Louisiana Law Review

Volume 32 | Number 2
The Work of the Louisiana Appellate Courts for the 1970-1971 Term: A Symposium
February 1972

Procedure: Civil Procedure

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lorem taxes, since voting was only by property taxpayers; prior to *Cipriano v. City of Houma*,[19] virtually all bond-authorizing enactments contained this limitation with respect to property ownership, even though the bonds were not necessarily to be supported by ad valorem taxes. The constitutional provision states only that the governing authority "shall impose and collect annually, *in excess of all other taxes*, a tax sufficient to pay the interest. . . ."[20] This language was held manifestly to contemplate bonds supported by more than one kind of tax; issuing such "sales tax" bonds without referendum was therefore unconstitutional.[21]

PROCEDURE

CIVIL PROCEDURE

*William E. Crawford**

Partial Judgments

The Louisiana Supreme Court in *Walker v. Jones*[1] has written an opinion which may have traumatic effects on article 1915 of the Code of Civil Procedure,[2] dealing with the authority of the trial judge to render partial final judgments. The court held that a trial judge may, in the same case, render one final judgment on the main demand and another on the incidental demand.

Walker sued Jones and the State Department of Highways for personal injuries arising out of an automobile accident in-

19. 395 U.S. 701 (1969).
20. LA. CONST. art. XIV, § 14(a).
21. 258 La. 175, 193-203, 245 So.2d 398, 406-08.
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1. 257 La. 404, 242 So.2d 559 (1970).
2. LA. CODE CIV. P. art. 1915: "A final judgment may be rendered and signed by the court, even though it may not grant the successful party all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
"(1) Dismisses the suit as to less than all of the plaintiffs, defendants, third party plaintiffs, third party defendants, or interveners;
"(2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969;
"(3) Grants a motion for summary judgment, as provided by Articles 966 through 969; or
"(4) Renders judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.
"If an appeal is taken from such a judgment, the trial court nevertheless shall retain jurisdiction to adjudicate the remaining issues in the case."

volving both an alleged defect in the highway and the alleged negligence of Jones. Jones reconvened with allegations of negligence against Walker and filed a third party demand with allegations of negligence against the Department of Highways. The trial court decided that only the State Department of Highways was negligent and gave written reasons for judgment finding in favor of both Walker and Jones against the State Highway Department.

The problem at issue here was planted when the trial judge in rendering his formal judgment on October 13, 1967, gave judgment only in favor of Walker against the Department of Highways and omitted any mention of Jones. The department appealed suspensively from the judgment on October 16, 1967. Then, on October 27, 1967, the trial judge signed another formal judgment in favor of Jones on his demand against the Department of Highways. Finally, on January 11, 1968, Jones appealed devolutively from the judgment of October 13, 1967, apparently as a precautionary measure against the possibility that a second judgment in the case (the October 27, 1967, judgment) was not within the trial judge's authority to sign. The Department of Highways never appealed from the October 27th judgment, taking the position before the supreme court that article 1915 of the Code of Civil Procedure did not permit or authorize the signing of the October 27th judgment in favor of Jones. The department further contended that article 2088 of the Code of Civil Procedure divested the trial court of jurisdiction in the case, which would be still another basis for holding that the October 27th judgment was unauthorized.

The majority opinion in the supreme court decision on the question of divestment of jurisdiction held that only those matters reviewable under the appeal were divested and, since the judgment of October 13 did not mention the Jones cause of action, it was not a matter reviewable under the appeal; consequently it did not fall under the divesting effect of article 2088.

As to the authority of the court to render the second judgment (October 27) under the provisions of article 1915, the court in effect held that the listing in that article of the instances where partial judgments might be rendered was not exclusive: "[W]e are unable to agree that the signing of multiple judg-

ments in cases involving third party actions is otherwise reprobated."[3]

Later in its opinion, the court made rather clear that it had written the opinion to save Jones from the adversity he might experience by having his action omitted from the final judgment:

> "The notion that separate judgments are undesirable, because multiple appeals and piecemeal litigation result, has been employed by courts as standards which serve to conserve time and expense for the litigant and the courts; the argument has not been advanced, so far as we can ascertain, to defeat a claim when a court has decided in favor of a litigant, but for some reason has inadvertently failed to incorporate that decision in the proper formal judgment."[4]

Justice Barham, in a vigorous dissent, argued that the rationale of the majority opinion did great harm to the clear intent of the Code of Civil Procedure to limit the circumstances which must obtain to justify the rendering of a partial judgment in a case. This argument seems well founded.

The omission from a judgment of any holding as to an action in the case constitutes a holding adverse to that action.[5] Jones protected himself against that thrust by appealing devolutively from the October 13th judgment. At the time the supreme court heard this case on writs, it was clear that Jones' appeal was timely filed and that he had preserved his objections to the rendering of the judgment without inclusion therein of the favorable finding on his action. There was thus a routine way for the supreme court to grant relief to Jones by ultimately requiring that his action be included in the October 13th judgment, through an order so modifying the judgment.

The language of article 1915 does not suggest approval of the rendering of separate judgments in a case, even though it may involve multiple parties and claims. The first three subparagraphs of the article[6] refer to instances where the final judgment disposes of matters which are ripe for judgment prior

3. Walker v. Jones, 257 La. 404, 415, 242 So.2d 559, 563 (1970).
4. *Id.* at 416, 242 So.2d at 564.
5. Soniat v. Whitmer, 141 La. 235, 74 So. 916 (1917).
6. *See* note 2 *supra.*

to a full determination of all issues in the case as between all parties. The fourth sub-paragraph of the article is the only one touching on the instant case, and by implication it squarely precludes separate judgments unless there have been separate trials on the demands. Further, the comment under article 1915 says that:

> "The rule that there should be one final judgment is designed to prevent multiplicity of appeals and piecemeal litigation. In cases where the rules of joinder are liberal, however, injustice could result to parties who had clearly distinct claims and who were put to the trouble of *awaiting the sometimes lengthy determination of the entire suit.* Statutory exceptions have, therefore, been enacted." (Emphasis added.)

When the defective judgment of October 13th was sent to Jones, he could have moved for a new trial for reargument only. Once all parties appealed, however, the simplest solution was for the supreme court to grant Jones the relief to which he was entitled under his appeal, rather than under his ill-conceived partial judgment.

If the majority opinion is received by the practicing bar as a correct interpretation of article 1915, not limited to the hardship case there before the court, the unworkable consequences are not fanciful. A judgment in favor of a principal plaintiff might be appealed suspensively by the principal defendant—third party plaintiff; third party plaintiff then might have a later judgment (under the rule of the instant case) over against third party defendant, who might have a new trial resulting in reversal of findings of fact subtending the principal judgment. Further untenable variations are easy to envision.

CIVIL PROCEDURE

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Jurisdiction over the Subject Matter

In defining the jurisdiction of the city courts of New Orleans, article 4835 of the Code of Civil Procedure provides that "[t]hese courts have jurisdiction of reconventional demands and interventions filed therein and necessarily connected with or grow-

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