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Paul M. Hebert** and Carlos E. Lazarus***

This article will cover only selected statutes of general interest. Related subject matter will be found in the discussion of Practice and Procedure, constituting part of this Symposium.

REFUSAL TO LIMIT JURISDICTION OF APPELLATE COURTS IN CIVIL CASES

The 1956 legislative session was noteworthy for far-reaching measures proposed but not enacted into law which would have greatly affected Louisiana’s traditional system of an appeal on the facts in all civil cases. Constitutional amendments were introduced for the purpose of limiting the appellate jurisdiction of the Supreme Court and the courts of appeal to questions of law in personal injury cases.1 When one of the measures affecting the Supreme Court received a majority vote of those present but failed on reconsideration to receive the necessary two-thirds vote required for constitutional amendments, the proposed bills were all allowed to die on the calendar or in Senate and House Committees.

The writers are advocates for the retention of the present Louisiana system which allows the appellate courts in this state to exercise a review of both the facts and the law in all civil cases.2 It is believed that the Legislature acted wisely in refusing

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1. Senate Bill No. 168 and House Bills Nos. 733 and 747 proposed amendments to section 11 of article VII of the Louisiana Constitution of 1921 to limit the jurisdiction of the Supreme Court; Senate Bill No. 155 and House Bill No. 734 proposed amendments to section 29 of article VII of the Louisiana Constitution of 1921 to limit the jurisdiction of the courts of appeal. Recognizing that these measures, if adopted, would have the effect of encouraging widespread use of civil jury trials in personal injury cases, House Bill No. 774 would have provided additional procedures to be followed in such cases including: procedures for the examination of prospective jurors by the court; provisions for alternate jurors, for separate verdicts, and for general verdicts accompanied by interrogatories to be answered by the jury; provisions for directed verdicts, for the rendition of judgments notwithstanding the verdict of the jury, and for the granting of a new trial in certain cases unless the plaintiff enters a remittitur.

2. In a statement made to Judiciary Committee “B” of the House of Representatives at the time of one of the hearings one of the writers said in substance: “It is my view that the elimination of the appeal on the facts in personal injury cases tried by jury in Louisiana would be unwise and is inconsistent with Louisi-
to tamper with the appeal on the facts in civil cases which has been such an historic part of our Louisiana judicial system.\(^3\)

Considering the fact that a majority of the legislators voting on the initial proposal favored a review on questions of law alone in personal injury cases, it is to be expected that the proposed measures will again be introduced in future legislative sessions.

The basic purpose sought by the proposals is to bring about a situation in which the jury will be widely used in all personal injury cases in the state courts instead of the present system under which such litigation is largely handled by the non-jury trial. To some extent there may be justification for a feeling on the part of lawyers representing personal injury claimants in state courts that the quantum of the judgments has been too low in many cases as compared with jury verdicts in comparable cases brought in the federal courts under the Louisiana statute permitting a direct action against the insurer. The remedy should be to focus the attention of the courts on the necessity for more adequate verdicts in an era of inflation and not to jettison the jurisdictional and trial system which are largely responsible for relatively clear dockets in most of the state courts. Studies and surveys of the problem of quantum of damages in the state courts are needed and might well develop data of value to the bench and bar in the consideration of the problems involved in these recurring proposals which, it is predicted, will be heard from again.\(^4\)

\(^{3}\) ana's traditional theory of judicial administration. The bills under consideration would have the effect of importing into our law the complicated inequitable procedures of common law jury trials in these cases. Louisiana's present system under which questions of fact involved in civil litigation can be determined by able, conscientious trial, appellate and Supreme Court judges is, in my opinion, far superior to the system proposed which would radically limit the review authority of our present appellate courts and the Supreme Court.

"The appeal on the facts in all civil cases in Louisiana has many desirable results—it avoids the splitting of issues into questions of law and fact. It avoids delay and the necessity for numerous new trials if legal error is committed in the trial court. It generally simplifies the rules of evidence generally, in my opinion, is more just to both plaintiffs and defendants in resolving the increasingly complex issues of liability, contributory negligence and damages that are involved in personal injury litigation."\(^3\)

\(^{4}\) For some observations on the far-reaching effect of the appeals on the facts in civil cases in Louisiana, see Hebert, *The Problem of Reversible Error in Louisiana*, 6 Tul. L. Rev. 169 (1932).

4. It is of more than passing interest that the movement to bring about the use of the jury in personal injury cases in the Louisiana state courts comes at a time when court congestion in other jurisdictions resulting from the system of jury trials is stimulating demand for the abolition of the common law jury trial in automobile accident cases. See observations of Judge David W. Peck, Presiding Justice of the Appellate Division of the Supreme Court of New York, in *The Future of the Trial Lawyer*, 40 J. Am. Jud. Soc. 38, 43-44 (1956).
ASSIGNMENT TO JUDICIAL DUTY OF RETIRED JUDGES

A proposed amendment to section 8 of article VII of the Constitution would authorize the Supreme Court to assign retired judges, with their consent, to judicial duty on any court of record for any designated period. This provision is not applicable to judges retired on account of disability. The proposed amendment makes it clear that any retired judge so assigned shall have all of the power, duties and jurisdiction of the court to which he is assigned. His salary is required to be equal to that of the judges of the court to which he is assigned and in addition he is entitled to the expense allowances provided by the constitutional article VII, section 13 "and as provided by Law in an amount equal to that allowed to judges of the court to which he is assigned." The Legislature is directed to make the requisite appropriation.

This is a most salutary proposal. It would put into effect a system similar to that which the federal judiciary has utilized to good advantage. There are instances in which state court judges wish to accept their retirement but would be willing from time to time to accept judicial duty for stated periods. Under this proposal the experience of retired judges may be wisely drawn upon as an aid in clearing a particularly congested docket for the trial of a special lengthy case, or for temporary relief of other judges in a variety of situations. This proposal is not only good for the judicial system but also is certain to be a psychological boon to the retired judge who consents to such temporary assignments. It is to be hoped the proposal will carry at the November election.

ADDITIONAL PROVISIONS — PENSIONS FOR THE WIDOWS OF JUDGES

In 1954 the Legislature made provisions for pensions for the widows of judges. The bill originally proposed in the Senate at that time provided pensions for the widows of judges in three classifications, namely, (1) judges who had retired either before or after the passage of the act of 1954, (2) judges who were then eligible for retirement but who had not retired, and (3) judges who became eligible for retirement after the passage of the act. Under section 2 of the 1954 act it was provided that the sur-

viving widow's right to the pension was dependent upon her hav-
ing been married to the judge at the date of his death for ten
years either prior to his retirement or for ten years prior to his
eligibility for retirement. Before final passage, Act 697 of 1954
had been amended to create two new classifications of judges
whose widows were to receive the same pensions, namely, (1)
any retired judge who had died before the effective date of the
statute; and (2) any judge who would have been eligible for re-
tirement at the end of the term of office for which he had al-
ready been elected and who died before the effective date of the
Act. Section 2 was not amended and as a result the widows of
judges in the last two categories could not literally meet the
additional marriage qualifications there stated.

In Dore v. Tugwell7 the Supreme Court construed the 1954
act broadly to give effect to the legislative intent expressed in
section 1. It was held that the act, construed as a whole, granted
the pension to the widow of a judge who would have become
eligible for retirement at the end of his term of office, but who
had died prior to the effective date of the act.

The 1956 Legislature, against this background, amended, ex-
tended, and clarified the 1954 statute by providing that, upon
the death of any judge of a court of record, or of any retired
judge of a court of record, his widow is entitled to the pension
as long as she remains unmarried.8 Under the previous statute
the pension was one-half of the “pension or retirement pay.”
The 1956 act rephrases the pension as “one-third of the salary
of any such judge as was being paid such decedent prior to death
or retirement.” Although this change in phraseology does not
reduce the amount of the pension in the case of judges who retire
on two-thirds pay (since one-half the retirement pay under the
previous statute is equal to one-third of the judicial salary), it
definitely reduces it in the case of judges who, under article VII,
section 8 of the Constitution are entitled to retire at full pay upon
reaching the age of eighty years. It is hoped that this apparent
oversight will be remedied at the earliest opportunity.

PENSIONS FOR FORMER JUDGES

New provision has been made for the payment of pensions
to former judges of courts of record who do not qualify under

7. 228 La. 807, 84 So.2d 199 (1955).
present retirement provisions, and who have served for more than twenty years, not necessarily consecutively, and who have reached the age of seventy-five. The pension is equal to one-half the salary the judge was receiving at the time he ceased to be a judge.

These two instances of legislative action liberalizing pension provisions should add to the attractiveness of judicial office and afford a desirable degree of pension security.

TRAVELING EXPENSES — LAW CLERKS AND STENOGRAPHERS

The travel expense provisions (Orleans excepted) were liberalized. When there are two parishes in the district, the allowance has been fixed at $1,200.00 and the allowance is fixed at $1,800.00 in the three parish judicial districts. The previous statutory requirement of a detailed itemized statement of expenses has been eliminated. Such travel funds are payable monthly on the judge’s own warrant.

Provision was enacted exempting law clerks and stenographers employed by judges of courts of record from the dual office holding statute. This should facilitate the staffing of such positions in which there is difficulty in obtaining the services of highly qualified personnel for such positions.

JUDICIAL ORGANIZATION

Criminal and Civil District Courts of Orleans Parish

The 1956 Legislature created two additional divisions of the Criminal District Court and an additional division of the Civil District Court for the Parish of Orleans. This increases to eight the number of judges in both the Criminal and Civil District Courts. The respective statutes under which these judgeships were created make the term of office coincide with that of the incumbent judges of these two courts so that the first judges appointed to these new judicial offices have terms of four years

and thereafter the judgeships shall be filled by election for terms of twelve years.

**Juvenile and Family Court for the Parish of Orleans**

Under a proposed constitutional amendment to be voted on at the November 1956 election, the Juvenile Court for the Parish of Orleans would be reconstituted as the Juvenile and Family Court for the Parish of Orleans and the number of judges increased from two to three.\(^{14}\) The constitutional amendment, if adopted, would increase the terms of office from eight to twelve years and would fix the salary at $10,000.00 payable by the state and $5,000.00 payable by the City of New Orleans. The additional judge is to be appointed by the Governor to serve until the office is filled at the congressional election of 1958.

**Additional Judicial Districts**

Proposed constitutional amendments were adopted for November submission to the people proposing the creation of an additional judicial district to be composed of the Parish of Lafourche\(^{15}\) and a new judicial district to be composed of the Parish of Livingston.\(^{16}\)

Additional judgeships proposed for several judicial districts were not enacted by the 1956 Legislature.\(^{17}\) With the development that has taken place in the work of the Judicial Council and the statistical information now available as to the volume of

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15. Under La. Const. art. VII, § 31, the Parishes of Terrebonne ad Lafourche compose the Seventeenth Judicial District. La. Act 595 of 1956 proposes to amend this constitutional provision by withdrawing the Parish of Lafourche so that it shall become the new Thirty-Second Judicial District. It is provided that the incumbent judge of the Seventeenth Judicial District who is a resident of Lafourche Parish shall act as the judge of the newly created Thirty-Second District until his term expires and until the election of the new judge for the Thirty-Second Judicial District.
16. La. Act 628 of 1956 also proposes a constitutional amendment to La. Const. art. VII, § 31, creating a new Thirty-Second Judicial District “or such other consecutively numbered district as the Secretary of State shall designate in the event that additional judicial districts are created simultaneously” to be composed of the Parish of Livingston, which presently forms part of the Twenty-First District.
17. House Bill No. 1190 (Fifth Judicial District); House Bill No. 636 (Seventeenth Judicial District); House Bill No. 196 (Twenty-Seventh Judicial District). However, the adoption of the constitutional amendments proposed by La. Acts 595 and 628 creating additional judicial districts to be composed of the parishes of Lafourche and Livingston, respectively, will have the effect of creating two additional judgeships, since the number of judges in the Seventeenth and Twenty-First judicial districts, from which the districts are to be created, will not be diminished. See La. Act 7 (E.S. 1956), amending La. R.S. 13:621 (Supp. 1956).
judicial business in the several districts, it is to be expected that
the Legislature should draw increasingly on such information
in appraising the need for additional judicial districts.18 It would
be desirable that all proposals for new judgeships be required to
gain clearance in the form of a recommendation from the Judicial
Council in a manner similar to the present system under which
the necessity for additional federal judgeships is determined.

JUDICIAL SALARIES

The 1956 Legislature made no substantial change from the
viewpoint of the general state level of judicial salaries. Such
legislation as was passed was specially applicable to specific
judgeships and in many instances the salary adjustments made
related to the portion of the judicial salary contributed by local
governing bodies.19 On the subject of local contributions to judi-
cial salaries, the Revised Statutes formerly provided that where
more than one parish is in a judicial district, the additional sal-
ary paid district judges by such parishes should be in the pro-
portion of the assessed value of property in the contributing
parish to the total assessed valuation of all parish property in
the judicial district.20 Act 253 of 1956 avoids the rigidity of this
formula by providing that the additional salary may be divided
equally among the parishes in the district, according to the pre-
vious method, or as may be determined by the governing author-
ities of the parishes in the district.21

The need for a comprehensive state-wide consideration of the
entire subject of judicial salaries is evident from the number of
statutes passed at each session of the Legislature to make salary
adjustments for various courts without state-wide uniformity.
Federal judicial salaries were fixed at $22,500.00 for United
States District Judges, $25,500.00 for Court of Appeals Judges
and $35,000.00 for Supreme Court Justices in 1955.22 The 1954
Legislature authorized a comprehensive study to be made re-

18. See REPORT OF THE JUDICIAL COUNCIL ON THE NUMBER OF CIVIL CASES
FILED IN DISTRICT COURTS FROM JUNE 1 TO AUGUST 1, 1956 (Mimeo. 1956) for
indication of the districts in which the heaviest case loads exist.
specting judicial salaries throughout the state.\textsuperscript{23} Though the
study has been completed, no definite recommendations have been
made for legislative action.\textsuperscript{24} The subject of judicial salaries
should now receive legislative attention. Any salary measures
adopted should be pursuant to a state-wide plan that would make
unnecessary the recurrence of the "special bill" approach to the
subject of salary consideration. There would be merit in the
establishment of a standing Commission on Judicial Salaries with
a statutory duty in the Commission of making periodical reviews
and reports to the Legislature when action is called for. Judges
should not be embarrassed by any necessity for raising this ques-
tion themselves from time to time.

\textbf{JURISDICTION OF COURTS}

Miscellaneous measures affecting the jurisdiction of certain
specific city courts were adopted by the 1956 Legislature.\textsuperscript{25} As
these measures are primarily of local interest they will not be
commented upon.

The family court movement in Louisiana makes the proposed
constitutional amendment to the jurisdiction of the Family Court
of Baton Rouge of some general interest.\textsuperscript{26} Act 592 of 1956 is a

\textsuperscript{23} Senate Concurrent Resolution No. 13 of the Regular Legislative Session of
1954.

\textsuperscript{24} The study was made by the Louisiana Legislative Council assisted by a
Committee of the Louisiana State Bar Association and was published as \textit{LOUISIANA
LEGISLATIVE COUNCIL RESEARCH REPORT No. 6} (April 7, 1955).

\textsuperscript{25} La. Act 606 of 1956 proposes a constitutional amendment to section 51 of
article VII extending the criminal jurisdiction of the City Court of Shreveport to
portions of the Parish of Bossier which are within or which may be later taken
into the city limits of Shreveport. La. Act 86 of 1956 amends LA. R.S. 13:2427
(1950) and increases the civil jurisdiction of the City Court of Ruston concurrent-
ly with that of the district court in matters not exceeding $500.00. La. Act 199 of
1956, amending LA. R.S. 13:2471 (1950), increases the civil jurisdiction of the
City of West Monroe concurrent with that of the district court in matters not
exceeding $1,000.00. La. Act 227 of 1956, amending LA. R.S. 13:2215 (1950), with
reference to the Lafayette City Court, authorizes collection of fines by a deputy
marshal and establishes a traffic violation bureau with jurisdiction to collect fines
in traffic cases. La. Act 237 of 1956, amending LA. R.S. 13:2383 (1950), in-
creases the civil jurisdiction of the City Court of New Iberia concurrently with the
district court in matters not exceeding $500.00. In criminal matters the court is
authorized to assess court costs not to exceed $5.00 to defray clerical and other
court expenses.

\textsuperscript{26} The Family Court for the Parish of East Baton Rouge, as established and
created by constitutional amendment by LA. Act 738 of 1954, LA. CONST. art. VII,
§ 53, was given exclusive jurisdiction in all matters pertaining to minors under
seventeen years of age, except capital crimes and cases of attempted aggravated
rape if committed by minors of fifteen years of age or older. It was also empowered
to try cases involving non-support, disavowal of paternity, actions for divorce, sep-
aration and annulment of marriages, including all matters connected therewith,
such as alimony matters, custody, and injunctive relief for the preservation of
the community.
joint resolution proposing a constitutional amendment to amend the jurisdictional powers of this court. In addition to its present jurisdiction this act, if adopted in November, will specifically confer upon the Family Court of Baton Rouge exclusive jurisdiction in cases arising under the Uniform Reciprocal Non-Support Law in cases involving desertion of a wife by a husband and in cases involving criminal neglect of family. The amendment also specifically confers jurisdiction upon this court in all proceedings "for writs of Habeas Corpus for the determination and enforcement of rights to the custody of minors or for the release of any person in actual custody in any case" in which the court has original jurisdiction.27

GENERAL LEGISLATION RELATIVE TO CITY COURTS

In addition to a special statute creating an additional city court28 and in addition to other acts amending specific provisions of the several city court statutes29 the 1956 Legislature also enacted Acts 257, 326, and 422, which all pertain to the establishment and creation of city courts in general. Consideration of these statutes requires some treatment of the history and status of the city courts up to the present time.

Pursuant to constitutional authority30 the Legislature has, from time to time, adopted general and special legislation abolishing the justice of the peace courts in wards containing cities of more than 5,000 inhabitants and creating in their stead city courts with varying civil and criminal jurisdiction depending upon the combined population of the city and ward wherein these courts were established.31

27. This is evidently intended as a legislative policy changing the result reached in Kelly v. Kelly, 227 La. 275, 79 So.2d 307 (1955) in which the Supreme Court held that the judge of the Family Court of East Baton Rouge Parish had no jurisdiction or authority to issue a writ of habeas corpus requiring the father of a minor to return the child to its mother to whom custody has been awarded by a California court.
29. See statutes listed in note 25 supra.
30. LA. CONST. art. VII, § 51.
31. These general provisions, the first one of which was enacted as early as 1898, were incorporated into the Revised Statutes of 1950 under Chapter 7 of Title 13 as sections 1870 et seq. These provisions require the voters of all wards containing cities of more than 5,000 inhabitants to elect a city judge for a term of six years upon whose election the office of justice of peace will ipso facto be abolished. They also regulate the procedures in these courts both in civil and criminal matters as well as the appointment, election and salaries of clerks of court, marshals, and lesser court officers and employees. The qualifications of the judge,
These general provisions have, in the main, been utilized to supplement the special statutes creating particular city courts. The result has been a lack of uniformity among the city courts, especially regarding the jurisdictional amount which these courts may entertain and the exact scope and applicability of the general legislation to each one of them. This lack of uniformity and the maze of special legislation affecting particular city courts imposes a considerable burden on the practicing attorney who is oftentimes at a loss to determine what procedure obtains under differing statutes and the exact extent of the jurisdiction possessed by the particular city court where his case will be considered.

The need for a uniform and integrated city court statute is thus apparent. Act 326 of 1956 represents an attempt by the 1956 Legislature to achieve some measure of uniformity. This statute was apparently intended to supersede the other laws on the subject, with the exception of the special legislation applicable to the Cities of New Orleans, Baton Rouge, Monroe, Alexandria, and Shreveport. The first section of the new general act provides for the abolition of the justice of the peace courts in cities of more than five thousand inhabitants upon the election of a city judge. The act provides for the election of these judges "whether these courts are presently in existence or may hereafter be created." The terms of all city judges to whom the act applies are to expire on December 31, 1960, and thereafter each shall be elected for a period of six years. Where the combined population in the city and ward is more than 10,000, the statute requires the judge to be a practicing attorney; the civil jurisdiction of the court is concurrent with that of district courts where the amount in dispute does not exceed $300.00 or $500.00, depending upon whether the combined population is less than or more than 20,000.

The criminal jurisdiction of these courts, also limited by the constitutional provision, extends to the trial of cases involving violations of municipal and parochial ordinances; to the holding of preliminary examinations in cases not capital; and, the trial of offenses not punishable by imprisonment at hard labor.

32. Section 14 of Act 326 of 1956, adding LA. R.S. 13:1904 (Supp. 1956), provides: "The provisions of this Act shall not apply to the City Courts of Baton Rouge, Monroe, Alexandria, New Orleans or Shreveport." Note also additional exceptions of the Cities of Eunice and Gretna from portions of section 1 of the act.

bined population of the city and ward is over 10,000, but less than 20,000, civil jurisdiction conferred is concurrent with the district courts if the amount in dispute is not over $500.00; where the combined population is 20,000 or more, the jurisdictional amount is $1,000.00. The act specifically confers jurisdiction in compensation cases and in suits to foreclose mortgages and liens on movables within these respective jurisdictional amounts. The act also specifically denies these courts jurisdiction in succession matters or in cases in which a succession is a defendant, where the state, or a parish, or political subdivision is a party defendant or where title to real estate is in question. No provision is made in this statute regarding jurisdiction in courts where the combined population is 10,000 or under.

Qualifications of the judges are made uniform and their salaries in addition to fees in civil cases are graduated according to the population in the city and ward where the court is established.

The act further provides for the disposition of fines and forfeitures, recusation or absence of the judge, as well as provision for the appointment of clerks and deputy clerks, prescribing their qualifications and their powers, and for the appointment of court reporters. The office of marshal for every city court is also provided.

As stated before, this statute does not apply to the city courts of New Orleans, Baton Rouge, Monroe, Alexandria, and Shreveport. But that it was intended to supersede other statutes relative to city courts is evident not only from the first section of the act which requires the election of city judges in 1960, but also from the repealing clause which repeals "all laws or parts of

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34. These respective jurisdictional amounts are in accordance with La. Const. art. VII, § 51, as amended.
36. La. Const. art. VII, § 51 authorizing the abolition of the justice of the peace courts in wards embracing the parish seat, or containing cities of more than 5000 inhabitants authorizes creation of courts "with such civil jurisdiction as is now vested in the justices of the peace." See note 31 supra.
37. La. Act 326 of 1956, § 4, adding La. R.S. 13:1894 (Supp. 1956), sets forth the salary schedule. Such salaries are to be paid in proportion of one-half each by the city and parish. Additional salaries by the city or parochial authority are authorized but not required.
38. He is to be elected in November 1960 for six years, in all cases, his term to begin January 1, 1961. Although the statute prescribes the qualifications, duties and powers of marshals, no provision is made for their compensation.
laws, general or special, in conflict with the provisions of this Act."

Although Act 326 of 1956 is deficient in various respects (failing to provide the jurisdiction of city courts in cities where the population is 10,000 or under), it goes a long way towards making its provisions applicable statewide. Its effect, however, is somewhat doubtful in view of the fact that the 1956 Legislature also adopted additional special legislation creating a new city court (Bunkie, Act 357 of 1956) and amended the provisions of the various statutes creating the city courts of Eunice, Lafayette, Lake Charles, New Iberia, Natchitoches, Ruston, West Monroe, and others.

Moreover, section 1870 of Title 13 of the Revised Statutes which contained the great bulk of the general legislation pertaining to city courts was also amended by different acts in 1956. The first of these amendments (Act 257 of 1956) amends and re-enacts the entire section, but the only ostensible changes it makes are (1) to reduce the mandatory salary of the judge in wards of more than 10,000 inhabitants from $3,000 to $2,000, permitting the municipalities and parishes to pay an additional $1,000 and (2) to increase the salary of the marshal from $2,000 to $3,000.

As amended, however, R.S. 13:1870 conflicts with Act 326 in many respects, particularly regarding the qualifications of the judges and the jurisdiction of the courts. Under the Supreme Court ruling in the St. Julian case, it is most likely that this amendment to R.S. 13:1870 would be ineffective, since Act 326 is the last numbered act of the Legislature.

But then again, R.S. 13:1870 was again amended and re-enacted by Act 422 of 1956, and although the declared purpose of the amendment is to fix the salary of city court marshals at $3,600.00, the re-enactment of the rest of the section, set forth in the Revised Statutes of 1950, makes it inconsistent and in many respects conflicts with the provisions of Act 326. Again, under the St. Julian decision, R.S. 13:1870 as last amended by Act 422 of 1956 would seem to govern. Only a curative statute will apparently clarify the chaotic situation which this recent legislation has created. Happily, the Louisiana State Law Institute, as part of its program to revise Title 13 of the Revised Statutes, has undertaken this task.

utes in connection with the revision of the Code of Practice, proposes to undertake such a task.

DEPOSITIONS AND DISCOVERY

Prior to the enactment of the new Deposition and Discovery Statute of 1952, commissions for the taking of depositions on oral examination and upon written interrogatories were governed by the articles of the Code of Practice and sections 3771 et seq. of Title 13 of the Louisiana Revised Statutes of 1950. For the purpose of depositions upon oral examination, the various clerks of court, and in the Parish of Orleans, notaries public as well, were constituted commissioners for the taking of the testimony of witnesses. In the case of depositions upon written interrogatories, the Code of Practice articles required that the commission to take the testimony be directed to "some judge or justice of the peace . . . or to any other person authorized by law to administer oaths."40 Upon the adoption of Act 202 of 1952 enacting the new Depositions and Discovery Statute these former provisions were repealed. The new act42 provided for depositions to be taken before "an officer authorized to administer oaths, who is not an employee or attorney of any of the parties or otherwise interested in the outcome of the case." The federal rule on the subject which authorizes the judge to confer authority pro tempore on any person to take a deposition was rejected by the drafters of the new statute, thus avoiding the problem as to whether the Legislature could constitutionally authorize the judiciary to confer upon private individuals the authority to administer oaths under such circumstances.

Act 55 of 1956 authorizes the official court reporters of the United States District Courts in Louisiana, as well as the court reporters of all district courts, the Parish of Orleans excepted, to administer oaths "to parties appearing before such reporters for the taking or execution of depositions, interrogatories and statements," thus legislatively conferring upon these officers limited authority to take depositions in all cases where they were not otherwise authorized to do so.

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ORDERS WAIVING MARRIAGEABLE AGE OR WAIVING SEVENTY-TWO HOUR WAITING PERIOD

Act 140 of 1934, which amended article 92 of the Civil Code by raising the minimum marriageable age to eighteen for males and sixteen for females, also contained a provision authorizing district court judges to issue, in their discretion, orders waiving the minimum age requirements upon application by one of the parties to the marriage in extraordinary circumstances. This proviso, however, was not reproduced as part of article 92 of the Civil Code, as amended, which made it at least doubtful as to whether it was effective, particularly since it was not re-enacted as part of the Revised Statutes of 1950. Any doubt that might have existed as to its effectiveness was removed by Act 298 of 1954 which again amended and re-enacted article 92 of the Civil Code, including as part thereof the proviso of 1934. The 1954 amendment however modified the exception by providing that in Orleans Parish the authority to issue the waiver order was vested in the judges of the First City Court of the City of New Orleans. Unfortunately, the language used in the 1954 amendment is not free from ambiguity so that the statute is susceptible of either one of two interpretations, viz: (1) the authority formerly conferred upon the civil district court judges has been withdrawn and vested in the judges of the first city court, which is probably what was intended, or (2) the authority vested in the judges of the first city court is concurrent with that of the civil district court judges. 43

The 1956 Legislature has again amended article 92 of the Civil Code, using the same formula as before, this time conferring similar authority also upon the judge of the Family Court for the Parish of East Baton Rouge.

As a companion measure, the 1956 Legislature also amended R.S. 9:204-206, which makes unlawful the celebration of marriages prior to seventy-two hours of the issuance of the marriage license, except upon the certificate of a district court judge attesting to the necessity for an immediate ceremony. These provisions, which were also amended in 1954 by authorizing the cer-

43. The pertinent language of the 1954 amendment is: "Provided, that this Act shall not apply, when on application of either of the parties to a proposed marriage, any district judge, except, in the Parish of Orleans, any judge of the First City Court of the City of New Orleans, may, upon satisfactory evidence being presented to him * * * when the parents * * * of the parties give their consent * * *."
tificate to be issued by the First City Court judges of the City of New Orleans, have recently been amended by Act 288 of 1956 to confer a similar authority on the judge of the Family Court for the Parish of East Baton Rouge. Whether these amendments also divest the district court judges of their authority in this respect is also subject to question, for the 1956 amendments have failed to clarify the language in the previous enactments in this respect.