MARRIAGE CONTRACTS OF FRENCH COLONIAL LOUISIANA

By

HENRY P. DART

MARRIAGE CONTRACTS OF FRENCH COLONIAL LOUISIANA

By

HENRY P. DART

I.

THE ARCHIVES of the Superior Council of Louisiana at the Cabildo in New Orleans contain many marriage contracts of the French Colonial era. These documents are not only interesting from a genealogical point of view, but they are important elements in the history of the law in Louisiana. Whether executed in New Orleans or at the Posts of the Colony, they follow a certain form and it is our purpose here to trace briefly the origin and history of this feature of our ancient life, which in a modified form is still a part of the law of the State. The documents are authentic instruments, that is, they were executed before the Clerk of the Superior Council in New Orleans acting as the official notary of the Colony, signed by the parties and their relatives and friends in the presence of witnesses and closed by the signature of the notary. Those passed at the Posts of the Colony were received by the Commandant with similar formality and in such instances the original document was delivered to the Clerk of the Court in New Orleans to be filed as part of the records of that body under the requirements of the law regulating the powers, duties and functions of the Superior Council, and to preserve the privilege and mortgage usually stipulated in such contracts or resulting in law from the execution thereof.[1]

[1] On the place of the Superior Council in the local life of Louisiana, see Dart. A Criminal Trial Before the Superior Council of Louisiana. May, 1747, La. Hist. Qy., Vol. 13, 1930, pp. 368-390.

It seems unnecessary to stress the value of these ancient contracts. They form an essential part of the social history of the Colony, preserving as they do the intimate family connections of the participants and of their relatives and friends. They introduce us to the people of the Colony, for here we find the names of the great and the small, most of whom missed their page in the histories of this era, but who nevertheless did their part, carried on and are still remembered by countless descendants in all parts of the world.

The purely historical value of these documents is enormous for read in the light of the law of that era they carry us well back into the centuries when Church and State locked horns in the battle to make the State dominant in the matter of marriage and to bring all the people and their property under the jurisdiction of the sovereign and his courts. They also teach us that the marital community prevailed in Louisiana long before the Spanish era which is usually credited with that feature of our law. They show further that the principle of the legitime was here* and to make an end of the matter, we might follow through to find in active use in French Colonial Louisiana much of the ancient law and practice regulating the family that was absorbed by the Napoleon Code and is part of the law in Louisiana today. The subject should therefore have some attraction for the general reader and certainly should appeal to those who believe that one cannot truly understand the legal system of Louisiana as it exists today without some knowledge of the sources from which it is derived.**

II.

As we have just indicated, marriages contracted and celebrated in Louisiana during the French Regime were governed by regulations established after centuries of conflict between the State and the Church. Long before our time it had been settled that marriage was a civil contract based on the consent of the parties and governed as to form, effect and consequence by the law of the land. The earlier adjustment of this controversy carried a condition that the civil contract must be witnessed by a

---

* Custom of Paris, Art. 298.

** The marriage contract seems to have survived through the Spanish Era, but that period is not under consideration in this paper. Porteous, Marriage Contracts of the Spanish Period of Louisiana, La. Hist. Qy., Vol. 9, pp. 385-397, July, 1926.

priest, but this left the affair in the situation described by old de Ferriere:

> "The persons who marry are themselves the ministers of the sacrament and their consent ends the matter, the priest receives their engagement, but they form it themselves."[2]

It was finally arranged that the celebration of marriage required the participation of the Church and the State. An official view of the situation in our period is found in Chancellor Pontchartrain's report of 1712 to Besancon, President of the Parliament of Paris. He said:

> "As marriage is at once a civil contract and a sacrament, its validity is derived from the exercise of the authority of two jurisdictions. The *contract* depends absolutely on the secular powers; the *sacrament* depends solely on ecclesiastical power. As there can be no valid marriage among us if it is not elevated to the dignity of a sacrament and as on the other hand there can be no sacrament if there is no contract, legally consented to, it is evident that the Church and the State exercise equal control over marriage, considering it is a contract and a sacrament."[3]
>
> "According to the doctrines of the Council of Trent the Cure was only a qualified witness to the sacrament of marriage that the contractants gave to themselves. According to the doctrines of the Parliament he became the Minister of the sacrament. * * * Marriage therefore was contracted in the last stage of our ancient law by the exchange of consents and the benediction of the Cure in the form prescribed by the Royal Ordinances."[4]

This controversy regarding the jurisdiction of the Church over marriage and over all questions arising thereunder doubtless had something to do with the invention of what de Ferriere terms the "most important contract" of human life, i. e., the written authentic instrument called in the ancient days a Marriage Contract, and still known by that title in the law of Louisiana.[5] The legal historians of France concur, however, that this

---

[2] de Ferriere Dictionnaire de Droit et de Pratique, "Marriage", Vol. 2, p. 204, Revised Edition, Paris, 1771.

[3] Glasson, Histoire du Droit et des Institution de la France, Vol. 8, p. 434, Paris, 1903. Violet, Histoire du Droit Civil Francais, Paris, 1905, Book 3, Chap. 2, p. 433, et seq.

[4] Glasson, *Ibid.*, p. 444.

[5] Civil Code of Louisiana, Art. 2325, et seq.

instrument was a conception of the lawyers of the ancient regime for protection and regulation of the rights of spouses that might otherwise have suffered in the confusion created by the numerous Customs of that realm. Its origin has been fixed as early as the 14th Century.[6] These Customs were codified long before the founding of Louisiana and formed part of the civil law of France. Until the overthrow of the monarchy, it was essential that the colonies of France should be regulated by a Custom, primarily because the general laws of the Kingdom were not in conflict with and did not supercede the Custom. It was also considered that a Colony was an addition to the realm coming into existence after the laws of the Realm had established rules and regulations for home government. That under such conditions, it was necessary to extend to each Colony the whole or a part of the legal system of France, as in the discretion of the King was meet and proper. This does not mean that the Custom became the sole law of the Colony, for the royal legislation handled many matters not explicit in or covered by the Custom. The Custom of Paris was conceded to be the most complete and best of all the Customs and in a sense "was the common law of France." It is historically true that this Custom was extended to Louisiana on the creation of civil government for that Colony in 1712 in connection with the transfer to Crozat, was reiterated in the Edict creating the Company of the West, and remained the underlying law of the Colony until the delivery to Spain in 1769.[7]

III.

Whatever may have been the origin and intent of the marriage contract, it was a settled method in common use in France, Canada and Louisiana during the 17th and 18th Centuries. Before the founding of Louisiana a great body of judicial and legislative construction had settled the form, scope, meaning and authority of that instrument. Like the modern

---

[6] Montmorency's Essay on Pothier in Great Jurists of the World. Continental Legal History Series, p. 453 and 454.

On the other hand, Violet, *Ibid.*, p. 423, tracks the germ of the contract into the ancient Roman and Germanic sources and suggests that the marriage contract of the 18th Century is a survival of another ancient rule, altered and modified to meet the changed condition of the times.

[7] Dart, The Place of the Civil Law in Louisiana, Tulane Law Review, Vol. 4, pp. 163-177, February, 1930.

Ibid., The Colonial Legal System of Arkansas, Louisiana and Texas, Louisiana Bar Association Reports, Vol. 27, 1926, pp. 43-60, American Bar Journal, Vol. 12, July, 1926, p. 481.

law of Bills of Lading, each word and sentence had received construction. Indeed, certain words and phrases had become so stereotyped that the notaries frequently covered by brief abbreviations the subject to which these applied. An ancient thesis on the law of marriage contracts carried forms for the various covenants usually inserted in such documents and as this was in constant use in Louisiana[8] the officials perhaps felt they could safely shorten the documents, and the abbreviations of these scribes gave the writer of this paper an unhappy quarter of an hour before he solved the riddle by finding a copy of La Parfait Notaire, first published in 1635, revised and enlarged by Claude de Ferriere, and by his son C. J. de Ferriere and reprinted many times. A modern edition embodying the changes of the Napoleonic regime was issued in 1805 under the editorship of A. J. Massie with the title La Nouveau Parfait Notaire and this book remained in use in Louisiana long after her entrance into the Union. The earlier edition was relied upon in Colonial Louisiana as a text book.[9]

The codification of the Customs of France was begun in the 15th and finished in the 16th Century. Under this procedure the Custom of Paris became a small printed Code containing 362 articles covering a variety of things but particularly concerned with the rights of persons and property. In some aspects it might be likened to the Louisiana Civil Code and Code of Practice of today, but even if we had before us the Custom in unannotated shape, we could get nowhere because in the study of the marriage contracts of Louisiana we must follow and understand the judicial interpretation and construction and the governmental legislation of the 16th and succeeding centuries. To visualize what this means one should consult the edition of 1685 in three huge volumes aggregating 2563 pages and still other and later editions succeeding this magnum opus.[10]

Montmorency in the essay on Pothier previously noted says in substance that from the 16th Century onward the King was supreme as legislator and administrator and the written and

---

[8] Dart, The Law Library of a Louisiana Lawyer in the 18th Century, La. Bar Association Reports, Vol. 25, 1924, pp. 13-29.

[9] See Broutin v. Chantalou, Superior Council Archives, 1763, La. Hist. Qy., Vol. 16, p. 590-2, October, 1933.

[10] Corps et Compilation de tous les Commentateurs Anciens et Modernes sur la Coutume de Paris: Enrichie de Nouvelles Observations, & de plusieurs Questions decidées par les Arrests des Cour Souveraines, avec les Conferences des autres Coutumes. Par M. Claude de Ferriere, Avocat au Parlement. A Paris, chez Denys Thierry, rue Saint Jacques, devant la rue du Platre, a l'Enseigne de la Ville de Paris, M. DC. LXXXV. Avec Privilege du Roi.

customary laws were supplemented by Crown Ordinances, amending legal machinery with great elaboration but not dealing with the status of persons or the rights of property except in certain aspects. This early codification of the Customs had therefore the effect of unifying the whole system of customary law and of stamping it with a specific national character. Other ordinances in the 17th Century further nationalized the law of France and Louis XIV was very active in this work during some twenty years of his reign. In that time he had done enough to claim, if not to secure the title of the French Justinian.[11]

IV.

This brief review brings us to the consideration of the subject matter of marriage contracts in ancient Louisiana, and the cause and reason underlying their creation. The basic reason was, of course, the Custom of Paris and the Ordinances of the Kings as these were understood in 1712 and during the French dominion in Louisiana. I suspect that no contemporary writer of that period has stated the general principles more succinctly than did de Ferriere in his dictionary previously noted, published in 1771 while the law of France was still in its ancient shape as it prevailed in Colonial Louisiana and long before the changes made by the French Revolution or the codification under Napoleon. de Ferriere said:

> "Community of property between married persons is a partnership *(societe de biens)* which is contracted between husband and wife by express agreement contained in the contract of marriage or tacitly by the provisions of the Customary Law. The Romans did not know the community of property between husband and wife. Also it has no place among us in the countries of the written law if it is not particularly stipulated. By the Ancient law of the Gauls the community between married people was called *jus collaborationis* by which rule the wife was entitled to one third of the community. This law has been changed so that today in most of the Customs the wife has one half the property of the Community. In Customary countries they contract not solely by express stipulation in the contract of marriage but also by tacit consent *vi solius consuetudinio* which happens when the

[11] Montmorency, *Ibid.*, 456-462.

parties marry without making a contract, and where the marriage is in a country where the community results by disposition of the Customs or even when the contracting parties have made a contract of marriage and have omitted to make mention of the community. In this case community follows the marriage and is always presumed in Customary countries. It results that if the husband and wife make a debt conjointly or to the profit of one of them and do not notify the creditor that they are not in community the wife becomes bound in solido with the husband and may be made to pay the whole.

"In places where the Custom prohibits the community as in Normandy, it cannot be created by contract or otherwise, nor could it be evaded by making the contract elsewhere. It was considered a real statute affecting the status of the person domiciled in the prohibiting country. It was, however, permitted in community countries to stipulate by contract against the existence of community and in this case it was required that the parties should make a statement of their clothes and other movable property to be annexed to the contract and arrange for the common expense, whether to be borne by one or both and in what proportion and also what sum should be paid to the wife per annum. Whether or not a community followed when not stipulated in the contract depended on the domicile of the parties at the time of the marriage and not where they had been domiciled at the date of its dissolution—nor would a change in domicile affect the community once expressly or tacitly created. The stipulations of the marriage contract take effect only upon the nuptial benediction (actual marriage) of the parties whether consummated or not; thus a death bed marriage after a contract would put into operation all the provisions of the same.

"In the Customary law all the movable property belonging to each of the contractants on the day of the marriage or which they purchase during the same and also all the conquets immovable made during the same fall into the community if there is no stipulation to the contrary in the contract. But in the Written law a stipulation for community affected only the movables acquired together *(constante matrimonio)* unless it was stipulated to the contrary. Nor would immovables inherited or acquired by donation from ancestors, or others in the direct line enter into the community.

"Movables and immovables given purely and simply to one of the spouses by strangers or by collaterals fell without restriction into the community and were divided equally at dissolution. Acquets made before marriage did

not fall into the community. This shows that acquets meant immovables and conquets only gains, but the price of the sale of an acquet received after marriage became community. All of these things could be covered by stipulation. They could put the community under such clauses and conditions as they wished provided they were not contrary to good morals and the community could be restricted or amplified according to the pleasure of the parties. Thus the parties contracting in a community country could stipulate that the wife should have no share, or that she could share up to a certain sum or even that she could take it all and that the heirs could take nothing therefrom.

"After the celebration of the marriage the parties could make no valid contract affecting the community, whether to admit it, to destroy it, or to change, amplify or restrict it. But if the community had been dissolved during the life of the spouses they could re-establish it by tacit consent. The husband was the master of the community and could alone exercise all the movable and possessory actions. He could dispose of its effects provided that this was without fraud for he has only the administration and economy of the community and must govern sagely and not pillage it to the deprivation of his wife."[12]

V.

The Superior Council of Louisiana was a court of record created by edict of the King. It was the official depositary of original acts of sale, mortgage, etc. and for the recordation of the various transactions of the people.[13] Marriage contracts executed at the Posts were passed before the local commandant, who was ex officio authorized to act in such cases and in this function he usualy described himself as Notary. In many other respects the regulations for the deposit of the Contract were the same as in New Orleans. Thus his original act was transmitted to the Clerk's office in New Orleans for preservation and recordation. For reasons presently to be stated every marriage in French Colonial Louisiana should have been pre-

---

[12] de Ferriere, Dictionnaire, *Ibid.*, Vol. 2, p. 204.

[13] Dart, A Criminal Trial Before the Superior Council of Louisiana, May, 1747, La. Hist. Qy., Vol. 13, 1930, pp. 368-390.

Ibid., The Colonial Legal System of Arkansas, Louisiana and Texas, La. Bar Assn. Reports, Vol. 27, 1926, pp. 43-60, Amer. Bar Journal, Vol. 12, July, 1926, p. 481.

Ibid., The Place of the Civil Law in Louisiana, Tulane Law Review, Vol. 4, pp. 163-177, February, 1930.

Ibid., The Legal Institutions of Louisiana, La. Hist. Qy., Vol. 2, pp. 73-103 (January, 1919.)

ceded by a Marriage Contract, and while we have evidence this was not always done, still the rule was seldom broken. It was permissible (in case of necessity) to establish, the marriage by oral evidence where as sometimes happened it had been created in places where there was no Commandant or Cure. This might suggest the presence of a right to marry as at common law, but we have found nothing to indicate the prevalence of this except in the unusual cases here indicated and per contra we have found many instances where such unions were subsequently validated by the Council indicating that no legal rights were created by such unions until approved sooner or later by the Council. The vicissitudes of time and the long neglect of our French Archives have created gaps in those records that can never be completely filled.[14] Save for these misfortunes, we would have had in our files a fairly complete record of every marriage celebrated in French Louisiana.

There are, moreover, many original files of the Superior Council bound into the volumes of notarial acts of ancient notaries of Louisiana and preserved in the office of the Custodian of Notarial Records in the Civil Court House at New Orleans. Few of these ancient volumes have indices and the context can be ascertained only by a laborious page to page examination. They have been examined by us only in a cursory way and because they are not within our jurisdiction they have not been incorporated into our Index-Calendar. This work might be done by the Custodian but it will never be accomplished without the direct interposition of the legislature and the appropriation of the necessary funds. That this should be done no one can deny.

It seems unnecessary to stress the historical value of these old Marriage Contracts. They form an essential part of the social history of the Colony and preserve the intimate history of the families whose members participated in these functions. It was the habit to state the ancestry of the contractants and the names and "qualities" of the realtives and friends who took part, including the official titles of these people. The marriage law of the period required the consent of relatives and in default of these of friends. In short, marriage in ancient French Louisiana was safeguarded and sanctified, and the record was made up with much particularity and formality. Married people in that time obeyed the biblical injunction to produce and multi-

[14] Dart, The Archives of Louisiana, La. Hist. Qy., Vol. 2, No. 4, pp. 349-367, October 1919.

ply and there are countless thousands now living in Louisiana and in the world at large who trace their lineage back to marriages celebrated in Louisiana in the days when a Louis was the King of France and misruled Louisiana.

The subject is also not without interest from another angle. for as previously noted the Marriage Contract of ancient Louisiana has a lineal descendant with us today. It is still permissible under the Civil Code of Louisiana (Art. 2325 *et seq*) to make provision for the desires and rights of the parties. While modern law has largely obviated the necessity for such a contract, we still occasionally find one in existence and the current Reports of the decisions of our higher courts show that the practice has not been entirely abandoned. Having in view the duty of preserving the history of this feature of our ancient law, we have studied these old documents and have selected from the files examples of Marriage Contracts covering the period 1724-69. It was manifestly impossible to put all the existing contracts in the Quarterly, and though it may seem invidious, we were driven to select a sufficient number of these to illustrate the general form and any changes in the same. In other words, we have sought to find examples that would present the essential elements and all the special features or changes that from time to time crept into such documents, including those that contain the generic terms and phrases that created rights, duties and remedies. The names given for these rights and remedies are now in a sense archaic, but the purpose of these provisions has not been wholly lost in our modern law.

We expect to print these documents in the Quarterly as rapidly as the demand on our space will permit. As an introduction to these documents this paper is followed by the marriage contract of Iberville, executed in Canada, October 8, 1693. This interesting document is a copy made for the late Grace King while she was at work on her Biography of Bienville. The source from which she obtained the same makes it certain that it is an exact copy of the original still extant in Canada. We are using the Iberville marriage contract because it seems to be a proper introduction to our own contracts. It was executed just before our era began and in accordance with and under the same law that governed similar contracts in Louisiana during the whole French Regime. It has been made the subject of careful translation and intensive study as a guide to the meaning of our

own similar documents. From time to time as the Louisiana documents are printed they will be annotated and will receive similar treatment to that which has governed the preparation of the Iberville contract.

Keeping in mind the general form of the contract in the ancient Regime in Louisiana, we find in each of these documents a recital that the parties have agreed to marry and to celebrate the marriage before the Church, and this consent is the promise or engagement, which under the law of that period was considered a necessary preliminary to the marriage contract. It also provided for the rights of the spouses to be brought into force after the celebration to take effect upon the dissolution of the marriage. It was in its nature an indestructible agreement made before the marriage and unchangeable after that event. Its scope included the incidence of the property possessed by the parties at the time of the marriage and at the dissolution of the same when death closed the relation. It was permissible to include within its radius every stipulation and agreement that the parties desired or that they wished to select out of the judicial and legislative interpretations settled in the centuries of its use. We can well understand the high esteem of the ancient French authors who held the contract to be the most perfect work of man establishing at once the engagement to marry and the domestic law for the government of the spouses after the contract was "perfected and covered by the celebration of the marriage."[15]

VI.

We have mentioned some of the purposes of our ancient marriage contracts and it remains only to indicate by a brief analysis the general provisions common to all, excluding the purely personal provisions applicable to the particular marriages. These general provisions are:

1. **The existence of a community.** It has been shown in the foregoing pages that under Art. 220 of the Custom of Paris this was unnecessary as that state followed the marriage. Consequently a marriage in Louisiana without a marriage contract established a legal community, but the Contract was necessary if other agreements were needed— agreements that would render

---

[15] La Nouveau Parfait Notaire, Vol. 1, p. 281.

certain the rights of the respective parties. When the marriage was preceded by a contract establishing a community it was called a conventional community and the usefulness of the contract was that thereby the community would be and often was qualified, regulated or subjected to certain changes and obligations. *Movables* under the Custom had almost the same significance it has today. *Conquets immovable* were acquisitions made after the marriage and included inheritances or donations from collaterals and strangers. The immovable property of either spouse existing at the time of the marriage was not brought into the community unless by express stipulation. The same was true of donations and inheritances from ancestors or others in the direct line, the "stock and line" of the one receiving such immovables.

2. **The creation of dower for the wife.** This was of two kinds, the *douaire coutumier* which under the Custom of Paris was a usufruct on the half of the immovables which the husband held and possessed at the time of the celebration of the marriage and of that which would fall to him in the direct line after the marriage and during its existence. This was sometimes granted in the alternative the wife being permitted to elect to take the customary dower or a fixed sum of money called rente. This might be granted in lump that is to be received once for all or annually during the life of the survivor. This was in the nature of a real right and a charge upon the husbands' property of every nature. There was generally added a provision for the reduction of this charge should the wife contract a second marriage.

This last or alternative dower was called *douaire prefix* and if the contract did not expressly stipulate the *douaire coutumier*, the stipulation for a dower prefix excluded the tacit dower of the usufruct.

3. The **preciput.** This was a provision for mutual benefit created by express stipulation and not based on the law. It enabled the survivor to take out of the mass of the community a fixed advantage either in movables or in money, without diminution of the survivor's share in the same, and it also included the right of the widow to take out free of debts or of judgments against the community her personal apparel, jewels and furnishings of her chamber, and the widower had similar rights against the succession of the wife as to his clothes, arms and other movables in personal use.

4. **Reservation of property by the spouses.** This provision took away from the community certain sums of money or certain specified property which was to remain unaffected by the community and to revert after death to the heirs of the stock and line ("estoc et ligne") of the owner. The effect was to keep the inheritance of this property within the family of the owner, whether the children of the marriage fell in that category, I am unable to say. It is possible that as to immovable property this provision caused a reversion to the family of the owner and operated to shut out his descendants. This is stated, however, with much hesitancy because the courts of old Louisiana do not seem to have passed on the question. There are cases in our old records where the mother of a child born of the marriage was shut out of the property, though the child survived the father. It was held that the death of the child subsequent to the death of the father, broke the connection and sent the property to the family of the father.

5. **Right of renunciation.** It was usual to stipulate the right of the wife to renounce the community and upon such renunciation to take back all that had fallen to her by donation, succession or otherwise, together with her dowry and preciput.

In this brief summary of the dominating features of the Marriage Contract, I have purposely abstained from discussing a hundred interesting problems that fill the books of the ancient commentators, some of which suggest themselves here, but a study of this nature would extend this paper beyond the patience or interest of the reader. I have moreover noted in the foregoing pages sufficient, to enable the interested student to pursue the subject in all its ramifications.

MARRIAGE CONTRACT

Between Pre Lemoine D'Iberville and Marie Therese Pollet De La Combe October 8, 1693

Translated by the late HELOISE H. CRUZAT
In collaboration with the Editor of the Quarterly. Mr. Andre Lafargue rendered assistance on parts of the work.

BEFORE the Notary Royal in the Prevoste of Quebec, undersigned and there residing, were present in person **Pierre Lemoine, Esquire,**[1] **Lord of D'Hiberville**[2] Captain of His Majesty's Light Frigates son of deceased Charles LeMoine, whilst living, Esquire Lord of Shateauguay and damlle Catherine Primot, his wife, at present in this city, on the one part, and

Mre[3] Francois Magdeleine Reutte, Knight, Lord of Auteuil and of Mousseaux, Councillor of the King in his Councils and his Procureur General in the Sovereign Council of this Country, residing in his hotel in this upper City of Quebec and Madam Marie Anne Juchereau, his wife, whom he has authorized for the purposes of these presents, stipulating for **Damoiselle**[4] **Marie Therese Pollet,** daughter of deceased Francois Pollet, whilst living, Esquire, Lord of La Combe Pocatiere, Captain in the Regiment of Carignan and of Dame Marie Anne Juchereau, here present, and with her consent, for her and in her name, on the other part.

Which parties on the advice and counsel of their relatives and friends, for this purpose assembled, to-wit:—

On the part of the said lord D'hiberville, of Most High and Mighty Lord Mre Louis Debaude, Count of Frontenac, Lieutenant General of the King's Armies in Ancient France and his Gover-

[1] "Ecuyer" (Esquire) is here an honorary title attached to an officer and also accorded to men of the professions. As late as the 17th Century a gentleman of recent nobility was called Ecuyer. Originally Ecuyer was the young lad who in his Knightly education was approaching the time when he could follow his lord on adventure, solid on his horse, carrying a shield and a lance. Desclaux, History of France, p. 59.

[2] So written throughout the text but the signature is "d'Iberville."

[3] Mre (Messire) equivalent to Honorable.

[4] "Damlle" equivalent to Honorable.

nor and Lieutenant General in this Country; of Joseph Lemoine, Esquire, Lord of Serigny, Ensign on the King's Ships; Joseph Monic, Esquire, Captain and Major of the detached troops of the Marine in this Country and Dame Jeanne Dufresony and his wife; Mre Francois de la Forest, Governor of Louisiana for the King.[5]

And on the part of the said Damoiselle Pollet and of the said Lord and Lady Dauteuil; of High and Mighty Lord Mre Jean Bochart, Knight, Lord of Champigny, Norry Verneuil and other places, Councillor of the King in all his Councils, Indendant of Justice, Police and Finance in this said country and Madame Marie Magdeleine Chapoux his wife; of Dame Marie Giffard, widow of Nicolas Juchereau, Esquire, Sieur de Saint Denis, maternal grandmother of the said Damoiselle, future wife; of Joseph Giffard, Esquire, Lord of Beauport and Dame Michelle Nau, his wife, grand uncle; of Charles Juchereau, Esquire, Councillor of the King and his Lieutenant General in the Royal Jurisdiction of Montreal, of Ignace Juchereau Sieur Duchenay and Madame Marie Peuvret, his wife; of Francois Juchereau, Esquire, Sieur of Vaulezard, Marine Guard; of Francois Viennay Pachot, Burgher of this City, and Damoiselle Francoise Juchereau, his wife, uncle and aunt of the said Damoiselle future wife; of Mre Claude de Bermen, Esquire, Sieur de la Martiniere, Councillor of the King in the Sovereign Council of this country, cousin of the said damoiselle, future wife; of Dame Anne Garnier, widow of Mre Jean Bourdon, whilst living, Procureur General of the King in the said Council.

Have made between them the contract and agreements of marriage following, that is to say; that the said Sieur D'iberville and the said Damoiselle Pollet have promised and do promise reciprocally to take each other by law, and name in marriage, and to have same celebrated and solemnized before Our Mother, the Holy Church Catholic Apostolic and Roman, as soon as it will be possible and agreeable to them, their relatives and friends.

The said Sieur and Damoiselle, future spouses, will be in community in all their movable property and immovable conquets,[6] following, and in accordance with the Custom of Paris, by which it is understood and stipulated the said marriage shall be regulated,

---

[5] We have not been able to find any historical verification of la Forest's right to this title.

[6] "Conquets" were the acquisition ("profits") during the community by either of the spouses. Pothier's Works (Buguet's edition), 1, 216.

even though later on, they should have their residence or make acquisitions in places where the customs may otherwise regulate the same, which customs they reject and renounce positively by these presents. The said Sieur, future husband, will take the said Damoiselle, future wife, with the rights that have come to her by the death of the said deceased Sieur de la Combe, her father, and others that may fall to her in the share of the said Dame her mother.

And considering that the holdings of the said Sieur, future husband, are in money and movables, it has been stipulated that out of the property that he may have at the present time, of whatever nature this may be, movables or immovables, the sum of ten thousand livres will be taken therefrom in kind and shall remain the property of him and his stock and line,[7] the remainder of what he may possess entering into the said community and in case of predecease of the said Damoiselle, future wife without children, the said Sieur, future husband, has reserved to himself the enjoyment of all the goods of the said community without being obliged to furnish bond.

The said Damoiselle, future wife, will have dower of the customary dowry[8] or of the sum of five hundred livres rente[9] for each year, the dowry prefix[10] at her choice, it being, however specifically agreed that if the said damoiselle, future wife should contract a second marriage having children of such marriage, the said dowry prefix, should not exceed the sum of two hundred and fifty livres of rente in lieu of the said sum of five hundred livres.

The survivor, of the said Sieur and Damoiselle, future spouses, shall have and take par preciput[11] from the movable property of the said community (or actual cash at their choice) up to the sum of fifteen hundred livres, following the appraise-

---

[7] "Estoc et ligne", i. e., to pass to his own family and not to the family created by this marriage.

[8] "Douaire Coutumier" was the usufruct of all the estate of the husband, to take effect on his death and to bear upon all his property of every nature and kind.

[9] "Rente" was a fixed annual charge upon the estate.

[10] "Douaire prefix" was a stipulation for a fixed sum of money payable annually and a charge upon the estate.

[11] The *preciput* was a fixed thing or sum payable to the surviving spouse, over and above his or her share of the community property.

ment of the inventory and without augmentation ("sans crue")[12] and the said damsel, future wife, shall have in addition her dresses, rings, jewelry and personal wearing apparel, together with the furnishings of her chambers, which should not be valued higher than the sum of one thousand livres, also the said Sieur, future husband, shall be entitled to his arms, clothes, wearing apparel, linen and other movables of a personal character.

In the event of the dissolution of the community, it shall be optional with the said damoiselle, future wife, and for those of her stock and line to accept the said community or to renounce same and in case of renunciation to take back that which shall have come or fallen to her whether by succession, donation or otherwise, together with the said dowry and preciput as hereinabove stipulated.

For thus has it been agreed between the said parties, under penalty for all costs, damage and interest and for the whole have respectively bound their property present and future.

Renouncing, etc.[13] Done and Passed Quebec, at the home of the said Pachot, in the afternoon, on this the 8th day of October, one thousand six hundred and ninety-three, in the presence of Messieurs Charles Rageot, a practitioner, and Gillie Precour, witnesses residing in Quebec, who have signed these presents together with the said Sieur and the said damelle, future spouses, their parents, relations and friends and the undersigned notary.

(Original signed) **Le Moyne d'Iberville, Frontenac, Marie Therese Pollet, Bochart Champigny, M. M. Chaspoux, Jeanne Dufresnois, Monic, A. Gasnier, Ruette Dauteuil, Lemoyne Serigny, Juchereau Dauteuil, Delamartiniere, Juchereau, C. F. Juchereau Pachot, Delaforest, Precour, Juchereau de Vaulezar, C. Rageot, Chambalon.**

---

[12] *Crue* was the augmentation of the price of each thing estimated in an inventory of the property of a deceased person. This augmentation over the appraisement otherwise called *plus value* not having been regulated by Custom (usage) was different in every Coutume or Baillage. In Paris it was a fourth over the appraisement. It applied only to movables, money, silver and gold were not included nor immovables.

The survivor in marriage can take from the movables of the community for her (his) preciput up to the sum agreed and stipulated in the marriage contract following the price and estimation which has been made by the Sergeant of the movables of said community without augmentation (sans crue).

de Ferriere, Dict. of Law "Crue" Vol. 1, pp. 436-7.

[13] This abbreviation covers a usual clause in such contracts seldom written out in full whereby the parties renounced all laws that would protect them against such stipulation.