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The Nuncupative Testament by Public Act: A Dying Declaration?

Charles Laurence Spencer

notice or hearing be the norm where a creditor seeks to employ the legal processes of a state to protect his valid interests. *Mitchell* presents a more realistic approach to the problems encountered in the typical creditor-debtor relationship than did the narrow standard espoused in *Fuentes*. The prior hearing, which in the majority of cases is never utilized by the defaulting debtor,[52] was unnecessarily given sacrosanct constitutional status. The *Mitchell* "accommodation" test recognizes that mutual property interests[53] deserve more than one-sided protection and prevents invalidation of efficient creditors' remedies.

Greg Guidry

THE NUNCUPATIVE TESTAMENT BY PUBLIC ACT: A DYING DECLARATION?

When a nuncupative testament by public act,[1] executed by Mrs. Freddie Robertson Killingsworth,[2] was challenged by certain of her legal heirs not named as beneficiaries,[3] the legatees under the will brought an action seeking a declaration of its validity.[4] On original hearing, the Louisiana supreme court declared the will invalid, basing its decision on evidence which indicated that the notary's secretary had typed the will, thereby violating the codal requirement that the testament be written "by the notary."[5] On rehearing, the court

52. "Offering the debtor an opportunity to be heard does not guarantee the debtor will avail himself of the opportunity. The *Survey* [Collection Practices and Creditors' Remedies Survey] showed that in approximately 65 percent of all court cases the consumer failed to appear and judgment was entered by default for the creditor-plaintiff." REPORT OF THE NATIONAL COMMISSION ON CONSUMER FINANCE, CONSUMER CREDIT IN THE UNITED STATES 30 (1972).

53. "Indeed, depending on the number of installments which have been paid, the creditor's interest may often be greater than the debtor's. Thus we deal here with mutual property interests, both of which are entitled to be safeguarded. *Fuentes* overlooked this vital point." Mitchell v. W.T. Grant Co., 94 S. Ct. 1895, 1910 n.3 (1974) (Powell, J., concurring).

1. LA. CIV. CODE arts. 1577, 1578.

2. The will was executed on October 7, 1955.

3. These legal heirs would have inherited nothing under the will, but would have received 5/8's of Mrs. Killingsworth's estate had the will been declared invalid.

4. The legatees under the will enjoyed almost the entire estate of Mrs. Killingsworth. They were also legal heirs, however, and would have enjoyed approximately 3/8's of Mrs. Killingsworth's estate had the will been declared invalid.

5. LA. CIV. CODE art. 1578: "The nuncupative testaments by public act must be received by a notary public, in presence of three witnesses residing in the place where the will is executed, or of five witnesses not residing in the place.

ruled the evidence inadmissible, thus reversing its declaration of invalidity[6] without altering its previously expressed interpretation of the Code's notarial writing requirement. *Succession of Killingsworth*, 292 So.2d 536 (La. 1974).

Corollary to the right of ownership is the right of testamentary disposition.[7] Thus, the available forms of disposition should allow the testator's wishes to be given their full effect. The nuncupative testament by public act is one of the five testamentary forms available in Louisiana,[8] and has been used to effect *mortis causa* dispositions from the earliest days of the state's codal regime.

The provisions of the Louisiana Civil Code dealing with the nuncupative testament by public act reflect their French heritage.[9] Be-

"This testament must be dictated by the testator, and written *by the notary* as it is dictated.

"It must then be read to the testator in presence of the witnesses.

"Express mention is made of the whole, observing that all those formalities must be fulfilled at one time, without interruption, and without turning aside to other acts." (Emphasis added.)

6. The court thus found nothing to contradict the testament which was regular on its face. LA. CIV. CODE art. 1647: "Nuncupative testaments received by public acts do not require to be proved, that their execution may be ordered; they are full proof of themselves, unless they are alleged to be forged." It is well settled that recitals of a nuncupative testament by public act must be considered as proved until disproved. Renfrow v. McCain, 185 La. 135, 168 So. 753 (1936); Succession of Block, 131 La. 101, 59 So. 29 (1912); Succession of Papa, 192 So. 2d 854 (La. App. 4th Cir. 1966). Thus a strong though rebuttable presumption favoring the validity of such a testament is created where it appears on its face to have complied with all the formalities required by law.

7. Kingsbury v. Whitaker, 32 La. Ann. 1055, 1067 (1880). A flexible means of testamentary disposition was provided through subsequent legislation enacting the statutory will. Such a testament may be typewritten, printed, mimeographed, or written in any other manner. *See* LA. R.S. 9:2442 (Supp. 1953).

8. (1) LA. CIV. CODE art. 1578 (nuncupative testament by public act); (2) LA. CIV. CODE art. 1581 (nuncupative testament by private act); (3) LA. CIV. CODE art. 1584 (mystic testament); (4) LA. CIV. CODE art. 1588 (olographic testament); (5) LA. R.S. 9:2442-44 (Supp. 1952), *as amended by* La. Acts 1964, No. 437 § 1 (statutory will). R.S. 9:2444 was repealed by La. Acts 1970, No. 475 § 2. It is now found in LA. CODE CIV. P. art. 2890. Also R.S. 9:2442 has been amended by La. Acts 1974, No. 246, to require that the will have a date, to require witnesses to have the minimum qualifications under article 1591 and 1592 of the Civil Code of 1870, and to clarify the requirements for the signing of the will and the attestation clause.

9. Article 1574 of the Louisiana Civil Code of 1870 is derived from article 969 of the Code Napoleon of 1804; articles 1575 and 1577 have no corresponding articles in the Code Napoleon. Article 1578 of the Civil Code was formerly articles 971 and 972 of the Code Napoleon; article 1579 was formerly article 973 of the Code Napoleon; article 1580 was formerly article 974 of the Code Napoleon. Article 1647 of the Civil Code has no corresponding article in the Code Napoleon. Article 1656 of the Civil Code, repealed by La. Acts 1960, No. 30 § 2 and replaced by article 2882 of the Louisiana Code of Civil Procedure, also has no corresponding article in the Code Napoleon.

cause the notary was of the literate minority of the populace at the time of the confection of the Code Napoleon, he was considered the appropriate person to transcribe this testament.[10] While Louisiana Civil Code articles dealing with the nuncupative testament by public act have remained basically unchanged, the corresponding French articles have undergone legislative revision to reflect technological advances and modern office practice,[11] and consequently a major disparity has developed between the French and Louisiana rules governing this form of disposition.[12] However, in both jurisdictions the essence of the nuncupative testament by public act is still the double protection afforded by (1) oral execution, (2) in the presence of competent witnesses,[13] evidenced by a notarial instrument. Specific formalities for this self-proving testament are set out in Civil Code article 1578.[14]

10. CODE NAPOLEON art. 972 (1804).

11. French Law of 25 *Ventose An XI.*

12. Under the revised French provisions, the notary may write this type of testament himself, or cause it to be written by a third person. It may be written either by hand or mechanically. FRENCH CIV. CODE art. 972. *Cf.* LA. CIV. CODE art. 1578 which states that this testament must be "written by the notary . . . ." "Written" has been judicially interpreted to include typewriting. Prudhomme v. Savant, 150 La. 256, 90 So. 640 (1922). For discussion of the French and Louisiana codal provisions for the nuncupative testament by public act, see 10 AUBRY & RAU, DROIT CIVIL FRANCAIS § 670 (6th ed. Esmein 1954) in C. LAZARUS, 3 CIVIL LAW TRANSLATIONS 149 (1969) [hereinafter cited as AUBRY & RAU].

13. "[A]s the will must . . . be read to the testator in the presence of the same witnesses, at the same interview, the law has provided a double safeguard against both honest mistakes and dishonest practices." Succession of Wilkin, 21 La. Ann. 115, 116 (1869). *See also* Langley's Heirs v. Langley's Executors, 12 La. 114 (1838).

14. (1) It must be written by a notary; (2) It must be received by the notary in presence of three witnesses residing in the place where the will is executed, or in presence of five witnesses not residing in the place; (3) It must be dictated by the testator to the notary in presence of the witnesses; (4) It must be read to the testator in presence of the witnesses; (5) It must be expressed in the will that all the formalities are complied with; (6) All these formalities must be fulfilled at one time and without interruption. LA. CIV. CODE art. 1578. Additionally, the testament must be signed by the testator or, if he declares that he cannot, his declaration must be expressed in the will and mention made of the cause that hinders him from signing. *Id.* art. 1579. It must also be signed by the witnesses, or at least by one of them for all, if the others cannot write. *Id.* art. 1580.

For an excellent discussion of the requirements of this type of will, see AUBRY & RAU § 670; L. OPPENHEIM, SUCCESSIONS AND DONATIONS § 195 in 10 LOUISIANA CIVIL LAW TREATISE 294 (1973). *See also* Oppenheim, *The Testate Succession*, 36 TUL. L. REV. 1 (1961); *The Institutes of Christian Roselius*, 38 TUL. L. REV. 497, 527 (1964); Comment, 12 TUL. L. REV. 439, 440-41 (1938).

A plausible interpretation of the comments by Professor Oppenheim regarding the requirements of this type of testament indicate that it is necessary for there to be

These formalities have been viewed as a matter of substance,[15] with deviation usually giving rise to invalidity.[16] Some deviation has been permitted, however, when the courts find that trustworthiness has not been sacrified.[17] For example, strict interpretation of the clause requiring the testament to be written by the notary "as it is dictated"[18] would appear to require verbatim recordation simultaneous to the dictation. Nevertheless, in *Succession of Beattie*[19] the court allowed reception of the dictation as a whole and later transcription from memory. This was justified by "the policy of our law to carry out the wishes of deceased persons and not to push the legal requirements . . . to extremes."[20] Sanction has also been given to the paraphrasing of the testator's words.[21] In yet another decision, *Prudhomme v. Savant*,[22] the court held that a nuncupative testament by public act was valid even though it had been entirely typewritten

express mention made in the testament that it was signed by the testator and that it was signed by the witnesses, or at least by one of them for all. However, it seems the applicable codal provisions neither express nor imply such requirements.

15. Comment, 36 TUL. L. REV. 1, 4 (1961); Comment, 12 TUL. L. REV. 439, 446 (1938).

16. LA. CIV. CODE art. 1595: "The formalities, to which testaments are subject by the provisions of the present section, must be observed; otherwise the testaments are null and void." *See also* LA. CIV. CODE art. 1578. The Louisiana supreme court quoted approvingly from 68 CORPUS JURIS § 276 in stating that "[a]ny material deviation from the manner of execution prescribed by statute will be fatal to the validity of the will" notwithstanding the absence, suggestion or intimation of fraud. Soileau v. Ortego, 189 La. 713, 718, 180 So. 496, 497 (1938).

17. In *Godden v. Executors of Burke*, 35 La. Ann. 160 (1883), a witness read to the testator from a memorandum made up the previous day by the notary after instructions by the testator. The testator then repeated the words as uttered to the notary in the presence of the other witnesses since he was not able from some transient cause to read the manuscript. The court found compliance with the requirement that the testament be "dictated by the testator." In *Segur's Heirs v. Segur*, 12 La. 25 (1838), the provision stating that the testament must be "written by the notary as it is dictated" was held to be complied with when the notary made a written memorandum from dictation, left the bedside of the testatrix, paused to mend his pen and speak with the universal legatee and one of the witnesses, and then wrote out the will from the memorandum. *See also* Succession of Beattie, 163 La. 831, 112 So. 802 (1927).

18. LA. CIV. CODE art. 1578.

19. 163 La. 831, 112 So. 802 (1927). The court held that the testament had been "dictated by the testat[rix]" when the bedridden testatrix dictated her entire will to the notary, who made mental note thereof and repaired to a small table placed at the foot of the bed where he made the transcription of her disposition. *See also* Segur's Heirs v. Segur, 12 La. 25 (1838).

20. Succession of Beattie, 163 La. 831, 838, 112 So. 802, 804 (1927).

21. Rostrup v. Succession of Spicer, 183 La. 1087, 1092, 165 So. 307, 308 (1936): "it is 'identity of thoughts and not of words which the law requires.'"

22. 150 La. 256, 90 So. 640 (1922). *See also* Tate, *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727, 734 (1962).

by the notary. It was reasoned that since the typewriter had not been invented at the time of the adoption of the Louisiana Civil Code, the redactors obviously did not intend to exclude that mode of transcription by use of the term "written."[23] Consequently, a will typed by the notary is considered "written" by him within the meaning of the Code. Additionally, it has been suggested that the testator himself may read the transcription back aloud,[24] though a technical construction of the article would imply that it must be read to him.[25]

While the testamentary accuracy guaranteed by this type of disposition would be undermined by material deviation,[26] such as permitting incompetent witnesses to attest to the validity of the testament[27] or allowing the transaction to occur in languages not understood by all of the participating parties,[28] benefits may result from tolerance of non-material deviation[29] which does not threaten testamentary security.[30] The more modern jurisprudence surveyed above thus provides a foundation for upholding a nuncupative testament by public act when typed by the notary's secretary, though *Knight v. Smith*,[31] decided by the Louisiana supreme court early in the nineteenth century, held to the contrary.

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23. 150 La. 256, 274, 90 So. 640, 646 (1922).

24. Comment, 12 TUL. L. REV. 439, 443 (1938).

25. LA. CIV. CODE art. 1578: "It must then be read to the testator . . . ."

26. "Any *material* deviation from the manner of execution prescribed by statute will be fatal to the validity of the will." Soileau v. Ortego, 189 La. 713, 718, 180 So. 496, 497 (1938), citing 68 CORPUS JURIS § 275. (Emphasis added.) *See also* Succession of Thibodeaux, 238 La. 791, 807, 116 So. 2d 525, 530 (1959) (legal formalities must be scrupulously observed in all *essential* respects); Succession of Payne, 25 La. Ann. 202, 205 (1873) (compliance with formalities declared to be *sacramental*).

27. Succession of Gauthreaux, 173 La. 993, 139 So. 322 (1932) (person held to be incompetent as witness to nuncupative testament by public act when partial deafness caused him to experience considerable difficulty in hearing and understanding).

28. Succession of Pardo, 22 La. Ann. 139 (1870) (witnesses must understand language in which the will is dictated, and also language in which it is written); Heirs of Bordelon v. Heirs of Baron, 11 La. Ann. 676 (1856) (notary must understand, without aid of translator, language in which the will is dictated); Succession of Dauzet, 212 So. 2d 523 (La. App. 3d Cir. 1968) (testator must understand language in which the will is read back).

29. *See, e.g.*, Rostrup v. Succession of Spicer, 183 La. 1087, 165 So. 307 (1936) (permitting notary to assist unlettered testator in accurately communicating his wishes); Prudhomme v. Savant, 150 La. 256, 90 So. 640 (1922) (permitting notary to type the testament).

30. "The formalities required by the law are indispensable . . . to the proper making of testaments, but they are not snares and pitfalls by which the testator is to be caught, and into which he must necessarily fall when he attempts to do with his property what the law authorizes him to do with it. We are to sustain the will which legally disposes of a testator's property, if we can, and not . . . pick it to pieces . . . ." Succession of Payne, 25 La. Ann. 202, 205 (1873).

31. 3 Mart. (O.S.) 156 (1813) (nuncupative testament by public act held invalid

In *Killingsworth*, consideration of the requirement that a nuncupative testament by public act be written by a notary was obviated on rehearing when the court ruled inadmissible testimony of two witnesses that the notary's secretary had typed the testament. Prior jurisprudence has established that witnesses can impeach their attestations to a testament only if independent facts or reasonable inferences exist to corroborate their testimony.[32] On original hearing the court found such an inference in the use of the word "revenue" rather than "residue" in the testament, "where the latter rather than the former word was obviously and logically intended."[33] On the basis of this semantic analysis, the court concluded that the legally untrained secretary had typed the entire will,[34] and consequently held it to be invalid. On rehearing, however, the court determined that a fair reading of the will as a whole[35] revealed that the testatrix had employed the term "revenue" to convey the same meaning intended by a practicing attorney using the term "residue."[36] Since "revenue" could be

because it had been written by the notary's clerk). *Cf.* King v. Vairin, 28 La. Ann. 452 (1876) (will held invalid because it had been written by one of the subscribing witnesses).

32. Talton v. Todd, 233 La. 146, 96 So. 2d 327 (1957); Succession of Beattie, 163 La. 831, 112 So. 802 (1927). In *Beattie* the court held that the "[t]estimony of subscribing witnesses which is adduced on the contest of the will and which, in effect, impeaches the solemn statements contained in the instrument which by their signatures they have attested as correct, is not in itself sufficient to overcome the presumption of validity arising from their presence and signatures and the official certificate of a public officer fortified by his oath. Their testimony must be corroborated by independent facts or reasonable inferences . . . ." *Id.* at 841, 112 So. at 805. *See also Civil Code and Related Subjects—Successions, Donations, and Community Property*, 18 LA. L. REV. 33, 38 (1957).

33. Succession of Killingsworth, 292 So. 2d 536, 540 (La. 1973) *rev'd on rehearing*, 292 So. 2d 552 (La. 1974). The term was used in the twelfth clause of the will, the final clause dealing with dispositions. The court stated that "the position in the testament where the twelfth clause appears [is that at which] a testator would usually bequeath the remainder of his estate in full ownership, the bequest of only the revenue of the remainder, without disposing the naked ownership thereof, seems unusual." *Id.* at 555. It also was contended by the legal heirs of Mrs. Killingsworth who were not named legatees under the will that the use of the word "precede" in the will instead of the work "predecease" constituted another reasonable inference that the will was typed by someone other than the attorney-notary. The court found no merit to this contention.

34. *Id.* at 540.

35. "It is well settled that when a particular provision of the will does not, standing alone, reveal the clear intent of the testator, we must take into consideration the other clauses and the whole language of the will." *Id.* at 555.

36. "[T]he only asset remaining in the estate to be governed by the twelfth clause of the will is cash. In addition, cash derived from the sale of property is often referred to by a layman as revenue." *Id.*

assigned a logical meaning in its context,[37] the court declined to find that it constituted a sufficient independent fact or reasonable inference to corroborate the negative testimony of the subscribing witnesses and thus, the evidence was not admitted.[38]

The majority opinion on original hearing, however, clearly indicates that given proper evidentiary support, the court would declare invalid a nuncupative testament by public act typed by the secretary, if again squarely presented with that situation.[39] Nevertheless, Justice Barham's dissent on original hearing[40] and Justice Tate's concurring opinion on rehearing[41] provide cogent argument for the opposite result.

The advantages of finding such a testament valid when typed by the secretary seem to outweigh any possible danger a ruling of validity might create. Sufficient protection from error,[42] fraud[43] or imposition[44] is afforded by the double safeguards of oral execution in the presence of competent witnesses, and by enforcement of the formali-

37. After fulfilling bequests of sums of money to certain named charities and particular people, a bequest to the favored relatives would consist of the remaining cash derived from the sale ordered by the testatrix of all of her property not bequeathed under particular title. *Id.*

38. In reversing its prior determination of invalidity, the court no longer had to deal with other significant issues of malpractice, prescriptive period, and coverage afforded by professional liability insurance.

39. Succession of Killingsworth, 292 So. 2d 536 (La. 1973) (majority of six Justices with one dissent).

40. *Id.* at 549 (Barham, J., dissenting).

41. Justice Tate expressed his agreement with Justice Barham's stance regarding the logic of upholding such a will, but qualified his agreement with the reservation that to follow such action "would, however, result in an unfortunate judicial posture—essentially a minority opinion of this court, founded on no rule of law deductible for future guidance." *Id.* at 556 (Tate, J., concurring).

42. *But see* Succession of Crouzeilles, 106 La. 442, 31 So. 64 (1901) (court upheld testament although notary misspelled testator's last name throughout will); Renfrow v. McCain, 185 La. 135, 168 So. 753 (1936) (validity was not affected despite statement in will that it was executed at office of notary when in fact it had been executed at home of testator several miles from notary's office).

43. *The Work of the Louisiana Appellate Courts for the 1965-1966 Term—Successions and Donations*, 27 LA. L. REV. 442, 444 (1967): "The purpose of the Civil Code articles prescribing the formalities which must be observed in the confection of testaments is undoubtedly to guard against imposition, fraud, or deception . . . ." *See also* Stephens v. Adger, 227 La. 387, 79 So. 2d 491 (1955); Succession of Michie, 183 So. 2d 436 (La. App. 2d Cir. 1966).

44. Of the cases researched by this writer, none were found in which the court overturned a nuncupative testament by public act because of imposition. *See* Successions of Gilbert, 222 La. 840, 64 So. 2d 192 (1953), where evidence was held to be insufficient to warrant a finding that any duress had been exerted upon decedent testatrix at the time she executed the testament.

ties other than writing by the notary. In addition, mechanical transcription of the type employed in *Killingsworth* may fairly be viewed as writing "by the notary." To distinguish legally between mechanical transcription by the notary and mechanical transcription by his secretary appears to be of little practical benefit, since both are similarly neutral acts.[45] The desired end, faithful transcription, should not be confused with the means of accomplishing this end, which are always subject to technological improvements.

Moreover, prohibition of the secretary's typing such a will produces negative results without comparable offsetting benefits. Notaries capable of typing the testament are fearful of exercising this option, because typing, unlike writing, conveys none of the characteristic identification of its author.[46] Costs to the testator, moreover, are greatly increased in this day of per-hour charges.[47] The illegible na-

45. Future devices may even transcribe a speaker's voicewaves, a technique which the *Prudhomme* rationale would apparently sanction. *Cf.* the method of transcription of testimony presently under experimentation in the Nineteenth Judicial District Court of East Baton Rouge Parish, Louisiana. The court reporter stenotypes the trial testimony onto magnetic tape. The tape is then telecommunicated to Illinois where it is translated into English onto another tape by a computer which is uniquely programmed to perform that task. The tape with the English translation is telecommunicated to Baton Rouge, where another machine produces a typeout. The entire transaction requires only a short period of time.

46. A challenge to the validity of a nuncupative testament by public act which has been typed might be successful if a party could procure admissible testimony to the effect that someone other than the notary had typed the will. This situation could arise when, as in many instances, the will is offered for probate years after it is executed and several of the attesting parties are deceased.

Where the notary's lack of compliance with the strict formalities of the nuncupative testament by public act causes the testament to be invalid, claims for reparation from the notary's heirs and surviving law partner can be maintained. In *Killingsworth*, the proponents of the will filed a plea of one year prescription in an attempt to bar the claim for reparation. The court of appeals held that prescription in a case of this nature does not commence to run until there is a final judgment decreeing the will to be invalid, rather than commencing at the time the will was executed, or at the time of the death of the testator. The Louisiana supreme court agreed that the plea of prescription was properly overruled. However, it undercut this affirmation with regard to the time at which such prescription will commence by stating that "[w]hile we would be inclined to hold that prescription did not commence to run against the legatees any sooner than the date of Mrs. Killingsworth's death (in which event not even the one year tort prescription would lie under the facts here) *we need not so hold* since the prescription plea urged (one year) is not applicable to a contractual claim of the third party beneficiary (The applicable prescription on a claim under contract is 10 years)." Succession of Killingsworth, 292 So. 2d 536, 545 (La. 1973) (Emphasis added.) Note that if the prescriptive period applicable to such claims was held to commence running only upon a final judgment decreeing the will invalid, potential liability for the legal mishandling of a testament could subsist for generations.

47. If the attorney-notary charges by the hour, a will which he must either write

ture of the script of many attorneys might prevent altogether the carrying out of the testator's wishes, and a party may even die intestate as the result of a notary's failure to comply with a non-essential technicality. The result of all of these factors is that the nuncupative testament by public act has fallen into disuse and may be obsolete in light of modern office practice.[48]

Lest this testamentary form be completely abandoned, the applicable codal provisions should be revised, while maintaining safeguards which are adequate to protect the interests of the testator. Adoption of the following suggested revision, patterned after recent French legislation,[49] would achieve this end:

> Art. 1578. The nuncupative testaments by public act must be received by a notary public, in the presence of three witnesses residing in the place where the will is executed, or of five witnesses not residing in the place.
>
> This testament must be dictated by the testator; the notary may write it himself or have it transcribed by hand or mechanically.
>
> It must then be read to the testator in the presence of the witnesses.
>
> Express mention is made of the whole, observing that all those formalities must be fulfilled at one time, without interruption, and without turning aside to other acts.[50]

In the event of legislative inaction, however, the courts may again be faced with interpreting the present codal provisions. In other instances our courts have acknowledged the importance of perceiving the spirit as well as the letter of the Code[51] and it is hoped that this

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in longhand or type can cost the testator as much as several hundred dollars. However, to permit the secretary to type the testament would significantly reduce this amount.

48. "[T]he nuncupative testament by public act, with all its formalities, is too rigid a form to be truly useful . . . . Unless the essentials of the form are reinterpreted . . . this code form must be regarded as made obsolete by modern office practices." Succession of Killingsworth, 292 So. 2d 536, 557 (La. 1974) (Tate, J., concurring). As early as 1938, this form of testamentary disposition was seldom used because of its rigid formalities. *See* Comment, 12 TUL. L. REV. 439, 446 (1938).

49. French Law of 25 *Ventôse An XI.*

50. The value of the last provision of Louisiana Civil Code article 1578 has perhaps been offset by the extent of unnecessary litigation which it has engendered. Should legislative consideration be given to amending this article, it is suggested that a study be undertaken to evaluate the advantages of also changing the last provision of this article to read simply: "Express mention is made of the observing of all these formalities."

51. "The development of our mineral law is an example frequently given of the application by the Louisiana courts of ancient Code concepts to changed economic and

attitude will be extended to the area of testamentary dispositions.

Charles Laurence Spencer

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social conditions for which the Code did not provide." Tate, *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727, 738 (1962). *See also* LA. CIV. CODE art. 667, as discussed in Barham, *A Renaissance of the Civilian Tradition in Louisiana*, 33 LA. L. REV. 357, 381 (1973); Yiannopoulos, *Civil Responsibility in the Framework of Vicinage: Articles 667-669 and 2315 of the Civil Code*, 48 TUL. L. REV. 195 (1974); Yiannopoulos, *Violations of the Obligations of Vicinage: Remedies Under Articles 667 and 669*, 34 LA. L. REV. 475 (1974).