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Private Law: Persons

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The Work of the Louisiana Appellate Courts for the 1968-1969 Term

A Symposium

[*Editor's Note.* The articles in this symposium discuss selected decisions of Louisiana appellate courts reported in the advance sheets dated July 1, 1968 to July 1, 1969.]

PRIVATE LAW

PERSONS

*W. Thomas Tête**

FILIATION

In *George v. Bertrand*[1] the Court of Appeal for the Third Circuit held that the biological father of a child could not recover under article 2315 of the Civil Code for that child's wrongful death where the child was born *during* the marriage of his mother to another man. Even though the mother and the biological father, who married after the birth of the decedent, had been living in open concubinage at the time of the child's conception and birth, the court held that the child was the legitimate child of the husband of the prior marriage, rather than the legitimated child of the biological father. The court's decision is quite consistent with the previous Louisiana jurisprudence.[2] Unfortunately it illustrates how unnecessarily shaky that jurisprudence makes the constitutional foundation of Louisiana family law.

The court of appeal rejected the contention that denial of a remedy would violate *Levy v. Louisiana*[3] and its companion case *Glona v. American Guarantee and Liability*[4] on the grounds that:

> "[T]hese cases hold that an illegitimate child, or the mother of an illegitimate child cannot be prevented from suing under La. C.C. Art. 2315 for the death of the other . . . .
>
> "It is obvious from the wording of these cases that they have no application to the facts at hand. Vergie Lee George was not an illegitimate, but rather the legitimate child of

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1. 217 So.2d 47 (La. App. 3rd Cir. 1969).

2. *See, e.g.*, Feazel v. Feazel, 222 La. 113, 62 So.2d 119 (1952); Succession of Saloy, 44 La. Ann. 433, 10 So. 872 (1892); Eloi v. Mader, 1 Rob. 581 (La. 1841).

3. 391 U.S. 68 (1968).

4. 391 U.S. 73 (1968).

Velma Roxie Myles and Willie Jackson. There is no discrimination against Ruffin George, he is simply not the legitimate father of the deceased."[5]

The Court's narrow reading of *Levy* is dubious. The rationale of *Levy* was not based on the technical label of illegitimacy *per se*, but the use of this legal classification to deny a remedy to one class of persons that was granted to another, where the relationship in both cases was deemed to be essentially the same. Justice Douglas stated:

> "Legitimacy or illegitimacy of birth has no relation to the nature of the wrong allegedly inflicted on the mother. These children, though illegitimate, were dependent on her; she cared for them and nurtured them; they were indeed hers in the biological and in the spiritual sense; in her death they suffered wrong in the sense that any dependent would.
>
> "We conclude that it is invidious to discriminate against them when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother."[6]

Levy did not hold that the children should recover because they were illegitimate, but because there existed a substantial parent-child relationship between the mother and her children. Such a relationship also existed in *George v. Bertrand.* The mere fact that the biological father was denied relief because his child was labeled the legitimate child of another man instead of illegitimate would seem to be irrelevant under *Levy* and *Glona.*

Suppose that in the next case that comes before the court, it is the child who is suing for the wrongful death of his biological father who, as in *Bertrand*, had treated him as his. What "action, conduct, or demeanor" of the child will the court point to in denying him the right to recover for the death of the only person he has known as his father? Will it be enough for the court to say to him: "You could have recovered for the death of one who never supported you, but you cannot do so for the death of him who had heretofore sustained you"?

The *George v. Bertrand* situation may be contrasted with that presented the United States Court of Appeals for the Fifth Circuit in *Houma Well Service v. Fontenot.*[7] There it was plainly rational not to extend *Levy* to the point where legal relation-

5. George v. Bertrand, 217 So.2d 47, 49 (La. App. 3d Cir. 1969).
6. Levy v. Louisiana, 391 U.S. 68, 72 (1968).
7. 413 F.2d 509 (5th Cir. 1969).

ship would be equated with biological relationship. The mother of the decedent claimed that under *Levy* she should be allowed the opportunity of proving the true "biological fact" that her son's wife's daughter, born before the dissolution of their marriage by divorce, was not the child of her son, the decedent, so that the mother, rather than the child, could recover under the Jones Act. The court there ruled that "Louisiana undoubtedly has an interest in protecting the intimate family relationship from divisive and destructive attacks by those seeking to challenge the legitimacy of children born during wedlock,"[8] and denied the mother the opportunity to prove the child illegitimate, where neither she, her son's heir, nor her son had brought an action to disavow the child within the time allowed by law.

The definitive decision on the constitutionality of Louisiana's system of legal relationships may well depend on whether the case the United States Supreme Court chooses to decide is on its facts similar to the situation in *George v. Bertrand* or that in *Houma Well Service v. Fontenot.* There is ample language in *Levy* to support the proposition that legal relationship does not have to equal biological relationship and that legal relationship only needs to be recognized where there is a psychological or economic relationship of parent and child.[9] But those additional factors that might be deemed to be required under *Levy* were present in *George v. Bertrand.* If a case like *George v. Bertrand* ever reached the United States Supreme Court it *might* decide on the non-biological bases of the relationship; but there is a substantial danger that it might decide simply on the presence of

8. *Id.* at 512.

9. *See* quotation from *Levy* at text accompanying note 6 *supra.* There is also language to support a broad construction of *Levy.* For such construction *see* Estate of Jensen v. Undhjem, 162 N.W.2d 861 (N.D. 1968), where the Supreme Court of North Dakota ruled that state's inheritance statute unconstitutional, stating: "Applying the reasoning in Levy, as no action, conduct, or demeanor of the illegitimate children in the instant case is relevant to their status of illegitimacy, we conclude that the classification for purposes of inheritance . . . , which is based on such a status and which results in illegitimate children being disinherited while their legitimate brother inherit is unreasonable." *Id.* at 878.

New York and Missouri are in accord with North Dakota on the broad reading of *Levy.* See E.M.R. & G.P.R. v. G.E.R., 431 S.W.2d 152 (Mo. 1968); Maternity Petition of Matilda Storm v. None, 57 Misc.2d 342, 291 N.Y.S.2d 515 (N.Y. 1968); Trent v. Loru, 57 Misc.2d 382, 292 N.Y.S.2d 524 (N.Y. 1968).

For a narrow construction of *Levy see* Baston v. Sears, 15 Ohio St. 166, 168, 239 N.E.2d 62, 63 (1968). "*Levy v. Louisiana* . . . had not been decided at the time the appellee presented his case to this court, but we believe that it is inapplicable. The rights announced in Levy were based on the intimate, familial relationship which exists between a mother and her child, whether the child is legitimate or illegitimate."

the biological relationship with grave consequences to our law of successions and the stability of titles to property that have passed by succession, as well as to our family law. Therefore it would be well if the Louisiana courts could insure that situations like *George v. Bertrand* would not arise, if the damage done by the Supreme Court's unfortunate intrusion into this aspect of private law is to be limited.

The Louisiana courts could prevent cases like *George v. Bertrand* from reaching the Supreme Court by giving the Civil Code a more logical interpretation. The Court in *George v. Bertrand* stated that "there is no question that the child . . . was conceived and born *during* the marriage of"[10] his mother to her previous husband. However it ignored articles 193-197 of the Civil Code under which *only certain types of proof of filiation* will bring the presumption of legitimacy of article 184 into operation.

Article 193 provides the primary type of such proof, a "register of birth or baptism" stating the child's filiation, or what the French call a *title* (*titre*) to the status of a legitimate child of the marriage."[11] This the child of the decedent of the *Houma Well Service* case evidently had; the deceased child of *George v. Bertrand* did not.

Articles 194 and 195 establish the second way in which the presumption of article 184 becomes applicable. That is where the child has *possessed* the status of a legitimate child though lacking title to it.[12] To possess a status is to enjoy the benefits and repu-

10. George v. Bertrand, 217 So.2d 47, 48 (La. App. 3d Cir. 1969).

11. *Cf.* LA. CIV. CODE arts. 193, 194 and the corresponding articles in the Code Napoleon. The latter read: Art. 319: *"La filiation se prouve par l'extrait du registre civil des naissances incrits sur le registre de l'état civil."*

Art. 320: *"A défaut de ce titre, la possession constante de l'état d'enfant légitime suffit."*

The expression *ce titre*, "this title," refers to the "civil register of birth," which is roughly equivalent to "the register of birth or baptism" of our Code. The French had a more highly developed system of registry of birth and may also have been motivated by the secularist ideology of the Revolution in not allowing a register of baptism. This writer has used the expression "title" in the text as a short expression for the "register of birth or baptism" of our Code, which is the phrase consistently used wherever the French Civil Code speaks of "title" or "civil register of births," since our lengthy expression is functionally equivalent to the shorter French expression with the exception of the effect given a certificate of baptism.

12. The French text of article 213 of the Civil Code of 1825, which corresponds to article 194 of the present Code, uses the expression *la possession constante de l'état* in precisely the same way as it is used in article 320 of the Code Napoleon which corresponds to it. Similarly, the French text of

tation which attach to it. Again, this element was lacking in *George v. Bertrand*, though it would have been present in the *Houma Well Service* case had the child lacked a title.

Where there is neither possession of the status nor title to it, the child may prove his legitimate filiation under the terms of article 196, which allows him to prove it by either written or oral proof. But article 197 follows immediately upon article 196 and limits it by allowing any relevant evidence to be introduced to rebut the evidence permitted under article 196.[13] Thus article 197 prevents the presumption of legitimacy of article 184 from coming into operation where the proof of filiation is by any means

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article 214 of the Civil Code of 1825, corresponding to article 195 of our present Code and to article 321 of the French Code, uses the expression *la possession d'état* in exactly the same way as its counterpart in the French Civil Code. *See* 3 LOUISIANA LEGAL ARCHIVES, THE COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 113-16 (1940).

13. The only hypothesis making article 197 consistent with articles 184-192 is that the first applies only in the cases specified in article 196. This theory has been adopted by the French jurisprudence. *See* DALLOZ, CODE CIVIL art. 325, n.3 (Paris, 1969). This construction finds very strong support in the *Exposé des Motifs* on paternity and filiation addressed to the French legislators on their session of 21 Ventose, Year 11 of the Revolution (March 21, 1803), 2 *Procès-Verbaux du Conseil d'Etat contenant la Discussion du Projet de Code Civil* 567, at 573-75:

"Après avoir établi le petit nombre d'exceptions à la règle generale pater est quem nuptiae demonstrant, la loi indique aux enfans légitimes les preuves qu'ils doivent fournir de leur filiation.

". . . .

"Lorsque l'enfant n'a ni possession constante ni titre, ou lorsqu'il a été inscrit, soit sous de faux noms, soit comme né de père et mère inconnus, il en résulte une presomption très-forte qu'il n'appartient point au mariage."

After stating that even in the above circumstances a child should be able to prove his filiation by testimony, if the proof is commenced in writing (Louisiana has no requirement that the proof be so commenced), the exposition of motive continues:

"La loi veille suffisamment à l'interet des familles, lorsque, dans tous les cases ou l'enfant peut appeler des témoins, elles sont autorisées à faire la prevue contraire par tous les moyens propres a établir que le reclamant n'est pas l'enfant de la mère qu'il prétend avoir.

"La preuve de maternité qui aurait été faire contre la femme, n'est pas regardée comme preuve de la paternité contre le mari . . . ." Id. at 577.

Writer's translation: "After having established the small number of exceptions to the general rule *pater est quem nuptiae demonstrant*, the law indicates to legitimate children the proofs which they must furnish of their filiation.

". . . .

"When the child has neither constant possession nor title, or when he has been registered under false names or as born of unknown father and mother, *a very strong presumption results from this that he does not belong to the marriage.*

". . . .

"The law sufficiently heeds the interest of families, when, in every case, where the child can call witnesses, *they are authorized to make contrary proof by all proper means* that the claimant is not the child of the mother which he pretends to have.

"The proof of maternity made against the wife is not regarded as proof of paternity of the husband . . . ." (Emphasis added.)

other than title or possession.[14] Since the evidence of filiation in *George v. Bertrand* was neither that of title nor that of possession, it must be considered a species of "written or oral" proof, permissible under article 196, but not bringing the presumption of article 184 into operation.[15]

Where the court erred in *George v. Bertrand* was in treating the mere fact, established by some means other than title or possession, that the decedent was born *during* the existence of the earlier marriage as conclusive proof of his having been born of the marriage. This error apparently owes its origin to the typically poor English translation of the original French text of what are now our articles of Title VII of Book I, "OF FATHER AND CHILD."

Our present articles translate the phrase "*dans le mariage*" by "during the marriage," whereas it should be translated "*within the marriage.*"[16] If one reads article 184 in the light of the French texts of the articles of our old codes corresponding to it, the relationship between the articles on "legitimacy resulting from marriage" and those on "the manner of proving legitimate filiation" becomes clearer.

Article 184 should read: "The law considers the husband of the mother as the father of all children conceived *within* the marriage." *Mere proof that a child was born at some time during the marriage is not proof that he was born within the marriage.*

14. See note 13 *supra.*

15. See note 13 *supra.*

16. There are many reasons why the phrase *dans le mariage* as used in the Louisiana Civil Code of 1825 must be translated "within the marriage" rather than "during the marriage." For example, the latter translation, found in the present text of article 179, makes nonsense out of article 182. Article 179 states: "Legitimate children are those who are born during the marriage"; yet article 182 recognizes that some of the children born during the marriage may be adulterous bastards, should either or both of the parties to adultery be married. Use of the translation "within the marriage" would not lead to a self-contradiction in the Code.

Furthermore, the redactors of our Civil Code appear to have quite deliberately chosen the word *dans* over the usual French word for "during," *pendant. Pendant* is used in the articles of the Code Napoleon from which our articles were taken. This writer could find no project of the French Code from which *dans* could have simply been copied without intention of making the meaning more precise. The use of *dans* was probably taken from the final *Projet's* chapter, *Des enfans legitimes ou nés dans le mariage.* Clearly *nés dans le mariage* is equated with legitimacy, an equation true only if *dans* is used to mean *within* rather than *during.* The precision of the redactors' use of *dans* in our Code should be given effect.

Moreover, our Code contrasts legitimate children as born *dans le mariage* with illegitimate children as born *hors du mariage, outside* marriage (LA. CIV. CODE arts. 179, 180). "Within" is an appropriate contrary to "outside"; "during" is not.

There must be proof of the type discussed in articles 193-195 before the presumption that the child was born *within* the marriage and is therefore a legitimate child of the marriage becomes applicable.

Since the decedent in *George v. Bertrand* had neither title to nor possession of the status of the legitimate child of his mother's prior marriage, the court should have considered the question of his status independently of any presumption that he was the legitimate child of the prior marriage. The evidence that he was born during the existence of his mother's marriage to another man should, under article 196 of the Civil Code, be considered as, at most, *some* evidence that he was conceived and born *within* the marriage, but not as *conclusive* evidence. Under article 197 it should be weighed against any evidence that he was always treated as the child of one other than his mother's husband at the time, that he was born while his mother was living in open concubinage with another man, that he was always treated as the legitimated child of the marriage between his biological father and his mother, and any other relevant evidence.

It has previously been pointed out in this *Review* that the present jurisprudence leads to unjust results that could be avoided if we were to follow the lead of the French jurisprudence in not applying any presumption of legitimate filiation in situations where the child has neither title to nor possession of the status of a legitimate child of the marriage.[17] It is submitted that in the light of *Levy* it is not only wise, but urgent, that Louisiana adopt such an interpretation of the Civil Code and that only such an interpretation can give meaning to articles 193-197.

There is no good reason to prevent the adoption of such an interpretation. The prior jurisprudence could be overruled on any one of a number of grounds:[18] that *Levy* necessitated an interpretation of the Civil Code that would recognize the relationship between a child and his biological father where it is the biological father who had always given the child the psychological and economic support that a father owes a child; that the prior jurisprudence was based upon a mistranslation of the French

17. *See The Work of the Louisiana Appellate Courts for the 1952-1953 Term—Persons*, 14 LA. L. REV. 114, 121-23 (1953); Pascal, *Who Is the Papa?*, 18 LA. L. REV. 685 (1957).

18. *See* the dissenting opinion of Judges Frugé and Miller in Tannehill v. Tannehill, 226 So.2d 185 (La. App. 3d Cir. 1969), for another interpretation of the Civil Code articles on paternity, which would lead to a more rational result than the present jurisprudence.

text of articles now in our Code in English only and that it is therefore in conflict with the well-established jurisprudence that the French text prevails over the English;[19] or that in these circumstances the judicial decisions have not given rise to the long series of actions by the people based upon the belief that the rule announced in them was law and hence that there was no custom in the sense of article 3 of the Civil Code.

To overrule openly the erroneous jurisprudence of the past would be better than devising new artificialities to overcome old ones, as was done in an ingenious dissenting opinion in *George v. Bertrand*, which concluded that the decedent must have had two legitimate fathers.[20] It is apparent from its legislative history that the Code does not envision that a child born while his mother was living in open concubinage should have two fathers to look to for support if his mother should later marry his biological father, whereas a child born to a chaste mother should have only a single father to support him.

ALIMONY

In *Smith v. Smith*[21] the Court of Appeal for the Third Circuit was presented with a novel question of interpretation of article 160 of the Civil Code as amended.[22] The trial judge had awarded Mrs. Smith a divorce on the ground of adultery as well as alimony payments.

On appeal Mr. Smith sought reversal of the lower court's judgment only on the latter question. The defendant had attempted to introduce evidence of the wife's fault to defeat the claim for alimony. He alleged that she had committed a number of acts of cruel treatment, that she had made an attempt on his

19. *See* Shelp v. National Surety Corp., 333 F.2d 431 (5th Cir. 1964), for an excellent discussion and application of that jurisprudence. The jurisprudence on this point is quite long. *See*, e.g., Phelps v. Reinach, 38 La. Ann. 547 (1886).

20. In his dissenting opinion Judge Tate said that he did not reach the constitutional issue posed by *Levy* because under the construction he gave the Code it was unnecessary to do so. Judge Tate's opinion does have the advantage over that of the majority in that it would have given a constitutional interpretation to the provisions of the Code in question in the light of Justice Douglas' fiat in *Levy*, but could produce other unnecessary complications.

21. 216 So.2d 391 (La. App. 3d Cir. 1968).

22. LA. CIV. CODE art. 160: "When the wife has not been at fault, and she has not sufficient means for her support, the court may allow her, out of the property and earnings of the husband, alimony which shall not exceed one-third of his income when:

"1. The wife obtains a divorce . . . ."

life, and that she had abandoned the matrimonial domicile without cause. The trial judge ruled that the husband could not introduce his evidence on the ground that if the wife is granted a divorce on the ground of adultery, the husband cannot contend she is guilty of fault barring alimony.

The court of appeal reversed and remanded on the point of alimony and held that the wife had to prove herself free from fault in order to be entitled to alimony under article 160 even where the divorce is granted on the basis of fault rather than living separate and apart.

The court's interpretation is sound, not only on the ground of the mandate of article 13[23] which it cited,[24] but also because it promotes the preservation of the family unit. To rule that the husband could not prove the fault of the wife would be to require a husband to file suit for separation, instead of allowing him to attempt to weather a marital storm if his attempt might involve the risk that he could be provoked or tempted to an act which would be categorized as fault. The law does not *require* a wife to divorce her husband for adultery; why then should it *require* the husband to end the marital bond rather than commit it? The civil law has generally recognized that a marriage might endure as a viable social unit despite a husband's occasional lapses from virtue.[25] The court's decision, by not positively promoting divorce for the husband's self-protection, may afford tolerable marriages an opportunity to evolve into sound ones. Both the parties to the marriage and the rest of society would thus benefit.

Certain implications of the decision remain to be considered. The court continued to interpret "fault" in article 160 to mean that degree of fault which would have been grounds for separation *or divorce*. If the husband proved his assertions, he would have established sufficient fault to have entitled him to a separation under article 138.

But what would have been the case if the husband had proved sufficient fault to entitle him to a divorce? The court's language implies that under article 160 as amended he would be

23. *Id.* art. 13: "When a law is clear, and free from all ambiguity, the letter of it is not to be disregarded, under the pretext of pursuing its spirit."

24. Smith v. Smith, 216 So.2d 391, 393 (La. App. 3d Cir. 1968).

25. *E.g.*, the original text of article 230 of the Code Napoleon, which gave the wife the right to divorce her husband for adultery only if he kept his concubine in the matrimonial dwelling. The husband's right to divorce under article 229 was not so limited, nor is the wife's today.

able to use the wife's fault to defeat her claim for alimony, whereas under the jurisprudence on mutuality of fault proof of equal fault on the wife's part would bar the divorce.[26] If the court's reasoning is correct, then the amendment to article 160 must be viewed as tacitly abolishing the jurisprudential rule on recrimination, at least in regard to divorce.

TUTORSHIP

In the *Succession of Quave*[27] the Court of Appeal for the Fourth Circuit rejected the contention of the aunt of a child that article 263 of the Civil Code, which provides that "the judge ought to appoint to the tutorship the nearest ascendant in the direct line of the minor," ought not be applied where it may be in "the best interests of the child" to appoint a collateral instead. One judge dissented, partly on the ground that article 263 was "directory rather than mandatory," the aunt having urged that the use of the word "ought" in article 263 left the judge with the discretion necessary to appoint her instead of a qualified ascendant.[28]

Assuming the correctness of the court's finding that the ascendant whom it appointed ought not to have been disqualified on the ground that she was incapable of performing the duties of tutrix or otherwise unfit,[29] the majority's opinion is clearly correct.

To read article 263 as directory rather than mandatory is equivalent to reading it out of the Code altogether. The aunt's claim that the word "ought" should be construed as granting the discretion she sought to have exercised is erroneous, since "ought"

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26. *E.g.*, Callahan v. Callais, 224 La. 901, 71 So.2d 320 (1954); J.F.C. v. M.E., 6 Rob. 135 (La. 1843).

27. 214 So.2d 260 (La. App. 4th Cir. 1968).

28. The main thrust of the arguments of the aunt, the dissenting opinion, and the trial court's opinion was that the ascendant in question should be disqualified as tutrix under article 4231(6) of the Louisiana Code of Civil Procedure. This writer does not feel that extensive comment upon the matter is appropriate, as it is basically a question of fact, but on the basis of the facts as reported in the decision it is an extremely close case. The trial and dissenting judges' opinion may well have been correct as a matter of fact. The difficulty with their opinions is that they come very close to barring the grandmother's right to the tutorship on the ground of her fundamentalist religious practices. Such a decision would violate the principle of freedom of exercise of religion. The other factors discussed by the trial judge might have been enough to deny her the tutorship, but commenting upon the rigidity and strictness of the grandmother's religion prejudiced the argument.

29. See note 31 *supra*.

is merely the English translation of a form of the word *devoir*[30] which means to have a duty to do something, that is, *ought* as equivalent to *must*. Judgment on this point in the aunt's favor would have carried dangers for a consistent application of the Civil Code far beyond the narrow field of tutorship.

PROPERTY

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PUBLIC THINGS

Public and Private Domain

Public property, namely, property of the state and its political subdivisions, is divided in Louisiana and in France into property of the public domain and property of the private domain. This division, which corresponds to some extent to the Roman distinction between *res publicae* and *res fisci*, has given rise to doctrinal controversies in France. Writers are not in agreement as to which things belong to the public domain and which to the private domain, nor as to the criteria for this division.[1] In Louisiana, courts have dealt with the practical implications of this division in a number of cases.[2]

In *Landry v. Council of Parish of East Baton Rouge*,[3] action was brought by persons using a municipal airport to enjoin its proposed closure and relocation by municipal authorities. In a scholarly opinion, the Court of Appeal for the First Circuit held that the decision to close and relocate the airport was not an abuse of discretion; hence, plaintiffs were not entitled to injunction. In the course of its opinion, the court classified the municipal airport as a thing of the private domain of the municipality, adopting the view that the criterion for the distinction between things of the public domain and of the private domain is the concept

30. The form was the third person singular indicative, *doit*. *See* 3 LOUISIANA LEGAL ARCHIVES, THE COMBINED EDITIONS OF THE CIVIL CODES OF LOUISIANA 151 (1940) for the French text of the article of the Civil Code of 1825 corresponding to the present article 263.

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1. *See* A. YIANNOPOULOS, CIVIL LAW PROPERTY, § 30 (1966).

2. *See e.g.*, Bullis v. Town of Jackson, 203 La. 289, 14 So.2d 1 (1943); Town of Farmerville v. Commercial Credit Co., 173 La. 43, 136 So. 82 (1931); City of New Orleans v. Salmen Brick & Lumber Co., 135 La. 828, 66 So. 237 (1914); Daublin v. Mayor of New Orleans, 1 Mart.(O.S.) 185 (La. 1810); Louisiana Highway Comm'n v. Raxsdale, 12 So.2d 631 (La. App. 2d Cir. 1943).

3. 220 So.2d 795 (La. App. 1st Cir. 1969).