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*Relics of the Emperors*  
*Louisiana Civil Law*  
 by W. K. Gardner\*

**T**HE STATE OF LOUISIANA has some unique and interesting laws, not common to the other states. Having been under the dominion of France, Spain and France alternately, before it was purchased by the United States, it is not unnatural that Louisiana's basic law should be drawn from those countries, and especially from the Code Napoleon. Like most countries of continental Europe, France and Spain adopted, to a great extent, the civil law of Rome, as distinguished from the English common law. After the purchase of Louisiana by the United States the people of the territory demanded and were granted the right to retain the law with which they were familiar. Hence the term, "Civil law" of Louisiana.

Perhaps some of the most interesting phases of the Louisiana law are those governing relations between individuals, and especially persons of the opposite sex.

A Louisiana law, adopted from the Code Napoleon, prohibits either of two persons who live together in "open concubinage" from making to the other, by will or otherwise, a donation of any substantial part of his or her property.

A concubine is on a higher plane than a courtesan, or even what is known as a mistress. It has been said that she is a wife without a title or the benefit of legal standing. She is not to be confused with a common law wife, which is not legally recognized in Louisiana. In biblical days a concubine who bore children was often given greater protection, and apparently enjoyed greater public esteem, than was extended to a barren wife.

During the Roman empire marriage became quite unpopular. Whether this was due to the looseness of men's morals or to the tyrannical dispositions of ladies of equal distinction has been debated. It is not improbable that women of inferior station and social standing were more fascinating and desirable. It is said that the emperor once called all the bachelors before him and ordered them to mend their ways, under penalty of incurring his dis-

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favor. While fear of the emperor was great, dislike for conventional marriage was even greater, and what was known as "uneven" marriages became fashionable, and were finally made legal. A woman of inferior rank would be given by her relatives to a Roman citizen as his concubine. This was a serious contract, and intended as permanent. The woman did not lose caste. She was respected by her friends, and the children could inherit to some extent from the father.

France did not follow the Roman law to that extent, and the Code Napoleon prohibited the making of a gift of any property to a concubine. This led to many scandalous lawsuits, resulting in probing into the private liaisons of prominent dead men. To avoid such exposures, the writers of the Louisiana code departed from the strict terms of the Code Napoleon. Only persons living in "open" concubinage are prohibited from making substantial donations to each other.

This distinction between *open* and clandestine alliances has led to some ingenious decisions by the supreme court of Louisiana. For example, Emile conducted a store and his wife's sister, Celine, worked with him. At the suggestion of his wife, Emile frequently escorted his sister-in-law, Celine, to her home at night after the close of business. He would also visit her on Sundays occasionally—presumably to discuss business. This afforded food for neighborhood gossip; but it was not a matter of public knowledge that there was any impropriety existing between the two. Finally Celine, who had accumulated some property, died leaving a will by which she bequeathed her property to Emile. Celine's father attempted to have the will set aside on the ground that she was the concubine of the beneficiary, and that the bequest violated the law and was void. The court found it unnecessary to determine whether Celine had in fact been the concubine of Emile, her brother-in-law, but held the gift valid on the ground that the concubinage, if such there was, was not "open" within the meaning of the law; that what the law penalized was a public illicit relationship, and not a secret one. In other words, it is not the status which the law condemns, but the insolence of publicizing it. All the father gained by exposing his daughter's secret love affair was the unfavorable publicity and the resulting stigma to her name. Greed is the mother of infamy.

In another case a will was upheld on a converse state of facts, but on the same legal principle. Charles and Irma openly

lived together in the same dwelling for many years as husband and wife. She bore his name. Friends and neighbors believed they were married. He held her out to the public and treated her in all respects as his lawful wife. Her son by a previous marriage was surprised and shocked to learn, after Charles' death, that they were never married. The relatives of Charles, after his death, attacked his will, which left a large part of his considerable property to his spurious wife, Irma. They said that the pair lived in open concubinage and the gift was void. Here was certainly a case of *open* concubinage, they argued, as it was of general knowledge that the two lived together as husband and wife. The court, however, found that while they openly lived together as husband and wife, the concubinage relationship was not open, as the public believed they were married, while their actual status was a secret one. That they were generally known to be living together as husband and wife was not enough. The fact that they were unmarried must also have been of public knowledge, to come within the condemnation of the law. So, an unmarried pair openly living together as husband and wife might legally will their property to each other if they are smart enough to fool the public into believing they are married.

Another law of Louisiana, following the French law, recognizes what is known as a putative marriage. When a marriage contract, entered into in due ceremonial form and in good faith on the part of one or both of the parties, turns out to be void because one of them had a husband or wife living, or for some other reason unknown to one or both of them at the time of the marriage, it is valid as a putative marriage as to the party who was ignorant of the impediment. Such marriages are declared to have all the "civil effects" of a lawful marriage. The innocent party is protected from shame and might share the property of the other, and the children conceived during the time of "good faith" are legitimate and entitled to inherit from the parents.

An example of a good putative marriage as to both parties involved an illiterate pair. The woman had been married before, and had employed a lawyer to secure a divorce. She claimed the lawyer told her the divorce had been granted before she remarried, but that proved to be incorrect. It is possible the lawyer told her that, but what is more likely, he used legal parlance which she did not understand; a fault which my legal brethren, as well as members of the medical profession, find difficult to

avoid. The fact was, however, the woman and both her first and second husbands believed a divorce had been granted. The court held that the two in question acted in good faith, and the second marriage was good as a putative marriage.

Many cases arise in which only one of the parties acts in good faith. As might be supposed, the women are usually the victims. Whether or not this is because they are more gullible or because the men have less conscience, is a topic which will be left for the psychologists to decide.

One such case concerned the estate of one Ulissi, a rather prominent professional man, of European origin, who died in New Orleans. He left the greater part of his property, except the share of his widow, Adina, to his sister, Olga, by means of an olographic will. The French, Spanish and Louisiana laws authorize such wills. After the death of the testator, one Rita, a personable young woman of latin appearance, demanded a child's share of his estate. Under Louisiana law a parent may not disinherit his or her legitimate child, except for certain specified reasons. Olga, the sister, said, in effect, "This will never do; if Rita is the daughter of my brother she is illegitimate and not entitled to inherit from him." Rita, however, was not a bogus adventuress. In the lawsuit which followed she produced documents in support of her claim that her mother Josephine, when a girl of seventeen, not long since arrived from Europe, and ignorant of the language, customs, and laws of the country, was induced by Ulissi to go with him, accompanied by a chaperon—probably selected by Ulissi—to Gulfport, Mississippi, for the purpose of getting married. Superficially he was a plausible chap, for he told Josephine that his father was seriously ill and that the knowledge of his only son marrying a stranger might cause his immediate death. The day they arrived in Gulfport was Friday, and, having some superstition about marrying on that day, Josephine remained in her hotel with her chaperon until the following day, when she and Ulissi appeared before the clerk of the circuit court and obtained a marriage license. Ulissi then told Josephine that was all that was necessary to consummate a legal marriage, and that they would later have it blessed by a priest. That, he conveniently neglected to do. Believing his assurance that all was well—which is easy to do when one desires something dear to the heart, as she no doubt did—Josephine stayed with Ulissi a few days at hotels in Gulfport and Biloxi,

whence they returned to New Orleans and lived together as husband and wife for about fifteen months, during which time Rita was born. The pseudo husband then told Josephine they were not married, and abandoned her and her child and later married Adina. However, he was not altogether soulless, for he did contribute to the proper education of Rita over the years. The trial judge held that since Ulissi and Josephine were never married, Rita's lawsuit was without merit, and dismissed her case. She appealed to the supreme court of the state. Wise and tolerant judges of that court searched for a legal ground on which to do justice. They decided that although the marriage ceremony was not actually performed, the facts alleged showed that Rita's mother acted in good faith, since she was tricked into believing that she was married, and that there was a putative marriage, and that Rita was legitimate and entitled to her share of the estate.

A more astonishing case was that of an incestuous marriage. A native of France had lived in Louisiana for several years. On a visit to his native land he brought back Lucie Adele, his sister's daughter, whom he placed in a convent to receive a suitable education. After having her educated to his satisfaction, like Pygmalion, he fell in love with her and conceived the idea of marrying her. He wrote to her parents in France and presented his debasing proposal. This was a grave matter to the parents. They consulted an eminent French lawyer, who advised them that the emperor in his time could legalize such marriages. The parents then came to New Orleans to consider and decide the matter. A lawyer in that city advised the uncle that such marriages were legal in some states but were prohibited in Louisiana. The lawmakers had been unwilling to follow the soldier-emperor that far. Whether or not Uncle "Pygmalion" got the impression that Mississippi permitted such marriages is not clear. In any event, he departed to Bay St. Louis in that state with his attractive young niece, Lucie Adele, a minor, who had the blessing of her parents. It should be assumed, of course, that the welfare of their daughter and not the uncle's wealth was the incentive. The marriage was duly celebrated in Bay St. Louis, where, however, it was also illegal. The happy bride and groom returned to New Orleans, where the marriage was publicly avowed, and they lived together until his death some years later. Two children were born, one of whom died. After the death of

the uncle-husband there was a controversy over his estate, and the validity of the marriage was questioned. There again right prevailed. It was decided by the court that since Lucie Adele was young, ignorant of the customs of the country and influenced by respect for her uncle, aided and abetted by her parents, she acted in good faith, and as to her there was a good putative marriage. While there is a maxim, *ignoranti juris non excusat*—ignorance of the law excuses not—the judges held, following the law of France, that such ignorance should be an excuse when circumstances warrant.

After the innocent party is enlightened, a putative marriage ceases to be valid. That is, if the parties continue to live in wedlock after knowledge of the facts which makes the marriage void, the relationship is illegal. One Hill abandoned his wife and children in a northern state and settled in the interior of Louisiana. There he married Eleonore, who was said to be a destitute orphan. Hill represented himself as a widower, which Eleonore and her *curator* (guardian) believed. The marriage ceremony was performed by the commandant of a Spanish fort, according to law. The "husband" became quite prominent and acquired many thousands of acres of land, on some of which he made valuable improvements and conducted a large plantation. He proved to be a kind and affectionate husband to Eleonore. After a number of years a son of the first marriage appeared in Louisiana and the putative wife was informed of her husband's duplicity. However, she remained loyal to the man who had been a devoted husband for so many years. In a lawsuit involving the title to some of the land many years after the death of Hill, the question of the validity of the marriage and the legitimacy of the children had to be decided. The court held that those children who were conceived during the time Eleonore was ignorant of the existence of the first wife were legitimate, but those conceived after she ceased to "act in good faith" were not. Some or all of the children were destined to achieve positions in society which were a fitting reward to the one-time "destitute orphan."

Under an old Spanish law the position of a man who has abandoned his wife and married another, without the formality of a divorce, is similar to that of a wife who has committed adultery. He forfeits his share of the community property, and on his death the entire property passes to the two wives in equal

shares, and not to the heirs of the ignominious husband; provided, of course, the second wife was innocent. This rule has been applied in Louisiana.

There is one situation in which the "civil effects" of marriage are of no comfort to the innocent party to a putative marriage. Thomas Vaughan was mortally injured by the explosion of a boiler at his place of employment. Sarah, who had been living with him about ten years following a marriage ceremony, sued the employer for damages on account of his death. The company had made a settlement with Savannah, whom Thomas had previously married but from whom he had considered a divorce unnecessary routine. These facts were unknown to Sarah. Since Savannah was the widow of Thomas, a judgment in favor of Sarah was reversed by the supreme court of Louisiana for the reason a man could not leave two widows, and the right of action for wrongful death was given by the Louisiana statute to the widow and not to one who had been merely a putative wife.

The French code was also the precedent for a Louisiana law aimed at preserving the sanctity of the marriage vow. In case of divorce on the ground of adultery the guilty party can never marry his or her accomplice in the adultery, under penalty of being prosecuted for bigamy and having the new marriage annulled. The moral there is that one who is tempted to steal the mate of another should be patient until a divorce is granted.

William Jackson, a young man of colorful southern drawl, was divorced by his wife on the ground of adultery with Lettie Hart. He then committed the folly of marrying Lettie, and was prosecuted for bigamy. When his case was called he stepped forward, obviously pleased that all eyes in the courtroom were focused on him. The austere voice of the court's clerk pealed out: "Charged with bigamy. Are you the defendant?" Jackson: "No, sir. I done hired a lawya to be the defendant. I'm the gentleman who committed the bigamy." Thereafter in his prison stripes he had ample opportunity to speculate as to whether Lettie was a doll in a tea-cup or just a smart she-devil by whom he had been taken in and held up.

As previously stated, the laws of Louisiana, unlike those of most other states, prohibit parents from disinheriting their legitimate children except on certain specified grounds. One of such grounds is, if the child, "having the means, has refused to become security for the parent in order to get him out of prison." A



child whose wealthy parent has been locked up for an infraction of the law should not hesitate to go bail, even at the risk of future poverty. The marriage of a minor child without the consent of the parent is also ground for disinheritance, but the reason must appear from the will or be otherwise shown. "I bequeath only my prayers to my daughter, Helene, who has so deeply grieved and offended me by her elopement and marriage," states sufficient reason for disinheritance.

By the laws of the other states parents are not generally required to pay damages for the torts of their children. Under the civil law, however, a father, or if he is not living, the mother, is responsible for damages caused by the tort of a minor child. Charlie Champagn, a fourteen-year old boy, was shooting birds in the trees of a street in New Orleans with a 22-calibre rifle. He handed it to Leo Sill, another young boy. Whether or not the boys decided it would be more exciting to shoot at something more human is their secret. However, the rifle was discharged, and killed a little colored boy. The parents of the deceased child sued the father of Charlie and the widowed mother of Leo for damages. The court decided that the shooting was accidental, but rendered judgment in favor of the bereaved parents against both of the other parents, with the proviso that Leo's mother could recover over any part of the judgment she might be compelled to pay from the father of Charlie, who was the principal wrongdoer.

In another case the plaintiff did not fare so well. Wallie, a minor son of a wealthy man, was deeply in love with Lucille, an attractive girl, but years his senior. They made several trips at night to a town in another parish (county) for the purpose of getting married. On each occasion they were told by the official on whom they called that his books were under lock and key in the courthouse and he could not issue the license. These failures proved to be unfortunate, as Lucille eventually became a mother. The father of Wallie was able to convince him that the proposed marriage was not for his best interest. Thereupon Lucille sued Wallie's father for damages. Her action was based on two claims: first, Wallie being a minor, his father was liable for his wrongful act of seduction, and, second, that the father alienated the son's affections for her. As to the first, the court decided that Lucille, being of the age of discretion, was *particeps criminis*—a partner in crime—and could not recover damages on that account. In respect to the claim of alienation

of affections, the court said that since Wallie's father had the legal right to disinherit his minor son if he married without the parent's consent, he also had the right to persuade him not to marry. Lucille learned about men from Junior.

The law was more favorable to Suzanne, however; or, perhaps she had legal advice. She brought suit against the brothers and sisters of one Lazare, deceased, claiming that she had been engaged to marry Lazare, and that he repeatedly promised to fulfill his engagement, but failed to keep his promise. After his death she bore his child; by reason of which, coupled with his failure to marry her, she said, she was condemned to a life of social ostracism, disgrace and poverty. Under the general or common law, Lazare's obligation, being a personal one, would have died with him; but not so under the civil law of Louisiana. By that law if a party to a contract is "put in default" by the refusal of a request to perform, the other party has a right of action for damages, which right survives death. When it appeared that Lazare was about to give up, the mind of Suzanne, or of her lawyer, must have shifted into high speed gear, for she alleged that on the day of Lazare's death he was "put in default by formal demand, with which he refused to comply." There is also a provision in the civil law to the effect that the heirs of a deceased person, upon acceptance of the inheritance, may be compelled to pay for an injury caused by the "crimes and misdemeanors" of the deceased. Pursuant to these provisions of the law, Suzanne was able to recover damages from the heirs of Lazare on account of his breach of promise and seduction.

The various points of Louisiana law which are stated herein differ generally from the laws of the other states, which, mainly, adopted the common law of England. From time to time, however, the legislature of Louisiana, like that of other states, has enacted additional laws to meet modern conditions, which do not differ greatly from the statutory laws of other states.