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Civil Procedure - Venue - Article 74 of the Code of Civil Procedure

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NOTES

CIVIL PROCEDURE — VENUE — ARTICLE 74 OF THE CODE OF CIVIL PROCEDURE

Plaintiffs, one a resident of East Baton Rouge Parish, the other a resident of Orleans Parish, instituted suit in Orleans to recover for mental anguish and damages to credit rating resulting from an alleged wrongful seizure of land in Livingston Parish. Defendant, a resident of Livingston Parish, excepted on the ground that Orleans Parish was an improper venue because the damage was the result of a wrongful act occurring in Livingston Parish. *Held*, proper venue for an action to recover damages to compensate for mental distress resulting from a wrongful seizure is either the domicile of the defendant or the situs of the wrongful act which caused the damage. Article 74¹ of the Code of Civil Procedure providing that a tort action may be brought in the parish in which “damages were sustained” does not apply if “the damage incurred by the plaintiffs is so subjectively nebulous that it could be litigated in any parish of their choice. . . .”² Otherwise, one seeking damages for mental anguish could litigate in any one of several parishes in which he sustained mental suffering. Mental anguish is so nebulous that if considered apart from the act causing it, plaintiff would be given an unlimited choice of venue not intended by the drafters of the Code. *Coursey v. White*, 184 So.2d 625 (La. App. 4th Cir. 1966).

The general rule of venue is that an action must be instituted at the domicile of the defendant.³ It is ordinarily a defendant's

1. “An action for the recovery of damages for an offense or quasi offense may be brought in the parish where the wrongful conduct occurred, or in the parish where the damages were sustained. An action to enjoin the commission of an offense or quasi offense may be brought in the parish where the wrongful conduct occurred or may occur.”

“As used herein, the words ‘offense or quasi offense’ include a nuisance and a violation of Article 667 of the Civil Code.” (As amended, La. Acts 1962, No. 92, § 1.)

2. *Coursey v. White*, 184 So.2d 625, 627 (La. App. 4th Cir. 1966).

3. LA. CODE OF CIVIL PROCEDURE art. 42 (1960): “The general rules of venue are that an action against:

“(1) An individual who is domiciled in the State shall be brought in the parish of his domicile. . . .”

The official “comments” or “preliminary statement” of the redactors of the Code, preceding § 1, ch. 2, sets forth the intent of the legislature: “In Louisiana the parishes fixed for the venue of most actions are the defendant's domicile or

right to be sued in the court of his domicile,⁴ and he may not be sued over his objection in a court of improper venue.⁵ Exceptions to the general rule must be specifically authorized by statute,⁶ and a plaintiff who claims the benefit of an exception must bring himself clearly within it.⁷

Prior to the Code of Civil Procedure of 1960, one statutory exception to the general rule was article 165(9) of the Code of Practice of 1870,⁸ which provided that any defendant could be sued in the parish where damage was caused by his act of commission. A later amendment added that corporate defendants could be sued in the parish in which damage was sustained as a result of an act of omission.⁹ The jurisprudence is clear that the exception to the general venue rule only applies to ex delicto damages, and if a claim was presented for both contractual and tortious damages, recovery would be limited to the ex delicto damages.¹⁰ It was not necessary that the acts of commission which gave rise to the suit be accomplished by force, violence, or duress.¹¹ If a plaintiff could utilize the exception to the general venue rule, the action could be instituted in the "parish where the damage was done or trespass committed."¹² The Louisiana Supreme Court interpreted this exception narrowly. In *Devons v. Lee Logging Co.*,¹³ defendant, a resident of Webster, furnished plaintiff a defective wagon in Webster Parish for use in Winn

place of business, the situs of property involved in the suit, or the place where the cause of action arose. The substance of these rules has been retained in this code."

4. See *McFeeley v. Hargrove*, 166 So.2d 333 (La. App. 1st Cir. 1964).

5. See *Boyett v. King*, 180 So. 168 (La. App. 2d Cir. 1938).

6. See *Tennent v. Caffery*, 170 La. 680, 129 So. 128 (1930).

7. See *Clover v. Mayer*, 209 La. 599, 25 So.2d 242 (1946).

8. La. Code of Practice art. 165(9) (1870) provided: "Trespass. In all cases where any person, firm or domestic or foreign corporation shall commit trespass, or do anything for which an action for damage lies or where any domestic or foreign corporation shall fail to do anything for which an action for damage lies, such person, firm or corporation may be sued in the parish where such damage is done, or trespass committed or at the domicile of such person, firm or corporation."

9. See *Tripiani v. Meraux*, 184 La. 66, 165 So. 453 (1936); *Gibbs v. Stanfill*, 94 So.2d 582 (La. App. 2d Cir. 1957); *Armand v. Bordelon*, 53 So.2d 168 (La. App. 2d Cir. 1951); *Hayes v. Oertel*, 195 So. 388 (La. App. Orl. Cir. 1940); *Esthay v. McCain*, 180 So. 235 (La. App. 1st Cir. 1938).

10. See *Lottinger v. Mark II Electronics*, 179 So.2d 644 (La. App. 4th Cir. 1964); *Chronister v. Creole Corp.*, 147 So.2d 218 (La. App. 4th Cir. 1962).

11. *Esthay v. McCain*, 185 So. 235 (La. App. 1st Cir. 1938).

12. "Trespass," within the meaning of La. Code of Practice art. 165(a) (1870), permitting suit in the parish where the damage is done or "trespass committed" is used in the broad sense of any act that injures another, and not in the technical or narrow sense of the term. See *Tripiani v. Meraux*, 184 La. 66, 165 So. 453 (1936).

13. 121 La. 518, 46 So. 614 (1908).

Parish. Plaintiff was injured in Winn while using the wagon and filed suit for damages there. When the case arose, article 165(9) did not contain the amended provision that a corporation could be sued where the damage was done when it "failed to do anything."¹⁴ The court held that defendant committed no act of commission; this suit arising out of an act of omission could not be brought away from the domicile of the defendant. In *Tripiani v. Meraux*,¹⁵ plaintiff was bitten in Orleans Parish by a dog owned by defendant, who resided in St. Bernard Parish. Suit was filed in Orleans. The court held that since there was no act of commission article 165(9) was not applicable to this individual defendant as an exception to the general rule that venue is the domicile of defendant. It pointed out that only a corporation could be sued away from its domicile for acts of omission. Had defendant's breach of duty been a positive act,¹⁶ suit could have been filed in Orleans where the damage was sustained. Chief Justice O'Niell said in *O'Brien v. Delta Air Corp.*,¹⁷ with reference to the parish where damage is done, "that means the parish in which the negligence or the failure in the performance of a duty occurred. It does not mean, necessarily, the parish in which the injured party actually was at the time when he was injured."¹⁸ It is submitted that a correct application of 165(9) was made in *Bourgeois v. Beeson-Warner Ins. Agency*,¹⁹ involving the failure of an Orleans Parish corporation to place burglary insurance coverage on plaintiff's Jefferson Parish property. Plaintiff sustained an uninsured burglary loss and sued the insurance agency in Jefferson Parish. The court of appeal held the loss was sustained and the damage done in Jefferson Parish; consequently, Jefferson Parish was the proper venue for the action under the explicit terms of article 165(9).

The redactors of the Code of Civil Procedure changed several portions of article 165(9). Article 74²⁰ applies to acts of commission as well as of omission, and applies to all defendants; the distinction between omission and commission and between individuals and corporations is abandoned. It appears clear that

14. La. Code of Practice art. 165(9) (1870) was amended in 1914 to include the failure of a corporation to do an act.

15. 184 La. 66, 165 So. 453 (1956).

16. See *Esthay v. McCain*, 185 So. 235 (La. App. 1st Cir. 1938).

17. 188 La. 911, 920, 178 So. 489, 492 (1938).

18. See also *Town of Eunice v. M. & L. Constr. Co.*, 123 So.2d 579 (La. App. 3d Cir. 1960).

19. 144 So.2d 563 (La. App. 4th Cir. 1962).

20. See note 1 *supra*.

the legislature set forth two places, besides the domicile of the defendant, as proper venue for actions arising out of offenses or quasi-offenses: where the wrongful conduct occurred, or the parish where the "damages were sustained." It is indicated that the exception article 74 provides to the general rule of venue²¹ will be strictly construed.²²

In the instant case the alleged wrongful seizure took place in Livingston Parish, and plaintiff filed suit in Orleans Parish, his domicile. He claimed damages for mental anguish and damage to his credit record, both of which he alleged were incurred in Orleans Parish. The court considered these claims so "subjectively nebulous"²³ that to allow the suit in Orleans Parish would be to divide the main element of damage — injury caused by the wrongful seizure itself — from an indirect element — mental distress resulting from the seizure — in order to allow the plaintiff to choose his own venue. The *ratio decidendi* was limited to the facts of the instant case because the court felt that in most situations of a delictual nature the place where the damages are sustained is easily determined. The court was concerned with the possibility of "forum shopping" and the fact that mental anguish indirectly resulted from the main cause of damage, the wrongful seizure.

The pleadings in the instant case disclose an attempt to draw a parallel between the present situation and libel actions. In libel a suit can be filed in the parish where the damages are sustained, whether those damages are direct or indirect.²⁴ Initially this would seem to be a valid analogy since both are multi-parish actions; however, it must be noted that in libel suits there is an act committed in each parish by the dissemination of the statement. In the instant situation the mental damages were hard to assess apart from the main element. The jurisprudence contains many cases recognizing mental anguish as a substantial element of damage; however, in all of these cases the mental anguish was accompanied by some act or omission on the part of the defendant.²⁵ In the instant situation the court characterized

21. *Coursey v. White*, 184 So. 2d 625, 627 (La. App. 4th Cir. 1966).

22. See *Anglade v. Hemenway Furniture Co.*, 151 So. 2d 164 (La. App. 1963).

23. 184 So. 2d 625, 627 (La. App. 4th Cir. 1966).

24. See *Walker v. Associated Press*, 162 So. 2d 437 (La. App. 2d Cir. 1964).

25. See Comment, 26 LA. L. REV. 512 (1965); Note, 23 LA. L. REV. 473 (1963).

the damage as "indirectly resulting"²⁶ from the act committed in Livingston Parish.

It is submitted that the court adopted a restricted view of article 74. It qualifies the phrase "where the damages were sustained" to mean there must be independent damage and it cannot be "indirectly resulting" from another cause of action. This will prevent "forum shopping" in the situation where the injury occurs in one parish and the injured party goes to another parish to recover from the injury but carries the pain with him. Article 74 had as one of its purposes the remedying of earlier cases²⁷ in which the wrongful conduct occurred in one parish and the damages were sustained in another. The court in the instant case seems to indicate that this remedy will be available only where there is a substantial damage incurred in a second parish. This interpretation will serve to prevent the splitting of a cause of action in order to allow the plaintiff to pick capriciously the venue in which he will sue.²⁸ It is submitted that the apparent desire of the legislature, to prevent forum shopping yet allow the action to be brought in the parish where the damage was sustained, should not be limited as in the instant case. It seems the court has injected a new question into all tort actions, that of whether the damages claimed are "direct and determinable" or whether they are "indirect and subjectively nebulous."

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CONSTITUTIONAL LAW — EQUAL PROTECTION — SYSTEMATIC INCLUSION IN JURY SELECTION

Brooks, a Negro, was indicted for rape of a white woman by a grand jury impaneled under a system that excluded Negroes. Aware that Brook's indictment was invalid because of a decision rendered since the original indictment,¹ the district judge appointed a new jury commission. This commission selected sixteen prospective jurors, two of them Negroes, who were also chosen for the new grand jury that re-indicted Brooks. A mo-

26. 184 So. 2d 625, 627 (La. App. 4th Cir. 1966).

27. See note 8 *supra*.

28. L.A. CODE OF CIVIL PROCEDURE art. 425 (1960).

1. *Stoker v. State*, 331 S.W.2d 310 (Tex. Crim. App. 1960). Conviction reversed and indictment dismissed because of 50-year history of exclusion of Negroes on the grand jury list.