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case involved the interpretation of two olographic wills.⁵⁴ The courts of appeal in declaratory judgment cases have looked to the proof adduced on trial, and in two recent decisions have ordered the appeals transferred to the Supreme Court.⁵⁵

Mary Ellen Caldwell

Appellate Jurisdiction of the Supreme Court

PART II

Amount in Dispute Measured by Value of the Thing in Dispute

The Supreme Court's exercise of appellate jurisdiction is often sought in cases where the subject matter of the suit is not money, but something which can be evaluated in terms of money, such as the possession of immovables, contract rights, and the title to real property. Usually the grounds urged to establish the court's jurisdiction are that the amount in dispute is in excess of \$2,000. The Supreme Court has repeatedly held in these cases that "In determining whether this court has appellate jurisdiction because of the amount in dispute, or because of the value of the thing in dispute . . . the record must show affirmatively that the court has appellate jurisdiction. . . ."¹

The court has never precisely defined what constitutes an affirmative showing of jurisdiction in the record. In *Heirs of P. L. Jacobs v. Johnson*,² the court examined the record for evidence of the value of the land in a jactitory action and based its opinion on the consideration recited in prior transfers of the land and on the value of mineral deeds and leases affecting the land, which were incorporated into the record. The court re-

the mineral rights in dispute is far in excess of the sum of \$2,000 and therefore this court is vested with appellate jurisdiction of the case."

54. 68 So.2d 744 (La. App. 1953).

55. *Parker v. Tillman*, 69 So.2d 534 (La. App. 1953); *St. Cyr v. Boland*, 34 So.2d 69 (La. App. 1948).

1. *State v. Cook*, 197 La. 1027, 1036, 3 So.2d 114, 116 (1941). See also *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 193, 207 (1953), and cases cited therein at 207, n. 31.

2. 219 La. 125, 52 So.2d 444 (1951).

marked in *Martin v. Carroll*³ that the value of the disputed interest was not recited in the pleadings, and that the value computed from the evidence was insufficient to show jurisdiction. Similarly, in *Adger v. Oliver*⁴ the court held that the amount in dispute must be shown by the pleadings or proof. Thus it appears that an affirmative showing that the court is vested with jurisdiction can consist of the allegations in the pleadings or the inclusion in the record of evidence which will support the inference that the requisite amount is in dispute.

As recently as 1951, in *Meraux v. R. R. Barrow, Inc.*,⁵ the court allowed the parties to use affidavits establishing the value of the matter involved when the amount in dispute did not appear in the record. That case involved a petition for recognition of ownership of a royalty interest in certain property. On appeal to the Supreme Court, after a motion to dismiss had been filed, an affidavit was accepted by the court on the day the case was argued. The affidavit itemized amounts in excess of \$2,000, and the court ruled that jurisdiction had been shown, saying that such affidavits were to be construed with the facts in the record, and that by themselves they could neither confer nor defeat jurisdiction. The rule admitting affidavits for that purpose was apparently well settled.⁶ But the Supreme Court chose not to admit affidavits in *Louisiana Board of Pharmacy v. Smith*,⁷ a suit to enjoin appellant from practicing pharmacy without a permit. The court restated the rule that jurisdiction should be affirmatively shown in the record, and pointed out that the Supreme Court, not being a court of original jurisdiction, would not receive evidence in the form of affidavits. This holding was followed in rapid succession by a number of decisions indicating that the former rule had definitely been discarded. In *Succession of Wesley*,⁸ where the matter in dispute was the possession of an

3. 220 La. 481, 56 So.2d 843 (1952). See also *Tucker v. Woodside*, 218 La. 708, 50 So.2d 814 (1951); *Prampin v. Southern Chemical Works*, 218 La. 392, 49 So.2d 737 (1950); *Lama v. Manale*, 28 So.2d 479 (La. App. 1946).

4. 222 La. 793, 64 So.2d 6 (1953). See also *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 193, 210 (1953).

5. 219 La. 309, 52 So.2d 863 (1951). See also *Sexton v. Waggoner*, 222 La. 680, 63 So.2d 423 (1953); *Prampin v. Southern Chemical Works*, 218 La. 392, 49 So.2d 737 (1950).

6. See *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 209, n. 43 and cases cited therein (1953).

7. 221 La. 1026, 61 So.2d 513 (1952).

8. 222 La. 411, 415, 62 So.2d 625, 626 (1952).

estate consisting of immovable property, the court's new position was stated clearly:

"The affidavit which was offered in this court after the appeal had been lodged here, will not be considered because this court not being one of original jurisdiction, effect cannot be given to any proof submitted after the appeal has been taken and perfected. True it is that in the past, jurisdiction was entertained by the court on showings similar to the one here attempted to be made. That was principally because the question of jurisdiction was not raised by any of the parties nor did it suggest itself to the court. Also the court was not so conscious of its jurisdiction, as defined by the Constitution, art 7, § 10, as it is now. To the end that jurisdiction might be made more readily ascertainable, it should be observed that in the revision of the Rules of Court, recently promulgated, the appellant, or relator . . . is required under Section 2 of Rule X to set forth in his brief 'a statement of the appellate jurisdiction of this court as applied to the case. . . . ' . . . We have endeavored lately to enforce an adherence to the rule and will continue to see that it is complied with."

The new position was taken emphatically in a later case rejecting a stipulation made after trial court's judgment and before the appeal was taken.⁹ An affidavit was also refused in a mandamus proceeding when an attempt was made to set the value of stock certificates at an amount in excess of \$2,000.¹⁰ Other decisions make it clear that the court will not allow jurisdiction to be conferred by stipulations of the parties entered into after judgment by the trial court,¹¹ nor will it consider affidavits offered to supplement the record.¹²

There are particular rules and considerations which consistently enter the court's evaluation of the matter in dispute. If the matter in dispute is the ownership of land, the measure of the amount in dispute is the value of the land in question.¹³ In

9. *Adger v. Oliver*, 222 La. 793, 64 So.2d 6 (1953).

10. *State ex rel. Davis v. Oaklawn Land & Improvement Co.*, 223 La. 7, 64 So.2d 623 (1953); *Wainer v. Kirn*, 223 La. 669, 66 So.2d 587 (1953); *Castleberry v. Ethridge*, 223 La. 466, 65 So.2d 138 (1953).

11. *Beene v. Pardue*, 223 La. 417, 65 So.2d 897 (1953).

12. *Duplantis v. Locascio*, 223 La. 11, 64 So.2d 624 (1953).

13. *Newman v. McClure*, 221 La. 556, 59 So.2d 882 (1952); *Heirs of P. L. Jacobs v. Johnson*, 219 La. 125, 52 So.2d 444 (1951). For value of expropriated land, see *Housing Authority of New Orleans v. Doll*, 222 La. 933, 64 So.2d 224 (1953).

boundary actions, the amount is the value of the disputed area.¹⁴ Jurisdiction in a possessory action is based upon the value of the right of possession.¹⁵ These rules appear to be well settled. But the court has said that there is no hard and fast rule to be applied in the jactitory action, since the action may resolve itself into a damage suit, a petitory action, or a possessory action, depending on the answer filed by the defendant.¹⁶

A problem frequently encountered is the determination of what constitutes the matter in dispute. In *New Orleans & Northeastern R.R. v. Redmann*,¹⁷ the trial court had fixed a disputed boundary line and ordered the removal of certain encroachments from plaintiff's property. The Supreme Court reviewed the record on a motion to dismiss and noted that the matter in dispute was no longer the boundary line but instead the order for the removal of the encroachments and the cost of carrying out the order did not appear in the record. The court has also denied that it had jurisdiction in cases where the matter in dispute, though part of a whole valued at more than \$2,000, was itself of a value below the jurisdictional minimum.¹⁸ The appellee in *Nash v. Curette*¹⁹ filed a motion to dismiss a petitory action on the grounds that the land in question was valued at only \$50. The court denied the motion because cumulated with the petitory action was a demand for damages for malicious prosecution, and the possible damages appeared to be in excess of \$2,000.

In suits arising out of contracts for the sale of immovable property the determination of the court's jurisdiction often hinges on whether the contract itself, damages, or a deposit of money, is the matter in dispute. The general rule was well stated in *Villemeur v. Woodward*,²⁰ where the plaintiff prayed for the return of a deposit of \$1,000 on a contract to purchase

14. *Beene v. Pardue*, 223 La. 417, 65 So.2d 897 (1953); *Dupre v. Dupre*, 68 So.2d 773 (La. 1953).

15. *Fontenot v. Babineaux*, 217 La. 891, 47 So.2d 678 (1950). For value of lease, see *New Orleans v. Disabled American Veterans*, 222 La. 507, 62 So.2d 817 (1953).

16. *Green v. George*, 213 La. 739, 35 So.2d 595 (1948).

17. 210 La. 525, 27 So.2d 321 (1946).

18. *Angelette v. Hardie*, 223 La. 167, 65 So.2d 126 (1953); *Newman v. McClure*, 221 La. 556, 59 So.2d 882 (1952); *Succession of Valdez*, 215 La. 791, 41 So.2d 682 (1949).

19. 216 La. 190, 43 So.2d 262 (1949).

20. 171 La. 831, 834, 132 So. 361, 362 (1931). See also *Heard v. Monroe Sand & Gravel Co.*, 165 La. 925, 116 So. 386 (1928). For effect of incidental demands, see Part I, p. 880, n. 26 *supra*.

immovable property for a price of \$10,000. In holding that the matter was within the jurisdiction of the court of appeal, the Supreme Court made the following statement:

“. . . [I]f the Court of Appeal should be called upon, in deciding the sufficiency of the defense, to pass upon the validity of a contract, the annulment of which, had it been demanded in the petition, would have been beyond its jurisdiction, nevertheless the validity of the contract, in determining the sufficiency of the defense, would be considered as arising only incidentally in the case. . . . A question arising only incidentally in a case . . . does not deprive the court before which it arises of jurisdiction.”

A later decision implies that a demand for the specific performance of a contract would establish the amount in dispute at the value of the contract.²¹ A court of appeal in 1945 declined jurisdiction in a suit on a contract to sell by holding that the amount in dispute was in excess of \$2,000 because “The principal relief sought by appellee here is for the rescission [sic] of a contract to purchase real estate for the sum of \$4200 and his claim for restoration of his deposit (an amount within our appellate jurisdiction) is merely an incident to the suit.”²² If the demand is equally for the annulment of the contract and the return of a deposit, the value of the contract will be considered in determining the amount in dispute.²³ The court which stated that rule did not mention a point which was emphasized in *Papalia v. Hartson*,²⁴ where the court pointed out that a contract will not be considered the matter in dispute if the right to claim specific performance has been waived, even if the suit is for the rescission of the contract.

The problem of ascertaining the matter in dispute is further illustrated by a court of appeal decision in a suit wherein the plaintiff sought either the reformation of an act of sale or its annulment for lesion beyond moiety. Although defendant argued that the main demand was for reformation, involving an amount less than \$2,000, the court looked to the plaintiff's plea of lesion beyond moiety, which involved property worth more than \$5,000, and held that the matter exceeded the court of ap-

21. *Richardson v. Charles Kirsch & Co.*, 191 La. 991, 187 So. 1 (1939).

22. *De Salvo v. Doll*, 21 So.2d 60, 62 (La. App. 1945).

23. *Roccaforte v. Barbin*, 207 La. 924, 22 So.2d 271 (1945).

24. 218 La. 200, 48 So.2d 896 (1950).

peal's jurisdiction.²⁵ The decision was based on *Templet v. Babbitt*,²⁶ in which case the Supreme Court also entertained jurisdiction when only one of two alternative causes was for an amount in excess of \$2,000.

The amount in dispute in an injunction proceeding is the value of the asserted right which is the subject of the injunction proceedings.²⁷ In 1940, this rule appeared in *Frierson v. Cooper*²⁸ as an evaluation from the defendant's viewpoint—what would it cost the defendant if the injunction issued? In a 1952 case it appears as an evaluation from the plaintiff's standpoint of the right which the injunction is sought to protect. In that case, the plaintiffs urged that they were being deprived of the right to use and enjoy property and that the right was worth more than \$2,000.²⁹ When the value of the right to be enjoined or protected is not shown affirmatively in the record, an appeal will not lie, just as in the case of other matters in dispute.³⁰ In two other 1952 decisions the court held that there were only certain rights in contest, with no amount in dispute, and held it was without jurisdiction because no grounds for appellate jurisdiction other than "amount in dispute" were applicable.³¹

A recent comprehensive discussion in *Grace v. Boggs*³² affirmed by way of dictum the established rule that the amount in dispute in a contested election is tested by the emoluments of the office involved for the entire term. But the action in *Grace v. Boggs* was held to be only a suit for the disqualification of a candidate, the assertion of a political right without monetary

25. *Lewis v. Cochrane*, 47 So.2d 131 (La. App. 1950).

26. 196 La. 303, 199 So. 127 (1940).

27. *Louisiana State Board of Medical Examiners v. McHenry*, 222 La. 984, 64 So.2d 242 (1953); *Patterson v. Caron*, 44 So.2d 237 (La. App. 1950).

28. 196 La. 450, 199 So. 388 (1940), 1 *LOYOLA L. REV.* 110 (1941). See also *Harris v. Pierce*, 70 So.2d 134 (La. 1953); *Plauche v. Albert*, 215 La. 776, 41 So.2d 677 (1949).

29. *Ryan v. Louisiana Society for Prevention of Cruelty to Animals*, 221 La. 559, 59 So.2d 883 (1952).

30. *Harris v. Pierce*, 70 So.2d 134 (La. 1953); *Plauche v. Albert*, 215 La. 776, 41 So.2d 677 (1949).

31. *Eddy v. Monaghan*, 220 La. 1015, 58 So.2d 323 (1952); *Louisiana Undertaking Co. v. Louisiana State Board of Embalmers*, 220 La. 334, 56 So.2d 566 (1952). For mandamus proceedings, see *Orleans Parish School Board v. New Orleans*, 219 La. 1063, 55 So.2d 245 (1951); *State ex rel. Pope v. Bunkie Coca-Cola Bottling Co.*, 219 La. 1035, 55 So.2d 236 (1951). For injunction as incidental demand, see *Cannella v. Succession of Cannella*, 216 La. 464, 43 So.2d 795 (1949).

32. 220 La. 22, 55 So.2d 768 (1951); *Langlois v. Lancaster*, 217 La. 995, 47 So.2d 795 (1950); *State ex rel. Pickrel v. Tugwell*, 199 La. 185, 5 So.2d 544 (1941).

value being in controversy. The court's opinion differed from an earlier decision³³ which stated that certain election statutes specifically provided for the Supreme Court's appellate jurisdiction over contested primary elections. The exact elements comprising a "contested election" are not clear, but it appears necessary that a party be elected to an office, or have the equivalent of election thereto, such as election in the Democratic primary, before the test of "emoluments of office" is applicable.

CONSTITUTIONAL QUESTIONS

The Supreme Court has appellate jurisdiction in cases where the constitutionality or legality of fines, taxes, or penalties is attacked, and where laws of the state, or ordinances of a lesser political entity, are declared unconstitutional.³⁴ For a long time, there had been confusion as to the interpretation of the clause concerning the constitutionality or legality of taxes, but the question was set at rest in *State Farm Mut. Automobile Ins. Co. v. Ott*.³⁵ The same case reviewed and pointed out the consistent interpretation of the clause concerning the constitutionality and legality of fines, forfeitures, and penalties.³⁶ When the question concerns laws or ordinances not containing a tax, penalty, forfeiture, fine, or like matter, the law or ordinance must be declared unconstitutional by the lower court before jurisdiction will vest in the appellate court, and it will not consider the question if the plea of unconstitutionality has been raised for the first time on appeal.³⁷ In *State ex rel. Nunez v. Baynard*³⁸ the lower court had declared unconstitutional the Governor's veto of part of an act of the legislature. The Supreme Court pointed out

33. *Perez v. Cognevich*, 156 La. 331, 100 So. 444 (1924).

34. LA. CONST. Art. VII, § 10.

35. 221 La. 1061, 61 So.2d 872 (1952). See *The Work of the Louisiana Supreme Court for the 1952-1953 Term—Civil Procedure*, 14 LOUISIANA LAW REVIEW 198, 209 (1953); Note, 14 LOUISIANA LAW REVIEW 276 (1953).

36. See also *State v. Dunning*, 69 So.2d 16 (La. 1953), and cases cited therein.

37. *Giamalva v. Cooper*, 217 La. 979, 47 So.2d 790 (1950); *Southern Enterprises v. Foster*, 203 La. 133, 13 So.2d 491 (1943); *Batts v. Marthaville Mercantile Co.*, 193 La. 1072, 192 So. 721 (1939); *Causey v. Opelousas-St. Landry Securities Co.*, 192 La. 677, 188 So. 739 (1939). But see *New Orleans v. Grosch*, 49 So.2d 435 (La. App. 1950) for a factual situation where the court of appeal allowed the plea of unconstitutionality to be raised for the first time before it. In *State v. Cook*, 197 La. 1027, 3 So.2d 114 (1941), the court pointed out the hiatus created by not granting Supreme Court jurisdiction of fines, forfeitures, and penalties imposed by the state.

38. 203 La. 711, 14 So.2d 611 (1943).

that it would not have jurisdiction unless the declaration of unconstitutionality applied to the legislation and not to the veto.

MISCELLANEOUS AREAS OF JURISDICTION

In homestead exemption cases, domestic relations cases and cases relating to the status of persons, and criminal cases,³⁹ jurisdiction is conferred by the nature of the matter in dispute.

The homestead exemption must fall within the provisions of Article XI, Section 1, of the Louisiana Constitution of 1921;⁴⁰ and if all the property involved is movable, it must be shown in the record that its value exceeds \$2,000.⁴¹

The court in *Smith v. Shehee*⁴² held that a question of legitimacy would not come within the Supreme Court's appellate jurisdiction if only collaterally involved. There has been little question that the matters involving alimony⁴³ and the custody of children are within the Supreme Court's appellate jurisdiction.⁴⁴

Numerous cases illustrate that the Supreme Court's review of criminal cases is restricted to questions of law.⁴⁵ In pointing out what constitutes "questions of law alone" the court in *State v. Bernard*⁴⁶ said:

"The limitation excludes only such questions of fact as pertain directly to the question of guilt or innocence of the defendant, and does not exclude collateral questions concerning findings of fact on which the trial judge has based a ruling, and which have no direct relation to the question of guilt or innocence. . . . [T]he only question presented to this court is whether the admitted facts constitute a violation of the ordinance. . . . The question is a clear-cut question of law. . . ."

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39. LA. CONST. Art. VII, § 10.

40. *Succession of Harper*, 182 La. 55, 161 So. 18 (1935).

41. *Batts v. Marthaville Mercantile Co.*, 193 La. 1072, 192 So. 721 (1939).

42. 175 La. 394, 143 So. 338 (1932).

43. *Ramos v. Ramos*, 173 La. 407, 137 So. 196 (1927).

44. *Downey v. Downey*, 183 La. 424, 164 So. 160 (1935).

45. *State v. Cortez*, 211 La. 669, 30 So.2d 681 (1947); *State v. McDonell*, 208 La. 602, 23 So.2d 230 (1945); *State v. Allen*, 200 La. 687, 8 So.2d 643 (1942); *State v. Fountain*, 175 La. 221, 143 So. 55 (1932).

46. 204 La. 844, 854, 16 So.2d 454, 457 (1943). See also *State v. Gaspard*, 222 La. 222, 62 So.2d 281 (1952); *State v. Haddad*, 221 La. 337, 59 So.2d 411 (1951).