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Appellate Jurisdiction of the Supreme Court: Part I

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the law as reflected in the rest of the Civil Code than a literal interpretation of the article would be. Since an instance would be rare in which debts or liabilities of a succession would remain in force for thirty years, it is doubtful whether the court will ever be called upon to give meaning to the "or renounce" phrase of the article. Except for this one inconsistency, which for practical reasons will probably never be presented to the court, the *Tarver* theory offers a simple and workable solution to this troublesome problem of interpretation.

Charles C. Gray

Appellate Jurisdiction of the Supreme Court

PART I

The congestion of the Supreme Court docket seems to have led the court to insist vigorously upon the complete fulfillment of all the requirements for establishing its appellate jurisdiction. The practice under the new Rule IX[1] of reshuffling the voluminous matters awaiting adjudication has not stopped the influx of appealable cases, and effective relief can be found only in further limiting the court's appellate jurisdiction.[2]

Constitutional restriction of the court's appellate jurisdiction has consistently been accomplished by increasing the minimum jurisdictional amount.[3] If no constitutional convention is forthcoming within the next year, a constitutional amendment to relieve the bottleneck on appeals would seem to be warranted.[4]

1. Rule IX of the Supreme Court, §§ 2-4, Revised October 4, 1951, effective January 1, 1952, permits assignment of cases to the preference docket in case of a rehearing, a special assignment, advancement to the preference docket, or certification of questions by the courts of appeal. "Section 3. Any case on the regular docket may be transferred to the preference docket, . . . by order of the Court founded on a written motion of the attorney . . . representing any party to the suit requesting the transfer. . . ." Special assignments are made under Section 4 where the state or its subdivisions are parties, and in matters impressed with "public interest" or, finally, in cases in which the court, "upon the showing made, believes that the ends of justice require an immediate hearing. . . ."

2. LA. CONST. Art. VII, § 10.

3. The Constitutions of 1812, 1845, 1852, and 1864 required $300; the Constitution of 1868 effected a change to $500, which was retained in the Constitution of 1879. The latter was amended pursuant to La. Acts 1882, No. 125, p. 174 to fix the minimum at $2,000, which was retained in the 1898, 1913 and 1921 Constitutions.

4. H.B. No. 202 of the 1954 legislature proposed a constitutional amendment to LA. CONST. Art. VII, § 10, which would have restricted the civil

The Louisiana State Law Institute, in its *Projet* for a new constitution, recommends a substantial change in the appellate jurisdiction of the Supreme Court by proposing that the jurisdictional amount for civil suits be set at eight thousand dollars.[5] The want of adequate statistics makes it impossible to ascertain the proportion of cases which an upward revision of the jurisdictional amount would affect, but the $8,000 figure seems well calculated to accelerate the disposition of appeals.

The failure to provide constitutional relief has forced the court to rely upon available statutes and its own inherent powers to solve the problem. As a device for interpreting the effects upon the jurisdictional amount of remittiturs, stipulations, affidavits, cumulation of demands, and palpable inflation, the court has apparently relied upon Article 92 of the Code of Practice: "The consent of parties cannot render a judge competent to try a cause which . . . can not be brought before him. . . ."[6] La. R.S. 13:4441, permitting transfers of appeals between the appellate courts,[7] has been used increasingly in recent years, perhaps because it focuses attention on the jurisdictional issue. But the most direct recognition of the problem was the Supreme Court's observation, while applying its new Rule X, Section 2,[8] that:

"This Court became cognizant of the fact that we had enter-

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appellate jurisdiction of the Supreme Court materially. It would have increased the minimum jurisdictional amount to $10,000, and eliminated jurisdiction of questions concerning the constitutionality or legality of a tax, local improvement assessment, toll or impost, fine, forfeiture or penalty. It was returned to the House without action by the judiciary committee to which it had been referred, and was subsequently withdrawn.

5. PROJET OF A NEW CONSTITUTION FOR THE STATE OF LOUISIANA Art. VI, § 16 (Louisiana State Law Institute, 1950).

6. LA. CODE OF PRACTICE of 1870.

7. Formerly La. Acts 1904, No. 56, p. 135, as amended, La. Acts 1912, No. 19, p. 25, now LA. R.S. 1950, §§ 13:4441-13:4442. LA. R.S. 1950, § 13:4441, provides that "In any case otherwise properly brought up on appeal to the Supreme Court, or to any of the courts of appeal, the judges of these courts may, in cases where the appellant or appellants shall have appealed to the wrong court, transfer the case to the proper court instead of dismissing the appeal. . . ." The act requires that when the court of appeal has erroneously transferred a case to the Supreme Court, the "latter court shall not dismiss the appeal, but shall retransfer such case to the court of appeal. . . ." For statements to the effect that the entire provision is mandatory, see State v. Cook, 197 La. 1027, 3 So.2d 114 (1941) and Succession of Goree, 68 So.2d 636 (La. App. 1953).

8. Rule X, § 2, Revised Rules of the Supreme Court, effective January 1, 1952, requires the brief of the appellant to set forth "a statement of the appellate jurisdiction of [the Supreme Court] as applied to the case. . . ." *Cf. Work of the Louisiana Supreme Court for the 1951-1952 Term—Civil Procedure*, 13 LOUISIANA LAW REVIEW 306, 313 (1953) and *Bench and Bar*, 26 TULANE L. REV. 491, 494 (1952).

tained jurisdiction in a number of cases in the past because the question of our jurisdiction had not been raised, but under our new rules the appellant is required to set forth in his brief the appellate jurisdiction of this Court as applied to the case. . . ."[9]

More subtle evidence of the court's insistence upon the establishment in the record of its appellate jurisdiction has been its reluctance to permit the use of affidavits and stipulations as devices to establish jurisdiction.[10] Since 1898, the Constitution has expressly provided that the Supreme Court shall have original jurisdiction for the determination of questions of fact affecting its own appellate jurisdiction.[11] In the exercise of this power the court has remanded cases to lower courts for the purpose of introducing pertinent evidence into the record and has also accepted affidavits or stipulations of the parties as evidence of jurisdiction. Recently, however, the court has virtually ceased accepting affidavits and has instead remanded the cases to the lower court[12] or transferred them to the courts of appeal under the provisions of La. R.S. 13:4441.[13]

The discussion which follows seeks to suggest the general approach taken by the Supreme Court to the determination of its appellate jurisdiction, principally in those areas where there has been some recent variation from the approach taken in the past. The discussion attempts to highlight the relatively recent modifications in the three basic divisions of the Supreme Court's

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9. State *ex rel.* Sitges v. Bayou Terre Aux Boeuf Drainage Dist., 221 La. 985, 989, 60 So.2d 895, 897 (1952). *Cf. The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 198, 206 (1953).

10. See p. 886 *infra*.

11. LA. CONST. Art. 85 (1898); LA. CONST. Art. 85 (1913).

12. "In such cases the Supreme Court ordinarily remands to the court of first instance for the purposes of having the necessary evidence submitted. Cf. Harnischfeger Sales Corp. v. Sternberg Co., 177 La. 373, 148 So. 440, 1933." 1 MCMAHON, LOUISIANA PRACTICE 94, n. 15 (1939).

13. Beene v. Pardue, 67 So.2d 337 (La. App. 1953). See also Peters v. Fonville, 67 So.2d 331 (La. App. 1953); Ilardo v. Agurs, 67 So.2d 559 (La. App. 1953).

This practice has been criticized as involving unnecessary delay and circuitous routing of the litigation to the trial court for taking evidence. For an analysis of the problems created by such transfers, see *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 198, 210 (1953).

appellate jurisdiction: jurisdictional amount,[14] constitutional questions,[15] and the miscellaneous areas of jurisdiction.[16]

JURISDICTIONAL AMOUNT

Money Judgments

The Supreme Court "shall have appellate jurisdiction in civil suits where the amount in dispute, . . . irrespective of the amount therein claimed, shall exceed two thousand dollars. . . ."[17] Subject to the rules on palpable inflation,[18] judicial admission,[19] and remittitur prior to judgment,[20] the general test of appellate jurisdiction over monied demands is the amount in dispute when the case was submitted to the trial court for decision, not the

14. "[C]ivil suits where the amount in dispute, or the fund to be distributed, irrespective of the amount therein claimed, shall exceed two thousand dollars, exclusive of interest. . . ." LA. CONST. Art. VII, § 10.

15. "It shall have appellate jurisdiction in all cases wherein the constitutionality or legality of any tax, local improvement assessment, toll or impost levied by the State, or by any parish, municipality, board, or subdivision of the State is contested, or where the legality, or constitutionality of any fine, forfeiture, or penalty imposed by a parish, municipal corporation, board, or subdivision of the State shall be in contest . . . or a law of this State has been declared unconstitutional. . . ." LA. CONST. Art. VII, § 10.

16. The Supreme Court "shall have appellate jurisdiction of all suits for divorce or separation from bed and board, and of all matters arising therein; of suits involving alimony, of suits for the nullity of marriage, for interdiction, or involving the tutorship of minors, or curatorship of interdicts, or the legitimacy, or custody of children, and of matters of adoption and emancipation.

". . . Its appellate jurisdiction shall also extend to all cases involving homestead exemptions irrespective of the amount involved, and the appeal on the law and the facts shall be directly from the court in which the case originated to the Supreme Court; except that in cases involving only movable property, the appeal shall lie to the court having jurisdiction of the amount or the value of the property involved.

". . .

"The appellate jurisdiction of the Supreme Court shall also extend to criminal cases on questions of law alone, whenever the penalty of death, or imprisonment at hard labor may be imposed; or where a fine exceeding three hundred dollars or imprisonment exceeding six months has been actually imposed." LA. CONST. Art. VII, § 10.

17. LA. CONST. Art. VII, § 10.

18. Mitchell v. Shreveport Laundries, 221 La. 686, 60 So.2d 86 (1952); Nash v. Curette, 216 La. 190, 43 So.2d 262 (1949), 218 La. 789, 51 So.2d 71 (1951); Trahan v. Breaux, 212 La. 459, 32 So.2d 845 (1947); Walsh v. Bush, 206 La. 303, 19 So.2d 144 (1944).

19. Defendant's judicial admission: D'Asaro v. Cotonio, 223 La. 624, 66 So.2d 572 (1953); Jackson v. Perkins, 221 La. 526, 59 So.2d 708 (1952); Ledet v. Rodgers, 220 La. 650, 57 So.2d 217 (1952); Reed v. Eureka Homestead Society, 174 La. 823, 141 So. 847 (1932); Crowell & Spencer Lumber Co. v. Lynch, 157 La. 21, 101 So. 797 (1924) and authorities cited therein.

20. Remittitur before judgment: Walker v. Fitzgerald, 214 La. 293, 37 So.2d 712 (1948) (plaintiff's tacit consent); Dutton v. Harmonia Insurance Co. of Buffalo, N.Y., 191 La. 72, 184 So. 546 (1938). *Cf. The Work of the Louisiana Supreme Court for the 1938-1939 Term—Procedure*, 2 LOUISIANA LAW REVIEW 135, 145 (1939); Wolf v. Thomas, 137 La. 833, 69 So. 269 (1915).

amount of the judgment.[21] After judgment by the trial court, neither party can deprive the other of his right of appeal by remission of the debt;[22] conversely, both are prohibited from gaining jurisdiction by consent.[23]

The Constitution expressly excludes interest from the calculation of the jurisdictional amount,[24] but penalties, attorney fees and costs, when provided for by contract or statute, are added to the main amount to determine appellate jurisdiction.[25] The Constitution also provides that incidental demands such as reconvention, intervention, and judgments for costs must follow the main demand on appeal. "If there be no right of appeal on the main demand, the appeal shall lie to the court having jurisdiction of the reconventional demand."[26]

Parties having a common interest in recovery may cumulate their actions in a single suit, but the amounts of their demands may not be aggregated to gain jurisdiction.[27] In *Vogt v. Jannarelli*[28] this rule was applied to a suit by a husband and wife, as co-plaintiffs, for damages "arising out of the same circumstances." The suit was declared to embody two separate causes of action, and the amounts of the claims were held not subject to aggregation, for the reason that the wife's claim was her separate prop-

21. Kennedy v. Perry Timber Co., 217 La. 401, 46 So.2d 312 (1950); Walker v. Fitzgerald, 214 La. 293, 37 So.2d 712 (1948). But see, for amount of judgment of trial court, T. A. Pittman, Inc. v. Crescent City Plumbing and Heating Co., 149 So. 784 (La. App. 1933), and Teche Lines v. Gorum, 7 So.2d 736 (La. App. 1942), *transferred* 202 La. 993, 13 So.2d 291 (1943).

22. State v. Cook, 197 La. 1027, 3 So.2d 114 (1941), and authorities cited therein; Griffin v. Bank of Abbeville and Trust Co., 69 So.2d 153 (La. App. 1953).

23. Holland v. Gross, 195 So. 837 (La. App. 1940).

24. ". . . two thousand dollars exclusive of interest. . . ." LA. CONST. Art. VII, § 10.

25. Thompson v. Jones, 200 La. 437, 8 So.2d 286 (1942); Buras v. Fidelity and Depos. Co. of Md., 195 La. 244, 196 So. 335 (1940); Willis v. Johnson, 43 So.2d 299 (La. App. 1949); Smith v. Atkins, 23 So.2d 649 (La. App. 1945), *transferred* 211 La. 369, 30 So.2d 121 (1947). Statutory penalties and reasonable attorney fees: Hammack v. Resolute Fire Ins. Co., 223 La. 655, 66 So.2d 583 (1943); Madison v. Prudential Ins. Co. of America, 190 La. 103, 181 So. 871 (1938).

26. LA. CONST. Art. VII, § 1.

Intervention: Louisiana State Board of Med. Examiners v. McHenery, 222 La. 984, 64 So.2d 242 (1953); Hebert v. T. L. James & Co., 221 La. 1044, 61 So.2d 734 (1952).

Incidental demand—taxing of costs: Jiles v. Venus Community Benevolent Aid Ass'n, 195 So. 363 (La. App. 1940).

27. Southern Timber & Land Co. v. Wartell, 109 La. 453, 33 So. 559 (1903). For an analysis of the jurisprudence on this point, see 1 MCMAHON, LOUISIANA PRACTICE 86, n. 8.1 (Supp. 1952).

28. 195 La. 277, 196 So. 346 (1940).

erty and the husband's, that of the community. The test of amount in dispute was applied to each claim separately.

The Constitution does not allow the Supreme Court to entertain appeals from "suits for damages for physical injuries to, or for the death of a person, or for other damages sustained . . . arising out of the same circumstances."[29] This provision has been interpreted as vesting appellate jurisdiction over the whole of such appeals in one court, that is, the appropriate court of appeal.[30] In practice, therefore, if no demand for damages for physical injuries is involved, claims for damages of all other types are appealable to the Supreme Court when the amount in dispute exceeds $2,000.[31] But the presence in the pleadings of a prayer for damages for physical injuries confers exclusive appellate jurisdiction upon the courts of appeal, irrespective of the amount claimed.[32] The most serious problem in this area is the interpretation of the phrase "arising out of the same circumstances," which was rendered even more difficult by the decision in *Cavalier v. Original Club Forest*,[33] in 1951. That case involved a course of events closely connected in time, which gave rise to claims for damages for personal injuries and for defamation, and the court held both causes of action to have arisen out of the "same circumstances." However, the court overruled two similar cases[34] where there was an appreciable interval of time between the acts complained of, holding the causes not to have arisen from the "same circumstances." Since the overruled cases were apparently distinguishable from the *Cavalier* case because of the time interval between events, there is some doubt as to what rule the court will apply to similar cases in the future.

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29. LA. CONST. Art. VII, § 10.

30. LA. CONST. Art. VII, § 29; Jumonville v. Frey's, Inc., 171 So. 590 (La. App. 1937).

31. Spearman v. Toye Bros. Auto & Taxicab Co., 164 La. 677, 114 So. 591 (1927).

32. Beauvais v. D. C. Hall Transport, Inc., 217 La. 388, 46 So.2d 307 (1950); Kirkwood v. McFarland, 217 La. 386, 46 So.2d 307 (1950); Sibley v. Petty Realty Co., 215 La. 597, 41 So.2d 230 (1949). *But see* O'Rourke v. O'Rourke, 69 So.2d 567 (La. App. 1953), *cert. granted*, where the court of appeal retained jurisdiction despite the absence of a prayer for damages for physical injuries, relying upon allusions in the petition to "suffering physically," "physically upset," and "setback in her recovery."

33. 220 La. 183, 56 So.2d 147 (1951), 12 LOUISIANA LAW REVIEW 500 (1952). See also Searcy v. Interurban Trans. Co., 179 So. 93 (La. App. 1937); Miller v. Commercial Standard Ins. Co., 13 So.2d 733 (La. App. 1943).

34. Newsom v. Starns, 174 La. 955, 142 So. 138 (1932); Applewhite v. New Orleans Great Northern Ry., 148 So. 261 (La. App. 1933).

Fund To Be Distributed

The "fund" cases usually involve money demands payable only out of a fund, or claims to a portion of certain definite property of any sort which has been appraised and inventoried. Succession, receivership, liquidation, and concursus proceedings and disputes arising out of third oppositions are appealed on the basis of amount of the fund to be distributed. The amount deposited in the registry of the court or the appraised value of the property inventoried[35] is generally taken as the jurisdictional amount. In *Succession of Banker*, where the legal representative of the succession had partially disposed of the succession fund under a final judgment homologating his accounts, appellate jurisdiction was determined in terms of the balance of the fund remaining to be distributed.[36] However, when the claim is in the nature of a partition, as among heirs claiming a specific portion,[37] or in cases where the status of property as separate or community is sought to be determined,[38] the interest asserted by the claimant is considered the amount in dispute and controls appellate jurisdiction. But where the plaintiff's demand, if granted, would require a re-distribution of the original "fund to be distributed," the amount of the fund controls.[39] Appeals from judgments on incidental demands in cases involving a fund to be distributed follow the jurisdiction of the main issue.[40]

Declaratory Judgments

The relatively new device of obtaining declaratory judgments[41] is frequently used to settle in advance the kinds of prob-

35. Succession of Lecompte, 196 La. 287, 199 So. 122 (1940); Succession of Wengert, 178 La. 1027, 152 So. 747 (1934).

The amount must appear affirmatively in the record: Succession of Derouen, 216 La. 957, 45 So.2d 91 (1950) (where inference of amount was drawn from the amount of the appeal bond); Succession of Lynch, 124 La. 127, 49 So. 1002 (1909) (where mere allegation of value was uncertain and problematical).

36. 197 La. 229, 1 So.2d 87 (1941). See also Knighton v. Safety Tire Service, 177 La. 762, 149 So. 448 (1933); Ferguson v. Gulf Lumber Co., 135 La. 974, 66 So. 317 (1914) (defendant bonded the sequestered property); *In re* Weinberger Banana Co., 20 So.2d 30 (La. App. 1944).

37. Succession of Jackson, 68 So.2d 127 (La. App. 1953).

38. Succession of Wesley, 222 La. 411, 62 So.2d 625 (1952).

39. Succession of Goree, 68 So.2d 636 (La. App. 1953).

40. Vives v. Vives, 67 So.2d 329 (La. App. 1953).

41. LA. R.S. § 13:4231 (1950), which provides: "Courts of record . . . may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. . . ."

lems formerly raised in the concursus or "fund" cases discussed above. Although the Supreme Court has entertained appeals in a few declaratory judgment cases, it has not announced a definite rule for the determination of its own appellate jurisdiction in this area.[42] An early decision in *Board of Comm'rs of Port of New Orleans v. Hibernia National Bank* was widely interpreted as an indication that the court would receive no appeals under the act. The Court in that case said:

> "It seems apparent that a suit, having as its sole object the judicial declaration of rights which do not presently, and may never, require enforcement is neither a monied demand nor one in which the matter in contest can be said to be capable of monetary appraisement."[43]

Moreover, in *First National Life Ins. Co. v. New Orleans*,[44] which involved the interpretation of a $275,000 contract, the Court declared, "as a matter of fact there is no issue in contest. . . ." These statements recall the old Louisiana cases announcing that, under the Constitution, there was no basis for an appeal to the Supreme Court where there was no monied demand.[45] Even after accepting jurisdiction of several appeals from declaratory judgments, the court in 1953 said of a suit to have a contract to purchase realty declared valid, "[T]he amount which the defendant has offered to pay is not, and indeed, nothing else seems to be in dispute."[46]

Illustrative of the court's attitude towards appeals from declaratory judgments is *Succession of Solari*, wherein the vendee of a universal legatee sought to have the bequest of a $45,000 estate declared valid in an effort to clear title to his $350 purchase. The Court said, "The plaintiff is only claiming property of the value of $350 and the necessity of passing on the will is only incidental to the plaintiff's demand and a collateral issue

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42. See *The Work of the Louisiana Supreme Court for the 1951-1952 Term—Civil Procedure*, 13 LOUISIANA LAW REVIEW 306, 316 (1953); *The Work of the Louisiana Supreme Court for the 1950-1951 Term—Civil Procedure*, 12 LOUISIANA LAW REVIEW 184, 191 (1952).

43. 219 La. 208, 211, 52 So.2d 753 (1951). See *The Work of the Louisiana Supreme Court for the 1950-1951 Term—Civil Procedure*, 12 LOUISIANA LAW REVIEW 184, 193 (1952).

44. 218 La. 9, 16, 48 So.2d 145, 147 (1950).

45. Hite v. Hinsel [Himel], 39 La. Ann. 113, 1 So. 415 (1887); Buddig v. Baldwin, 38 La. Ann. 394 (1886); Saux v. Patton, 34 La. Ann. 1155 (1882); State v. Miscar, 34 La. Ann. 834 (1882).

46. Bierhorst v. Kelly, 223 La. 737, 742, 66 So.2d 791, 792 (1953), *transferred* 68 So.2d 111 (La. App. 1953) (rehearing denied).

which cannot be considered in fixing the jurisdiction of the appeal."[47]

In appeals from declaratory judgments, affidavits of the parties have been refused on the grounds that they were conjectural as to the value of the rights sought to be adjudicated. Furthermore, where a monied demand for $75 was cumulated with a request for the construction of a contract involving a $3,000 bond, the court transferred the matter to the court of appeal on the theory that Article VII, Section 10, of the Constitution did not apply to the case.[48]

Although there are several declaratory judgment cases in which the court has applied the usual tests for establishing the jurisdictional amount, the reported opinions yield no clear rule of thumb. In one case, plaintiff sought to be recognized as the owner of a one-eighth interest in certain property. The court alluded to testimony in the record that the property was worth "eight to ten thousand dollars," but transferred the appeal.[49] On the other hand, the court took appellate jurisdiction over several mineral royalty cases,[50] without explaining why. In one of these, the court stated that there was "no factual issue . . . involved in the case."[51] In another, the opinion reveals that a complete record of the sales of the interests involved was presented on appeal. This may have supplied the requisite proof of the jurisdictional amount.[52] The court in *Arkansas Louisiana Gas Co. v. Thompson*, the latest mineral royalty case accepted on appeal under the Declaratory Judgment Act, states in a footnote that the record clearly demonstrated the requisite jurisdictional amount.[53] The most recent reported case in which the court took jurisdiction, *Succession of Rolling*, contains no mention of the value of the estate or the jurisdictional issue. The

47. 218 La. 671, 676, 50 So.2d 801, 802 (1951). See *The Work of the Louisiana Supreme Court for the 1950-1951 Term—Civil Procedure*, 12 LOUISIANA LAW REVIEW 184, 192 (1952).

48. Nelson v. Associated Branch of Pilots of Port of Lake Charles, 221 La. 1015, 61 So.2d 463 (1952). See also for refusal of affidavits, Fireside Mutual Life Ins. Co. v. Martin, 220 La. 794, 57 So.2d 687 (1952).

49. Krokroskia v. Martin, 220 La. 992, 58 So.2d 205 (1952).

50. Arkansas Louisiana Gas Co. v. Southwest Nat. Pro. Co., 221 La. 608, 60 So.2d 9 (1952); Southwest Nat. Pro. Co. v. Arkansas Louisiana Gas Co., 221 La. 617, 60 So.2d 12 (1952); Horn v. Skelly Oil Co., 221 La. 626, 60 So.2d 65 (1952); Arkansas Louisiana Gas Co. v. Thompson, 222 La. 868, 64 So.2d 202 (1953).

51. Arkansas Louisiana Gas Co. v. Southwest Nat. Pro. Co., 221 La. 608, 60 So.2d 9 (1952).

52. Horn v. Skelly Oil Co., 221 La. 626, 60 So.2d 65 (1952).

53. 222 La. 868, 871, n. 1, 64 So.2d 202, 203, n. 1 (1953): "The cash value of

case involved the interpretation of two olographic wills.[54] The courts of appeal in declaratory judgment cases have looked to the proof adduced on trial, and in two recent decisions have ordered the appeals transferred to the Supreme Court.[55]

Mary Ellen Caldwell

Appellate Jurisdiction of the Supreme Court

PART II

Amount in Dispute Measured by Value of the Thing in Dispute

The Supreme Court's exercise of appellate jurisdiction is often sought in cases where the subject matter of the suit is not money, but something which can be evaluated in terms of money, such as the possession of immovables, contract rights, and the title to real property. Usually the grounds urged to establish the court's jurisdiction are that the amount in dispute is in excess of $2,000. The Supreme Court has repeatedly held in these cases that "In determining whether this court has appellate jurisdiction because of the amount in dispute, or because of the value of the thing in dispute . . . the record must show affirmatively that the court has appellate jurisdiction. . . ."[1]

The court has never precisely defined what constitutes an affirmative showing of jurisdiction in the record. In *Heirs of P. L. Jacobs v. Johnson*,[2] the court examined the record for evidence of the value of the land in a jactitory action and based its opinion on the consideration recited in prior transfers of the land and on the value of mineral deeds and leases affecting the land, which were incorporated into the record. The court re-

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the mineral rights in dispute is far in excess of the sum of $2,000 and therefore this court is vested with appellate jurisdiction of the case."

54. 68 So.2d 744 (La. App. 1953).

55. Parker v. Tillman, 69 So.2d 534 (La. App. 1953); St. Cyr v. Boland, 34 So.2d 69 (La. App. 1948).

1. State v. Cook, 197 La. 1027, 1036, 3 So.2d 114, 116 (1941). See also *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 198, 207 (1953), and cases cited therein at 207, n. 31.

2. 219 La. 125, 52 So.2d 444 (1951).