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CIVIL PROCEDURE

Henry G. McMahon*

PERSONAL JURISDICTION OVER NONRESIDENTS

The articles of the Louisiana Code of Civil Procedure on this subject were advisedly couched in broad and general language.

“ . . . [P]ersonal jurisdiction over nonresidents is an area of the procedural law in which many of the old landmarks have been uprooted by recent decisions of the United States Supreme Court, where the law is still in somewhat of a state of flux, and in which no one may delineate its future limitations with any degree of assurance or precision. For these reasons, the Louisiana State Law Institute advisedly adopted a basic article with language broad enough to provide an adequate theoretical foundation for implementing legislation, but which would not have to be amended constantly to keep abreast of expanding constitutional limits of full faith and credit and due process of law. . . .”¹

Even prior to 1960, Louisiana had a number of special statutes which enabled its courts to exercise personal jurisdiction over nonresidents.² Further, one of the most important pieces of legislation implementing the new procedural Code³ was adopted, on the recommendation of the Law Institute, to permit Louisiana to tap the full potential of personal jurisdiction over foreign corporations⁴ now allowed by the United States Supreme Court.⁵ However, at the time of the adoption of the new pro-

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1. McMahon, *Jurisdiction under the Louisiana Code of Civil Procedure*, 35 *TUL. L. REV.* 501, 507 (1961).

2. These included the Nonresident Motorist Act, LA. R.S. 13:3474 and 13:3475 (1950); the Foreign Watercraft Act, *id.* 13:3479 through 13:3482; the Direct Action Statute, *id.* 22:655; pertinent provisions of the Louisiana Insurance Code, *id.* 22:982(2), 22:985, and 22:1253(A); and certain statutory provisions relating to foreign corporations, *id.* 12:202, and *id.* 13:3471(5)(c, d) prior to amendment in 1960.

3. LA. R.S. 13:3471(1) (1950), as amended by LA. Acts 1960, No. 32, § 1.

4. The former LA. R.S. 13:3471(5)(d) (1950) provided for the service of process on foreign corporations not required to appoint an agent for the service of process in Louisiana, in actions resulting from or related to “business activities in this state through acts performed by its employees or agents in this state.” In 1960, this was broadened by substituting the words “a business activity in this state” for the more limited language quoted above. LA. R.S. 13:3471(1), as amended by LA. Acts 1960, No. 32, § 1.

5. “[D]ue process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he

cedural Code there was still a hiatus with respect to personal jurisdiction over nonresidents. Here, "the Achilles' heel of Louisiana civil procedure [was] jurisdiction *in personam* over non-resident individuals and partnerships."⁶ The effect of this hiatus made itself evident almost immediately.⁷

There were two reasons why the Reporters on the Code of Civil Procedure Project did not submit the draft of any implementing statute at the time of the adoption of the new Code. Firstly, they did not have the time to complete the necessary study of such legislation. Secondly, a number of other states were drafting such statutes at the time. A relatively slight delay would provide Louisiana with the opportunity of studying these statutes and their experience in the state and federal courts.

By the middle of 1962, the Commission on International Rules of Judicial Procedure had completed its draft of the proposed *Uniform Interstate and International Procedure Act*,⁸ and on August 3, 1962, this draft was approved by the National Conference of Commissioners on Uniform State Laws. This uniform statute contained complete provisions covering personal jurisdiction over nonresidents,⁹ based largely upon the recently adopted "long arm statutes" of fifteen states.¹⁰

have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), quoted with approval in *McGee v. International Life Ins. Co.*, 355 U.S. 220, 222 (1957).

6. *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Civil Procedure*, 24 LA. L. REV. 291, 293 (1964).

7. In *De Marcy v. Keystone Exploration Co.*, 137 So.2d 68 (La. App. 3d Cir. 1962), discussed in *The Work of the Louisiana Appellate Courts for the 1961-1962 Term — Civil Procedure*, 23 LA. L. REV. 378, 379 (1963), and *Consolidated Credit Corp. v. Johnston*, 152 So.2d 399 (La. App. 1st Cir. 1963), discussed in *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Civil Procedure*, 24 LA. L. REV. 291, 294 (1964); cf. *Gaudin v. Cunningham*, 164 So.2d 624 (La. App. 3d Cir. 1964).

8. See *Fourth Annual Report of the Commission on International Rules of Judicial Procedure*, U.S. H.R. DOC. NO. 88 (1963).

9. Uniform Interstate and International Procedure Act arts. I and II.

10. *Illinois*: ILL. ANN. STATS. c. 110, § 117 (Smith-Hurd 1961); *Maine*: ME. REV. STATS. c. 112, § 21 (1960 Supp.); *Maryland*: MD. CODE art. 23, § 92 (1957); *Michigan*: MICH. STAT. ANN. §§ 27A.715, 27A.725, 27A.735 (1961 Supp.); *Minnesota*: MINN. STAT. ANN. § 303.13 (1962 Supp.); *Montana*: MONT. REV. CIV. PROC. 4B(1)(e) (1962 Supp.); *New Hampshire*: N.H. REV. STAT. ANN. § 300:11 (1962 Supp.); *New York*: N.Y.C.P.L.R. § 302(a)(1) (1962 Supp.); *North Carolina*: N.C. GEN. STAT. ANN. § 55-145 (Repl. 1962); *Pennsylvania*: PA. STAT. ANN. c. 1, tit. 12, § 331 (1962 Supp.); *Tennessee*: TENN. CODE ANN. § 20-220 (1962 Supp.); *Vermont*: VT. STAT. ANN. tit. 12, § 855 (1962 Supp.); *Washington*: WASH. REV. CODE § 4.28.185 (1957); *Wisconsin*: WIS. STAT. tit. 25, § 262.05 (Cum. Supp. 1962); *Wyoming*: WYO. STAT. ANN. § 17-44 (1962 Supp.).

The *Personal Jurisdiction Over Nonresidents Statute* adopted by the Legislature of Louisiana in 1964,¹¹ on the recommendation of the Law Institute, is based largely on the pertinent provisions of the *Uniform Interstate and International Procedure Act*. Actually the only changes made were the substitution of civilian terminology for the Anglo-American nomenclature of the uniform act,¹² the inclusion of a definition of "nonresident" as employed in the Louisiana legislation,¹³ the insertion of a venue rule,¹⁴ the addition of specific provisions for service of process outside of Louisiana,¹⁵ and the specific inclusion of "a real right" in the language relating to an interest in, use, or possession of real property in this state.¹⁶

The initial section¹⁷ of the new Louisiana "long arm statute" contains the grant of jurisdiction over nonresidents in the following language:

"A court may exercise personal jurisdiction over a non-resident, who acts directly or by an agent, as to a cause of action arising from the nonresident's

11. LA. R.S. 13:3201 through 13:3207 (1950), added by La. Acts 1964, No. 47, § 3.

12. The language "injury or damage by an offense or quasi offense" was substituted in LA. R.S. 13:3201 (1950), added by La. Acts 1964, No. 47, § 3, for the words "tortious injury" of Section 1.03 of the uniform act.

13. Section 1.03 of the uniform act uses the word "person," with an extremely broad definition of the latter set out in section 1.01. LA. R.S. 13:3201 and 13:3202 (1950), added by La. Acts 1964, No. 47, § 3, substitute therefor the word "nonresident," which is defined in *id.* 13:3206, as including "an individual, his executor, administrator, or other legal representative, who at the time of the filing of the suit is not domiciled or residing in this state, or a partnership, association, or any other legal or commercial entity (other than a corporation) not then domiciled in this state, or a corporation which is not organized under the laws of, and is not then licensed to do business in, this state."

14. "A suit on a cause of action described in R.S. 13:3201 may be instituted in the parish where the plaintiff is domiciled, or in any parish of proper venue under any provision of the Louisiana Code of Civil Procedure other than Article 42." LA. R.S. 13:3203 (1950), added by La. Acts 1964, No. 47, § 3. LA. CODE OF CIVIL PROCEDURE art. 42 (1960) was excepted so as to exclude specifically any implication that the defendant might be sued in any parish in the state.

15. LA. R.S. 13:3204 (1950), added by La. Acts 1964, No. 47, § 3, provides the modes for the service of process on the nonresident defendant outside of the state.

16. Section 1.03(a)(5) of the uniform act refers to "having an interest in, using, or possessing real property in this state." In the Louisiana legislation this is changed to "having an interest in, using, or possessing a real right or immovable property in this state." LA. R.S. 13:3201(e) (1950), added by La. Acts 1964, No. 47, § 3. In the vast majority of cases, suits involving mineral interests are proceedings *in rem*, of which the district court of the parish where the property is situated has jurisdiction. LA. CODE OF CIVIL PROCEDURE arts. 8, 80(1) (1960). The words "a real right" were added so as to remove any doubt as to the jurisdiction *in personam* of the Louisiana court in personal actions involving a real right, as defined by *id.* art. 3664.

17. LA. R.S. 13:3201 (1950), added by La. Acts 1964, No. 47, § 3.

“(a) transacting any business in this state;

“(b) contracting to supply services or things in this state;

“(c) causing injury or damage by an offense or quasi offense committed through an act or omission in this state;

“(d) causing injury or damage in this state by an offense or quasi offense committed through an act or omission outside of this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state; or

“(e) having an interest in, using, or possessing a real right or immovable property in this state.”

The Louisiana legislation follows the uniform act in expressly prohibiting the joinder of a cause of action over which the court does not have jurisdiction *in personam* with a cause of action falling within the section quoted just above.¹⁸ This may not have been necessary, as the probabilities are that the same result would follow under the code rules of cumulation of actions.¹⁹

Service of process, under this statute, may be made either by registered or certified mail, or by personal delivery by a person designated by the Louisiana court or by one authorized by the law of the places where the service is made to serve the process of any of its courts of general jurisdiction.²⁰ The rights of the nonresident defendant are protected by a statutory prohibition against a default judgment earlier than thirty days after proof of service has been filed in the record.²¹ The final section of the statute declares that it provides additional rem-

18. *Id.* 13:3202.

19. LA. CODE OF CIVIL PROCEDURE arts. 462 and 463 (1960), requiring that each of the plural actions cumulated be “within the jurisdiction of the court.”

20. LA. R.S. 13:3204 (1950), added by La. Acts 1964, No. 47, § 3.

21. “No default judgment can be rendered against the defendant until thirty days after the filing in the record of the affidavit of the individual who either:

“(a) mailed the process to the defendant, showing that it was enclosed in an envelope properly addressed to the defendant, with sufficient postage affixed, and the date it was deposited in the United States mails, to which shall be attached the return receipt of the defendant; or

“(b) actually delivered the process to the defendant, showing the date, place, and manner of delivery.” LA. R.S. 13:3205 (1950), added by La. Acts 1964, No. 47, § 3.

edies and does not in any way conflict with, modify, or repeal any code or statutory provision providing another remedy.²²

With the adoption of the *Personal Jurisdiction Over Non-residents Statute*, it is believed that the courts of Louisiana now possess all of the jurisdiction *in personam* over all types of nonresidents permitted by the decisions of the United States Supreme Court.

Two other changes were made in Title 13 of the Revised Statutes in 1964. The first of these provided an alternative mode for the service of garnishment process on a nonresident individual doing business in Louisiana.²³ The second amended the provision governing the application for a rehearing in the intermediate courts of appeal, so as to avoid conflict with a recent amendment of their uniform rules.²⁴

PROCEDURAL PROVISIONS OF THE CIVIL CODE

Ever since the decisions in *Williams v. North Carolina*,²⁵ when a husband establishes a domicile in another state or country he may obtain a valid divorce there, even though the court has no jurisdiction *in personam* over the wife. In such instances, if the wife subsequently sued the husband in Louisiana for a divorce or separation from bed and board, the divorce granted to the husband in the other state or country would be a complete defense to the wife's action.²⁶ Further, under the law prior

22. "R.S. 13:3201 through 13:3206 provide additional remedies, and do not in any way affect, conflict with, modify, or repeal any code article or statute providing any other remedy, including without being limited to, any of the provisions of the Louisiana Code of Civil Procedure, R.S. 13:3471(1), R.S. 13:3472, R.S. 13:3474 and 13:3475, R.S. 13:3479 through 13:3482, R.S. 13:3914, or R.S. 22:655." LA. R.S. 13:3207 (1950), added by La Acts 1964, No. 47, § 3.

23. LA. R.S. 13:3914 (1950), added by La. Acts 1964, No. 47, § 4, providing that if the nonresident garnishee is absent from his place of business at the time of the attempted service of the garnishment process, it may be served on any of his agents or employees. This change was made to fill in the hiatus indicated by *Consolidated Credit Corp. v. Johnston*, 152 So.2d 399 (La. App. 1st Cir. 1963), discussed in *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Civil Procedure*, 24 LA. L. REV. 291, 293, 294 (1964).

24. LA. R.S. 13:4446(B) (1950), as amended by La. Acts 1964, No. 47, § 5, to conform to, and avoid any conflict with, Rule XI, § 2, Uniform Rules of the Louisiana Courts of Appeal, as amended in 1963. Both provide that an application for rehearing must be filed, or properly mailed to the court in an envelope officially postmarked on or before the fourteenth calendar day after notice of judgment has been given.

25. 317 U.S. 287 (1942), noted 17 TUL. L. REV. 500 (1943) and *id.* 325 U.S. 226 (1945), noted 6 LA. L. REV. 290 (1945).

26. Such a situation was actually presented in *Walker v. Walker*, 157 So.2d 476 (La. App. 3d Cir. 1963), but the question of the plaintiff wife's right to alimony was foreclosed by the fact that she had not been free of fault.

to 1964, the court would have been without power to grant the wife alimony, even if she had been without fault. To fill in this lacuna, some of the states have adopted statutes which authorize their courts to grant alimony to the wife in such cases.²⁷ On the recommendation of the Law Institute, at its last session the legislature amended article 160 of the Civil Code primarily for the purpose of filling in this hiatus.²⁸ Another effect of this amendment is to make it clear that, regardless of who obtains the divorce, the wife is not entitled to alimony unless she has been free of fault.²⁹

The same statute expressly repealed articles 412 and 413 of the Civil Code, both of which had been repealed impliedly by the Code of Civil Procedure.³⁰

AMENDMENTS OF THE CODE OF CIVIL PROCEDURE

Seventeen articles of the new procedural Code were amended in 1964. Of this number, fifteen of the changes were made on

27. *E.g.*, 6A GILBERT-BLISS, N.Y. CIV. PRAC. § 1170-b (1956 Cum. Supp.), which was held constitutional in *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

28. LA. CIVIL CODE art. 160 (1870), as amended by La. Acts 1964, No. 48, § 1.

29. This amendment made it clear, through the inclusion of the words "when the wife has not been at fault" in the preamble, that the wife who obtains the divorce is not entitled to alimony unless she has been without fault. LA. CIVIL CODE art. 160 (1870), as amended by La. Acts 1964, No. 48, § 1. When this code article was adopted in 1870, no divorce could be granted unless the plaintiff was free of fault. Then followed the statute providing that living separate and apart for seven years (eventually shortened to two years) entitled either of the spouses to a divorce. A history of the prior amendments to article 160 is to be found in *August v. Blache*, 200 La. 1029, 1034-36, 9 So.2d 402, 403-04 (1942). In *Sachse v. Sachse*, 150 So.2d 772 (La. App. 1st Cir. 1963), it was held that even when the wife obtains the divorce she must prove her freedom from fault to obtain alimony. See, to substantially the same effect, *McKnight v. Irving*, 228 La. 1088, 85 So.2d 1 (1956). However, there appears to be a contrary holding in *Moreau v. Moreau*, 142 So.2d 423, 426 (La. App. 3d Cir. 1962), weakened to some extent by the fact that the intermediate appellate court found as a fact that the wife was free of fault. *Id.* at 426, 427. See also the concurring opinion of McCaleb, J., in *McKnight v. Irving*, *supra*. So, unless the wife's freedom from fault was made applicable to all three subdivisions of the amended article, this amendment probably would have been construed as a legislative overruling of *Sachse v. Sachse*, *supra*. The Law Institute and the legislature considered the holding of the latter to be the sounder policy.

The second subdivision of the amended article was broadened to include a divorce under LA. R.S. 9:302 (1950), as amended by La. Acts 1960, No. 31, § 1, to avoid any contention that its rule regarding alimony was impliedly repealed through this amendment.

30. La. Acts 1964, No. 48, § 2. The former LA. CIVIL CODE arts. 412 and 413 (1870), respectively, granted the husband an absolute right to be appointed curator of his interdicted wife and relieved the wife of the necessity of furnishing security when she was appointed curatrix of her husband. These articles had been repealed impliedly by LA. CODE OF CIVIL PROCEDURE arts. 4131, 4550, and 4554 (1960), which accorded each spouse only a priority of appointment to the curatorship of the interdict if asserted within ten days of the interdiction, and

the recommendation of the Law Institute.³¹ The remaining two amendments resulted from the initiative of individual legislators.³²

In the two sets of amendments of the Code of Civil Procedure recommended heretofore by the Law Institute,³³ the larger number were adopted to fill in hiatuses which had been discovered by the Law Institute during the two years following the adoption of the new Code. In 1964, this emphasis shifted, as only two of the Institute recommendations were made for that purpose. Five articles were recommended for amendment solely for the purpose of clarification, without any change in the procedural law actually being made. Ten articles of the new Code were amended on the recommendation of the Law Institute to effect changes in the law, primarily to meet changing social and economic conditions.

Probably the most serious of the two procedural hiatuses filled in by 1964 legislation was pointed out (if not created) in *State v. Hillebrandt*,³⁴ holding that a party litigating *in forma pauperis* was not relieved of the necessity of paying the fees, mileage, and expenses of the witnesses whom he subpoenaed to testify at the trial. The 1964 amendment works a legislative overruling of this case.³⁵

The second hiatus was created during the redaction of the new procedural Code. The provisions of R.S. 13:3411 and 13:3412, authorizing the appointment of an attorney at law to represent the unrepresented defendant in proceedings *in rem*,

further required the wife to furnish security when appointed curatrix of her interdicted husband.

31. By La. Acts 1964, No. 4, § 1, amending LA. CODE OF CIVIL PROCEDURE arts. 1114, 2088, 2416, 2592, 2637, 2642, 3097, 3098, 3191, 4034, 4234, 4264, 4273, 5091, and 5185 (1960).

32. La. Acts 1964, No. 483, § 1, and La. Acts 1964, No. 336, § 1, amending LA. CODE OF CIVIL PROCEDURE arts. 3782 and 5181 (1960), respectively.

33. See La. Acts 1961, No. 23, § 1, and La. Acts 1962, No. 92, § 1, discussed in *Louisiana Legislation of 1962: A Symposium — Civil Procedure*, 23 LA. L. REV. 56 (1962). These amendments are analyzed in *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Civil Procedure*, 24 LA. L. REV. 291 (1964).

34. 244 La. 742, 154 So.2d 384 (1963), affirming *id.*, 146 So.2d 718 (La. App. 3d Cir. 1962). These decisions are criticized in *The Work of the Louisiana Appellate Courts for the 1962-1963 Term — Civil Procedure*, 24 LA. L. REV. 291, 324-326 (1964).

35. By entitling the indigent party to: "(2) The right to the compulsory attendance of witnesses for the purpose of testifying, either in court or by deposition, without the payment of the fees, mileage, and other expenses allowed these witnesses by law . . ." LA. CODE OF CIVIL PROCEDURE art. 5185 (1960), as amended by La. Acts 1964, No. 4, § 1.

were repealed in 1960³⁶ under the erroneous impression that they had been transferred to the new procedural Code. Actually, they had been transferred to the Title on Executory Proceedings³⁷ (where they were needed most often), but had not been retained with respect to ordinary proceedings *in rem* (where they were needed occasionally). Article 5091 was amended in 1964 so as to restore the former Revised Statute provisions completely.³⁸

Of the three code provisions clarified by 1964 amendments, the most important is article 2088. This provision originally was declaratory of the general jurisprudential rule that the jurisdiction of the trial court is divested, and that of the appellate court attaches, on the filing of the appeal bond, or on the signing of the order of appeal if no bond is required by law. However, some of the exceptions to this general rule recognized by the prior jurisprudence were not stated in this article, and could only be found in other provisions of the new Code. The 1964 amendment merely re-writes this article, phrases the general rule more precisely, and includes all of the exceptions thereto.³⁹

The fifteen-day delay allowed for the taking of a suspensive appeal from an order of seizure and sale in an executory proceeding, like other delays for an appeal, was tied in with the delay for applying for a new trial.⁴⁰ However, in an executory proceeding no new trial may be applied for. A court would have experienced no particular difficulty in concluding that, in view of this, the delay ran from the date of the signing of the order for the issuance of the writ, but this would have necessitated a review of the history of the pertinent article and its source provisions. The 1964 amendment clarifies the article by provid-

36. By La. Acts 1960, No. 32, § 2.

37. LA. CODE OF CIVIL PROCEDURE art. 2674 (1960).

38. "The court shall appoint an attorney at law to represent the defendant, on the petition or ex parte written motion of the plaintiff, when: . . .

"(2) The action or proceeding is in rem, and: (a) the defendant is dead, no succession representative has been appointed, and his heirs and legatees have not been sent into possession judicially; (b) the defendant is a corporation or partnership on which process cannot be served for any reason; or (c) the defendant's property is under the administration of a legal representative, but the latter has died, resigned, or been removed from office and no successor thereof has qualified, or has left the state permanently without appointing someone to represent him. . . ." LA. CODE OF CIVIL PROCEDURE art. 5091 (1960), as amended by La. Acts 1964, No. 4, § 1.

39. LA. CODE OF CIVIL PROCEDURE art. 2088 (1960), as amended by La. Acts 1964, No. 4, § 1.

40. *Id.* art. 2642.

ing expressly that a "suspensive appeal from an order directing the issuance of a writ of seizure and sale shall be taken within fifteen days of the signing of the order."⁴¹

The third clarifying amendment merely substitutes express authority for the implied power of a succession representative, resident or nonresident, to appoint an agent to represent him in all acts of his administration during his absence.⁴²

Of those amendments made to meet changed, or changing, social or economic conditions, the most important were in the field of tutorship. Under the new procedural Code, as under the prior law, a nonresident was disqualified from appointment as tutor of a Louisiana minor; and if he were a resident at the time of such an appointment, he forfeited the office by abandoning his Louisiana residence.⁴³ A century and a half ago, when a person seldom strayed more than a few miles from the place of his birth, these were probably workable rules; but in view of the present migratory practices of the American people, and of modern, efficient means of transportation and communication, these rules have become both anachronistic and unworkable. They were discarded in 1964 through the amendment of four separate code articles.⁴⁴ A nonresident may now be appointed the tutor of a Louisiana minor, and he no longer forfeits his office by moving out of the state. The only requirement imposed on him which is not required of a resident is that he appoint a resident agent for the service of process, and file this appointment in the tutorship proceeding.⁴⁵ These new rules apply likewise to curatorship.⁴⁶

Both building and loan,⁴⁷ and federal savings and loan,⁴⁸ associations for some years have been permitted to enforce their mortgages by executory process even though they also secured advances made to the mortgagor for the payment of taxes, insurance premiums, and repairs on the mortgaged prop-

41. *Id.* art 2642, as amended by La. Acts 1964, No. 4, § 1.

42. *Id.* art. 3191, as amended by La. Acts 1964, No. 4, § 1.

43. See *id.* arts. 4034, 4234, 4264, and 4273.

44. *Id.* arts. 4034, 4234, 4264, and 4273, as amended by La. Acts 1964, No. 4, § 1.

45. *Id.* arts. 4234 and 4273, as amended by La. Acts 1964, No. 4, § 1.

46. The provisions of *id.* arts. 4234, 4264, and 4273, as amended, apply equally to the curatorship of interdicts by virtue of *id.* art. 4554, as amended by La. Acts 1962, No. 92, § 1.

47. Under LA. R.S. 6:767 (1950), as amended by La. Acts 1954, No. 640, § 1.

48. Under *id.* 6:835.1, added by La. Acts 1954, No. 713, § 1.

erty. In such cases, the amount of these advances were proved by the certificate of the secretary or assistant secretary of the association. If the same advances were made by other mortgagees, even though secured by the mortgage, the latter had to be enforced *via ordinaria*, for lack of authentic evidence of the amount of the advances. In 1964, article 2637 of the Code of Civil Procedure was amended so as to make it possible for all such mortgages to be enforced by executory process. The amount of these advances may now be proved by the verified petition or by affidavit.⁴⁹

Another important change in the procedural law was made through the broadening of the venue for garnishment under the writ of fieri facias. The prior jurisprudential rule of venue in such cases only at the domicile of the garnishee had been retained in the new procedural Code.⁵⁰ Because of the increasing number of corporations, both foreign and domestic, which maintained one or more branch establishments in the state, this rule ceased to be workable when the wages or salary of an employee of a branch establishment were garnished. In 1964, the venue was broadened to permit such a garnishment "in the parish where the garnishee may be sued under Article 42 or 77."⁵¹

Prior to 1964, there was no authority for the use of summary process in a proceeding against the surety on a judicial bond, although as a matter of practice the surety seldom challenged its use. In 1964, the pertinent article of the new pro-

49. The amendment by La. Acts 1964, No. 4, § 1, adds the following paragraph to this article: "If a mortgage sought to be enforced secures the repayment of any advances made by the holder of the mortgage note for the payment of taxes, insurance premiums, or special assessments on, or repairs to, or maintenance of, the property affected by the mortgage, the existence, date, and amount of these advances may be proved by the verified petition, or supplemental petition, or by affidavits submitted therewith."

"For these advances to be secured by the mortgage, some limit or ceiling on them must be provided in the act of mortgage itself. Article 3309, Civil Code. This amendment does not in any way, affect this Civil Code rule, or introduce any system of 'open end' mortgages into our law. It merely authorizes the enforcement, by executory process, of the mortgagee's claim for such advances when they are secured by a valid mortgage." Comment (c) under LA. CODE OF CIVIL PROCEDURE art. 2637 (1960), as amended by La. Acts 1964, No. 4, § 1.

50. LA. CODE OF CIVIL PROCEDURE art. 2416 (1960).

51. *Ibid.*, as amended by La. Acts 1964, No. 4, § 1.

In the case of a garnishment of the wages or salary of an employee of a corporation's branch establishment, this amendment would permit the garnishment proceeding to be instituted either in the parish where this branch establishment was situated or in the parish where its registered office (if a domestic corporation) or its principal business establishment in Louisiana (if a foreign corporation) was situated.

cedural Code was amended⁵² so as to expressly authorize the use of summary process in "[a]n action against the surety on a judicial bond after judgment has been obtained against the principal, or against both principal and surety when a summary proceeding against the principal is permitted."⁵³

Two articles relating to succession procedure⁵⁴ were amended in 1964, so as to limit the appointment of a stranger as succession representative to those instances when he has been named the testamentary executor, is a creditor, or is nominated for the office by the surviving spouse, a competent heir or legatee, or by the legal representative of an incompetent heir or legatee, of the deceased. One of these amendments also grants to the legal representative of an incompetent heir or legatee of the deceased the same privilege of nominating the administrator or dative testamentary executor as is enjoyed by the surviving spouse and competent heirs and legatees.⁵⁵

The remaining amendment of the new procedural Code recommended by the Law Institute⁵⁶ was adopted merely to reduce court costs through the elimination of unnecessary service of pleadings in the third party demand.⁵⁷

The two amendments of the Code of Civil Procedure not recommended by the Law Institute are not of great significance. The first⁵⁸ amended the basic *forma pauperis* article to permit an indigent wife to enforce an unpaid allowance for alimony or child support, or both, by a rule for contempt filed without the prepayment of costs or the furnishing of security therefor. The

52. LA. CODE OF CIVIL PROCEDURE art. 2592 (1960), as amended by La. Acts 1964, No. 4, § 1.

53. As in the motion to dissolve a writ of attachment, sequestration, temporary restraining order, or preliminary injunction, and to recover damages for its illegal issuance. See *id.* arts. 3506, 3607 and 3608.

54. *Id.* arts. 3097 and 3098, as amended by La. Acts 1964, No. 4, § 1.

55. *Id.* art. 3098, as amended by La. Acts 1964, No. 4, § 1.

56. *Id.* art. 1114, as amended by La. Acts 1964, No. 4, § 1.

57. The original code article required service on the third party defendant of copies of "the petition in the third party demand; the petition in the principal demand; the petition in the reconventional demand, if any; and the answers to the principal and reconventional demand filed prior to the issuance of citation in the third party action." In many instances the third party defendant is a defendant in the principal action, and occasionally he is the original plaintiff. In such cases, the service of copies of some of these pleadings is a duplication which subjects the third party plaintiff to unnecessary court costs. For this reason, the amended article requires service of copies of these pleadings on the third party defendant only if they have not previously been served on, or filed by, him. *Id.* art. 1114, as amended by La. Acts 1964, No. 4, § 1.

58. *Id.* art. 5181, as amended by La. Acts 1964, No. 336, § 1.

draftsman of this amendment showed commendable restraint in resisting the professional urge to sprinkle his amendment with said's and aforesaid's. He succumbed, however, to the irresistible "and/or."⁵⁹

The second of these two amendments⁶⁰ merely limited the trial judge's authority to fix the hearing on an alternative writ of mandamus. The amendment provides that any writ of mandamus "directed to the Bureau of Vital Statistics, city of New Orleans, or the State Board of Health, shall not be assigned for a hearing within fifteen days after the service of the writ." There appears to be no objection to this modification, but, since it is not a general rule of procedure, it should have been incorporated into the Revised Statutes.⁶¹

59. "The classic in the use of this bastard hybrid is La. Acts 1954, No. 731, § 1, which authorized the State Board of Institutions 'to provide separate facilities for *males and/or females* committed to the State Industrial School for Colored Youths.' Apparently, the Christine Jorgensen case was not as unique as the medical profession thought." PLEADINGS AND JUDICIAL FORMS ANNOTATED, 10 LSA — CODE OF CIVIL PROCEDURE vi, n. 4 (1963).

60. LA. CODE OF CIVIL PROCEDURE art. 3782 (1960), as amended by La. Acts 1964, No. 483, § 1.

61. As a new section 88 of Title 40.