Louisiana Law Review

Volume 12 | Number 2
The Work of the Louisiana Supreme Court for the 1950-1951 Term
January 1952

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Robert Roberts III

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."

Article 90[3] apparently has reference to point (3) of Article 87, but there is some belief that Article 90 means nothing more than that a judge of one judicial district cannot sit on the bench of another district unless so assigned by the supreme court. In any event, the jurisdiction referred to would not seem to be jurisdiction ratione materiae.

The French writers[4] say that *competence* is the capacity of the judge to take cognizance of a suit.[5] The term embraces both jurisdiction ratione materiae and jurisdiction ratione personae, as we know the terms. Garsonnet and Cézar Bru say:

> "The theory of competence is divided into two distinct parts, competence *ratione materiae* and competence *ratione personae*. Competence *ratione materiae* is the right of courts classified in a certain category of jurisdiction to take cognizance of a suit to the exclusion of courts of *another* category; competence *ratione personae* is the right of courts classified in a certain category of jurisdiction to take cognizance of a suit to the exclusion of other courts of the *same* category. . . . Competence *ratione materiae* is so called because the suits are distributed among different classes of courts on account of the nature of the action; the term competence *ratione personae* occurs between tribunals of the same class and this competence is generally determined by the domicile or residence of the defendant." [6]

3. "To determine on his competency, as relates to the place where the action is brought, we must be governed by the rule which provides that a judge shall not exercise any jurisdiction beyond the limits of the territory assigned to him."

4. There is no express authority for consulting the French writers, since an attempt to trace the origin of Article 87 proved unavailing. The draftsmen of the Code of Practice undoubtedly consulted their own knowledge of French and Spanish procedure, however, and these concepts were general knowledge early in the history of continental law. Although the French today speak of *competence* ratione materiae and *competence* ratione personae, early French law used the term *jurisdiction* instead of competence. See Engelmann, A History of Continental Civil Procedure 656 et seq. (transl. and ed. by Millar, 1927). The distinction between the terms was clearly understood in the early law.

5. 1 Garsonnet et Cézar Bru, Traité Théorique et Pratique de Procedure Civile et Commerciale 723, nº 461 (3 ed. 1912); Japiot, Traité Élémentaire de Procédure Civile et Commerciale 218, nº 274 (3 ed. 1935).

6. 1 Garsonnet et Cézar Bru, op. cit. supra note 5, at 729, nº 464: "*La théorie de la compétence se divise en deux parties distinctes: la compétence* ratione materiae *et la compétence* ratione personae. *La compétence* ratione materiae *est le droit, pour les tribunaux classés dans un ordre determiné de juridiction, de connaître d'une affair à l'exclusion des tribunaux d'un autre ordre; la compétence* ratione personae *est le droit, pour les tribunaux classés dans un ordre determiné de juridiction, de connaître d'une affair à l'exclusion des autres tribunaux du même ordre. . . . La compétence* ratione materiae *est ainsi nommée parce que les affaires sont réparties entre les différents*

Japiot speaks of competence ratione materiae as absolute competence and competence ratione personae as relative competence,[7] since a judgment rendered by a court lacking competence ratione materiae is an absolute nullity, whereas, in the absence of an objection to the tribunal filed in limine, a court incompetent ratione personae may render a decree which is perfectly valid.[8] The reason for allowing the defendant to submit to the jurisdiction of the court in the latter instance is that the rules providing the place where the defendant may be sued are for the benefit of the defendant alone. If he is agreeable to being sued in a certain court (as distinguished from other courts of the same class), there is no reason why he should not be sued there. On the other hand, statutes requiring particular *types* of actions to be brought in certain courts are for the benefit of the public, hence the rule that consent of the litigants cannot render a court competent ratione materiae.[9] The reasoning behind this theory is simple. It is against the policy of the law for a justice of the peace, for example, to try a suit in which, say, 50,000 francs is at issue. But since all justices of the peace are presumed to have the same degree of ability to make a just decision, it theoretically does not make any difference whether a suit involving 10 francs is tried in one justice of the peace court or another, so long as the defendant has no objection.

The Louisiana Supreme Court has undoubtedly been influenced in some measure by the common law of our sister states. The seemingly simple expedient of translating the terms in question to jurisdiction over the subject matter and jurisdiction over the person, and proceeding to consult common law authority, has some appeal.

Common law authorities define jurisdiction over the subject matter as "the power to hear and determine causes of the particular type to which the cause in question belongs."[10] Hence this term would appear to correspond with jurisdiction ratione materiae. Jurisdiction ratione personae, on the other hand, obviously is not equivalent to common law jurisdiction over the per-

ordres de tribunaux à raison de leur nature; le nom de la compétence ratione personae *vient de ce qu'entre tribunaux du même ordre la compétence est généralement determinée par le domicile ou par la résidence du defendeur.*"

7. Japiot, loc. cit. supra note 5.

8. Id. at 222, nos 281, 282.

9. Id. at 219, no 275, 221 et seq., nos 279-282. 1 Garsonnet et Cézar Bru, op. cit. supra note 5, at 732 et seq., nos 466-469.

10. Joy v. Two-Bit Corp., 287 Mich. 244, 283 N.W. 45 (1938); Brandeen v. Lau, 113 Neb. 34, 201 N.W. 665 (1924).

son, since the latter is defined as "the power to exercise authority over the person of the defendant by reason of valid service of process or voluntary appearance in court." [11] The common law term apparently refers to what civilians classify under rules relating to service of citation.

When interstate elements are involved, "jurisdiction over the person" also implies a question of due process of law; that is, whether the defendant has been afforded his constitutional rights of proper notice and hearing in the proceedings. Since Louisiana is obliged to follow *Pennoyer v. Neff*,[12] our jurists have also been influenced by the procedural rules peculiar to the federal system. The introduction of this concept in the interstate situation is unavoidable, but its use should be limited to those circumstances.[13]

The common law term "venue" seems to be substantially equivalent to jurisdiction ratione personae. Venue is universally agreed to be "the place where the action is to be brought." [14] Except for a possibly different approach, this is what jurisdiction ratione personae has just been defined as. Weight is lent to the assertion that the two are corresponding terms by the fact that venue is waivable, that is, an exception to venue must be disposed of in limine.[15]

The general term "jurisdiction" at common law is held to be inclusive of jurisdiction over the person as well as jurisdiction over the subject matter.[16] Venue is always carefully distinguished from jurisdiction.[17] Of course, the term "venue" is used quite generally in Louisiana today, and will be used throughout the remainder of this comment to mean the same thing as jurisdiction ratione personae.

In several comparatively recent cases, the Supreme Court of Louisiana applied the term jurisdiction ratione materiae as applicable to situations in which the issue was really which

11. People ex rel. Thompson v. Harper, 244 Ill. 121, 91 N.E. 90 (1910); Sanipoli v. Pleasant Valley Coal Co., 31 Utah 114, 86 Pac. 865, 10 Ann. Cas. 1142 (1906).

12. 95 U.S. 714 (1878).

13. This point will be further developed infra pp. 218, 220.

14. Kibler v. Transcontinental & Western Air, 63 F. Supp. 724 (D.C. N.Y. 1945); Stewart v. Sampson, 285 Ky. 447, 148 S.W. 2d 278 (1941); State ex. rel. McAllister v. Slate, 278 Mo. 570, 214 S.W. 85, 8 A.L.R. 1226 (1919).

15. Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 324 U.S. 635 (1945); Godfrey v. Tidewater Power Co., 223 N.C. 647, 27 S.E. 2d 736, 149 A.L.R. 1183 (1943).

16. State Board of Dental Examiners v. Savelle, 90 Colo. 177, 8 P. 2d 693 (1932); Finlen v. Skelly, 310 Ill. 170, 141 N.E. 388 (1923).

17. Hurlburd v. Eblen, 239 Iowa 160, 33 N.W. 2d 825 (1948); Shaffer v. Bank, 201 N.C. 415, 160 S.E. 481 (1931).

district court the suit should have been brought in. If this be true, and if the conclusions arrived at in the foregoing discussion be valid, jurisdiction ratione personae is the term which should have been used.

The most recent case in which this problem is presented is *Rathborne Lumber and Supply Company v. Falgout*,[18] a suit to recover the price of building materials. The plaintiff sought to obtain a solidary personal judgment against the two defendants and, in addition, to enforce a lien and privilege held against certain immovable property owned by one of the defendants, Pelas. The suit was filed in Jefferson Parish, the domicile of defendant Falgout, but not of Pelas. The property in question was located in Plaquemines Parish. Pelas excepted to the jurisdiction of the court ratione materiae et personae. The supreme court held that the latter exception was without merit on the ground that solidary obligors may be sued at the domicile of any one of them. The former exception was sustained, however, on the ground that the lien could not be enforced by a court other than the one sitting in the parish in which the land was located.[19] The suit was dismissed insofar as it sought to enforce the material lien. It is submitted that the correct result was reached in the case, since both exceptions were filed in limine, and since it would appear that Jefferson Parish was not the proper venue for the suit to enforce the material lien. However, in view of the fact that the issue was which district court was proper for the institution of the suit, it would seem that the lacking element was jurisdiction ratione personae, not jurisdiction ratione materiae. The court was influenced, in all probability, by the fact that an action to enforce a lien is an in rem action, and the term "rem" is quite naturally suggestive of "thing" or "subject matter." Furthermore, the exception to the jurisdiction ratione personae had been overruled on another valid ground. What the court apparently overlooked was that this was a two-fold action: disposal of the exception to the jurisdiction ratione personae in regard to one facet of the action (the solidary personal judgment sought) did not thereby dispose of it in regard to the other (the desired enforcement of the lien and privilege).

18. 218 La. 629, 50 So. 2d 295 (1951).

19. ". . . Said lien and privilege may be enforced by a civil action in any court of competent jurisdiction in the parish in which the land is situated. . . ." La. Act 298 of 1926, § 12, as amended by La. Act 323 of 1938.

In *Bercegeay v. Techeland Oil Company*,[20] the plaintiffs brought suit to cancel an oil and gas lease in the court of the parish in which the leased land was located,[21] St. Mary Parish. The defendants, corporations in receivership, appealed from an adverse judgment on the ground that Article 165(3)[22] of the Code of Practice declares that insolvent corporations must be sued in the court which has declared their insolvency. The supreme court held that this provision is mandatory, and confers jurisdiction ratione materiae; the court sitting in St. Mary Parish was thus incompetent to hear the cause, and the exception did not have to be filed in limine.

It seems unfortunate that the difference in the use of language of the various provisions of Article 165[23] should be the basis of the *Bercegeay* holding. It is true that some of these subsections use "must" or "shall" while others employ "may." "May" is used four times in the article.[24] In all four instances there is no single parish provided for the institution of suit. On the contrary, the subsections which employ "must" or "shall" provide only one particular parish wherein the action is to be brought.[25] It is submitted that the difference in use of language is predicated only on good usage, and that all ten of the subsections of the article refer to jurisdiction ratione personae. It is interesting to note that Article 162,[26] providing the general rule that the defendant must be sued at his domicile, is couched in mandatory language, yet the courts of the state have never hesitated to say

20. 209 La. 33, 24 So. 2d 242 (1945), discussed in McMahon, Louisiana Practice 13, § 5, n. 15.1 (Supp. 1949) and 7 LOUISIANA LAW REVIEW 262, 263 (1947), noted in 7 LOUISIANA LAW REVIEW 437 (1947).

21. La. Act 205 of 1938 classifies mineral leases as real rights and provides that their ownership and possession may be protected in the same manner as that of other immovable property. Such a lease is covered by the provisions of Article 163 of the Louisiana Code of Practice (providing for the institution of real actions in the parish wherein the property is located or at the domicile of the defendant). The court sitting in the parish wherein the leased land is located thus has authority to cancel the lease. Payne v. Walmsley, 185 So. 88 (La. App. 1938).

22. "Exceptions to Rule of Domicil: There are other exceptions to this rule which require that the defendant be sued before the judge having jurisdiction over the place of domicil or residence; they are here enumerated: . . . 3. Failure. 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."

23. Providing the exceptions to the general rule of domicil.

24. Art. 165(5), (6), (9), (10), La. Code of Practice of 1870.

25. Art. 165(1), (2), (3), (4), (7), (8), La. Code of Practice of 1870.

26. "It is a general rule in civil matters that one must be sued before his own judge, that is to say, before the judge having jurisdiction over the place where he has his domicil or residence, and shall not be permitted to elect any other domicil or residence for the purpose of being sued, but this rule is subject to those exceptions expressly provided for by law."

that this rule is waivable. "Must" and "shall" should be interpreted merely to mean that suit must be instituted in the parish provided for on penalty of dismissal if the defendant excepts timely to a suit brought in another parish.

An acute problem would be presented by a logical extension of the *Bercegeay* holding if both conflicting provisions were mandatory. A discussion of the ramifications of this question is not within the scope of this comment;[27] for purposes of this discussion, the quarrel with the decision is with the use of the term jurisdiction ratione materiae, when it would appear that the issue is one only of jurisdiction ratione personae. One district court is equally as competent as another to try a suit involving the cancellation of a lease.

The *Bercegeay* case follows in the wake of *Mitcham v. Mitcham*,[28] a suit for partition by licitation. The land which plaintiffs sought to have partitioned was located in two parishes, and since the defendants made no objection, the trial judge rendered a judgment partitioning both tracts. On appeal, the supreme court held that Subsection (1) of Article 165[29] of the Code of Practice and Civil Code Article 1290,[30] being couched in mandatory terms, confer jurisdiction ratione materiae and are therefore not waivable. As in the *Bercegeay* case, no exception was filed in limine. The court merely cited the well-known principle that jurisdiction ratione materiae cannot be created by consent of the litigants,[31] and may be urged at any time. This rule is of course applicable if there is really a question of jurisdiction ratione materiae. The same criticism should be aimed at the reasoning

27. For discussion of this problem, see McMahon, Louisiana Practice 13, § 5, n. 15.1 (Supp. 1949), 7 LOUISIANA LAW REVIEW 262, 263 (1947); and 7 LOUISIANA LAW REVIEW 437 (1947).

28. 186 La. 641, 173 So. 132 (1937).

29. "1. Partition of Real Property. In matters relative to the partition of real property between several coproprietors, for in such cases the suit must be brought before the court of the place where such property is situated, though the coproprietors may reside in different parishes."

30. "All the rules, established in the present chapter, with the exception of that which relates to the collations, are applicable to partitions between coproprietors of the same thing when among the coproprietors any are absent, minors, or interdicted, or when the coproprietors of age and present can not agree on the partition and on the manner of making it.

"But in these kinds of partitions the action must be brought before the judge of the place where the property to be divided is situated, wherever the parties interested may be domiciliated."

31. "The consent of parties can not render a judge competent to try a cause which, from its nature, can not 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." Art. 92, La. Code of Practice of 1870.

of the court in this case as was directed in the *Bercegeay* case, namely, that Article 165 is no more than a series of venue provisions. Since a possibly valid objection to the jurisdiction ratione personae is waived unless made in limine, it would appear from this analysis that the exceptions should have been overruled in both the *Bercegeay* and *Mitcham* cases. In a case such as the *Rathborne Lumber Company* case, however, wherein the final result was sound, the realist is probably constrained to wonder what real difference it makes whether or not the correct term is employed, aside from a desire to adhere to technical niceties. The answer to such a query runs something along these lines: Suppose that counsel in the three cases had failed to raise the question of jurisdiction at all, and judgments, apparently all valid, had been rendered. The reasoning of the court would dictate the result that these judgments would be absolutely null and void, subject to attack at any time, since jurisdiction ratione materiae admittedly cannot be created by consent of the parties. It is obvious that the validity of titles to land sold in the execution of such judgments would be precarious indeed; the attorney's inability to protect the property rights of his client in such cases is a real problem.

Tanner v. Beverly Country Club[32] presents the problem from a somewhat different angle, in that a constitutional question is decided, and in that quite different reasoning underlies the opinion of the court. It seems to be the most unfortunate of the recent cases in this area. Plaintiffs brought suit under Act 192 of 1920, as amended, providing for the abatement of gambling houses as nuisances. The supreme court declared the statute unconstitutional in as much as it authorized institution of suit in any district court of the state and thus contravened the constitutional provision for twenty-eight judicial districts.[33]

The section of the act in question reads: "That ten taxpayers, whether natural or artificial persons and whether citizens or non residents, shall have the right to file a suit in any District Court in this State or in the Civil District Court for the Parish of Orleans, to abate the nuisance created by such gambling house and to have the owner, lessee, sublessee, agent or other occupant declared guilty of maintaining a public nuisance." [34] Since the wording of the section had been changed from ". . . in the district

32. 217 La. 1043, 47 So. 2d 905 (1950).
33. La. Const. of 1921, Art. VII, § 31.
34. La. Act 192 of 1920, as amended by La. Act 120 of 1940, § 3.

court or in the civil district court for the Parish of Orleans, having jurisdiction thereof . . . ," [35] the court concluded that it must give effect to the amendment, and held that this section meant exactly what it said; namely, that suit could be brought in any district court in the state.[36]

The ruling nullifying the statute is apparently based on the conclusion that Article VII, Section 31, of the Constitution provides for territorial jurisdiction, and that territorial jurisdiction is jurisdiction ratione materiae. So-called territorial jurisdiction is a term with more than one meaning, and it should always be determined whether, as used, *inter*state or *intra*state territorial jurisdiction is alluded to. In the former sense it has reference to principles of conflict of laws relating to due process and equal protection of the law. In the latter usage, however, it would appear that the term is nothing more than a venue provision. Article 90 of the Code of Practice[37] is relied on by the court, but as mentioned above, it is believed that this article definitely does not refer to jurisdiction ratione materiae. The court in the instant case has apparently applied the interstate concept to a situation which it was not intended to cover. As a general proposition, it is of course true that a judge in one state cannot pronounce judgment affecting property located in another state, but it certainly does not follow that a judge in one parish of Louisiana cannot render a judgment which affects property located outside the boundaries of that parish. The competency of the judge, as used in this sense, is statewide.

In the writer's opinion, Article VII, Section 31, of the Constitution should be construed only as providing for the orderly administration of justice by dividing the state into convenient districts. It is submitted that it does not deal with the jurisdiction ratione materiae of the district courts, in as much as provision is made therefor in another section of Article VII of the Constitution.[38] The supreme court pointed out that the territorial jurisdiction of the district courts could be changed, but only in the manner provided for in the Constitution. What is not convincing is what connection this statement has with what was done by the legislature in the amendment to the gambling nuisance

35. La. Act 192 of 1920, as amended by La. Act 49 of 1938, § 3.

36. Two members of the court did not agree with this interpretation of the statute. See dissenting opinions of Hamiter and Hawthorne, 217 La. 1043, 1067, 1068, 47 So. 2d 905, 913 (1950).

37. See note 20, supra.

38. La. Const. of 1921, Art. VII, §§ 35, 36.

statute. The constitutional provision for change in judicial districts[39] is merely for the purpose of increasing or decreasing the number of districts, for realigning the parishes in each, or for changing the number of judges in any district.

In summary, the position taken by this comment is that the section of the gambling nuisance act declared unconstitutional is in reality a venue provision, or rule of jurisdiction ratione personae. And the legislature is empowered to provide for the venue of all suits. Article 162[40] of the Code of Practice says, for example, that the defendant must be sued at his domicile, unless there is an exception to this rule provided for *by law*. This rule relating to the defendant's domicile is the general rule, but there are scores of exceptions, all provided for by legislative act. There is nothing so radically different in providing that suit may be instituted in any district court—merely increasing the number of parishes in which suit would be entertained would not seem to remove the provision from the realm of venue and place it in that of jurisdiction ratione materiae. Such a law is undeniably harsh, but the legislators apparently considered the rule proper in view of the end to be achieved. It should be mentioned, however, that dictum has been found in one case[41] to the effect that an unduly arbitrary venue statute might conceivably be a denial of due process of law. It is submitted that the supreme court would have been on sounder ground had the decision in the *Tanner* case been rested on this point. While it would seem to be out of the question that the supreme court would so hold, the rationale of the *Tanner* holding would apparently preclude the legislature from enacting statutes in which the venue of a suit is designated.

Several separation and divorce cases appear to be in point.

The case which is closest to the discussion at hand is probably *McGee v. Gasery*,[42] decided in 1936. A "matrimonial domicile" was established by the parties in Orleans Parish. The defendant wife subsequently left her husband and went to Jefferson Parish, where she was alleged to be living in open adultery. She was cited in Jefferson Parish, where suit for divorce was instituted, but made no appearance within the time allowed by law. The judge held that the plaintiff husband was not entitled to a default

39. La. Const. of 1921, Art. VII, § 34.
40. See note 26, supra.
41. Mapes v. Hutcher, 363 Ill. 227, 2 N.E. 2d 63 (1936).
42. 185 La. 839, 171 So. 49 (1936).

judgment, and the supreme court affirmed on the ground that the district court for Jefferson Parish was without jurisdiction ratione materiae. Since the wife had no cause for leaving the husband, she was deemed to be still domiciled in Orleans Parish. Several other cases have at least strongly implied that if suit for separation or divorce is filed in an improper district court, that court will be regarded as lacking jurisdiction ratione materiae,[43] hence a failure of objection by the defendant spouse will not render the court competent. The reasoning of the supreme court in these cases is that the subject matter of the suit, the so-called "marital res," is absent, if suit is not brought in the proper venue. It would appear that the court has again applied principles peculiar to conflict of laws. The use of the expressions "matrimonial domicile" and "marital res" derive from the cases of *Atherton v. Atherton*[44] and *Haddock v. Haddock*,[45] decided in the Supreme Court of the United States. The use of the terms in those cases was for the purpose of deciding whether or not a given state could take jurisdiction of a suit, not whether a given county, as distinguished from another county in the same state, could try the suit. Following the decision in *Williams v. North Carolina I*,[46] the idea of marital res is obsolescent even in the interstate sense. It clearly should not be used in a case in which there are no out-of-state elements involved.

Nevertheless, a strong public policy is effectuated by the application of non-waivable rules in regard to separation and divorce. In the absence of such rules, spouses seeking consent divorces would be able to choose the most lenient judges. Yet there would seem to be nothing in the law to prohibit this practice, so long as suit was brought in a district court. As the law now stands, the answer is that one judge should be no more lenient than another in granting a separation or divorce.

It would seem that in certain cases "venue becomes jurisdictional." While such a statement is concededly anomalous, it will be readily admitted that there are a number of instances in which, for sound reasons, non-waivable venue rules would be advantageous. The divorce and separation situation is clearly one such instance. The opening of successions is probably another.

43. Gennusa v. Gennusa, 189 La. 137, 179 So. 60 (1938); Hymel v. Hymel, 214 La. 346, 37 So. 2d 813 (1948); Wreyford v. Wreyford, 216 La. 784, 44 So. 2d 867 (1950).

44. 181 U.S. 155 (1903).

45. 201 U.S. 562 (1906).

46. 317 U.S. 287 (1942).

Yet referring to such jurisdiction as ratione materiae simply cannot be squared with the traditional concepts. There appears, however, to be a remedy in sight. As a result of the *Tanner* case, it has been suggested that the terms jurisdiction ratione materiae and jurisdiction ratione personae be abrogated altogether.[47] This has been done in the preliminary work on the new procedural code which is now in progress. There is no reason why absolute venue rules cannot simply be provided in instances wherein they are deemed advisable. All other rules relating to the place where suit is to be brought would thus be clearly waivable, and no further confusion should result.

Robert Roberts, III

47. It is interesting to note that the French have proposed, in a draft of a new procedural code, to retain the terms jurisdiction ratione materiae and jurisdiction ratione personae. Of course, the problems presented by our federal system do not hamper the French. Preliminary Projet of Revised Code of Civil Procedure (1951).