

Louisiana Law Review

Volume 7 | Number 3
March 1947

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Repository Citation

Edwin C. Schilling Jr., *Marriage - Capacity of Minors to Marry - Minimum Age*, 7 La. L. Rev. (1947)
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to the former jurisprudence. Perhaps timely and complete relief can be obtained only through a legislative restatement of the pertinent code provisions.

CECIL C. LOWE

MARRIAGE—CAPACITY OF MINORS TO MARRY—MINIMUM AGE—

A fifteen year old girl married without parental consent and remained away from home four days. Her parents filed a petition in the juvenile court alleging that the child was delinquent in that she had absented herself from her home and her parents without their consent. She was placed in a convent by the juvenile court judge and was denied bail pending a hearing on the complaint. Upon her application and that of her husband to the supreme court, a rule was issued ordering the judge to show cause why she should not be released from custody. The judge responded that the marriage was illegal under Article 92,¹ which forbids celebrants of marriages to marry females under the age of sixteen or males under the age of eighteen. The supreme court rejected the reasoning and interpreted the article literally as a prohibition on celebrants only, and not as a declaration of the minimum age for marriage. The court also relied on Article 112² which provides that a marriage cannot be annulled for lack of parental consent and accordingly held that it was not only the wife's right, but her duty to live with her husband. *State v. Golden*, 210 La. 347, 26 So. (2d) 837 (La. 1946).

Thus for the first time in Louisiana we have a decision by the supreme court on the validity of a marriage in which the celebrant violated the provisions of Article 92. This decision was affirmed by implication in the case of *State v. Priest*,³ decided eighteen days later.

1. La. Civil Code of 1870 as amended by Act 140 of 1934: "Ministers of the gospel and magistrates, entrusted with the power of celebrating marriages, are prohibited to marry any male under the age of eighteen years, and any female under the age of sixteen, and if any of them are convicted of having married such persons, he shall be removed from his office, if a magistrate, or deprived forever of the right of celebrating marriage, if a minister of the gospel." Before the 1934 amendment the ages were fourteen and twelve respectively.

2. La. Civil Code of 1870: "The marriage of minors, contracted without the consent of the father and mother, can not for that cause be annulled, if it is otherwise contracted with the formalities prescribed by law; but such want of consent shall be a good cause for the father and mother to disinherit their children thus married, if they think proper."

3. 27 So.(2d) 173 (La. 1946). A fifteen year old married woman was committed to the State Industrial School for Girls by the Juvenile court judge for truancy from school. The court cited the case here noted and held a fifteen year old married woman was not a child under the care and control of parent, guardian, or other person within the statute providing that such

In the chapter of the Code on the nullity of marriages, the first three articles⁴ deal with marriages celebrated without free consent of the parties or without parental consent. The next article⁵ refers to "every marriage contracted under the *other incapacities or nullities* enumerated in the *second chapter* of this title." (Italics supplied.) Inasmuch as Article 92 is found in the second chapter, the argument might be made that it is an expression of "incapacity or nullity." The court pointed out, however, that the other articles in this chapter⁶ specifically indicate that marriages celebrated in contravention of them are null, but that no such language is found in Article 92.

Article 92 was amended by Act 140 of 1934 to raise the prescribed ages to their present level, sixteen years for females and eighteen years for males.⁷ If this were intended as the minimum ages for marriages, it seems that Article 92 would have been changed to show clearly such intention. An even stronger reason for this argument is found in the amending act, which permits a judge to authorize a marriage of persons below those ages when extraordinary circumstances exist.⁸ If the judge may permit such marriages, a fortiori they may recognize as valid any marriage already entered into where extraordinary circumstances exist. Under this view, although violation of Article 92 is unlawful on the part of the celebrant, it does not render the marriage null.

Assuming the instant decision to be correct, is there anywhere in our law an expression of the minimum age for marriage? Article 97⁹ speaks of the minor "who has attained the

person must send the child to school. But for the decision in the case here noted, it would have been necessary for the court to consider whether a fifteen year old female could be legally married.

4. Arts. 110, 111, 112, c. 4, tit. 4, La. Civil Code of 1870.

5. Art. 113, La. Civil Code of 1870.

6. Arts. 91 (lack of free consent), 93 (bigamy), 94 (miscegenation and incest in the direct line), and 95 (incest in the collateral line), La. Civil Code of 1870.

7. See note 1, supra.

8. La. Act 140 of 1934, § 2: "Provided, that this Act shall not apply, when on application of either of the parties to a proposed marriage, any district judge may, upon satisfactory evidence being presented to him, in case of extraordinary circumstances when the parents or guardians of the parties to the proposed marriage give their consent, provided, however, that said evidence shall be presented in Chambers, and provided also, that said order shall not contain the reasons for authorizing said marriage, and the application shall not be a matter of record but the order shall be attached to and made part of the marriage certificate."

9. See note 13, infra.

competent age to marry," and according to Article 34 "the law determines the period at which persons are sufficiently advanced in life to be capable of contracting marriage." Neither of these articles establish the competent age to marry. Article 36, however, separated from Article 34 only by a general article on emancipation, established the age of puberty at twelve years for females and fourteen for males. It is possible that the age of puberty was intended as the minimum age at which persons should be capable of contracting marriage. A strong indication of the correctness of this view is found in the Louisiana Civil Code of 1825. At that time minors who had not reached the age of puberty were placed under the authority of *tutors*, while those above the age of puberty were placed under the authority of *curators* until they were emancipated or reached the age of majority.¹⁰ A provision of that code¹¹ corresponding to Article 97 of the present code provided that the minor of either sex who had reached the competent age to marry must have received the consent of his father and mother or the survivor of them; and if they were both dead, the consent of his *curator*. Had it been considered possible for a person under the age of puberty to marry, it seems that the article would have mentioned the *tutor* as well as the *curator*. It is also interesting to note that this age is consistent with Article 42 of the Louisiana Criminal Code, which states that a female under the age of twelve is incapable of consenting to sexual intercourse.¹²

The fact that the legislature in 1934 raised the ages in Article 92 from twelve and fourteen to sixteen and eighteen demonstrates that the legislature at least disapproved of and sought to prevent marriages of persons under those ages. This highly commendable objective could be attained easily by strict enforcement of the law as it exists, or with very slight modification of these provisions. Article 92 provides for the punishment of celebrants who marry persons under the minimum age limit, but the writer knows of no instance in which this article was enforced. In addition, Articles 97¹³ and 98¹⁴ require applicants

10. Art. 263, La. Civil Code of 1825.

11. Art. 99, La. Civil Code of 1825.

12. This rule was well established in Louisiana jurisprudence long before the adoption of the Louisiana Criminal Code: *State v. Tilman*, 30 La. Ann. 1249 (1878); *State v. Mehojovich*, 118 La. 1013, 43 So. 660 (1907); *State v. Folden*, 135 La. 791, 66 So. 223 (1914).

13. Art. 97, La. Civil Code of 1870: "The minor of either sex, who has attained the competent age to marry, must have received the consent of his

for marriage licenses to give proof of parental consent or majority, but no sanction exists for enforcing these articles. It seems they could be enforced by imposing serious penalties or punishments on licensing officers who violate the provisions. Again, both parties to the marriage could well be required to appear before the license issuing officer. Of course, if all public officers and persons authorized to celebrate marriages made a conscientious attempt to abide by the articles of the Civil Code, penalties would not be necessary and problems as are herein discussed would not be likely to arise.

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NATURAL OBLIGATIONS—SUFFICIENCY AS CONSIDERATION—On November 22, 1933, Burns transferred to his first wife certain real and personal property in settlement of an indebtedness of fifteen thousand dollars arising from the dissolution of the community formerly existing between them. The transfer was accepted as full satisfaction of the debt. Subsequent to a second marriage, Burns and his first wife entered into a second agreement rescinding the first, evaluating the property previously transferred at six thousand dollars, transferring further property to the amount of one thousand dollars, and acknowledging a further indebtedness on his part of eight thousand dollars, for which three mortgage notes were given as collateral security. Burns died without making further payments on the debt. His widow sued to bring the mortgage notes back into the succession on the theory that they were void for want of consideration. The defense of the first wife was that the acknowledgment of the indebtedness was supported by a natural obligation arising from the fact that the value of the property transferred to her by the first agreement was not equal to the amount of the debt. The court held that the dation en paiement extinguished the debt in toto, as a full payment in money, and that if any obligation remained because the value of the thing given was not equal to the amount of the debt, it was not a natural obligation, but a moral one, and not sufficient to support a new promise to pay. *Succession of Burns*, 199 La. 1081, 7 So. (2d) 359 (1942).

father and mother or the survivor of them; and if they are both dead, the consent of his tutor. He must furnish proof of this consent to the officer to whom he applies for permission to marry."

14. Art. 98, La. Civil Code of 1870: "Those who have attained the age of majority, on their demanding permission to marry, must furnish proof of their having attained that age."