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Procedure - Appellate Jurisdiction, Court of Appeal

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In addition to the considerations discussed, particularly those relating to taxation, there are additional tax questions raised. Unfortunately these are without the intended scope of this note, and perhaps warrant individual treatment themselves.

In view of the well-known *Ellerbe* and *Gray* cases, it would seem that the law on this phase of mineral rights was fairly well settled. The instant decision is important as it relates to the particular facts involved. More important, probably, is the effect it may have on connected areas of law.

William C. Bradley

PROCEDURE—APPELLATE JURISDICTION, COURT OF APPEAL

Plaintiff brought suit to recover $25,025 for personal injuries allegedly sustained from an assault and battery and from certain defamatory statements. The district court rendered judgment for defendant on the assault and battery charge and for the plaintiff on the slander charge, and both appealed. *Held*, that although slander is an offense separate and distinct from assault and battery, since the former arose "out of the same circumstances" as the physical injuries, the court of appeal had appellate jurisdiction over both claims for damages. The cases of *Newsom v. Starns* and *Applewhite v. New Orleans Great Northern Railway Company* were expressly overruled. *Cavalier v. Original Club Forrest*, 56 So. 2d 147 (La. 1952).[1]

Article VII, Section 10, of the Louisiana Constitution of 1921 provides, "the Louisiana Supreme Court has appellate jurisdiction in civil suits where the amount in dispute, or the fund to be distributed, irrespective of the amount therein claimed, shall exceed $2000 exclusive of interest, *except in suits for damages for physical injuries to or for the death of a person, or for other damages sustained by such persons, or his heirs or representa-*

1. The problem presented in the principal case arises only when separate and distinct causes of action are joined in the same suit, and is attributable primarily to the freedom of cumulation of actions permitted under Louisiana procedure. Cf. Arts. 148-152, La. Code of Practice of 1870. If the two claims are merely separate items of damages claimed for the same cause of action, of necessity these separate items would arise "out of the same circumstances," that is, claim for property damage to plaintiff's automobile and a claim for damages for physical injuries to plaintiff, resulting from the same negligent acts of defendant. In such cases, clearly the appeal would lie to the court of appeal.

tives, arising out of the same circumstances." [2] (Italics supplied.) In interpreting this article the courts have held in suits in which the claims exceeded $2000 that the court of appeal had no jurisdiction over an action for libel or slander,[3] a suit for false imprisonment,[4] mental anguish,[5] or malicious prosecution,[6] since there was no claim for damages for physical injuries presented. In *Spearman v. Toye Brothers Auto & Taxicab Company*[7] plaintiff brought suit to recover $15,000 for mental anguish and pain suffered when an employee of the defendant company "squeezed her thigh." The supreme court, in accepting jurisdiction, held that in order for the court of appeal to have jurisdiction there must be present *actual* physical injury, and not merely an emotional injury arising out of a situation which might on occasion involve physical injury. In *Jumonville v. Frey's Incorporated*[8] the court had occasion to interpret "arising out of the same circumstances." The case involved a suit in which the greater portion of the plaintiff's claim was based on mental anguish, but there was also included a claim for physical injuries caused by this mental anguish. The court held that jurisdiction rested with the court of appeal, because they felt that the framers of the Constitution meant to give the court of appeal jurisdiction over all cases involving claims for physical injury, even though there might be present mental anguish, humiliation, or the like, if the latter were caused by the same facts which caused the physical injury.

The result of the *Cavalier* case, under its specific facts, appears to be sound. However, the propriety of the court's express overruling of the *Newsom* and *Applewhite* cases appears questionable. In *Newsom v. Starns*[9] an action was brought to recover $20,000 for physical injuries received from the kidnapping, tarring, and feathering of the plaintiff by the defendants. Plaintiff also claimed an additional $20,000 for the defamation of his good name caused by the general publication of the news of the tarring and feathering, and a special publication of defamatory

2. La. Const. of 1921, Art. VII, § 29, provides that the court of appeal has appellate jurisdiction over all appealable civil cases in which the supreme court is not given jurisdiction.
3. Moore v. O'Hara, 8 So. 2d 130 (La. App. 1942).
4. Barfield v. Marron, 17 So. 2d 850 (La. App. 1944).
5. Duplantis v. Chauvin, 158 So. 653 (La. App. 1935).
6. Clarke v. Bandelin, 6 La. App. 564 (1927).
7. 164 La. 677, 144 So. 591 (1927).
8. 171 So. 590 (La. App. 1937).
9. 174 La. 955, 142 So. 138 (1932).

claims that plaintiff had had intimate relations with the defendant's wife. The facts show that the defendants forced plaintiff to enter their car, removed him to a place outside of town, and there tarred and feathered him. Following this, they again forced the plaintiff into their car and returned to the business district of Amite, where they forcefully ejected him from the car into the street. The supreme court held that the court of appeal undoubtedly had jurisdiction over the suit for personal injury but that it had no jurisdiction over the claim for defamation, as two separate and distinct causes of action were involved.

In *Applewhite v. New Orleans Great Northern Railway Company*[10] suit was instituted to recover $4,750 for damages caused by an assault and battery and malicious prosecution. There defendant's special agent shot the plaintiff while he was allegedly attempting to enter a box car. After being wounded, the plaintiff withdrew from the railroad yard and found temporary refuge in the railroad station, where he was given permission to lie down. Some time later he was found there by the special agent who had wounded him, and who then proceeded to have him arrested by the local authorities. Under these facts, and under authority of the *Newsom* case, the court of appeal held that plaintiff's suit involved two separate and distinct causes of action, and that it had appellate jurisdiction to review only the demand for damages for the assault and battery.[11]

It is submitted that these two cases may be distinguished on their facts from the *Cavalier* case. In the principal case the assault and battery and the defamation seem to have occurred as parts of a continuous course of events, whereas in the *Newsom* and *Applewhite* cases there appears to have been an appreciable interval of time between the two events giving rise to the suit. In the *Newsom* case this interval is found in the time required to drive the plaintiff from the place where the assault and battery took place to the town's business district, where the defamation occurred. In the *Applewhite* case the element of time involved

10. 148 So. 261 (La. App. 1933).

11. The same jurisdictional question was involved in Searcy v. Interurban Trans. Co., 179 So. 93 (La. App. 1937), but the matter was sidestepped when the supreme court reviewed both claims under certiorari. Plaintiff, while on defendant's bus, suffered a stroke of apoplexy, which rendered him helpless. Negligently believing him to be drunk, employees mistreated plaintiff while he was in defendant's terminal station, and later caused him to be arrested for drunkenness. The court of appeal had held on rehearing that it had jurisdiction over the personal injuries claim, but not the defamation claim.

is found in the time separating the shooting, which took place on the tracks, from the time of the arrest, which occurred in the station house. In neither of these cases did the court indicate that the element of time separating the two events was a basis for its decision, but this factor might well have influenced the court in finding separate and distinct offenses not arising out of the same circumstances.

One very obvious effect of the present inflationary spiral has been the sharp increase in the proportion of civil cases now going on appeal to the supreme court. In recognition of this the Louisiana State Law Institute, in its *projet* of a new state constitution, has proposed an increase of the supreme court's jurisdictional minimum from $2000 to $8000.[12] In providing a badly-needed limitation on the jurisdiction of Louisiana's highest court, and in affording a more even distribution of appeals among the four appellate courts, the result of the *Cavalier* case should prove desirable. Its overruling of the *Newsom* and *Applewhite* cases, however, leaves some rather difficult questions unanswered.[13]

Ronald Lee Davis, Jr.

PROCEDURE—WAIVABILITY OF JURISDICTION RATIONE PERSONAE

Plaintiff filed suit in Union Parish against residents of Claiborne Parish, who were properly cited therein. A preliminary

12. Projet of Constitution of Louisiana, Louisiana State Law Institute, Art. VI, § 16(3) (1950).

13. Suppose that under the facts of the principal case there had been a month's interval of time between the assault and battery and the defamation, but that there was a direct causal connection between the two offenses. Would the claim for the defamation be deemed to arise "out of the same circumstances" as the claim for damages for the assault and battery, within the contemplation of the constitutional provision? If so, then the rationale of the *Cavalier* case is causal connexity, rather than any test as to the simultaneous or continuous nature of the circumstances upon which the two causes of action are based. Compare Searcy v. Interurban Transp. Co., 179 So. 93 (La. App. 1937).

Until these and similar questions have been answered, it is recommended that under circumstances similar to the principal case, the appeal on both causes of action be prosecuted to the proper court of appeal, which would clearly have jurisdiction, at least as to the physical injury action. Then, even if the intermediate appellate court held the other action to fall within the appellate jurisdiction of the supreme court, the court of appeal could review the physical injury action and then transfer the balance of the case to the supreme court, under La. R.S. (1950) 13:4440. Cf. State v. J. Foto & Bros., 134 La. 153, 63 So. 859 (1913).