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Rendition of Judgements

The purpose of this Comment is to examine some of the problems in the former procedure law of judgments and to apprise the reader of the corrective measures and innovations which the Code of Civil Procedure employs in this area. The segments of the law of judgments which will be discussed in this paper may be classified generally as: final judgments; rules of notice; partial judgments; and imposition of costs.¹

FINAL JUDGMENTS

A judgment is final as opposed to interlocutory, when it determines the merits of the dispute, either in whole or in part.² It must be read and signed in open court³ and must contain appropriate language by which it may be identified as final.⁴

The Code of Civil Procedure does not abolish the distinction between the rendition and signing of judgments.⁵ This distinction, which was recognized by some, but not by all, of the articles in the Code of Practice⁶ has resulted in uncertainty in determining the "effective date" of the judgment.⁷ The "effective date" of judgment concept was created by the courts to settle this apparent conflict between the Code of Practice articles.⁸ Fixing an "effective date" for the judgment has been recognized by the jurisprudence as critically important in three problem areas: ascertaining the commencement of procedural delays,⁹ computing

1. Book II, Title VI, Chapter 3, Articles 1911-1921.

2. LA. CODE OF CIVIL PROCEDURE art. 1841 (1960).

3. *Id.* art. 1911.

4. *Id.* art. 1918.

5. *Id.* art. 1911: ". . . all final judgments shall be read *and* signed in open court." (Emphasis added.) See also *id.* 1911, Comment (a), where it is stated: "Under the articles in this Chapter, judgments are to be signed at the time of rendition or at any time thereafter . . . [and] it is contemplated that all judgments will be signed within a reasonable time after rendition."

6. LA. CODE OF PRACTICE arts. 543, 546, 547 (1870) clearly indicate that rendition and signing are distinct judicial acts, while Articles 548, 558, and 565 seem to recognize no such distinction. The jurisprudence, in certain cases, has held that a judgment is not rendered until signed. See, e.g., *Viator v. Heintz*, 201 La. 884, 10 So.2d 690 (1942), and the authorities collected therein. For a more complete discussion of this problem, see Comment, 24 TUL. L. REV. 470 (1950).

7. Since there were some provisions in the Code of Practice which apparently gave effect to a judgment at the time of rendition, while other articles gave the judgment effect only upon signing, there was an obvious uncertainty as to which time, rendition, or signing would be used in computing periods of procedural delay. This created the necessity for the "effective date" concept, which is discussed in Comment, 9 LOUISIANA LAW REVIEW 509 (1949).

8. Two comprehensive comments deal with the problem. See Comments, 9 LOUISIANA LAW REVIEW 509 (1949); 24 TUL. L. REV. 470 (1950).

9. See Comment, 9 LOUISIANA LAW REVIEW 509 (1949).

periods of prescription,¹⁰ and in establishing property rights in the judgment.¹¹ Since the new Code does not abolish the distinction between rendition and signing of the judgment, it is helpful to analyze separately the methods employed by the Code in resolving each of these problems.¹²

In determining the "effective date" of the judgment for the purpose of ascertaining the delays for appealing, the Code of Civil Procedure corrected the deficiency in the old law, not by removing the distinction between the rendition and signing of the judgment or stipulation an "effective date,"¹³ but by stating that the delays for devolutive and suspensive appeals will commence on the expiration of the delay granted for the application for new trial.¹⁴ Such application may be made within three days, exclusive of holidays, following the day on which the clerk mails the notice of the *signing* of the judgment.¹⁵ Thus, as between rendition and signing, the *signing* of the judgment is the focal point for the determination of periods of delay. It is also noteworthy that the legislature directed that all judgments may be signed at any time after rendition.¹⁶ The Law Institute contemplated that the judgments will be signed within a reasonable time and granted great discretion to the courts in determining what is reasonable.¹⁷

The second important area where the distinction between rendition and signing of the judgment created confusion was that of ascertaining the commencement of the tolling of prescription of money judgments under Civil Code Article 3547.¹⁸ That article formerly provided that money judgments would prescribe in ten years from "rendition." However, the Louisiana Supreme Court, in *Viator v. Heintz*,¹⁹ interpreted "rendition" to mean "signed" and held that this prescription did not begin until signature. Since the *Viator* case, there has been no serious

10. See Comment, 24 TUL. L. REV. 470, 472 (1950).

11. *Id.* at 473.

12. It should be noted that the new Code provides a needed uniformity between the rules of practice applicable in Orleans Parish and the remainder of the state.

13. Both alternatives were considered and rejected by the Law Institute during the development of the Code of Civil Procedure. See LOUISIANA STATE LAW INSTITUTE, EXPOSE DES MOTIFS No. 13, Appendix I (May 1, 1955).

14. LA. CODE OF CIVIL PROCEDURE arts. 2087(1), 2123(1) (1960).

15. *Id.* art. 1974.

16. *Id.* art. 1911.

17. *Id.* Comment (a).

18. LA. CIVIL CODE art. 3547 (1870), as amended, La. Acts 1960, No. 30, § 1.

19. 201 La. 884, 10 So.2d 690 (1942).

doubt that the signing of the judgment was the critical factor in computing prescription under Civil Code Article 3547. The legislature corrected the conflict without removing the distinction between rendition and signing. This was accomplished by amending the article to state specifically that a money judgment rendered by a trial court is prescribed by the lapse of ten years from its *signing*.²⁰ Since signature is not required in an appellate court judgment,²¹ it was not necessary to change the rule that such judgments prescribe ten years from "rendition."²²

The last area of confusion which existed in the prior law concerning final judgments was the determination of when "property rights" in the judgment came into existence. This question was of importance in the area of abatement of actions under Article 2315 of the Civil Code. Formerly, the right of action granted by that article was personal.²³ The right was said to have abated if the person having the right of action died prior to the rendition of the judgment in the action.²⁴ This rule created a possibility of conflict as to when the judgment was "rendered" and thus became property of the judgment creditor.²⁵ The Law Institute recommended that Article 2315 be amended to provide that the right of action was a heritable property right, and the adoption of this amendment by the legislature resolved the issue.²⁶

Another aspect of the "property right" question is presented by the confusion relative to when the judgment creditor has a sufficient property interest in the judgment to have it recorded. Such recordation creates a judicial mortgage upon the property of the judgment debtor,²⁷ but some uncertainties existed as to

20. Article 3547 was amended by La. Acts 1960, No. 30, § 1, which was part of the legislation enacted to supplement the adoption of the new Code.

21. E.g., *Thomas v. Goodwin*, 120 La. 504, 45 So. 406 (1907).

22. LA. CIVIL CODE art. 3547 (1870), as amended, La. Acts 1960, No. 30, § 1.

23. For an extensive discussion of the jurisprudence and attempted legislative reforms in this area, see Comment, 15 LOUISIANA LAW REVIEW 722 (1955).

24. *Ibid.*

25. This problem has never been before the courts, but under the old law the confusion relative to the distinction between rendition and signing could certainly lead to conflict in such a case.

26. LA. CIVIL CODE art. 2315 (1870), as amended, La. Acts 1960, No. 30, § 1. Of course, the principal problem sought to be cured by this amendment was not one relative to judgments. The main goal was to remove the conflict between Article 21 of the Code of Practice and the jurisprudence in abatement of action cases. For an evaluation of the solution of this problem by the Code of Civil Procedure, see McMahon, *The Code of Civil Procedure*, 21 LOUISIANA LAW REVIEW 1 (1960).

27. See Comment, 24 TUL. L. REV. 470 (1950).

when the judgment could first be recorded.²⁸ Article 548 of the Code of Practice provided that the judgment became the property of the judgment creditor upon "rendition." Despite this provision, the courts have almost uniformly held that an unsigned judgment could not be recorded.²⁹ While the jurisprudence is inconclusive on the question of when a "property right" arises in the judgment,³⁰ it appears that for most purposes there is no "property right" until the judgment is signed.³¹ Since recordation of the judgment is, in effect, partial execution, and the new Code requires that judgments must be signed prior to execution,³² it is submitted that the Law Institute recommended the retention of the jurisprudential rule on this point.

NOTICE OF JUDGMENTS

Article 1913 of the Code of Civil Procedure introduces a complete notice system into the Louisiana law governing *final* judgments. This article retains the rule that actual service of the notice of the signing of a final judgment is required where a default judgment has been taken against a defendant who has neither been personally served with citation nor made any appearance in the suit.³³ However, the mailing of notices in other cases was formerly required only where the case had been taken under advisement by the court.³⁴ The new Code expands this rule by requiring the clerk to mail a notice of the signing of the judgment in *all* cases, not merely those taken under advisement. Exceptions are recognized, of course, where service of the notice by the sheriff is required³⁵ and where counsel has waived the requirement of mailing of notice.³⁶

Conversely, with respect to notice of the rendition of an interlocutory order or judgment, Article 1914 of the new Code re-

28. *Ibid.*

29. E.g., *Marchal v. Hooker*, 27 La. Ann. 454 (1875).

30. See Comment, 24 TUL. L. REV. 470, 475, n. 29 (1950).

31. A possible qualification of this conclusion may be found in the cases dealing with the right of the trial court to alter a judgment after rendition. The clear limitation that the court may not alter the substance of the judgment seems to imply that some property right exists between rendition and signing. See LA. CODE OF CIVIL PROCEDURE art. 1951 (1960) and the Comments thereunder.

32. *Id.* art. 2252: "A judgment creditor may proceed with the execution of a judgment only after the delay for a suspensive appeal therefrom has elapsed." Since the delays for appealing only commence after signing (see page 229 *supra*), it is clear that signing of the judgment is a prerequisite to its enforceability.

33. *Id.* art. 1913, Comment (a).

34. *Id.* Comment (b).

35. *Ibid.*

36. *Id.* Comment (c).

stricts the former rule requiring notice in *all* cases and provides for notice to be mailed only in those cases where it has been requested.³⁷ This will not create a hardship, however, since the clerk is required to make a minute entry of the rendition of all interlocutory orders and judgments, which will be readily accessible to the party who does not request written notice.³⁸

PARTIAL JUDGMENTS

A widely accepted rule, in both common law and civilian jurisdictions, has been that there could be only one final judgment in any case.³⁹ This rule was designed to prevent a multiplicity of appeals from a single trial.⁴⁰ However, the rules of procedure are undergoing a liberalization and one evident aspect of the change has been the adoption of less severe rules of joinder of parties and actions. The liberal joinder concept naturally results in injustice where the single judgment rule is strictly applied because it forces parties with an easily proven claim to endure the hardship of awaiting final disposition of all the claims.⁴¹ Heretofore, the most prominent attempt to resolve this conflict has been made by Section 54(b) of the Federal Rules, which went into effect in 1936.⁴² This rule allowed the court to render a judgment on a particular claim at any stage of the trial and provided that such a judgment would terminate the suit only with respect to the claims so adjudicated. Although the courts were cognizant of the intent of the provision, much confusion resulted from its application.⁴³ Most of the problems were removed by the adoption of the present Rule in 1946, which clarifies the old rule by providing that the court may enter a *final* judgment on "one or more but less than all of the claims" presented in a suit.⁴⁴ Although the present rule is effective in most cases, particularly those involving joinder of actions, it has not been entirely satisfactory in cases involving a joinder of parties.⁴⁵ This lack of a specific rule covering the dismissal of one or more, but not all, of the parties litigant has resulted in con-

37. *Id.* art. 1914.

38. *Id.* paragraph 1.

39. The validity of this rule in Louisiana is recognized by the Redactors of the new Code in *id.* art. 1915, Comment (b).

40. *Ibid.*

41. *Ibid.*

42. For a complete history of this rule, see 6 MOORE, FEDERAL PRACTICE § 54.01 (2d ed. 1953).

43. *Id.* § 54.01[6].

44. *Ibid.*

45. *Id.* § 54.01[10] (Supp. 1959).

flicting decisions where an appeal is taken from the judgment of dismissal.⁴⁶ Some of the appellate courts have refused to consider such judgments as final for purposes of appellate jurisdiction.⁴⁷ A change to alleviate this condition in Rule 54(b) has been recommended but has not yet been adopted.⁴⁸

The Louisiana jurisprudence reveals some cases where the facts clearly indicate that partial judgments were given and appeals were allowed.⁴⁹ However, there are other cases where a strong factual situation was presented, only to have the court hold that the partial judgment granted was not final for purposes of appeal.⁵⁰ It is clear, therefore, that the jurisprudence has developed no certain rules on this subject.⁵¹

The Law Institute undertook to establish certainty in the law by the adoption of a specific article to govern this problem. In addition to a detailed study of the Federal Rule 54(b), the Institute considered the various attempts made by other jurisdictions to settle this matter.⁵² The best elements of the various statutes were combined with suggestions of the members of the Institute to produce Article 1915.⁵³ This article allows a final judgment to be rendered and signed on only a portion of the whole case when the lower court has: (1) "dismissed the suit as to less than all of the plaintiffs, defendants, third party plaintiffs, third party defendants, or intervenors," or (2) granted a judgment on the pleadings; or (3) rendered a judgment on either the principal or incidental demand, where the two have been tried separately; or, finally (4) granted a motion for summary judgment. Thus, it appears clear that most cases in which the problem of partial judgments will arise are covered by this article.⁵⁴ It is also noteworthy that this provision remedies the

46. *Ibid.*

47. See, e.g., *Steiner v. Twentieth Century Fox Film Corp.*, 220 F.2d 105 (9th Cir. 1955).

48. 6 MOORE, FEDERAL PRACTICE § 54.01[9], [10] (Supp. 1959).

49. E.g., *Williams v. DeSoto Bank & Trust Co.*, 185 La. 888, 171 So. 66 (1936); *State ex rel. Ikerd v. Judge*, 35 La. Ann. 212 (1883).

50. E.g., *Feitel v. Feitel*, 169 La. 384, 125 So. 280 (1929).

51. LA. CODE OF CIVIL PROCEDURE art. 1915, Comment (b) (1960).

52. See LOUISIANA STATE LAW INSTITUTE, MATERIALS FOR COUNCIL MEETING of Feb. 25 & 26, 1955, Appendix 1.

53. *Ibid.*

54. *Cf.* LA. CODE OF CIVIL PROCEDURE art. 1915(1) (1960) with the proposed change to Federal Rule 54(b). See 6 MOORE, FEDERAL PRACTICE § 54.01[9], [10], [11] (Supp. 1959).

The evil of piecemeal appeals may be avoided by the trial court in many cases by rendering the partial judgment, but not signing it until it signs the judgment disposing of the remainder of the case. *Cf.* LA. CODE OF CIVIL PROCEDURE art. 1038 (1960).

confusing situation found in the cases involving a joinder of parties under the Federal Rules.

COSTS

The new Code makes no attempt to define costs with particularity. However, by recommending the retention of R.S. 13:4533,⁵⁵ the Law Institute has, in effect, approved the present system of allowing the trial courts discretion in deciding what expenses may be recovered. This statute provides that the "costs of the clerk, sheriff, witness' fees, costs of taking depositions and copies of acts used on the trial, *and all other costs allowed by the court*, shall be taxed as costs." (Emphasis added.) It is evident that this provision, although it enumerates some costs, grants a great deal of latitude to the trial courts. It is submitted that such latitude is desirable. A large body of jurisprudence has developed which will retain its validity under the new Code.⁵⁶ Thus, new litigation concerning what expenses constitutes costs should be avoided.

The most significant change made by the new Code in the area of costs is found in the provision governing the parties who may be liable for costs.⁵⁷ Under the old law, Louisiana, like most other jurisdictions, arbitrarily imposed the costs of litigation on the losing party.⁵⁸ Under Article 1920, the imposition of costs is in the discretion of the trial judge. Such a scheme has obvious advantages in that it allows the court to consider such important factors as the frivolity of the demand and the necessity of the expense, as well as the nature of the cost, in determining an equitable distribution of the burden of payment.

CONCLUSIONS

Three conclusions are apparent from the study of the chapter of the Code of Civil Procedure which governs the rendition of judgments. The first is that these provisions have effectively removed the areas of confusion which existed under the old law. A reading of the articles of this chapter will not reveal all of the corrections, however. It is necessary, as the redactors undoubtedly intended, to study each provision in context—not only

55. LA. R.S. 13:4533 (1950).

56. E.g., *Rosenthal v. Rosenthal*, 159 La. 933, 106 So. 385 (1925); *Levy v. Stephens*, 54 So.2d 842 (La. App. 1951); *Hamilton v. Antoine*, 157 So. 795 (La. App. 1934); *Boagni v. Police Jury*, 145 So. 781 (La. App. 1933); *Levy v. McWilliams*, 13 La. App. 444, 129 So. 170 (1930).

57. LA. CODE OF CIVIL PROCEDURE art. 1920 (1960).

58. LA. CODE OF PRACTICE art. 549 (1870).

with the immediately preceding and subsequent articles — but with every related provision. An example of this is found in the earlier discussion in this Comment of the distinction between rendition and signing of final judgments. The new Code does not abolish this distinction since it is useful in matters relative to the application for new trial, but rather it removes the prior confusion as to the commencement of the delays for appeals by altering the articles concerning appeal.

Second, it is clear that the Code will greatly reduce *future* procedural problems. To accomplish this end, the redactors have not only borrowed thoroughly-tested rules from other jurisdictions, but they also employed unambiguous language and exhaustive comments to minimize any confusion relative to still unlitigated matters. Perhaps the best example of this within the purview of this Comment is the rule established for the granting of partial judgments. The Code specifically enumerates the cases in which partial judgments may be granted.

Last, the changes wrought by the Code of Civil Procedure in the area of rendition of judgments, such as the introduction of a complete notice system and the repeated grants of discretion to the trial courts, are entirely consistent with the evident intention of the procedural reform. The Code itself announces this intention when it enjoins the courts to construe it liberally "and with due regard for the fact that rules of procedure implement the substantive law and are not an end in themselves."⁵⁹

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Execution Sales

Prior to the adoption in 1960 of the Code of Civil Procedure, the law relative to execution of judgments was to be found in articles of the Louisiana Code of Practice of 1870, statutes, and cases. The new Code has compiled much of the material and, in addition, has made several important changes. The purpose of this Comment is to examine the law relative to execution sales under a writ of fieri facias¹ as it is under the Code of Civil Procedure and related statutes and to point out the major changes which have been made in the former law.

59. LA. CODE OF CIVIL PROCEDURE art. 5051 (1960).