el 3475 de la Luisiana, único entre los Códigos modernos qué habla de este caso. . .

Translation

Article 1965: The possessor of a movable for ten years uninterrupted, provided its owner has resided in the province or for twenty years if he has lived outside (the province) acquires its ownership without having to produce his title or having his bad faith asserted against him.

Comment: The rule of this article is inapplicable to one who
stole the thing, his accomplices and accessories who shall be governed by the Penal Code. Equivalent to 3475 of the Louisiana Code, unique among the modern codes (because) it speaks of this case.

**Louisiana Civil Code (1825)**

Art. 3475—Lorsque le possesseur d’un bien meuble, l’a possédé pendant dix ans sans interruption tandis que le propriétaire résidait dans l’état, ou pendant vingt ans lorsqu’il en était absent, il en acquerra la propriété, sans être obligé de justifier d’aucun titre ou que sa mauvaise foi purisée lui être opposée.

Art. 3475—When the possessor of any movable whatever has possessed it for ten years without interruption, while the owner resided in the State, or for twenty years if he resided out of it, he shall acquire the property without being obliged to produce a title, or to prove that he did not act in bad faith.

**Spanish Projet**

**Artículo 1967**

*Toda obligación personal por deuda exigible, se prescribe por diez años entre presentes, y veinte entre ausentes, aunque subsidiariamente haya hipoteca.*

*El tiempo empieza á correr desde que son exigibles.*

El 3508 de la Luisiana, adoptado en el nuestro por más consecuente y equitativo, exige diez años entre presentes y veinte entre ausentes.

**Translation**

Article 1967: Every obligation for an exigible debt is prescribed by ten years between parties who are present and twenty between absent parties although subsidiarily there is a mortgage.

The time begins to run from the time they are exigible.

Comment: Article 3508 of the Louisiana (Code) adopted in ours because it is more consistent and fairer, requires ten years between parties who are present and twenty between absent parties.
Louisiana Civil Code (1925)

Art. 3508—Toutes les actions personnelles généralement quelconques, sauf celles ci-dessus décrites, se prescrivent par dix ans, si le créancier est présent, et par vingt ans, s'il est absent.

Art. 3508—In general, all personal actions, except those above enumerated, are prescribed by ten years, if the creditor be present, and by twenty years, if he be absent.

Spanish Projet

Artículo 1023

Cuando el objeto del contrato es un compuesto de diversas partes, la denominación dada al todo comprende todas las partes que lo forman.

Este artículo venia antes mas vago y difuso; se le sustituyó por su claridad y sencillez el 1955 de la Luisiana.

Translation

Article 1023: When the object of the contract is an aggregate of different items, the denomination of the whole includes all the items that form it.

Comment: This article used to be vague and more diffuse. Because of its clarity and simplicity Article 1955 of the Louisiana (Code) was substituted.

Louisiana Civil Code (1925)

Art. 1955—Mais quand l'objet du contrat est un composé de diverses parties, alors la description générale ou la dénomination donnée au tout comprendra toutes les parties qui forment ce tout, quoiqu'elles n'aient pas été spécifiées, ou même connues des deux parties ou de l'une d'elles. La renonciation, qui est faite à une part dans une succession, d'après cette disposition, ne sera pas annulée sur l'allégation que la succession contenait plus ou moins de biens qu'on ne supposait, quoique dans le cas de dissimulation ou de dol, le contrat puisse être rescindé, d'après les autres dispositions qui sont contenues ci-dessus.

Art. 1955—But when the object of the contract is an aggregate composed of many or of different articles, there the general description of aggregate name will include all the particular articles which enter into the composition of the whole, although they were not specified or were even unknown to both or either of the parties. A
release of a share in a succession, under this rule, shall not be set aside on an allegation that the succession contained more or less than was supposed; where there is concealment, however, or fraud, it would be void under other rules before laid down.

APPENDIX B

TRANSLATION OF A TYPICAL ENTRY IN THE SPANISH PROJET*

Article 1367

The contract of purchase and sale is one in which one of the contracting parties obliges himself to deliver a thing and the other to pay for it in a fixed price and money.

1582 and 1591 of the French, 1427 and 1436 Neapolitan, 1588 and 1597 Sardinian, 1112 Vaud 1493 and 1501 Dutch, 2414 of Louisiana which adds: “Three things must concur for the perfection of this contract; the thing sold, its price, and the consent.” This last is followed by all the authors because it is of the substance or essence of the contract.

Se pecuniam dem, ut rem accipiam, emptio et venditio est, law 5 paragraph 1, title 5, book 19 of the Digest . . .

Of purchase and sale. Veteres in emptione, venditioneque appellationibus promiscue utebantur, Law 19, Title 1, book 19; Title 5, Fifth Partida says also “of sales and purchases”. The modern codes say only “of sale”.

*To a contemporary reader, Garcia Goyena’s spelling and punctuation may seem idiosyncratic because they differ considerably from modern usages. Thus, for instance, he often uses a “g” where a modern Spanish writer would put a “j” (e.g., “viage” vs. “viiage” in article 578). No effort has been made to note or correct the variations in Garcia Goyena’s texts. Nor have the archaisms in the Louisiana Civil Code of 1825 been noted (i.e., “testaments” vs. “testaments” in article 1594). The author is grateful to Camilo Salas for his review and correction of the following translations.

*This article is typical of Garcia Goyena’s work. In sequence, he provides the proposed article, a list of sources, and explanations of the key phrases and concepts in the institution regulated by the article.
Is obliged . . . Purchase and sale will not be perfect . . . without a public writing if (such writing) is required; the same must be said when the parties did not wish to bind themselves without *in scriptis* because their consent was conditional, Law 6, Title 5, Partida 5 and text of title 24, book 3, Institutions.

To deliver a thing; and the warranty of the same, according to Article 1383 and all of Section 3, Law 30, para. 1, Title 1, Book 19 of the Digest explains it thus: *Venditor hactenus tenetur ut rem emptori habere liceat, non etiam ut ejus faciat*; that is, (the seller) is responsible to the buyer for peaceful possession of the thing according to Article 1397, number 1, and in the contrary case of what is expressed in paragraph 1 of Section 3 . . .

Certain price and in money; *Sine pretio nulla venditio est* (without a price there is no sale), Law 2, Paragraph 1, Title 1, Book 18 of the Digest. *Certum esse pretium debet. Pretium in numerata pecunia consistere debet* (The price must be certain. The price must consist of current money) . . .

With regard to certainty of the price, see Article 1369: it should consist of money because exchange of one thing for another would be an exchange (permuta) not a sale. Law 7, Title 64, Book 4 of the Code, and the cited paragraph of the Institutions. But the contract would still be a purchase and sale, when the price was fixed in money although the parties by later agreement might have paid with something else, *non enim pretii numeratio, sed conventio perficit emptionem,* . . . Book 18 of the Digest and . . . Book 4 of the Code; because to qualify a contract one attends to its inception, not to its success.

And, though in this Code, rescission because of *laesio enormis* is not admitted, the price should still be serious and effective; otherwise the simulated contract that was nominally a sale would be a real donation governed by the rules and restrictions on donations concerning things, persons, and solemnity . . .