

Jurisdiction Ratione Materiae et Personae - Suits Against Insolvent Corporations in Receivership

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There is, however, at least one deviation from the general rule that any affirmative defense might be urged through the exception of no cause of action. In the field of prescription, where the courts are prohibited from supplying the plea,¹⁷ the defense cannot be presented through the exception of no cause of action but must be tendered by the exception of prescription.¹⁸

The principal case presents the first expression by the court of a rule applicable to the assertion of affirmative defenses generally by means of the exception of no cause of action. Since this rule requires an exclusion of every reasonable hypothesis other than the premise upon which the defense is based, it appears that the decision affords proper protection of the plaintiff from dismissal because of technical insufficiencies or surplusage. At the same time it preserves the use of the exception of no cause of action in those unusual cases where the petition definitely and unequivocally establishes a factual basis for the defense.

I. HENRY SMITH

JURISDICTION RATIONE MATERIAE ET PERSONAE—SUITS AGAINST INSOLVENT CORPORATIONS IN RECEIVERSHIP—Under a code provision permitting real actions to be brought either at defendant's

lowed Levy on his reconventional demand, of \$1675. Levy then brought suit against Roos, the surety, for \$1675 and was met by an exception of no cause of action. The court, in sustaining the exception, pointed out that the record of the previous suit was part of the plaintiff's petition and that, since compensation takes place by mere operation of law, extinction of the debt by compensation could be asserted by an exception of no cause of action.

16. *Ackerman v. McShane*, 43 La. Ann. 507, 9 So. 483 (1891), where the defendant was the surviving partner of the firm of the deceased and under a compromise agreement paid the plaintiff, the universal legatee, \$20,000 in full settlement of deceased's half of the partnership business. Later the plaintiff brought suit, alleging the compromise and that the defendant fraudulently represented that her interest was worth \$20,000 when actually it was worth \$29,000; and asked judgment for \$9000. In sustaining the exception of no cause of action, the court observed that the petition on its face showed the compromise; and that the plaintiff could not ask that it be set aside for fraud and at the same time retain the \$20,000 paid.

In *Brandon v. Gottlieb*, 132 So. 283 (La. App. 1931), the plaintiff's petition alleged that his 14 year old son was killed through the gross negligence of defendant's employee, an elevator operator; and that shortly thereafter the defendant and his insurance agent induced the plaintiff to sign a document called a "release" for which he was to receive a "gift" of \$350. The court overruled the defendant's exception of no cause of action, concluding that the plaintiff was not asking for annulment of a compromise, but was assuming rather that there was no such agreement.

17. Art. 3463, La. Civil Code of 1870.

18. *Succession of Thompson*, 191 La. 480, 186 So. 1 (1938); *White v. Davis*, 169 La. 101, 124 So. 186 (1929).

domicile or in the parish where the property is situated,¹ the plaintiffs brought suit in St. Mary Parish to annul an oil and gas lease affecting property in that parish. Both of the corporate defendants previously had been adjudicated insolvent in receivership proceedings conducted in Orleans Parish. Neither defendant excepted to the trial court's jurisdiction, one making no appearance whatsoever and the other, through its receiver, filing an answer which was in effect a general denial. Prior to judgment, under proper authorization in the receivership proceedings, the lease involved was sold, and the purchaser intervened in the St. Mary suit to resist the plaintiffs' demands. From a judgment for plaintiffs, the intervener and both defendants appealed, challenging the trial court's jurisdiction on the ground that since the defendants were insolvent, under the pertinent code provision,² the suit could only have been instituted in the receivership proceedings. *Held*, (1) the language of the code provision invoked by appellants was mandatory and permitted no exceptions thereto, and (2) that the lack of jurisdiction was *ratione materiae* which could not be waived through failure to object in limine. *Bercegeay v. Techeland Oil Corporation*, 209 La. 33, 24 So. (2d) 242 (1945).

Originally, the code provision relied on by the appellants was an adjunct of the state insolvency procedure, requiring all suits against an insolvent or his syndic to be transferred to or brought in the court conducting the insolvency proceedings.³ Upon the adoption of the National Bankruptcy Act⁴ this provision might well have been deemed suspended, along with the other statutory or code provisions relating to the cession of goods by insolvents. Apparently, the continued efficacy of this code provision was assumed necessary for the protection of receivers

1. "In actions for revendication of real property, . . . the defendant may be cited . . . either within the jurisdiction where the property revendicated . . . is situated . . . or in that where the defendant has his domicile, as plaintiff chooses. . . ." Art. 163, La. Code of Practice of 1870, as amended by La. Act 64 of 1876.

2. "In all matters relative to failure, all the suits already commenced, or which may be subsequently instituted against the debtor, must be carried before the court in which the failure has been declared." Art. 165(3), La. Code of Practice of 1870, as last amended by La. Act 282 of 1940.

3. See *Calder & Co. and Calder v. Their Creditors*, 44 La. Ann. 454, 10 So. 930 (1892). See also *Board of Missions, M. E. Church South v. C. D. Craighead Co.*, 130 La. 1076, 58 So. 888 (1912).

4. Act of July 1, 1898, c. 541, 30 Stat. 544.

and creditors of insolvent corporations.⁵ Since under receivership procedure, any interference with the receiver's administration and possession of property is controlled through the requirement that permission of the court conducting the receivership must be obtained to sue the receiver in another court,⁶ such an assumption would appear unnecessary. As the latest Louisiana Supreme Court cases have held a failure to obtain this prerequisite permission to be a jurisdictional question,⁷ the result in the instant case might be justified on this ground.⁸

In jurisdiction *ratione personae*⁹ the Louisiana counterpart of common law venue,¹⁰ the general rule in civil matters is that a person must be sued at his domicile.¹¹ Of necessity, exceptions thereto are construed strictly.¹² In the Code of Practice of 1825, the redactors followed a simple but definite pattern: the general rule was enunciated in Article 162, the permissive exceptions thereto were set forth in the following article, and the mandatory exceptions to the general rule were embodied in Articles 164 and 165. Little opportunity for conflict between these exceptions was presented, as the latter were few in number and each applied to well-defined situations. Since 1825, however, the number of these exceptions to the general rule (the defendant must be sued at his domicile) has increased steadily by amendatory additions to Article 165, with little or no attention being paid to the original pattern of the Code of Practice. Some of

5. See Board of Missions, *M. E. Church South v. C. D. Craighead Co.*, 130 La. 1076, 58 So. 888 (1912). See also *In re Receivership of Cotton Queen Oil Co.*, 143 La. 1, 78 So. 130 (1918).

6. *Godchaux v. Texas & P. Ry. Co.*, 151 La. 955, 92 So. 398 (1922); *Standard Oil Co. v. Sugar Products Co.*, 160 La. 763, 107 So. 566 (1926).

7. Cases cited supra note 6. Contra: *City of New Orleans v. New Orleans Savings Inst.*, 32 La. Ann. 527 (1880); *Winn v. Veal-Winn Co.'s Receiver*, 16 La. App. 323, 134 So. 264 (1931).

8. In plaintiffs' petition filed in the trial court in the instant case, no allegation is made that permission of the Civil District Court for the Parish of Orleans had been granted to sue the receiver in St. Mary Parish.

9. Jurisdiction *ratione personae* relates to "the space or extent of country over which the judge is entitled to exercise" his judicial power, as distinguished from jurisdiction *ratione materiae* which "means the power of him who has the right of judging." Art. 76, La. Code of Practice of 1870. See also Arts. 87-91, La. Code of Practice of 1870.

10. "Jurisdiction implies or imports the power of the court; venue the place of action." *Shaffer v. Bank*, 201 N. C. 415, 418, 160 S. E. 481, 482 (1931). See, to the same effect: *National Ass'n of Creditors v. Brown*, 147 Wash. 1, 264 Pac. 1005 (1928); *Paige v. Sinclair*, 237 Mass. 482, 130 N. E. 177 (1921).

11. Art. 162, La. Code of Practice of 1870.

12. *Tripiani v. Meraux*, 184 La. 66, 165 So. 453 (1936); *Rhodes v. Chrysanthou*, 191 La. 774, 186 So. 333 (1939); *State v. Younger*, 206 La. 1037, 20 So. (2d) 305 (1944), noted in (1945) 19 Tulane L. Rev. 458, 460.

these additional exceptions use language definitely permissive,¹³ while others employ mandatory phraseology.¹⁴ Further, the increase in the number of the exceptions to the general rule augmented the possibilities of a case falling within the application of two or more of the exceptions.

Heretofore, in cases falling within the application of two exceptions to the general rule, the court consistently has held that the plaintiff might bring the suit in the jurisdiction sanctioned by either of the exceptions.¹⁵ In such cases, when one of the two applicable exceptions was couched in mandatory language, in effect the latter has been construed merely as prohibiting the application of the general rule, not as prescribing the exclusive venue.¹⁶ Difficulties in the application of the rule of the instant case are presented with respect to cases falling within two exceptions to the general rule, both of which are expressed in mandatory language. Thus, if A and B Corporations are co-proprietors of immovables situated in X Parish, and a receiver for the corporation had been appointed in Y Parish, where would A bring an action to partition the property? If instituted in X Parish under Article 165 (1), under the instant case the court would lack jurisdiction, since the mandatory language of Article 165 (3) would require that the suit be brought only in Y Parish. But should A institute suit in the latter, he would be confronted with the holding of *Mitcham v. Mitcham*,¹⁷ that the language of Article 165 (1) is mandatory, and hence only the court in X Parish would have jurisdiction to partition the property. Additional dilemmas are presented by the other possibilities of conflict between other exceptions couched in mandatory language.¹⁸

13. Art. 165 (6, 9, 10), La. Code of Practice of 1870, as last amended by La. Act 282 of 1940.

14. Art. 165 (7, 8), La. Code of Practice of 1870, as last amended by La. Act 282 of 1940.

15. *Williams' Heirs v. Zengel*, 117 La. 599, 42 So. 153 (1906); *Joseph Rathborne Lumber Co. v. Cooper*, 164 La. 502, 114 So. 112 (1927).

16. In *Williams' Heirs v. Zengel*, supra note 15, it was held that under Art. 163, La. Code of Practice of 1870, a jactitory action is properly brought in the parish where the property is situated, even though brought against the administrator of a succession, who, under Art. 164, should have been sued in the court conducting the succession proceedings. In *Joseph Rathborne Lumber Co. v. Cooper*, supra note 15, despite the mandatory language of Art. 165 (8) requiring an action for trespass to real estate to be brought in the parish where the property is situated, two joint tortfeasors were permitted to be sued in another parish in which one was domiciled, under the provisions of Art. 165 (6) permitting solidary obligors to be sued at the domicile of either.

17. 186 La. 641, 173 So. 132 (1937).

18. These include:

(a) Suit against a partnership having only one establishment and

Even more unfortunate, however, is the court's affirmance and extension of the rule of the *Mitcham* case, holding an exception to the general rule of suit at defendant's domicile expressed in mandatory language to constitute a rule of jurisdiction *ratione materiae*. Prior to 1937, similar provisions consistently had been treated as relating only to jurisdiction *ratione personae*.¹⁹ The same dilemmas in the application of this principle are presented by a case falling within two of these exceptions as set forth above. Further difficulties are encountered in attempting to determine the limits which the court in the future will place upon a projection of the rule of the instant case and *Mitcham v. Mitcham*. The line of demarcation will have to be drawn somewhere as any complete, logical extension of the rule of these cases will lead to absurd consequences. Even the general rule of suit at the defendant's domicile is couched in mandatory language,²⁰ a fact which doubtless escaped the attention of the court in the principal case.

The instant case, and even more so the possible analogical extensions thereof, may raise questions as to the validity of titles deraigned through judicial proceedings based upon the earlier cases. These facts, together with the present unsettled state of this phase of Louisiana procedure, argue strongly for a return

that in X Parish (Art. 165 (2)) to recover for trespass to real estate situated in Y Parish (Art. 165 (8)).

(b) Suit against a succession opened in X Parish (Art. 164) to recover for trespass to real estate situated in Y Parish (Art. 165 (8)).

(c) Suit against an insolvent corporation for whom a receiver had been appointed in X Parish (Art. 165 (3)) to recover for trespass to real estate in Y Parish (Art. 165 (8)).

(d) Suit against a succession opened in X Parish (Art. 164) for a partition of real estate situated in Y Parish (Art. 165 (1)), owned jointly by plaintiff and decedent.

(e) Suit to recover on bond of officer of X Parish (Art. 165 (7)) against deceased surety whose succession has been opened in Y Parish (Art. 164).

(f) Suit to recover on bond of officer of X Parish (Art. 165 (7)) against defunct Louisiana surety company for which a receiver has been appointed in Y Parish (Art. 165 (3)).

Additional clashes between provisions couched in mandatory language may be afforded in actions of boundary affecting real property in X Parish (Art. 840, La. Civil Code of 1870), brought against a succession opened in Y Parish (Art. 164), or an insolvent corporation for which a receiver has been appointed in Y Parish (Art. 165 (3)).

19. See cases cited supra note 15.

20. Unless falling within one of the exceptions expressly provided for by law, a defendant "*must be sued* before his own judge, that is to say, before the judge having jurisdiction over the place where he has his domicile or residence. . . ." Art. 162, La. Code of Practice of 1870. Cf. Art. 93, La. Code of Practice of 1870.

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