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Comments

De Facto Public Officers in Louisiana

An individual may sometimes assume public office when under the law he has no right or title to that office. As a matter of protection to the public and other individuals who might presume, without a prohibitively thorough investigation of his status, that he is that officer, the policy has evolved of giving legal status to his acts under certain circumstances. This theory of de facto officership is one that is well rooted, but still presents current problems in certain ramifications and in discrepancies between jurisdictions. Louisiana courts entertained the subject as early as 1830,[1] and in some eighty cases since that time. While the situation had been greatly ameliorated by more exact legislation on the procedures of election and appointment of officers, it still has importance in view of the increased number of offices in the public field, especially of commissions and boards. Phases of the subject considered here are the conditions and elements of de facto officership, the validity of de facto officers' acts, attacks on their positions, their liability for their acts, and, the most active current question, their rights to compensation.

I. Who Is a De Facto Officer

The de jure officer is one who is duly qualified and appointed or elected in compliance with the law governing his position. Contrastingly, the usurper or intruder merely assumes an office to exercise its functions without any legal title or color of right to that office. Between these positions is the individual who is in possession of an office and discharging its duties under color of authority derived from some sort of election or appointment, however irregular or informal,[2] or at least from general reputa-

1. Police Jury v. Haw, 2 La. 41 (1830).

2. State v. Sadler, 51 La. Ann. 1397, 26 So. 390 (1898) gives a complete definition after a fairly detailed consideration of policy and jurisprudence. It says: "An officer de facto is one who exercises the duties of an office under color of appointment or election to that office, or who has the reputation of being the officer he assumes to be. He differs from the usurper of an office who undertakes to act . . . without color of right; and from an officer de jure who is in all respects legally appointed and qualified to exercise the office."

Other discussions and definitions can be found in the leading case of State v. Carrol, 38 Conn. 449, 9 Am. Rep. 409 (1871); De Facto Public Officers, 9 So. Calif. L. Rev. 189 (1936); McQuillan, Municipal Corporations 376, § 12.102 (3 ed. 1949).

tion.[3] Such a situation has been given legal standing as a matter of public policy. Public acts, records, contracts and the like, participated in by a public officer who subsequently is found to be holding office under a nullifying irregularity, cannot be treated simply as void. It would place too great a burden on the public to require them, in their dealings with public officers, to inquire into their backgrounds for every act. Hence the de facto doctrine.

For one to attain de facto status, however, there are three requirements that have been enunciated by the courts. The most controversial is the insistence by a slight majority that the office held must exist as a de jure office. The holder must have attained that office under some color of title, and he must be in actual physical possession of the office.

Necessity of the De Jure Office

Analogously to the officer, the office itself may be said, for analytical purposes, to have two aspects—one de jure and the other de facto.[4] The former is related to the legal authority for the existence of the office; the latter to its existence, *in fact*, despite an irregularity in, or complete lack of, legal origin or reason for continuance. For example, a regularly constituted office may be abolished, whereupon it loses its legal identity. But if the abolition is not generally recognized, and the office continues to function, it is said by some to exist as a de facto office.

There is seemingly irreconcilable conflict of authority among the various states over whether it is possible to have a de facto officer in the absence of a de jure office.[5] The leading United States case of *Norton v. Shelby County*,[6] involving the status of commissioners whose offices were created under an unconstitutional statute, lays down the rule that such is not possible. Although the court there admitted the cogent policy reasons underlying the de facto theory, it followed the reasoning that, since an unconstitutional law is void *ab initio*, the office "created" thereby never existed, and it would be "a misapplication of terms to call one an 'officer' who holds no office." [7]

3. State v. Sadler, 51 La. Ann. 1397, 26 So. 390 (1898); Miller v. Batson, 160 Miss. 642, 134 So. 567 (1931); Nofire v. United States, 164 U.S. 657 (1897).

4. Our court has described individuals as both de facto and de jure, but better terminology keeps them separate. The combination in a single individual of both aspects of course means the normal situation of a legally elected officer in physical possession of the office. See Monroe v. Liebmann, 47 La. Ann. 155, 16 So. 744 (1895); State v. Hodges, 165 La. 552, 115 So. 747 (1928); Wilson v. Lee, 196 La. 285, 199 So. 117 (1940).

5. Am. Jur., Public Officers, § 475; 99 A.L.R. 294 (1935).

6. 118 U.S. 425 (1886).

7. Id. at 441 et seq.

While the court relied completely on legal reasoning, the decision of course amounted to a policy refusal to imply to the de facto office the same need of recognition as the de facto officer. That this view creates hardships is well demonstrated by the fact that some thirty states, although not formulating a definite rule to the contrary, have found numerous differentiations and exceptions that have allowed de facto status in such a situation.[8]

Criticism may well begin by pointing out that the Supreme Court of the United States in 1940 repudiated the view that declaring a statute unconstitutional rendered it void *ab initio*. Referring specifically to the *Norton* case, it said in *Chicot County Drainage District v. Baxter State Bank*:

> "It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualification. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects. . . . Questions of rights claimed to have become vested, of status, or prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified." [9]

As well as removing the legal basis of argument in favor of the *Norton* view, this excerpt also points out that policy considerations marshall against requiring the existence of a de jure office for the existence of a de facto officer. Very harsh situations could arise where one of the government's many boards or commissions is declared unconstitutionally set up, or where one has been abolished and yet continues to function through error or misunderstanding. Should all their acts be voided, *ab initio*, even though they have been in existence for months or even years? Pertinent objections can be offered immediately.[10] There seems to be no

8. 99 A.L.R. 294 (1935).
9. 308 U.S. 371, 374 (1939).
10. Objections may be found more fully developed in De Facto Public

difference between the policy necessitating validation of the acts of a de facto officer in a de jure office and one in a de facto office. An office should be treated as de jure until adjudicated otherwise, or else everyone who deals with it will have to be a constitutional or legal expert.

Still, the Louisiana court elected to follow the *Norton* view. In *Garnier v. Louisiana Milk Commission*,[11] the statute creating the Milk Commission had named, as ex officio member of that commission, the "Secretary of the Louisiana State Livestock Board *of the Louisiana State University*" when no such position existed at the university. The place on the commission was assumed by Dr. Flower, the secretary of the Louisiana State Livestock Sanitary Board. Once the court denied him de jure status on the commission because his title did not properly correspond to that named by the statute, he urged that he had at least de facto status. The court interpreted the statute as creating, to reduce the situation to hypothetical form, "x office as filled by y" rather than creating "x office" with the legislative mandate that it be filled by the holder of y office. Then, relying on the *Norton* rule, they reasoned that since y did not exist, then "x office as filled by y" did not exist either, and hence there was no de jure office that Flower could hold even as de facto officer. While this is certainly a reasonable interpretation, it seems that the other, equally reasonable, would have been far preferable because of the practical results that followed. Accepting the former resulted in the selection of the undesirable *Norton* rule.

The counter argument, in favor of requiring a de jure office, is the demand for some reasonable limit on the validation of any kind of office, unless we are ready to ignore all constitutional limitations; and there is, of course, some merit in this. The objections listed above were no doubt to some degree considered by the Louisiana court, and their decision is apparently[12] made. Still, the very selection of the more stringent *Norton* rule may lead the court to find exceptions.

Officers, 9 So. Calif. L. Rev. 189, 206 (1936). See also Lang v. Bayonne, 74 N.J.L. 455, 68 Atl. 90, 15 L.R.A. (N.S.) 93, 12 Ann. Cas. 961, 122 Am. St. Rep. 391 (1907).

11. 200 La. 594, 8 So. 2d 611 (1942).

12. Some question may remain inasmuch as the entire de facto policy question was not presented very thoroughly in counsel's briefs, although it may have been in oral argument. See especially appellant's brief on behalf of a rehearing (denied) at pp. 7-11. It is interesting to note that for the question of the necessity of a de jure office, the Louisiana cases relied upon by both majority and dissent cite the same common law source book as only authority (8 A. & E.E. of Law, pp. 771 et seq.).

Necessity of Color of Title

It is requisite to de facto status that the individual have achieved his position through some color of authority or title, that is, by virtue of some appointment or election, however irregular or informal.[13] This would include the situations where the officer was elected or appointed when not qualified for the position,[14] where the election or appointment was defective procedurally or substantively,[15] where the officeholder has not complied with the legal requirements of the office such as filing bond[16] or taking oath,[17] where he was properly in office but has since accepted an incompatible office,[18] where he has resigned and no successor has yet been inducted,[19] where a successor has been appointed or elected but has not assumed office,[20] where an officer has "held over" his regular term because no successor has been qualified (although this would not be true in Louisiana),[21] and similar situations.[22] Note that in each of the above instances there was some irregularity, but always additionally some sort of

13. Cf. note 2, supra. See also Commonwealth v. City of Pittsburgh, 339 Pa. 173, 13 A. 2d 24 (1940).

14. Guilbeau v. Cormier, 32 La. Ann. 930 (1880); Williams v. Police Jury of Concordia, 160 La. 331, 107 So. 126 (1926); State v. Police Jury of Webster Parish, 120 La. 163, 45 So. 47 (1907); State v. Smith, 153 La. 577, 96 So. 127 (1923).

15. The Mayor and City Council of Monroe v. Hoffmann, 29 La. Ann. 651 (1877); Webb v. Keller, 39 La. Ann. 58 (1887); State v. Mitchell, 153 La. 585, 96 So. 130 (1923); State v. Hodges, 165 La. 552, 558, 115 So. 747, 750 (1928).

16. Monroe v. Liebmann, 47 La. Ann. 155, 16 So. 744 (1895); Davenport v. Davenport, 116 La. 1009, 41 So. 240 (1906); Succession of Segura, 134 La. 90, 63 So. 640 (1913); State v. Hargis, 179 La. 625, 154 So. 628 (1934).

17. Police Jury v. Haw, 2 La. 41 (1830); The Citizens Bank v. Bry, 3 La. Ann. 631 (1848); State v. Glaude, 148 La. 353, 86 So. 895 (1921).

18. State v. Sadler, 51 La. Ann. 1397, 26 So. 390 (1898); State v. Moreau, 153 La. 673, 96 So. 527 (1923); State v. Phillips, 164 La. 597, 114 So. 171 (1927). See also 100 A.L.R. 1187 (1936).

19. State v. Hargis, 179 La. 625, 154 So. 628 (1934).

20. New Orleans Canal and Bkg. Co. v. Tanner, 26 La. Ann. 274 (1874); State v. Pertsdorf, 33 La. Ann. 1411 (1881).

21. This usually results in de facto status. See State v. Moreau, 153 La. 673, 96 So. 527 (1923); 71 A.L.R. 748 (1931). In Louisiana, however, the Constitution (La. Const. of 1921, Art. XIX, § 6) and the Revised Statutes (La. R.S. [1950] 42:2) specifically provide that any officeholder shall remain in office until his successor is qualified or inducted. These sections have been interpreted as creating a duty on the part of a holdover, or even one whose resignation has been accepted. State v. Webster Parish School Board, 150 So. 446 (La. App. 1933); State v. Hargis, 179 La. 623, 154 So. 688 (1934); 14 A.L.R. 48. Compare with the situations footnoted by notes 19 and 20, supra. For the question of the duty of a de facto officer to perform his functions, see material footnoted by note 43, infra. For further language supporting the view that the holder would be accorded de jure status, see State v. Lancaster, 218 La. 1052, 1066, 51 So. 2d 622, 627 (1951), where the court treats the holdover and de facto questions separately.

22. Another instance might be afforded by a revolutionary or military government. State v. MacFarland, 25 La. Ann. 547 (1872); Burke v. Tregre, 22 La. Ann. 629 (1870).

election or appointment to excuse the belief that the individual properly occupied office.

Also usually resulting in de facto status is the situation where an individual holds office under such color of general reputation as results in general public acquiescence in his authority.[23] This fits in with the policy theory underlying de facto officership, and has been recognized in Louisiana. In *Davenport v. Davenport*[24] one of the reasons given for according de facto status to a notary was that he had "the reputation of being such in the community in which he lives." And in *State v. Sadler*[25] the definition of a de facto officer included one "who has the reputation of being the officer he assumes to be." In the *Garnier* case, if the court had admitted that the statutorily created commission office existed, then it would not have mattered if the contributing board office existed or not. Flower's assumption of membership on the commission, unobjected to by the other members or the public for a goodly period of time, surely gave him the reputation of being a member, and one sufficient to accord de facto status.

A further requirement in regard to color of title or reputation is that parties dealing with such officer in order to plead his de facto status must have relied in good faith on his apparent title. In one Louisiana case a voter, arriving early at the polls, impressed two bystanders to receive his ballot. When his vote was challenged he pleaded that they had de facto status as commissioners. The court denied it, pointing out his knowledge of the infirmity of their appointment.[26]

Necessity of Actual Physical Possession

Actual physical possession of the office is an essential to de facto officership.[27] It usually must be accompanied by good faith, and faithful exercise of the functions of the office and discharge of its duties, since possession alone makes one a usurper whose acts are wholly void.

II. Validity of and Liability for De Facto Acts

Once it has been determined that an officer has de facto status, there is no question as to the validity of his acts insofar

23. Note 3, supra.
24. 116 La. 1009, 41 So. 240, 114 Am. St. Rep. 575 (1906).
25. 51 La. Ann. 1397, 26 So. 390 (1898).
26. Lower Terrebonne Ref. and Mfg. Co. v. Police Jury of Parish of Terrebonne, 115 La. 1019, 40 So. 443 (1906).
27. Guillotte v. Poincy, 41 La. Ann. 333, 6 So. 507, 6 L.R.A. 403 (1889); Jackson v. Powell, 119 La. 883, 44 So. 689 (1907).

as the public and third parties are concerned, until such time as his title is adjudged insufficient. This view was expressed in Louisiana first in 1848[28] and has been repeated in a long series of cases.[29] Thus the public is not forced to look behind the election or appointment of every officer with whom they deal.[30] But this validation of a de facto's actions does not apply in any situation where his own rights, and not those of the public or third parties, are concerned. An officer, when attempting to justify his own actions, must show his de jure status.[31] The rationale most often given for this is the discouragement of the seizure of public office.

An interesting question arises over the status and powers of individuals appointed by a de facto officer or body, or by a body which included a de facto member whose vote or consent was necessary to the appointment. Cases in other jurisdictions have obtained two results, some holding that the individual gained de jure status, others that he gained only de facto status,[32] with the latter view seemingly predominating.[33]

In regard to the liability for the acts of de facto officers, the general rule is that they themselves cannot escape civil or criminal liability for wrongs committed in office by an assertion of their de facto status. They are subject to contempt proceedings and imprisonment for misbehaviour in office.[34] A muni-

28. The Citizen's Bank v. Bry, 3 La. Ann. 631 (1848).

29. The Citizens Bank v. Bry, 3 La. Ann. 631 (1848) (deputy notary); New Orleans Canal and Banking Co. v. Tanner, 26 La. Ann. 274 (1874) (clerk of court); Guilbeau v. Cormier, 32 La. Ann. 930 (1880) (judge ad hoc); Webb v. Keller, 39 La. Ann. 55 (1887) (tutor or administrator); Davenport v. Davenport, 116 La. 1009, 41 So. 240 (1906) (notary); State v. Police Jury of Webster Parish, 120 La. 163, 45 So. 47 (1907) (deputy clerk); State v. Smith, 153 La. 577, 96 So. 127 (1923) (jury commissioners); Williams v. Police Jury of Concordia Parish, 160 La. 331, 107 So. 126 (1926) (police jury members); State v. Hodges, 165 La. 552, 115 So. 747 (1928) (school superintendent).

30. Sureties for de facto officers must. This stems from the theory that the de facto is to be regarded in all respects as a de jure officer. So long as he is accepted as a public fiduciary, he must be bonded. Therefore sureties cannot plead his de facto status to avoid payment on his behalf. Police Jury v. Haw, 2 La. 41 (1830). Most ramifications of this are taken care of in the surety contract.

31. A party suing, defending or acting in his own right as public officer must show de jure status. See cases collected in Am. Jur., Public Officers, § 493. See also material footnoted by note 43, infra.

32. 106 A.L.R. 1324 (1937).

33. State v. Board of Education of Mason County, 35 S.E. 2d 850 (W. Va. 1945).

34. 64 A.L.R. 534 (1929). Cf. material footnoted by note 31, supra, and note 43, infra. Brandon v. State, 233 Ala. 20, 173 So. 251 (1936); 64 A.L.R. 541 (1929); People v. Madel, 337 Ill. 169, 168 N.E. 883 (1929); Commonwealth v. Avery, 301 Mass. 605, 18 N.E. 2d 353 (1938).

cipality has been held free from liability in the tort of a de facto officer in two jurisdictions.[35]

III. Attacks on Their Position

The procedures used to settle disputes over office titles vary among the several states. In Louisiana the legislature has afforded the "intrusion into office suit" which allows the state or the person demanding possession of the office to proceed against one who "usurps, intrudes into, or unlawfully holds or exercises or attempts to remain in possession of any public office . . . in this state." [36]

Often, however, it is the particular act of an officer that is under attack, and one of the methods used is to question the rights of that officer to his position. Injunction, particularly, has been sought to restrain the activities of an officer allegedly holding under defective title. A long line of cases has held that such plaintiff must resort to the direct action of the intrusion into office suit, and collateral attacks are denied.[37] An injunction, however, will be allowed the de facto officer whose possession is being interfered with, provided he can show that he has some claim to the office in question. The most recent case on the subject, *Guillory v. Jones*,[38] has summarized and discussed the previous jurisprudence. There the court continued on to say that, if such injunction is obtained by the person in possession, then the judge can try the rights of both parties to the office. Noting that Louisiana judges are empowered to administer both law and equity in the same proceeding, they concluded: "There is no reason why a contest like this in a Louisiana court should not be settled finally in the suit for an injunction, instead of requiring two suits to settle the controversy."

Where the attack is made directly under the provisions of

35. Rounds v. Bangor, 46 Me. 541, 74 Am. Dec. 469 (1859); Clark v. Easton, 146 Mass. 43, 14 N.E. 795 (1888).

36. La. R.S. (1950) 42:76 et seq. The writ of quo warranto is no longer available for ousting one from public office, having been superseded by La. Rev. Stat. of 1870, §§ 2593-2605, as amended by La. Act 102 of 1928.

37. State v. Ferray, 22 La. Ann. 423 (1870) (sheriff); New Orleans Canal and Banking Co. v. Tanner, 26 La. Ann. 274 (1874) (clerk of court); Mayor and City Council of Natchitoches v. Redmond, 28 La. Ann. 274 (1876) (mayor and city council); State v. Sadler, 51 La. Ann. 1347, 26 So. 340 (1899) (judge); State v. Police Jury of Webster Parish, 120 La. 163, 45 So. 47 (1907) (deputy clerk); State v. Smith, 153 La. 577, 96 So. 127 (1923) (jury commissioners); Williams v. Police Jury of Concordia Parish, 160 La. 331, 107 So. 126 (1926) (police jurors).

38. 197 La. 165, 1 So. 2d 75 (1941).

the intrusion into office statute, the procedure is well settled.[39] While it can be initiated by the office claimant or the state, it is usually brought by the state on relation of the claimant. The question then becomes: "Has the relator a muniment of title to the office held by the defendant?" [40] If he has one that establishes a prima facie right to the office (for example, a commission from the governor, a judgment of court, official election returns published), the next inquiry is into the right of tenure of the defendant; but if the relator has no such muniment, and the state does not further the investigation on its own behalf, the proceedings are dismissed. If the muniment is possessed by the relator, and the defendant counters with a showing of his right to remain in office, the latter can then, and only then, inquire into the legality of the title relied upon by the relator—even if it is a commission from the governor.[41] Mere de facto status, however, does not constitute such a right as will allow one in possession of an office to combat a prima facie complete muniment of title. In *State v. Lancaster*[42] where the defendant Lancaster's election as mayor had been declared null in a previous suit, he refused to give up the office to the claimant, contending that the latter's claim, although supported by a commission from the governor, was the result of another void election. The court denied Lancaster de facto status, but said that even if he had such it would not be sufficient basis for him to combat the claimant's prima facie valid title.

Care should be taken, in general, not to rely completely on the provisions of the intrusion into office statute to the exclusion of the de facto relationships and rights that may arise.

Another aspect of this phase is worthy of mention. A defense that might be offered by a de facto officer to attacks on his actions is that he not only has the right, but the *duty* to fulfill the obligations of his office.[43]

IV. THEIR RIGHTS TO COMPENSATION

The governing body in Louisiana has a right to pay a de facto officer the salary that goes with the office.[44] Once it has

39. State v. Lancaster, 218 La. 1052, 51 So. 2d 622 (1951); Ford v. Miltenberger, 33 La. Ann. 263 (1881); State v. Cage, 196 La. 341, 199 So. 209 (1940).

40. Ford v. Miltenberger, 33 La. Ann. 263 (1881).

41. State v. Cage, 196 La. 341, 199 So. 209 (1940).

42. 218 La. 1052, 51 So. 2d 622 (1951).

43. State v. Hodges, 165 La. 552, 556, 115 So. 747, 749 (1928); Wilson v. Lee, 196 La. 271, 283, 199 So. 117, 121 (1940).

44. Michel v. City of New Orleans, 32 La. Ann. 1094, 1097 (1880): "Sound

been paid, two parties might try to recover it—the same governing body or the de jure officer. In most jurisdictions the former cannot recover a paid salary, but the latter can.[45] In Louisiana the emphasis is not on the identity of the claimant, but the good or bad faith of the officer who is being dispossessed. Under the terms of the intrusion into office statute either the state or the office claimant must prove bad faith in order to regain paid emoluments.[46] This, of course, would apply to de facto holders as well as usurpers. Should the de facto officer yield voluntarily to the de jure, without suit having been brought, it might best be argued that the intrusion into office statute sets out a state policy of allowing recovery by the de jure only upon proof of bad faith. In any event, the de jure officer cannot proceed against the local government for salary already paid a de facto, but must go against the de facto himself.[47]

Where a de facto has not yet been paid, and where his rights to demand salary are not covered by statute, the majority rule among the various states is that he is denied recovery. The rationale most used to support this view is that the right to compensation is an incident to the title of the office rather than the functions of occupation and exercise thereof. This rule, or a variation of it, has been followed in some thirty states.[48] The policy, of course, is the discouragement of the seizure of office. A smaller number of jurisdictions hold that he can recover provided there is no de jure claimant, and a few have held that he can recover for services performed in good faith even though there is a de jure claimant.[49] However, attempts to recover in quantum meruit have been finding support in recent decisions.[50] Louisiana's intrusion into office statute, requiring proof of bad faith for the recovery of salary already paid, indicates approval of a liberal policy. This is bolstered by such cases as *State v. Hodges* and *Wilson v. Lee*[51] which state that the de facto has the duty of fulfilling the

public policy dictates the wisdom and the necessity of paying the salary of the officer in possession of the office and performing functions required for the protection of society and the maintenance of peace and order. . . ."

45. 93 A.L.R. 258 (1934), 151 A.L.R. 948 (1944).

46. La. R.S. (1950) 42:80. State v. Irion, 169 La. 481, 125 So. 567 (1929); State v. Lancaster, 218 La. 1052, 51 So. 2d 622 (1951). See this latter case for one of the few indications of what might constitute bad faith.

47. Michel v. City of New Orleans, 32 La. Ann. 1094 (1880); McCollister v. Police Jury of Sabine Parish, 197 So. 303 (La. App. 1940).

48. 93 A.L.R. 258, 260 et seq. (1934), 151 A.L.R. 948, 954 (1944).

49. 93 A.L.R. 258, 266 (1934), 151 A.L.R. 948, 956-7 (1944).

50. 93 A.L.R. 258, 272 (1934), 151 A.L.R. 948, 958 (1944).

51. See note 43, supra.

functions of his office. It would seem that Louisiana would follow the rule that a de facto officer can recover for services performed in good faith even though there is a de jure claimant.

Henry J. Dauterive, Jr.

Jurisdiction Ratione Materiae et Personae in Louisiana

Throughout Louisiana's judicial history no little trouble has been experienced by the supreme court in determining the meaning and proper application of the terms jurisdiction ratione materiae and jurisdiction ratione personae. An attempt to derive a logical pattern from the cases on the subject would probably prove futile indeed. The purpose of this paper is, therefore, to try to educe the meaning of the terms as they were understood at the time of the adoption of the Code of Practice of 1825; on the basis of these findings a discussion is proposed of several recent cases in which the writer believes the supreme court has deviated to some degree from the traditional concepts.

Most of the pertinent articles of the Louisiana Code of Practice of 1870 are vague.[1] Article 87 is probably the most satisfactory, in providing that:

> "In order to ascertain whether a judge be competent or not, three points must be taken into consideration:
>
> (1) The object or the amount in dispute.
>
> (2) The person of the defendant.
>
> (3) The place where the action is to be brought."

The first of these points undeniably refers to jurisdiction ratione materiae. The meanings to be ascribed to the latter two might give rise to some disagreement, but it is submitted that both have reference to jurisdiction ratione personae. Article 89[2] would seem to bear out this interpretation, by speaking in terms of the "person of the defendant" in stating the general rule of "where the action is to be brought," namely, at the domicile of the defendant.

1. See Arts. 75, 76, 86, La. Code of Practice of 1870.

2. "To determine his competency, as relates to the person of the defendant, the rule which requires that the defendant be sued at the place of his domicile or usual residence must be observed. This rule is subject, however, to various exceptions, determined in the chapter which treats of judicial demands and of citations."