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Comments

Waiver of Objections to Place of Trial of Civil Suits in Louisiana Practice

Location of proper place for trial of civil suits is a problem characterized by individual interests difficult to reconcile by means of general rules of law. Such, however, has been the approach at common law. Under that system, actions are classified as either local or transitory depending on whether the action could have arisen in only one locality or anywhere. If the action is local, only the proper court for the immediate geographical area has jurisdiction over the subject matter of the suit. If the action is transitory, any court which has jurisdiction over the person of the defendant is competent to try the case.

Statutory modification of these rules has been effected in an endeavor to give recognition to a greater variety of interests. England with its centralized legal system now treats the problem on an individual case basis. Its courts are given authority to transfer cases to the most convenient forum regardless of the wishes of the parties.¹ Limited application of the doctrine of *forum non conveniens* and statutes requiring transfer of cases to the proper court indicate that the same interests are gaining recognition here.² The purpose of this comment is to determine those instances in which a party may waive a legitimate objection to the place of trial and to determine the acts which constitute waiver in such cases.

Where Is Waiver Possible?

Under the more comprehensive statutory arrangements in this country, the proper forum is fixed in one or more places depending upon the character of the suit and the nature of the interests involved. Extensive confusion has resulted from the terminology employed in some statutes which does not express clearly whether a provision is designed for the convenience of one of the parties (which can be waived) or for the convenience of the judiciary or third persons (which cannot be waived).

1. Order 36, Rule 10, Annual Practice 608 (1930).

2. See generally, Sunderland, *Trends in Procedural Law*, 1 *LOUISIANA LAW REVIEW* 477 (1939).

The most common source of difficulty is the use of the positive verbs "must" and "shall" in statutes granting jurisdiction to particular courts. Where mandatory and permissive language is used in a logical pattern, it has been held that use of the former intends non-waivable fixing of place of trial.³ On the other hand, other courts construing similar statutes have held that use of mandatory language is intended only to benefit one of the parties, and that the rule of waiver is governed by the old common law classification of the action as "local" or "transitory."⁴ Such has also been the construction generally, where the statutory arrangement reflects indiscriminate use of mandatory language.⁵

The elimination of transportation and communication impediments has no doubt been responsible in large part for the trend toward increasing the number of instances in which objections to the forum can be waived. As a consequence, re-litigation is more carefully guarded against than in the past.

Two articles of the Code of Practice are important in relation to the possibility of waiver:

"Article 92. The consent of parties cannot render a judge competent to try a cause which, from its nature, cannot be brought before him, or when the amount in dispute exceeds the sum over which he has jurisdiction. All judgments rendered in contravention of this provision shall be void."

"Article 93. If one be cited before a judge whose jurisdiction does not extend to the place of his domicile, or of his usual residence, but who is competent to decide the cause brought before him, and he plead to the merit, instead of declining the jurisdiction, the judgment given shall be valid, except the defendant is a minor."

The test for waiver purposes is whether the judge "is *competent* to decide the cause brought before him." (Italics supplied.) In the section of the Code entitled "Before What Tribunals Actions Are to be Brought" comprising Articles 162 through 168, both mandatory and permissive language is used to grant certain courts power to decide certain types of actions. The indication, however, is that such language was used interchangeably and was not

3. *Osborn v. Lidy*, 51 Ohio St. 90, 37 N.E. 434 (1894); *Acetylene Co. v. Cobblentz*, 86 Ohio St. 199, 99 N.E. 302 (1912); *Branbury v. Brailsford*, 66 Idaho 262, 158 P. 2d 826 (1945).

4. *Whalen v. Ring*, 224 Iowa 267, 276 N.W. 409 (1937); *Yess v. Ferch*, 213 Minn. 593, 5 N.W. 2d 641 (1942).

5. *Oshove v. Huron Circuit Judge*, 240 Mich. 46, 215 N.W. 48 (1927); *Stone v. Union Pac. R.R.*, 32 Utah 185, 89 Pac. 715 (1907).

intended to negate the competency of other courts. Mandatory language is used to make requirements that: (1) the defendant be sued at his domicile, (2) certain matters relative to successions be brought where the succession is opened, (3) partitions of real property be brought in the parish of the situs, (4) partnerships be sued in place of establishment, or if there are several before that of the place where the obligation was entered, (5) certain matters relative to bankruptcy be brought before the court declaring same, (6) matters relative to warranty be brought before the court having cognizance of the principal action, and (7) actions for trespass to real estate be brought before the court where property is situated. In the other instances, permissive language is used. The significance to be given to the respective expressions is a problem which even today is evidenced by a great amount of confusion in the decided cases.

In *Mitcham v. Mitcham*,⁶ suit was brought in one parish for partition of an estate which included real estate situated in another. The supreme court held that the consent of the parties could not confer jurisdiction upon the court to partition this property because of the mandatory provisions in the Code of Practice⁷ and the Civil Code.⁸

A more complex situation was involved in the recent case of *Bercegeay v. Techland Oil Company*.⁹ There, an action was brought to annul a mineral lease in the situs parish under the Code of Practice provision allowing real actions to be brought in the situs parish or at defendant's domicile. The defendant bankrupts did not urge the objection that suits against bankrupts *must* be brought before the court declaring same. The court held that only the court declaring the failure was competent to decide the issues and that a transfer could not be effected by the consent of the parties.

The fact that the court in the parish where property is situated can with greater ease effect an equitable partition of real estate, together with the fact that both the Civil Code and the Code of Practice contain mandatory grants of jurisdiction to such courts seem adequate justification for the *Mitcham* decision. Perhaps even greater justification existed for the holding in the *Bercegeay* case that only one court was competent to decide a case

6. 186 La. 641, 173 So. 132 (1937).

7. Art. 165(1), La. Code of Practice of 1870.

8. Art. 1290, La. Civil Code of 1870.

9. 209 La. 33, 24 So. 2d 242 (1945).

against a bankrupt. Protection to other creditors would seem to dictate such a result, as distribution of a single fund is involved. Neither the *Mitcham* nor the *Bercegeay* decision establishes as the general test of possibility of waiver whether the provision granting jurisdiction is couched in mandatory or permissive language. The indiscriminate use of the former is a factor which would render such an analysis unsound. The proper test should be whether the legislature intended a particular grant of jurisdiction as a benefit to a class of parties, or whether the grant was intended for the benefit of the judiciary or a class of interested third persons. The language used in such a provision, no doubt, is a factor which should be considered in determining the legislative intent.

The decisions do, however, seem unfortunate in that a certain reliance is placed upon the concepts of jurisdiction *ratione materiae* and jurisdiction *ratione personae* to explain possibility of waiver. Once it is determined that a particular provision is or is not intended for the benefit of the parties alone, it may be logical to state that the provision relates to jurisdiction *ratione personae* or *ratione materiae* as the case may be. These terms should not be used to provide a ready solution to a problem without going into the real issue.

With respect to successions, both the Civil Code¹⁰ and the Code of Practice¹¹ provide that if decedent was a Louisiana domiciliary the succession is to be opened before the domiciliary court. It has been consistently held that these provisions are mandatory and that the opening of a succession elsewhere is an absolute nullity.¹² The question arises, however, as to the extent of the exclusive jurisdiction of the domiciliary court. It seems desirable to require moneyed claims against the succession to be brought before the court opening the succession as distribution of a single fund is involved. A different question is presented with respect to ownership of lands outside the domiciliary parish. In *Williams' Heirs v. Zengel*¹³ it was held that a slander of title action could be maintained against a succession in the parish where the property was situated under the permissive language of Article 163 of the Code of Practice notwithstanding the mandatory provision

10. Art. 935, La. Civil Code of 1870.

11. Art. 929, La. Code of Practice of 1870.

12. Succession of Williamson, 3 La. Ann. 261 (1848); *Miltenberger v. Knox*, 21 La. Ann. 399 (1869); *Clemens v. Comfort*, 26 La. Ann. 269 (1874); *Taylor v. Williams*, 162 La. 92, 110 So. 100 (1926); Succession of Ranklin, 164 La. 654, 114 So. 583 (1927).

13. 117 La. 599, 42 So. 153 (1906).

of Article 164(4) requiring such suits to be brought before the court in which the succession was opened. The decision does not signify that the succession might waive a legitimate objection to the forum had suit been brought elsewhere.

Considerable difficulty has been encountered in determining the proper forum for trying actions involving trespass to realty. In *Joseph Rathborn Lumber Company v. Cooper*¹⁴ the court permitted suit to be brought at the domicile of one of the solidary obligors under the permissive provision of Article 165(6) notwithstanding the requirement that such actions be brought in the parish of the situs by Article 165(8). Although no waiver issue was directly presented, it would appear more feasible to allow waiver in this situation than in either of the situations presented in the *Mitcham* and *Bercegeay* cases. Courts in several other jurisdictions have construed similar provisions locating place of trial in trespass suits in the county of trial as relating to venue and not jurisdiction.¹⁵ It might well be true, however, that provisions of this type were originally designed primarily for the benefit of the judiciary. The principal issue involved in the early cases was that of determining whether defendant had actually invaded plaintiff's domain. Boundaries were not well marked. Consequently, proof of trespass was accomplished with greater ease in the county of situs. As boundaries today are much more certain, the principal issues now involved in trespass suits are proof of the identity of the defendant as the trespasser, and determination of damages. Consequently, the policy considerations in requiring that suit be brought in the parish of situs are much weaker now. The clear indication in the *Cooper* case is that waiver will be permitted in this situation.

In summary, the indiscriminate use of mandatory language in the provisions of the Code of Practice makes proper analysis dependent upon an individual treatment of each provision.

It is hoped that this useless battleground will be cleared in the current revision of the Code of Practice. In view of the social and economic changes in the last few generations, it would seem desirable to limit the instances in which no waiver will be recognized to (1) partitions of real property among co-owners, (2)

14. 164 La. 502, 114 So. 112 (1927).

15. *Wolff v. McGaugh*, 175 Ala. 299, 57 So. 754 (1912); *Roberts v. Moss*, 127 Ky. 657, 106 S.W. 297 (1907); *Gilden v. Illinois Central R.R.*, 137 Ky. 375, 125 S.W. 1047 (1910); *Pittsburgh, C.C. & St. L. Ry. v. Home Ins. Co.*, 125 N.E. 427 (Ind. App. 1919); *Norvell v. Stovall*, 95 S.W. 2d 1313 (Tex. App. 1936).

certain matters relative to successions, and possibly (3) certain matters relative to insolvency.

Provision should also be made to determine the place of trial if the mandatory terms are in conflict. The need for such provision is amply illustrated by the very recent case of *Demoruelle v. Allen*.¹⁶ Shortly after final divorce, suit for liquidation of the community was instituted before the court granting the divorce. Subsequently, plaintiff brought a separate action for partition of realty in the parish of its situs, relying upon the *Mitcham* decision. The court held that the proper court to partition the community was the court in which the divorce was granted and the initial liquidation proceeding begun. No special provision is made in the Code locating place of partition in community liquidation procedures. The result was reached by drawing an analogy to succession partition procedure, in which case express provision is made for the partition of the entire estate at one time. The analogy seems entirely reasonable in view of the fact that the interests of community creditors need protection and of the desirability of avoiding needless litigation. Nevertheless, it is very unfortunate that the Code of Practice does not comprehend these practical problems. The rules are being slowly formulated by an expensive case law method.

A unique situation is involved with respect to divorce jurisdiction. Divorce was not allowed in Louisiana at the time the original Code of Practice was formulated. When divorce was instituted, it was done in a substantive manner, and no special provision was made for the location of the place of trial. As a consequence, the general rule that a defendant must be sued at his domicile seems applicable. However, in this situation there is a definite public interest in encouraging continuation of the marital status by requiring suits involving this status to be brought before the judge most likely to be able to ascertain the true factual situation. The Louisiana courts have shown favor toward this interest.

In *Mann v. Mann*¹⁷ suit was brought in Caddo Parish against the wife, a resident of New York, for separation. Although the husband was a Louisiana domiciliary, no matrimonial domicile was ever established here. The case was litigated during the

16. 50 So. 2d 208 (La. 1950).

17. 170 La. 958, 129 So. 543 (1930).

existence of the *Atherton-Haddock*¹⁸ regimes under which only the state of the matrimonial domicile had jurisdiction to render a divorce constitutionally entitled to full faith and credit. Influenced by the apprehension that its order would be ineffective to dissolve the marriage, the court clearly indicated that the consent of the parties could not give jurisdiction to Louisiana courts. The significance of matrimonial domicile in interstate litigation was destroyed in *Williams v. North Carolina*.¹⁹ Any state in which one of the parties is domiciled is now competent to dissolve the marriage.

Louisiana courts in several cases have retained the concept of matrimonial domicile and have given it intrastate significance. This has been done in an effort to supply a Code deficiency by fixing the place of trial at the point of most substantial connection with the marital status. It has also been indicated that the lack of jurisdiction in all divorce cases relates to jurisdiction *ratione materiae* and is not subject to waiver.²⁰

In *McGee v. Gasery*,²¹ suit was brought in a parish other than that of defendant's domicile or the last matrimonial domicile. Defendant was served within the parish but failed to answer. When plaintiff moved for a preliminary default, the trial judge refused on the grounds that his court was without jurisdiction. On writs to the supreme court, the action was affirmed. ". . . the competency or power of the judge to pass upon the issues involved 'pertains to the jurisdiction of the court *ratione materiae* rather than *ratione personae*.' *Mann v. Mann*."²²

The question immediately arises as to whether final judgment decreeing divorce should be subject to re-examination and nullification on the issue of defendant's domicile or matrimonial domicile. At least two strong policy considerations would oppose this result: (1) the interest in protecting second marriages which follow such divorces, and (2) the interest in certainty to third persons who take title to property through community property settlements.

In *Russell v. Tagliavore*,²³ the pleadings indicated that defen-

18. *Atherton v. Atherton*, 181 U.S. 155 (1901); *Haddock v. Haddock*, 201 U.S. 562 (1906).

19. 317 U.S. 287 (1942).

20. *McGee v. Gasery*, 185 La. 839, 171 So. 49 (1936); *Plitt v. Plitt*, 190 La. 59, 181 So. 857 (1938); *Zinko v. Zinko*, 204 La. 478, 15 So. 2d 859 (1943); *Hymel v. Hymel*, 214 La. 346, 37 So. 2d 813 (1948).

21. 185 La. 839, 171 So. 49 (1936).

22. 185 La. 839, 844, 171 So. 49, 50.

23. 178 La. 840, 152 So. 540 (1934).

dant was not domiciled in the forum parish. The divorce was fully litigated although defendant urged no objection to the court's jurisdiction. Subsequently, plaintiff husband remarried. Upon suit brought to recover for wrongful death of his second wife, the objection was made that the second marriage was a nullity. The court carefully chose not to decide whether the divorce could be declared null in a direct action during the lifetime of the parties. Instead, the court held the nullity, if any, to be relative and not subject to collateral attack. Justice Overton dissented on the grounds that the divorce should be ruled an absolute nullity.

The *Russell* and *McGee* decisions are inconsistent in the latter's application of the concept of jurisdiction *ratione materiae*. The results of the two cases are inconsistent only if it is granted that the same acts which constitute waiver in the general case should constitute waiver in divorce cases.²⁴ In order to protect the public interest it seems feasible to declare that faulty pleading is not sufficient to constitute waiver in separation or divorce cases. Moreover, it would perhaps be desirable to legislate that district courts should require some form of affirmative proof that the last matrimonial domicile was within the forum parish (except, of course, in suits for separation or divorce solely on grounds of separation in fact).²⁵ It is believed that this would be sufficient protection against "consent" divorces rendered in a court chosen by the parties. It is the writer's opinion that the interests involved in upholding finally adjudicated divorces are paramount. It has been suggested that under present legislation no justification exists for considering separation or divorce actions different from other personal actions with respect to the location of place of trial and waiver.²⁶

Acts Which Constitute Waiver

Prior to 1936, Article 333 of the Code of Practice provided that all exceptions except those based upon absolute incompetency of the court could not be urged after joinder of issue. However, the jurisprudence from an early date had established a

24. In this connection, it is interesting to note that the supreme court in the *Mann* case indicated that proper exception to personal jurisdiction could be taken in defendant's answer to the merits. Such procedure has been consistently held to constitute waiver with respect to other causes of action. See authorities cited in note 28, *infra*.

25. La. R.S. (1950) 9:301 provides that plaintiff may institute such actions at his residence.

26. See Justice O'Niell's concurring opinion in *Zinko v. Zinko*, 204 La. 478, 15 So. 2d 859 (1943). See also *The Work of the Louisiana Supreme Court for the 1948-1949 Term—Persons*, 10 LOUISIANA LAW REVIEW 159, 162 (1950).

much broader concept of waiver, based upon the general definition of that term as: "The intentional or voluntary relinquishment of a known right; or such conduct as warrants an inference of the relinquishment of such right; or is consistent with claiming it."²⁷ It was held that an exception to place of trial had to be pleaded not only in limine, but before any other pleading.²⁸ Even if the exception were pleaded in this manner, it was deemed waived by subsequent entry of dilatory or preemptory exceptions without prior insistence upon disposal of the objection to forum.²⁹ The rationale of these decisions was stated in an early decision:

"It is evident that a defendant cannot logically or consistently deny the jurisdiction *ratione personae* of a judicial tribunal, and at the same time invoke its action on the subject matter of the suit."³⁰

Act 124 of 1936 amended Article 333 to require the filing of all dilatory exceptions at one time. The avowed purpose of the act was to prevent the "stringing out" of exceptions. It has been suggested that in this regard the statute serves no purpose as dilatory pleas under the original enactment had to be filed before joinder of issue and the filing of any dilatory exception "properly speaking" constituted joinder.³¹ One justifiable purpose of the statute may have been the prevention of "stringing out" in the narrow situation where defendant would object to the place of trial, insist upon and obtain trial on this issue, and subsequently file dilatory exceptions. For this preventive result to be obtained, however, declinatory exceptions would have to be held to be included within the term "dilatory" exceptions in the amended article. Because of the fact that dilatory exceptions are of two types: (1) declinatory exceptions, and (2) dilatory exceptions "properly speaking," and the additional fact that Article 333 is in the section of the Code relating to the latter category, question immediately centered upon the soundness of such construction. The issue was presented to the court, although in different form, in 1944 in *State v. Younger*.³² There defendant tendered a declina-

27. Black's Law Dictionary (3 ed. 1933).

28. *State v. Buck*, 46 La. Ann. 656 (1894); *First Nat. Bank of Arcadia v. Johnson*, 130 La. 288, 57 So. 930 (1912); *Iddle v. Hamler Boiler & Tank Co.*, 132 La. 476, 61 So. 532 (1913); *Martel Syndicate v. Block*, 154 La. 869, 98 So. 400 (1923); *Dauterive v. Sternfels*, 164 So. 349 (La. App. 1935); *State v. Noe*, 186 La. 102, 171 So. 708 (1936).

29. *City Nat. Bank of Selma v. Walker*, 130 La. 810, 58 So. 580 (1912).

30. *Iddle v. Hamler Boiler & Tank Co.*, 132 La. 476, 478, 61 So. 532, 533 (1913).

31. *McMahon, Parties Litigant in Louisiana*, 11 Tulane L. Rev. 527, 529 (1937).

32. 206 La. 1037, 20 So. 2d 305 (1944).

tory exception and at the same time offered in the alternative dilatory exceptions. The decision was that no waiver resulted. The earlier cases reaching the opposite result were considered inapplicable as a result of the construction of the 1936 amendment to require the filing of declinatory exceptions as well as "real" dilatory exceptions at the same time.

The 1936 amendment will probably have no effect upon waiver which results from pleadings other than exceptions. Consequently, the bonding of a seizure would no doubt still result in a waiver of any forum objection.³³ It has been held, however, that a motion to dismiss a seizure results in no waiver.³⁴

It is a common saying that a court is jealous of its jurisdiction. Consequently, it might be expected that the waiver rule would be utilized to counter forum objections. Fair criticism can be imported to some decisions on this score. For example, in *Martel Syndicate v. Block*³⁵ an exception was filed to jurisdiction *ratione materiae* and *ratione personae* specifying four grounds upon which the court had no jurisdiction. The court held that simultaneous filing of the exceptions constituted a waiver of the objection to the place of trial. From a practical viewpoint it is inconceivable that this action "warranted an inference of the relinquishment of a known right," or "was inconsistent with claiming it." Nevertheless, the decision was followed without question in *State v. Noe*.³⁶ The court of appeal has refused to extend the rule to cover the situation where the two exceptions were offered disjunctively.³⁷

Perhaps the real reason for these decisions is the practical consideration that the facts have been litigated fairly in both trial and appellate courts with further litigation only promising additional costs and delay. But in thus "equitably" disposing of the cases, the courts have been drawn into a dilemma which has resulted in the necessity of very technical pleading in objecting to the place of trial. It would be desirable in the revision of the Code of Practice to designate those pleadings which will constitute waiver along lines more consistent with the general definition of that term.

The failure to distinguish properly between acts which can-

33. *First National Bank of Arcadia v. Johnson*, 130 La. 288, 57 So. 930 (1912).

34. *Chapman v. Irwin*, 157 La. 920, 103 So. 263 (1925).

35. 154 La. 869, 98 So. 400 (1923).

36. 186 La. 102, 171 So. 708 (1936).

37. *Morales v. Falcon*, 167 So. 109 (La. App. 1936).

not be said to constitute waiver and instances in which no waiver can be effected has been the source of considerable confusion in at least one important area. Article 163 of the Code of Practice originally provided that certain real actions could be brought in the parish of situs or in the parish of defendant's domicile at the choice of plaintiff. In 1876 the article was amended to extend the classes of suits which can be brought at the place of situs to all suits where there is a provisional seizure or sequestration. However, the following proviso was added to the article:

"provided, that all judgments rendered in such cases shall only be operative up to the value of the property proceeded against, and not be binding for any excess over the value of the property in personam against the defendant."

It seems clear that the limitation of judgments of this nature to the value of the property seized is intended solely for the benefit of the owner and therefore is subject to waiver. It was so held in *Tupery v. Edmondson*³⁸ when defendant answered to the merits without objecting. Since the entire claim had been litigated, the personal judgment against defendant was held valid.

A different situation was presented in *Franek v. Turner*,³⁹ decided in 1927. In that case, personal judgment was sought in Orleans Parish and was coupled with a prayer for provisional seizure of property located there. Defendant resided elsewhere and made no appearance. Judgment by default was rendered as prayed for. Upon subsequent suit brought by defendants to declare the personal judgment a nullity, the court granted relief. The positive limitation on the extent of such judgments in Article 163 was held to override the statutory waiver which results from failure to object before joinder by default. The decision is not an unsound construction of the 1876 amendment. It would be a useless and highly technical gesture to compel a defendant to file a declinatory exception in a case in which he does not choose to appear and which is going to be tried on the merits regardless of the filing of his exception.

The difference between the *Franek* and *Tupery* cases is evident. In the latter, defendant appeared and presented his case. He had his day in court. On the other hand, defendant in the *Franek* case chose to give up the seized property by default rather than appear and defend a suit in a distant part of the state. Was

38. 32 La. Ann. 1146 (1880).

39. 164 La. 532, 114 So. 148 (1927).

not this the exact situation contemplated by the 1876 amendment limiting the amount of such judgments? The court did not state that no waiver could be effected in cases of provisional seizure or sequestration. Rather, the court held that defendant's acts did not constitute a waiver.⁴⁰

It is very unfortunate that the language in the *Franek* case is not altogether clear for it was cited as authority for reaching a completely illogical result in *Robin v. J. Thomas Driscoll, Incorporated*,⁴¹ a court of appeal decision. Suit was brought for the recovery of oil field wages in the parish where the well was located rather than at the domicile of defendants under the provisions of Act 145 of 1934. A writ of provisional seizure issued. No objections were made by defendants to jurisdiction. The suit was tried on its merits and judgment was entered in favor of plaintiff. On appeal, it was held that the trial court could render a judgment affecting the seized property only. "Beyond this the court itself may not go and no act of the defendant, tacitly or expressly, can extend or enlarge this positive limitation of the court's power and jurisdiction in such cases."⁴² The court found the *Franek* and *Tupery* cases inconsistent. The modern trend towards limiting a litigant to one day in court on one issue was ignored in the application of conceptualistic notions of jurisdiction *ratione materiae* and jurisdiction *ratione personae*. There is no interest on the part of the public in general, interested third persons, or the judiciary which requires that a judgment rendered in the parish of situs be limited to the value of property involved. The limitation is intended solely for the benefit of the defendant. There is no reason why he should not be allowed to relinquish this right if he so chooses. The Louisiana Supreme Court has so held in the *Tupery* case, and it is submitted that the *Franek* case is no authority for departure.

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40. One justice dissented on this point. None of the decisions relied upon in the dissent involved construction of the amendment to Article 163.

41. 197 So. 307 (La. App. 1940).

42. *Id.* at 311.