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Courts and Civil Procedure

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become more and more limited so that prescription now does run against these persons in several situations. Article 3541 in the part on liberative prescription was amended by Act 736 of 1954 so as to make the thirty-year (*liberative*) prescriptions run against these persons.[31] Act 341 of 1958 further amended this same article so as to make this provision cover both liberative and acquisitive thirty-year prescriptions. Prior amendments concerning the running of the ten-year acquisitive prescription against minors, interdicts, married women, and absentees, were duly incorporated in the appropriate article.[32] The 1958 amendment concerning acquisitive prescription would have had a proper location in Article 3499.

An important immediate and transitional feature of this 1958 act is not in the express article amendment but in another section of the statute. This provides that the amended article "shall operate retrospectively, as well as prospectively"; however, there is the proviso that no prescription of thirty years shall accrue before the expiration of 6 months from the effective date of the act.[33]

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APPELLATE REVISION

The most acute problem which has confronted the legal profession in Louisiana during the past few years has been the overload thrown upon our Supreme Court by its ever-increasing civil appellate docket. To solve this problem the Judicial Council, through a committee of its own, and in cooperation with the Chief Justice, the judges of all of the appellate courts, the Judicial Administrator, and committees of the state and local bar

31. Hebert & Lazarus, *1954 Legislation Affecting the Civil Code*, 15 LOUISIANA LAW REVIEW 9, 16-18 (1954), considered the 1954 act as covering both liberative and acquisitive prescription. Their comments are predicated upon Louisiana decisions there cited which fuse Articles 3499 (acquisitive prescription) and 3548 (liberative prescription) as one, upon the assumption that the only thirty-year prescription involves title to immovable property. However, there are also other actions subject to the thirty-year liberative prescription in LA. CIVIL CODE arts. 68, 78, 1030 (1870), and LA. R.S. 9:5701 (1950), which deny the generalization that Article 3548 is the counterpart or affirmance of Article 3499.

32. LA. CIVIL CODE art. 3478 (1870), as amended by La. Acts 1920, No. 161, and La. Acts 1924, No. 64.

33. La. Acts 1958, No. 341, § 2.

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associations, has labored for the past two years. The recommendation of the Judicial Council for a constitutional amendment to make the necessary revision of our appellate court system, to become effective on July 1, 1960, was considered by the Legislature during the last session.[1] Favorable action thereon was taken through the adoption of a joint resolution submitting a proposed amendment of Article VII of the Constitution. The proposed constitutional amendment submitted by this joint resolution seeks to carry into effect the recommendations of the Judicial Council to restrict severely the civil appellate jurisdiction of the Supreme Court, to increase materially the jurisdiction of the courts of appeal, to create an additional court of appeal, and to increase the number of judges on all of these intermediate appellate courts. The proposed constitutional amendment submitted by this resolution, however, goes beyond the recommendations of the Judicial Council in further increasing the number of additional judges of the courts of appeal.

Since, at this writing, the constitutional amendment proposed by this joint resolution has to be submitted to the qualified electors of the state for ratification, no detailed consideration of the appellate revision to be effected thereby will be attempted here, but will be the subject of an article to be published in a subsequent issue of the *Review*.

JUDICIAL NOTICE OF ORDINANCES

In common with all other American jurisdictions, Louisiana follows the rule that in the absence of statute a court of general jurisdiction cannot take judicial cognizance of an ordinance of a city, or other local governmental unit.[2] Similarly, the universal rule that a city court may take judicial cognizance of an ordinance of its own city is likewise recognized in this state.[3] Louisiana, however, applies the unique rule that on appeal of a case tried in a city court which took judicial notice of a city ordinance the appellate court cannot similarly take judicial cognizance of

1. La. Acts 1958, No. 561.

2. Doll v. Flintkote Co., 231 La. 241, 91 So.2d 24 (1956); State *ex rel.* Hourguettes v. City of Gretna, 194 La. 460, 193 So. 706 (1940); Valenti v. Oster Bros. Carriage & Wagon Mfg. Co., 154 La. 991, 98 So. 553 (1923); City of New Orleans v. Calamari, 150 La. 737, 91 So. 172, 22 A.L.R. 106 (1922); Stevens v. Delanoix, 96 So.2d 844 (La. App. 1957).

3. New Orleans v. Mangiarisian, 139 La. 605, 71 So. 886 (1916); State *ex rel.* Cotonio v. Judge of Criminal District Court, 105 La. 758, 30 So. 105 (1900); Brandt v. New Orleans Public Service, 15 La. App. 391, 132 So. 244 (1931). See also cases cited *infra* note 4.

the ordinance.[4] Hence, in this state, it is not only necessary to plead and prove a city ordinance in cases tried in a district court; but as a practical matter, whenever the case is appealable, it is at least necessary to introduce a copy of the city ordinance in evidence in a case tried in a city court.

A statute adopted during the past session will make the pleading and proof of municipal ordinances unnecessary in many instances.[5] This act requires all courts of record[6] to take judicial cognizance of all municipal and parochial ordinances enacted by municipalities and parishes within their respective jurisdictions when certified copies thereof have been filed with their clerks of court. The statute further provides that a certified copy of any such ordinance may be filed with the clerk of the court either by the custodian of the ordinance or by "any lawful officer of the court" — a phrase broad enough to include every attorney entitled to practice before the court in which the ordinance is to be filed.

The peculiar Louisiana rule mentioned above, however, will require dual filings of certified copies of each ordinance — one with the clerk of the trial court, and the other with the clerk of the appellate court. The result will be to limit the usefulness of the statute to those ordinances which the attorney expects to rely on in more than one case, such as municipal traffic ordinances. In those instances where the attorney expects to use the ordinance only once, he will find it simpler to plead and prove it, offering one certified copy thereof in evidence, than to file two certified copies, one with the clerk of the trial court and the other with the clerk of the appellate court.

NONRESIDENT MOTORIST STATUTE

The Nonresident Motorist Statute[7] provides that the operation of a motor vehicle on the public highways of the state by a nonresident is equivalent to his appointment of the Secretary of State as agent for the service of process in any action brought

4. Horn v. Draube, 16 La. App. 17, 132 So. 531 (1931); Di Leo v. Du Montier, 195 So. 74 (La. App. 1940); Pacific Fire Ins. Co. v. Employers Liability A. Corp., 34 So.2d 796 (La. App. 1948); Myers v. Landry, 50 So.2d 318 (La. App. 1951); Hardware Mut. Cas. Co. v. Abadie, 51 So.2d 664 (La. App. 1951).

5. La. Acts 1958, No. 316, § 1, amending and re-enacting LA. R.S. 13:3712 (1950).

6. The statute might have been somewhat clearer had the draftsman used the language "all district and appellate courts," but the phrase "courts of record" includes all such courts in Louisiana. See 10 WORDS & PHRASES 266 (Perm. ed.).

7. LA. R.S. 13:3474 and 13:3475 (1950).

against him in a court in this state to recover damages for the negligent operation of the motor vehicle. Early in 1956, it had been held that such an appointment terminated with the death of the nonresident, and that in an action brought against his personal representative process could not be served on the Secretary of State.[8] As a result of this decision, the utility of the statute was impaired in cases where the nonresident died as the result of the vehicular accident, and his casualty insurer was not licensed to do business in Louisiana.

The Legislature acted quickly to broaden the statute so as to fill in the hiatus thus disclosed. The act was amended[9] to provide that such use of a motor vehicle is equivalent to an appointment of the Secretary of State as agent for the service of process in such actions brought not only against the nonresident, but brought against: (1) his casualty insurer, if not licensed to do business in this state; (2) his personal representative, in the event of the death of the nonresident; and (3) his heirs or legatees, in the event of the death of the nonresident and failure to appoint a personal representative.

The statutory appointment of the Secretary of State as the agent for the service of process for the casualty insurer of the nonresident was upheld as constitutional recently by the United States District Court for the Eastern District of Louisiana.[10] The statutory appointment of the Secretary of State as the agent for the service of process for the personal representative of the deceased nonresident has not as yet been questioned judicially, but the great probabilities are that if challenged it will be held constitutional. With but one exception,[11] similar legislation of other states has been held constitutional.[12] The statutory appointment of the Secretary of State as the agent for the service of process on the heirs or legatees of a deceased nonresident is both unnecessary and unworkable.[13]

8. Fazio v. American Auto Ins. Co., 136 F. Supp. 184 (D.C. La. 1956).

9. By La. Acts 1956, No. 138, § 1.

10. Pugh v. Oklahoma Farm Bureau Mutual Insurance Co., 159 F. Supp. 155 (D.C. La. 1958).

11. Knoop v. Anderson, 71 F. Supp. 832 (D.C. Iowa 1947), holding the Iowa statute unconstitutional.

12. Oviatt v. Garrettson, 205 Ark. 792, 171 S.W.2d 287 (1943) (Arkansas statute); Plopa v. DuPre, 327 Mich. 660, 42 N.W.2d 777 (1950) (Michigan statute); Leighton v. Roper, 300 N.Y. 434, 91 N.E.2d 876, 18 A.L.R.2d 537 (1950) (New York statute); and Feinsinger v. Bard, 195 F.2d 45 (7th Cir. 1952) (Wisconsin statute).

13. The draftsman of the amendment overlooked the fact that Louisiana is the only state in the Union in which the doctrine of universal succession is recognized.

During the past session, the Nonresident Motorist Statute was again amended.[14] This time, however, the legislative change was slight. Heretofore, the act has provided that the operation of a motor vehicle on the public highways of the state by a nonresident, or his authorized agent or employee, is deemed equivalent to the appointment of the Secretary of State as agent for the service of process. The 1958 amendment broadens the statute slightly to provide that such operation by a nonresident, his authorized agent, employee, "or person for whom he is legally responsible" is deemed equivalent to such appointment. This slight addition presents none of the serious and interesting problems which the 1956 amendment presented.

LIS PENDENS STATUTE

R.S. 13:3541 provides that the pendency of an action affecting the title to, or asserting a mortgage or lien on, immovable property does not constitute notice to third persons unless notice of the pendency thereof has been filed in the mortgage office of the parish. Although it may sometimes be just as necessary for the defendant as for the plaintiff to obtain the protection of this constructive notice to third persons, heretofore the statute has been so narrowly phrased that the statutory remedy was available only to a plaintiff.[15] In the past session, this unfortunate hiatus was corrected by an amendment of the Lis Pendens Statute.[16] It is now possible for the defendant, or for any other party, to the action or proceeding to file notice of the pendency thereof, so as to afford constructive notice to third persons. This amendment rounds out the statute by providing that if judgment is rendered against the party who caused the notice of the pendency of the action to be recorded, the judgment may order the cancellation of such notice at the expense of the party who had it recorded originally.

This amendment increases appreciably the utility of a very useful remedy.

NONRESIDENT WITNESSES WITHIN ONE HUNDRED MILES

R.S. 13:3661 regulates the summoning of witnesses who are nonresidents of the parish in which the case is to be tried, but

In all other states, the liability would be one of the personal representative of the decreased, to be paid in due course of the administration of the estate.

14. La. Acts 1958, No. 345, § 1, amending LA. R.S. 13:3474 (1950).

15. Hecker v. Bourdette, 9 Orl. App. 121 (La. App. 1912).

16. La. Acts 1958, No. 113, § 1, amending LA. R.S. 13:3542 and 13:3543 (1950).

who live within one hundred miles of the place where the court is to be held. Two statutes adopted during the past session amended this provision.[17] Both amendments left the mileage to be paid such witnesses at an inadequate five cents a mile, but raised the *per diem* witness fee from a dollar and a half to five dollars. One of the amendatory acts, however, leaves the hotel and meal allowance, in the event the witness is required to remain for more than one day, at the totally inadequate figure of three dollars and fifty cents a day. The other more generously increases this allowance to five dollars a day. The two amendments may be reconciled readily by accepting the higher allowance.

PHOTOGRAPHIC REPRODUCTION OF RECORDS

R.S. 13:914 required the clerk of each district court to record in a bound book all pleadings, original documents, and judgments; and provided that if the original record is lost or destroyed a certified copy from this bound record may be substituted therefor.

Considering the manner in which original records are made available for use by attorneys and members of the public in the majority of district courts, this statutory provision is a wise precaution which makes accurate copies available in the event of the loss or destruction of the original. However, it imposed a heavy burden of expense upon busy clerks' offices, where the necessity of typing every pleading, exhibit, and judgment made it necessary to employ additional typists solely for this purpose. During the past session, these clerks were granted relief from this heavy burden by an amendment of the statute.[18] As amended, the act now requires clerks to record these pleadings, documents, and judgments in a bound volume either by copying, or by photo-recording, photo-copying, micro-filming, or other photographic method of reproduction. This amendment retains the requirement that accurate copies of all judicial records be retained, but makes it possible for the clerks to reduce the expense thereof appreciably.

FUND CONTINUOUSLY ACCRUING IN CONCURSUS PROCEEDING

A stakeholder who has in his possession funds claimed adversely by two or more claimants may deposit the funds into the

17. La. Acts 1958, No. 303, § 1, and No. 527, § 1.
18. La. Acts 1958, No. 319, § 1, amending LA. R.S. 13:914 (1950).

registry of a court of competent jurisdiction, and in a concursus proceeding implead the adverse claimants to assert their respective claims to the fund deposited.[19] If the fund is one which continues to accrue, the stakeholder may deposit it in the registry of the court from time to time as it accrues.[20] The statutory provision regulating these recurring deposits, however, has been anything but specific. Since the original deposit had to be made either by cash or by certified check, the recurring deposit similarly had to be so made. But aside from providing that the claimants need not be cited again each time such a recurring deposit is made, the pertinent statutory provision was silent on the procedure to be followed.

This statutory provision was amended during the past legislative session.[21] A new paragraph was added to the existing section, reading as follows:

> "Such supplemental deposits may be made in the same manner as the initial deposits; except that, when such deposits are made by check, the checks therefor need not be certified. Such checks, however, must contain thereon, or on vouchers attached thereto, the docket number of the concursus proceeding and sufficient information to enable the clerk of court to identify the deposit as such. No other formality in making or transmitting the deposit shall be required."

This amendment simplifies the procedure for making these recurring deposits. Because of the manner in which the amendment was made, however, the validity thereof is not entirely free from doubt.[22]

MISCELLANEOUS AMENDMENTS

The majority of the statutes in this area adopted during the last session of the Legislature possess local or limited importance

19. LA. R.S. 13:4811 through 13:4817 (1950).
20. LA. R.S. 13:4817 (1950).
21. La. Acts 1958, No. 325, § 1, amending LA. R.S. 13:4817 (1950).
22. The amending statute merely added the quoted paragraph to the single paragraph of the amended section, without complying with the requirement of Art. III, § 16, of the Constitution that the section amended "shall be re-enacted and published at length." There is some question presented as to whether this form of amendment is valid. *Cf.* New Orleans v. Board of Supervisors of Elections for Parish of Orleans, 216 La. 116, 142, 143, 43 So.2d 237, 246 (1948); and see Lazarus, *Legislative Bill Drafting*, 1 WEST'S LOUISIANA STATUTES ANNOTATED 191, 197 (1951).

only, and since they are not of general interest to members of the profession, no attempt will be made to review them here. Included in this category are the statutes creating additional judgeships, increasing the salaries of judges and other officers of various courts, increasing the schedule of fees in certain courts, and creating additional city courts throughout the state.

Criminal Law and Procedure

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CRIMINAL LAW

The offense of criminal mischief[1] is extended by Act 174 to embrace another form of interference with law enforcement. Under added clause (5), the giving of false reports or complaints of crimes is an offense. Since criminal mischief requires a general criminal intent,[2] the false report must be known to be false.

The penalty for armed robbery[3] is increased by Act 380 from imprisonment for from one to fifteen years to imprisonment for from two to thirty years. The increased maximum is in accord with the maximum penalty of thirty years for the comparably dangerous crime of aggravated burglary,[4] but the minimum of two years appears a little stiff. Of course the trial judge may always place the lesser participant, who is a first offender, on probation.

Act 315 supplements the unlawful sales to minors article of the Criminal Code[5] by setting up three special offenses where alcoholic beverages are sold to or for those under 18 years of age. All of the provisons avoid the possible limitations of the phrase "intoxicating and spirituous liquors" to distilled beverages, as distinguished from beer and wine. They refer to "alcoholic beverages of either high or low alcoholic content." Under Section 1 the purchaser who is "over the age of 17 and under the age of 18" is subject to a light penalty of not over a $25.00 fine or not more than 10 days imprisonment. Under Section 2 the purchase

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1. LA. R.S. 14:59 (1950).
2. Articles 59 defines criminal mischief as "the intentional performance of any of the following acts."
3. LA. R.S. 14:64 (1950).
4. *Id.* 14:60.
5. *Id.* 14:91.