Venue in Louisiana Criminal Cases under Amended Article 13, Code of Criminal Procedure

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be conducted, should prevent undue delays. The effect of this article would be to require the timely fixing of cases for trial so as to give the accused a reasonable time in which to object to the petit jury venire before the fifth day prior to trial.

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The rule governing venue in criminal cases, that an accused ordinarily must be tried in the locality where the crime was committed, has its origin in the common law institution of trial by jury. Under the rules of early English criminal procedure, the jury was composed of the witnesses to the crime.

For the convenience of the forum and the witnesses, the trial was held in the neighborhood where the crime was committed. Later, when the jury became an "impartial weigher of the evidence," not composed of the witnesses to the crime, the requirement of trial at the locus of the crime was continued.¹ The continuance of this requirement may be due to the factor of availability of witnesses and other considerations of trial convenience. A strict application of the rule that trial must be in the county where the crime was committed, however, has not always produced the best results. For this reason, most jurisdictions have relaxed the rule by creating certain exceptions.² For example, offenses committed within short, specified distances from a county line can be tried in either county.³ Furthermore, a prosecution for larceny can be brought in any county into which the stolen goods are carried.⁴ This exception to the rule has been extended in some states to include other "continuing" crimes.⁵

¹. ORFIELD, CRIMINAL PROCEDURE FROM ARREST TO APPEAL 367 (1947); PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 156, n. 8 (1953).
². 1 STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 278 (1883): "A rule which requires eighteen statutory exceptions, and such an evasion as the last one mentioned in the case of theft [the continuing nature of the crime]—the commonest of all offences—is obviously indefensible. . . . [A]ll courts otherwise competent to try an offence should be competent to try it irrespectively of the place where it was committed, the place of trial being determined by the convenience of the court, the witnesses, and the person accused. Of course, as a general rule, the county where the offence was committed would be the most convenient for the purpose."
³. LA. R.S. 15:15 (1950); PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 159 (1953).
⁵. CAL. PENAL CODE § 786 (1872); S.D. REV. CODE § 4514 (1919).
The Louisiana Legislature in 1855 adopted a comprehensive venue statute. Section 12 of act 121 of that year provided that "when any crime or misdemeanor shall be committed on the boundary of two or more parishes, or within one hundred yards thereof, or within one hundred yards of any other boundary, or shall be begun in one parish and completed in another, it may be dealt with, inquired of, tried, determined, and punished in either of the parishes in the same manner as if it had been actually and wholly committed therein." At the time this act was adopted the state constitution required only that the trial be by a jury of the "vicinage." Since 1864, however, the constitution has more specifically provided that the trial shall be in the parish where the crime was committed. Despite this constitutional provision, section 12 of act 121 of 1855 was not repealed and, in fact, was incorporated into the Revised Statutes of 1870 as section 988. However, in 1905 in State v. Montgomery, the portion of the act relating to crimes committed within one hundred yards of a parish line was declared unconstitutional. The statute was given what appeared to be the final blow in State v. Moore, where the court found it to be invalid insofar as it conflicted with the constitutional guaranty of trial in the parish where the offense is committed. However, when the present Constitution was adopted in 1921, one of its provisions permitted trial in either parish of crimes committed within one hundred feet of a parish line. Moreover, in 1940 in State v. Hart, the court apparently revived section 988 of the Revised Statutes when it stated: "[W]e are not aware of any constitutional objection to the provision in Section 988 of the Revised Statutes, with reference to a crime that was begun in one parish and completed in another." The court stated that the new constitutional provision superseded the objection raised in State v. Montgomery, but no mention was made of State v. Moore. In 1942, as a result of complex problems

8. La. Const. art. 103 (1852).
9. La. Const. art. 105 (1864); La. Const. art. 6 (1868); La. Const. art. 7 (1879); La. Const. art. 9 (1898); La. Const. art. 9 (1913); La. Const. art. 1, § 9 (1921).
11. 115 La. 153, 38 So. 949 (1905).
12. 140 La. 251, 72 So. 965 (1916).
15. 195 La. 184, 196 So. 62 (1940).
17. 115 La. 155, 38 So. 949 (1905). It should be noted that the Constitution is couched in terms of "100 feet" whereas section 988 reads "100 yards."
of venue arising in a group of 1940 inter-parish venue cases, a more liberal venue provision was enacted in the form of an amendment to article 13 of the Code of Criminal Procedure. It provides:

"... where the several acts constituting a crime shall have been committed in more than one parish, the offender may be tried in any parish where a substantial element of the crime has been committed."

The constitutionality of the amended article 13 was challenged in *State v. Pollard*, but the court in that case did not find determination of the constitutional question essential to the decision of the case. However, in *State v. Ellerbe* the court stated that "the test in determining venue is not whether the crime is a continuing one but whether it was perpetrated within the Parish where the prosecution is had." The court further stated that amended article 13 must be "regarded as an aid or guide to the Courts in determining the question of venue; it obviously cannot expand the mandate of the Constitution or limit the right secured thereunder." The latter decision would seem to indicate that the court did not question the constitutionality of the amended article 13, but in light of the quoted language the construction which it will be given remains to be determined.

Significantly, statutes similar to amended article 13 in states with comparable constitutional provisions have been held constitutional. It is also well to note that the amended article 13 is designed to remedy the situation existing at common law whereby a prosecution for a multiple-element crime could not be instituted in any county unless sufficient elements occurred in one county to constitute the completed crime. As the amended

18. *State v. Smith*, 194 La. 1015, 195 So. 523 (1940); *State v. Terzia*, 194 La. 583, 194 So. 27 (1940); *State v. Hart*, 195 La. 184, 196 So. 62 (1940); *State v. Matheny*, 194 La. 583, 193 So. 587 (1940); *State v. Todd*, 194 La. 595, 194 So. 31 (1940).
22. *Id.* at 644, 47 So.2d at 31, n. 1.
23. For a discussion of the constitutionality of such provisions, see Comment, 4 LOUISIANA LAW REVIEW 321 (1942). The principle of amended article 13 is also recognized in the American Law Institute's Code of Criminal Procedure §§ 238-49. However, the Federal Rules require trial in the state and district where the crime was committed, although the defendant can request a change of venue if the crime was "committed" in two or more districts. U.S. CONST. amend. VI; FED. R. CRIM. P. 18, 21(b); WHITMAN, FEDERAL CRIMINAL PROCEDURE 147, 154 (1950).
article is remedial and not penal, it should receive liberal construc-
tion.27 A study of decisions from this and other jurisdictions
having similar statutory provisions will indicate the possible
scope of this venue rule. These cases can best be considered in
their substantive criminal law groupings.

Accessory After the Fact

In Louisiana the crime of being an accessory after the fact is
an offense separate and distinct from the principal felony.28 Thus
it would seem that where the two crimes are committed in sep-
parate parishes, each must be tried in the parish where it was
committed. Two cases have arisen in other jurisdictions in which
the defendants were indicted and prosecuted as accessories after
the fact in the county where the principal felony was perpetrated,
although the accessory acts were committed elsewhere. In one
case29 there was a statute authorizing prosecution either in the
county of the principal felony or in the county where the acces-
sory acts were committed.30 In the other case,31 however, no such
statute existed and a prosecution of the accessory in the county of
the principal felony was held improper. Since Louisiana does not
have a statute permitting prosecution of the accessory in the parish
where the principal felony was committed, the courts of this state may follow the latter decision.

Accessory Before the Fact

In Louisiana, the crime of being an accessory before the fact has been abolished.32 Those parties so known at common law
are now classified as principals.33 In order to ascertain the proper
venue for the trial of such accomplices, it is recommended that
one consider decisions which have treated those parties as acces-
sories before the fact. It has been rather consistently held that
where the procuring, aiding, or other accessory acts occurred in
one county and the principal offense occurred in another, the ac-
complice can be tried in either.34 Whether or not it would follow
that the person who actually committed the main offense is
amenable to prosecution in the county where he was induced

30. N.Y. PENAL LAW § 1934.
33. Ibid.
34. Commonwealth v. Parker, 108 Ky. 673, 57 S.W. 484 (1900); People v.
Vario, 165 Misc. 842, 2 N.Y.S.2d 611 (1938); State v. Ayers, 8 Baxt. 96 (Tenn.
1874).
to commit or was aided in committing the crime is open to question.

**Conspiracy**

No Louisiana cases dealing with the venue of prosecutions for conspiracy have been found, but several interesting cases have arisen in other jurisdictions. In a New York case, where a conspiracy to commit theft was entered into and false representations were made in one county and the property was stolen in another, it was held that prosecution was proper in either county. In a separate, later prosecution of one of the conspirators, whose only act in the county where he was being prosecuted was the recordation of conveyances of the property stolen, the court applied the common law rule that a conspirator or confederate is bound by and held to have committed the acts of the others. Although the defendant in that case was being tried for theft, the same rule should apply to conspiracy, namely, that any of the conspirators can be tried in the county where an overt act by one of the confederates in furtherance of the conspiracy is committed. In a California case a conspiracy to procure females to become inmates of a house of prostitution was entered into and the procuring occurred in County A. Acts of prostitution by the females occurred in County B. Venue in County A was held proper. Prosecution would also have been proper in County B under the rule that a conspiracy can be tried in any county where an overt act tending to give effect to the conspiracy is committed. In Louisiana the same rule should apply since criminal conspiracy requires an "act in furtherance of the object" by one of the conspirators.

**Homicide**

No Louisiana cases have been discovered on the subject, but several common law cases seem to have covered adequately the problems concerning venue for homicide prosecutions. In New York, which has a venue provision similar to our amended...
article 13, the court considered venue in either county to be proper in a case where the intent to kill was formed, preparation was made, and the victim was either seized or enticed, all in County A, and the killing occurred in County B. In a Washington case, where a kidnapping occurred in County A and the body of the victim was found in County B, the court held that either county had venue jurisdiction even though it was not certain in which county death occurred or where the fatal wound was inflicted.

But there seem to be limitations to the applicability of amended article 13 to such situations. Dictum in a Montana case indicates that venue would not be proper in County A when the defendant forms the intent to kill and buys a gun in County A and travels to County B where he kills the victim. The Montana court felt that the acts of buying the gun in and traveling from County A would be mere preliminary acts and not acts requisite to the consummation of the offense. Similarly, in Louisiana, it could hardly be maintained that the formation of the intent to kill or the purchase of a gun (merely a preparatory act) constitutes a "substantial element" of the homicide within the meaning of amended article 13. Common law cases applying the "substantial element" rule have indicated that the only act which can definitely be called a substantial element of the crime is an act directed toward the person of the victim, such as kidnapping or inveigling and enticing him away, or shooting at him.

Other homicide cases from common law jurisdictions involving the crimes of abortion and illegal sale of whiskey have presented related problems. In an Iowa case, a prosecution for manslaughter was held proper in County A, where death resulted from an abortion performed in County B. The Iowa court rejected the defendant's contention that venue could be proper only in the county where the abortion was performed. It is to be noted that had death not resulted, a prosecution for the abortion could have been maintained only in County B where it occurred. However, the abortion and the resulting death of the victim were both

42. People v. Thorn, 21 Misc. 130, 47 N.Y. Supp. 46 (1897), aff'd, 156 N.Y. 286, 50 N.E. 947 (1898); People v. Lee, 334 Mich. 217, 54 N.W.2d 305 (1952).
44. State v. Hudson, 13 Mont. 112, 32 Pac. 413 (1893).
45. Id. at 115, 32 Pac. at 414.
46. Archer v. State, 106 Ind. 426 (1886); People v. Lee, 334 Mich. 217, 54 N.W.2d 305 (1952); People v. Thorn, 21 Misc. 130, 47 N.Y. Supp. 46 (1897); State v. Wilson, 38 Wash.2d 593, 231 P.2d 288 (1951).
substantial elements of the crime of manslaughter, and the prosecution was proper in either county.\textsuperscript{48} A similar result would be reached under Louisiana’s amended article 13.

In a New York case,\textsuperscript{49} the defendant bought wood alcohol in County A, made whiskey illegally and sold it in County B, and death resulting from the purchaser’s consumption of the whiskey occurred in another state. The defendant contended that the New York venue statute required the occurrence of acts or effects requisite to the consummation of the offense in County A for that county to have venue jurisdiction. The defendant felt that since none of the effects of the crime occurred in County A, he should not be subject to prosecution there. The court held that venue was properly laid in County A. However, in dealing with similar facts the Oklahoma court reached a different result. In that case,\textsuperscript{50} the whiskey was sold and delivered in County A. The purchaser gave some to friends, one of whom died in County B from drinking it. The court refused to recognize venue in County A. In the writer’s opinion, in both the New York and Oklahoma cases the acts in County A were too remote from the homicide to constitute a substantial element of the crime. Should similar situations arise in Louisiana, our courts would seem compelled to follow the Oklahoma decision in applying amended article 13.

\textit{Robbery}

There seems to be no Louisiana case concerning venue problems in robbery cases, but several common law decisions have discussed venue in this respect. In a Kentucky case,\textsuperscript{51} where the defendant drew a gun on the victim in County A and took the latter’s dogs from him in County B, the court held that either county would have venue jurisdiction over the offense of assault with intent to rob. The court treated the crime as a continuing one. In a similar case\textsuperscript{52} arising in Oklahoma, the defendant entered the victim’s car in County A, threatened him with a gun, and forced him to drive to County B, where he robbed him of the car and drove away with it. The court held that a prosecution in County B was proper. While the court did not state that prosecution in County A would also have been proper, it is submitted that it would have been.

\textsuperscript{48} Id. at 1309, 214 N.W. at 737.
\textsuperscript{50} Ex\textit{ parte} Lucas, 33 Okla. Crim. 407, 243 Pac. 990 (1925).
\textsuperscript{51} Arnett v. Commonwealth, 270 Ky. 335, 109 S.W.2d 795 (1937).
Two common law cases involved statutes recognizing the continuing nature of such crimes. The statutes provided in effect that where property taken by burglary, robbery, larceny, or embezzlement in one county is brought to another, either has jurisdiction. In one case, the defendant forced the victim to drive the latter's car from County A to a certain point in County B, at which point the defendant forced the victim out and robbed him of his car. The court found the statute applicable to the case and held venue proper in either county. In the other case, the defendant hired a taxi in County A and instructed the driver to go to County B, where he robbed him. The defendant immediately returned to County A with the stolen property, where he was later prosecuted. In recognizing venue in County A the court said that "the procuring of the taxi under such circumstances . . . justified the court in concluding that it was simply a part of the scheme requisite or employed for the consummation of the offense of robbery." The court further stated that, where "the means employed for the consummation of a criminal offense has a situs or location in one county, and the completed offense takes place in another, . . . both counties may entertain jurisdiction." The reasoning of these decisions would seem equally appropriate under Louisiana's amended article 13.

Theft

At common law and in Louisiana prior to 1942, larceny, embezzlement, and obtaining by false pretenses were treated as separate crimes. As indicated before, larceny was treated as a continuing crime and venue considered proper in any county or parish into which the stolen property was taken. Although no Louisiana cases on the subject have been found, embezzlement was also treated as a continuing crime at common law. On the other hand, the crime of obtaining by false pretenses was never treated as a continuing crime in Louisiana or at common law, and prosecution had to take place where the actual obtaining was effected. With the adoption of the Louisiana Criminal Code in...

53. CAL. PENAL CODE § 786 (1949); S.D. COMP. LAWS § 4514 (1929).
56. Id. at 523, 40 P.2d at 271.
1942, the common law stealing crimes were merged into the single crime of theft. Since the enactment of the consolidated theft article in the Criminal Code and the amendment to article 13 of the Code of Criminal Procedure, granting venue wherever a "substantial element" of a crime could be found, few theft cases involving venue problems have arisen in Louisiana. Prior to 1942, however, in cases involving several parishes, the Louisiana Supreme Court had encountered considerable difficulty in determining the proper venue. Of particular interest for purposes of the present discussion were a series of cases arising in 1940 which involved the crimes of embezzlement, obtaining by false pretenses, "double dipping," and other miscellaneous but related offenses. At that time the court was applying the rule that the parish where the act constituting the "gist" of the offense was committed should have venue. The court appeared satisfied in all of the decisions that the "gist" of the crimes involved was the unlawful obtaining, but it still had difficulty in determining the parish in which the property was obtained. For example, the court had to determine whether venue was proper in the parish where a check or other property was given or entrusted to the offender; where the conversion took place; where the duty of the thief to account was; where a check was cashed or deposited and other checks were drawn on the account; or where the checks were honored by the drawee bank. The only uniform decisions rendered in all these cases were those involving commercial paper where the court found that the obtaining was in the parish in which a negotiable instrument was honored by the drawee and the victim ultimately lost his money. But even then the court evidently ignored an earlier decision which had held that the offense did not occur in the parish where the drawee bank was situated.

With the adoption in 1942 of the amendment to article 13,

60. La. Acts 1942, No. 43, p. 137.
permitting prosecution in any parish where a "substantial element of the crime has been committed," the Louisiana courts should now abandon the technical and somewhat confusing rules which characterized the above decisions and consider the more workable solutions reached in other states having liberal venue provisions. By applying the rules developed in other jurisdictions, Louisiana courts should now be able to hold that: Venue is proper where either the misappropriation or the conversion takes place, if they occur in separate parishes, or where the fraudulent representations are made. Venue also is proper in the parish where the property leaves the hands of the victim, as well as in the parish where it is received by the thief. A few cases indicate that venue is also proper where a check is mailed to the thief or where it is received by him. Moreover, a defendant can be prosecuted either in the parish where he was entrusted with and formed the intent to steal the property, or in the parish where it was his duty to account to his principal or bailor. One case indicates that he can also be tried in the parish where the "impact" of his acts is felt. Other common law cases involving misappropriation and negotiation of commercial paper indicate that prosecution can now be brought where the drawee honored the instrument, or where the defendant cashed it or

71. People v. Mitchell, 49 App. Div. 531, 62 N.Y. Supp. 522 (4th Dep't 1900), aff'd, 168 N.Y. 604, 61 N.E. 182 (1901); State v. Boulet, 5 Wash. 654, 106 P.2d 311 (1940). But see People v. Weed, 153 Misc. 404, 274 N.Y. Supp. 943 (1934); Rogers v. State, 14 Okla. Crim. 235, 170 Pac. 269 (1918), in which the intent to steal was not formed in the county where the property was entrusted to the defendant.
deposited it to his account. However, it is doubtful that trial would be proper in any parish through which an instrument merely passes, en route from the parish where it was cashed to the drawee bank, since the passing of the instrument through the parish would not be necessary to the commission of the crime, but only incidental. Consequently, it would not be a substantial element of the crime.

The difficulty of determining venue for a bi-parish crime is illustrated by three different treatments of similar situations in other jurisdictions. In a Mississippi case, a defendant hauled cotton from County A to County B and sold it without informing the buyer of the landlord's lien on it. The court held that the offender could not be tried in the county from which the cotton was taken. The court considered the crime as having been committed wholly within County B. The Kansas court, however, held that the offender was subject to prosecution in the county from which the property was taken. The Kentucky court, on the other hand, treated both counties as having jurisdiction. Both the Kansas and Kentucky courts, however, considered venue in the first county proper only if the intent to defraud was formed before the removal of the property from the first county. It is submitted that the rule of the Kentucky court is the better one and should be applied if the question arises in Louisiana.

Extortion

No Louisiana decisions have been discovered treating venue problems in extortion cases. However, a New York case presented an interesting problem. As a result of threats made to the drawer, a check was given to the defendant in County A as a campaign contribution. The check was deposited in a bank in County B and payment was made by the drawee bank in County A. The court held that County B did not have jurisdiction on

76. Murry v. State, 98 Miss. 594, 54 So. 72 (1911).
78. Collins v. Commonwealth, 141 Ky. 564, 133 S.W. 233 (1911), rev'd on other grounds, 234 U.S. 634 (1914).
79. State v. Gorman, 113 Kan. 740, 216 Pac. 290 (1923); Collins v. Commonwealth, 141 Ky. 564, 133 S.W. 233 (1911), rev'd on other grounds, 234 U.S. 634 (1914). The intent to misappropriate the property must be formed in the county where the property is received by the defendant for venue to be proper in that county. See People v. Weed, 153 Misc. 404, 274 N.Y. Supp. 943 (1934); Rogers v. State, 14 Okla. Crim. 235, 170 Pac. 269 (1918).
80. People v. Fowler, 31 N.Y. Crim. 95, 152 N.Y. Supp. 672 (1914).
In Louisiana, as in other jurisdictions, the crime of receiving stolen things is separate and distinct from the crime of theft. Two common law decisions\(^8\) have held that a defendant cannot be tried for the crime of receiving in a county where the articles are stolen if he received them in another county. The same rule should apply in Louisiana under amended article 13. In Louisiana, the crime of receiving stolen things is defined as the "intentional procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses."\(^8\) This article has been applied to a venue problem in the case of *State v. Ellerbe*.\(^8\) In that case the defendant received stolen pigs in Parish A and removed them to Parish B. It was held that Parish B was not the proper venue because the crime was completed in Parish A where the animals were received. The court stressed the language of the article which makes it a crime to receive or conceal a stolen thing with knowledge of its character and found that there had been possession, but no concealing or receiving, in Parish B.\(^8\) One may wonder why the court failed to apply the idea of a continuing crime as in theft cases, but possibly the court was reluctant to extend a legal fiction. Apart from the applicability of the concept of a continuing crime, however, the case seems correctly decided. It is interesting to note that the Nevada court has also refused to extend the concept of the continuing offense to receiving stolen things. In the case of *State v. Pray*,\(^8\) the defendant purchased, paid for, and

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81. State v. Hart, 195 La. 184, 196 So. 62 (1940); State v. Smith, 194 La 1015, 195 So. 523 (1940); State v. Terzia, 194 La. 583, 194 So. 27 (1940).
84. 217 La. 639, 47 So.2d 30 (1950).
86. 30 Nev. 206, 94 Pac. 218 (1908).
received stolen ore in County A and then transported it to County B. Venue was held improper in the latter county. The Nevada court indicated that the offense was completed where the ore was intentionally received. Transportation of the property into County B to sell it, therefore, was not an act consummating or necessary to the consummation of the crime.\textsuperscript{87} Thus, the court refused to apply the continuing crime concept.

Two other common law decisions are of interest. A Kansas decision\textsuperscript{88} has held that where a defendant goes from one county to another to receive stolen things he cannot be tried in the former. It is submitted that a trip from one county to the other in such a case is not a substantial element of the crime. However, in a hypothetical situation, similar in principle to the case there under consideration,\textsuperscript{89} the Kentucky court indicated that if a defendant, knowing the stolen character of the goods, bought them in County A and took corporeal possession of them in County B, either county would have jurisdiction. Such acts would seem to satisfy the requirements of Louisiana’s amended article 13 should the situation be presented here.

\textbf{Bigamy}

In Louisiana, if a bigamous marriage were contracted in one parish and the defendants went to another parish where they lived together, it appears that venue for a bigamy prosecution would be proper in either parish. The marriage would constitute a substantial element of the crime.\textsuperscript{90} Compare, however, a case\textsuperscript{91} in which the Utah court held that where there is a lawful marriage contracted in one county and a bigamous one in another, venue is proper only in the county where the bigamous marriage was celebrated. The court reasoned that the existence of the lawful marriage in the first county, although it must be shown to prove the second marriage bigamous, was not a substantial element of the crime\textsuperscript{92}

\textbf{Forgery}

Article 72 of the Louisiana Criminal Code\textsuperscript{93} combines the common law crimes of forgery and uttering forged instruments.\textsuperscript{94}

\textsuperscript{87} State v. Pray, 30 Nev. 206, 223, 94 Pac. 218, 221 (1908).
\textsuperscript{88} State v. Rider, 46 Kan. 332, 26 Pac. 745 (1891).
\textsuperscript{89} Ellison v. Commonwealth, 190 Ky. 305, 227 S.W. 458 (1921).
\textsuperscript{90} La. R.S. 14:76 (1950).
\textsuperscript{91} State v. Graham, 23 Utah 278, 64 Pac. 557 (1901).
\textsuperscript{92} Id. at 288, 64 Pac. at 559.
\textsuperscript{93} La. R.S. 14:72 (1950).
\textsuperscript{94} Ibid.
This must be kept in mind in evaluating common law precedents. Several common law courts have established rules which could be applied in Louisiana under amended article 13. The Iowa Supreme Court has held that, where a defendant signed another's name to a negotiable instrument in one county and filled in the body of the instrument in another county, he would be amenable to a forgery prosecution in the latter. The converse would seem as reasonable: prosecution would also be permissible in the county in which the offender signed the name of the other person, since such signing is as much a forgery as is completing the body of the instrument. A California court has held that, where the instrument is forged in one county and deposited for collection in another, venue is proper in either. In an Oklahoma case the defendant forged a mortgage release in one county, and, impersonating the mortgagee, acknowledged the execution of the release before a notary public in another county. The court found that trial in the first county was proper.

Alabama and Mississippi courts have held that, if a forged instrument is sent from one county to another, the sender may be prosecuted in either county for uttering. A similar result would probably be reached under Louisiana's amended article 13. A California decision involved the deposit of a raised check in a bank in County A, drawn on a bank in County B. In due course, the check was paid by the drawee bank in County B. However, the latter county was denied jurisdiction to try the case. The court felt that the crime was completed when the check was presented to the bank in County A, and that no subsequent acts were substantial elements of the crime. In a subsequent case another California court has said that this decision was not in accord with the jurisprudence of the state and should be disregarded. This later view is certainly in accord with the Louisiana rule that the parish in which the drawee bank is located is the proper venue for the trial of theft cases. Forgery seems to be nothing but a special variation of theft.

95. State v. Spayde, 110 Iowa 726, 80 N.W. 1058 (1899); see Robinson v. Commonwealth, 217 Ky. 129, 288 S.W. 1044 (1926).
98. Seay v. State, 21 Ala. App. 339, 108 So. 620 (1925); Bradford v. State, 171 Miss. 8, 156 So. 655 (1934). But see State v. Hudson, 13 Mont. 112, 32 Pac. 413 (1893), where venue was held proper only in the county where the forged instrument was received.
100. Id. at 751, 204 Pac. at 402.
Abortion

There seems to be no Louisiana decision concerning venue in abortion cases, but several common law decisions are worthy of discussion. Under a statute making death of the woman or a miscarriage a necessary element of the crime of abortion, the Indiana Supreme Court has held that the county in which the woman died, as well as the county where the abortion was performed, is a proper place for trial.\(^\text{102}\) The Louisiana abortion statute does not make miscarriage or death an element of the crime.\(^\text{103}\) In Iowa, where there is a statute similar to ours, the Supreme Court has held the crime to be completed when the abortion is performed and refused to permit prosecution in the county of subsequent miscarriage or death.\(^\text{104}\) A California case\(^\text{105}\) presented the question whether certain acts constituted substantial elements of the crime. Preliminary arrangements for performing abortions on three women were made in County A. This consisted of physical examinations, the fixing of the fees to be charged, and the making of three definite appointments for the performance of the abortions. The abortions were performed in County B. The court held County A to be proper for the venue of the trial, treating the steps taken there as part of the crimes later consummated in County B. It is submitted that the steps taken in County A might have been considered mere acts of preparation.

Offenses Requiring Transmission or Publication

The majority rule is that a person who publishes libelous matter may be prosecuted in any county in which the matter is circulated.\(^\text{106}\) Prior to the amendment of article 13, the Louisiana rule was that the person could be prosecuted only in the parish where the libelous matter was printed,\(^\text{107}\) or where it was disseminated.\(^\text{108}\) If defamation is complete with the making of the defamatory statement, the Louisiana rule seems to be the correct one. However, if the crime requires that the defamatory matter be communicated to a third person, as the Louisiana

104. State v. Hollenbeck, 36 Iowa 112 (1872).
defamation statute seems to require, then the majority rule would appear to be correct. There have apparently been no cases in Louisiana on this subject since the amendment of article 13. However, in other states having similar statutory provisions, either the county where the libelous matter is printed or any county into which it is circulated has jurisdiction. Under the amended article 13, in any case involving defamation, threatening letters, or the like, it would be reasonable to find a substantial element of the offense either in the parish where the defamatory matter was printed or in the parish where the defamation ultimately was communicated to a third person.

Miscellaneous Offenses

Operating a vehicle while intoxicated. In a Louisiana case applying amended article 13, a defendant who, while under the influence of intoxicating liquors, drove from one parish to another, was held amenable to prosecution in either parish.

Bribery. A California case has held that where the offer or solicitation of a bribe is made and accepted in one county and payment of the bribe is made in another, venue is proper in either. A similar holding would seem correct under Louisiana's amended article 13.

Gambling. Another California case has held that where a person was induced in County A to go to a gambling house in County B, the courts of County A had jurisdiction over the offense, the acts of invitation being a part of the offense and resulting in the final consummation of the offense in County B. However, whether the Louisiana court would treat the acts of invitation as a substantial element of the crime or as mere preparatory acts is open to question.

Contaminating water supplies. Before the amendment of article 13, the Louisiana Supreme Court in State v. International Paper Co. allowed prosecution in the parish where the con-

109. LA. R.S. 14:47 (1950): "Defamation is the malicious publication or expression in any manner, to anyone other than the party defamed, of anything which tends ... [to expose anyone living or dead to hatred, contempt, or ridicule]." (Emphasis added.)


114. 201 La. 870, 10 So.2d 685 (1942).
tamination took effect. It is submitted that prosecution should be permissible in the parish where the dumping took place. Two common law cases have shown that when the dumping of waste matter in streams results in contamination of waters in a county other than that in which the waste matter is dumped, the defendant may be tried either in the county where the contaminating substance was dumped into the stream, or in the county where the contamination results.

Violation of "blue sky" laws. No Louisiana cases have been found, but two California decisions could be helpful should the question of venue in cases of violation of "blue sky" laws arise in Louisiana. In one case, where a falsified application to register securities was filed by a mining company in the branch office of the Commissioner of Corporations in County A, and the application was forwarded to the main office in County B, venue was held proper in either. In the other case, venue was also held proper in either county where an offer to purchase unregistered securities was mailed from County A to County B and an acceptance was returned to the first county.

Malfeasance in office. A New York case has discussed the question of venue in this type of case. The defendant was commissioned to investigate the police force of a city and to submit a report to the mayor. The investigation was held in County A; the report, which the defendant was under a duty to submit in County B, was not made. The court held that the crime consisted of the failure to report, which failure was a "single act of omission," and that the making of the investigation was a lawful act which did not necessarily lead to the consummation of the crime. The case indicates that prosecution should take place where the failure to perform the official duty occurs. It is doubtful whether a more liberal rule would result from the application of Louisiana's amended article 13.

Criminal neglect of family. The Louisiana Code of Criminal Procedure provides: "When any person shall desert or intentionally not support his family . . . the offense may be prosecuted and punished: (1) In the parish where the person owing the duty of support resides or is found, or (2) in the parish where the last matrimonial domicile was established, or (3) in the par-

118. People v. Twedt, 1 Cal.2d 392, 35 P.2d 324 (1934).
ish where the person (or persons) to whom the duty of support is owed establishes a bona fide residence, provided that this provision shall be effective only if the person to whom the duty of support was owed was justified in establishing a separate residence.\textsuperscript{120} The third section of this article was applied in \textit{State v. Maxie}.\textsuperscript{121} In that case the Louisiana Supreme Court held that the juvenile court of the parish in which minor children lived with and were cared for by their maternal grandmother had venue jurisdiction of the prosecution, although the defendant resided in another parish and despite the Civil Code provision\textsuperscript{122} making the father's domicile the domicile of the children. It is interesting to note that the Supreme Court referred to the constitutional requirement of trial in the parish where the crime was committed as a general provision, superseded by the more specific section of the Constitution establishing juvenile courts and authorizing the legislature to regulate the proceedings therein.\textsuperscript{123} However, article 16.1 of the Code of Criminal Procedure was referred to as merely a declaratory rule of law as to where the offense is really committed and thus not in conflict with the constitutional provision that all trials shall take place in the parish in which the offense was committed.\textsuperscript{124} Significantly, the court also cited amended article 13 as support for its decision, stating that where several acts constituting a crime are committed in more than one parish, trial may be had in any parish where a substantial element of the crime arose.\textsuperscript{125}

\textit{Liquor law violations.} No decisions involving such violations have arisen in Louisiana since the amendment to article 13, but prior to that time it was held in \textit{State v. Shields}\textsuperscript{126} that, under the local option law,\textsuperscript{127} it is the sale and not the executory contract for the sale of spirituous liquors that is denounced as the offense. Consequently, one receiving orders in a dry parish for spirituous liquors to be supplied from a general stock in a wet parish could not be prosecuted for violation of the liquor law of the dry parish, since the sale was not consummated there.\textsuperscript{128} No Louisiana decisions have been found concerning shipments be-

\begin{itemize}
\item \textsuperscript{120} LA. R.S. 15:16.1 (1950).
\item \textsuperscript{121} 221 La. 518, 59 So.2d 706 (1952).
\item \textsuperscript{122} Art. 39, LA. CIVIL CODE of 1870.
\item \textsuperscript{123} LA. CONST. art. VII, § 52.
\item \textsuperscript{124} State v. Maxie, 221 La. 518, 524, 59 So.2d 706, 708 (1952).
\item \textsuperscript{125} \textit{Ibid.}
\item \textsuperscript{126} 110 La. 547, 34 So. 673 (1903).
\item \textsuperscript{127} LA. R.S. 26:581-595 (1950).
\item \textsuperscript{128} State v. Shields, 110 La. 547, 553, 34 So. 673, 675 (1903).
\end{itemize}
between two dry parishes, but in an Iowa case, orders for liquor were solicited by an agent in County A, subject to approval in County B. Liquor was then shipped to County A. The court stated that venue was proper in either county for prosecution of the crime of unlawful sale of liquor. The Arizona Supreme Court has stated that when whiskey was brought into the state in violation of its prohibition laws, venue would be proper in every county through which the whiskey was transported, although the offense was not completed until the whiskey reached its destination.

Contributing to the delinquency of a juvenile. No Louisiana decisions have been found concerning venue in this type of case. However, in a Washington case, a letter written by the defendant in County A was received and caused a juvenile to become delinquent in County B. The court held that the defendant could be tried in either county.

Pandering. Several common law decisions have discussed venue problems in pandering cases. There is much support for the proposition that where a woman is induced in one county to become a prostitute, and is taken or goes to another county and becomes a prostitute as a result of the inducement, the person so inducing the woman can be prosecuted in either county. A California decision indicates that even if the defendant's only act was to have the female medically examined in the second county, the inducement in the first county having been accomplished by his confederates, he may be tried in either county. A Tennessee case has held that where a woman agreed in one county to meet the defendant in another county to be taken out of the state for purposes of prostitution, venue jurisdiction existed in the county because the crime was begun there.

Conclusion

It is submitted that the amendment of article 13 has solved most of the troublesome venue problems. There is the possibility, however, that amended article 13 will not be construed liberally, if the recent decision in State v. Pollard can be considered

135. 215 La. 655, 41 So.2d 465 (1949).
indicative of the court's attitude. In that case a road contractor was charged with theft for obtaining state funds by making false representations with respect to road work to be completed in Caldwell Parish. The contractor had not used the required materials in the construction of the road, had falsified the engineer's reports and had prepared fraudulent statements of the costs incurred—all in Caldwell Parish. The fraudulent estimate was received by the State Department of Highways in East Baton Rouge Parish, the parish in which the contract to construct the road had been entered into. The check in payment of the estimate was drawn in East Baton Rouge Parish on a bank in that parish and mailed to the contractor in a third parish, where he deposited it to his account. The Louisiana Supreme Court held that no substantial element of the crime occurred in Caldwell Parish, treating the acts done there as mere preparation. The decision seems to be in conflict with most of the decisions reached in other states. For example, in the similar New York case of People v. Hudson Valley Construction Co., a conspiracy to defraud the state was formed in County A, where the construction work was to be done and the materials were to be furnished. The state was defrauded through excessive charges for the work and materials. The court stated that the conspiracy initiated the offense and constituted part of the crime and that the doing of the work and the furnishing of the materials were necessary elements of the crime. Thus, under a statute similar to amended article 13, venue was held proper in County A. In view of the fact that the distinction between the two cited cases is very slight, the different results must be attributed to a difference in opinion as to how liberally the respective venue statutes should be construed. It is submitted that the result in the New York case is more in keeping with the Louisiana legislature's purpose in amending article 13. Furthermore, the rules that the defendant can be prosecuted where the effect of his fraudulent actions are felt or where "some of the false misrepresentations were

137. 217 N.Y. 172, 111 N.E. 472 (1916); see Ex parte Myers, 119 Kan. 270, 237 Pac. 1026 (1925); State v. Mason, 61 Kan. 102, 58 Pac. 978 (1899). In support of State v. Pollard, 215 La. 655, 41 So.2d 465 (1949), however, see State v. Robinson, 71 N.D. 463, 2 N.W.2d 183 (1942).
139. People v. Wallace, 78 Cal. App.2d 726, 748, 178 P.2d 771, 784 (1947). For the proposition that the defendant can be tried in the county where the effect of his acts are felt, see State v. Glucose Sugar Refining Co., 117 Iowa 524, 91 N.W. 794 (1902); Commonwealth v. Louisville & Nashville R.R., 175 Ky. 267, 194 S.W. 345 (1917).
made"140 might have been applied. Under the first rule, the parish where the roads were to be built could be treated as the parish affected by the defendant's criminal conduct and the one in which the district attorney would have more reason and be more likely to prosecute. While it should no longer be necessary to designate one particular parish as the locus of the crime, the court may still be confronted with questions as to whether a "substantial element" of the crime is present in the parish selected for prosecution. That the question is not always easy to answer is indicated by the Pollard case. In situations where the Louisiana Supreme Court has not had the opportunity to interpret amended article 13, the rules developed in venue cases in other jurisdictions should be of assistance.

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Acquisitive Prescription of Servitudes

Article 765, Louisiana Civil Code of 1870: "Continuous and apparent servitudes may be acquired by title, or by a possession of ten years . . . ."1

Article 3504, Louisiana Civil Code of 1870: "A continuous apparent servitude is acquired by possession and the enjoyment of the right for thirty years uninterruptedly, even without a title or good faith."

The foregoing articles of the Louisiana Civil Code provide two periods for the acquisitive prescription of continuous and apparent servitudes. Their distinctive language and the mere presence of two articles indicate that there are two distinct types of prescription. The purpose of this Comment is to ascertain the meaning of these two articles and to determine the requirements of each type of acquisitive prescription; to examine the treatment of the articles in the Louisiana jurisprudence; to consider briefly the prescription of servitudes in other systems of law; and to

1. The amendment to this article made by La. Acts 1904, No. 25, p. 30, dealing with the acquisition of public servitudes through possession of ten years is not discussed in this Comment. No problem has arisen in interpreting this amendment. See Landry v. Gulf States Utilities Co., 166 La. 1069, 118 So. 142 (1928); Bomer v. Baton Rouge, 162 La. 342, 110 So. 497 (1926); Frierson v. Police Jury of Caddo Parish, 160 La. 957, 107 So. 709 (1926).