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Procedure: Civil Procedure

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PROCEDURE

CIVIL PROCEDURE

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APPEALS

A not uncommon occurrence is the perfection of an appeal from an oral statement of judgment prior to the signing of a written judgment. If no signed judgment appears in the record the appellate court will dismiss the appeal for lack of jurisdiction.[1] However, where the judgment is signed after perfection of the appeal, a different problem is presented since there is a basis for jurisdiction but technically no appeal from the signed judgment. Resolution of the problem produced a split among the intermediate appellate courts. The First[2] and Third[3] Circuits held that the appeal should be dismissed, even though dismissal would preclude any appeal if the delay for appeal from the signed judgment had expired, while the Fourth[4] and Second Circuits maintained the appeals. The Second Circuit in *Nomey v. Department of Highways*[5] fashioned the test that the appeal should be maintained if 1) the judgment is signed at a point close in time to the oral statement of the judgment; 2) the judgment as signed is not substantially different from the oral judgment; and 3) the adverse party is not prejudiced and is given fair notice of the aim and purpose of the appeal.[6] In *Palmer v. Wren*[7] the First Circuit dismissed an appeal,[8] but

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1. Rourke v. Coursey, 334 So. 2d 480 (La. App. 3d Cir. 1976); DiSalvo v. Picard, 303 So. 2d 900 (La. App. 1st Cir. 1974); Mestyer v. Mestyer, 302 So. 2d 342 (La. App. 3d Cir. 1974); Rhodes v. J-W Operating Co., 247 So. 2d 657 (La. App. 2d Cir. 1971).
2. Malbrough v. Kiff, 312 So. 2d 915 (La. App. 1st Cir. 1975).
3. Forman v. May, 201 So. 2d 683 (La. App. 3d Cir. 1967).
4. Richardson v. Richardson, 264 So. 2d 699 (La. App. 4th Cir. 1972); American Nat'l Ins. Co. v. Ramon, 204 So. 2d 798 (La. App. 4th Cir. 1967).
5. 325 So. 2d 732 (La. App. 2d Cir. 1976).
6. *Id.* at 733.
7. 361 So. 2d 1206 (La. 1978).
8. No. 12,145 (La. App. 1st Cir. May 1, 1978) (decision is noted "not for publication").

the supreme court granted writs[9] and reinstated the appeal, commenting that "*Nomey* . . . has correctly decided this issue."[10] The *Nomey* test appears to be a common-sense balancing of the equities between the opposing parties, especially in light of the prevailing Louisiana policy favoring appeals.[11] While one may share Justice Summers' concern, expressed in a concurrence,[12] over the court's practice of deciding cases through per curiam opinions on grants of writs, without hearings, it is difficult to find fault with the result in *Palmer*.

The supreme court also passed upon the issue of reinstatement of an appeal. In *Jasmin v. Gafney, Inc.*,[13] after the trial court had granted plaintiff a judgment for workmen's compensation benefits and the defendant had appealed, counsel for the litigants agreed upon a settlement. Defendant then dismissed the appeal with prejudice, alleging settlement, but the motion did not state that the plaintiff-appellee concurred in the dismissal. When the plaintiff balked at completion of the compromise, defendant filed a rule to make the original judgment executory, or, alternatively, to reinstate the appeal. The supreme court reversed the Third Circuit[14] judgment reinstating the appeal with the observation that there is no legal authority for the reinstatement of an appeal.[15] While the decision appears harsh, it probably will have limited effect. In most cases, the agreement to compromise will be enforceable and will give rise to a new action;[16] in workmen's compensation cases, however, settlement requires court approval[17] and there can be no binding compromise until the formalities are complied with.[18] Forewarned by the decision, however, prudent counsel will not dismiss an appeal until settlement has been effected.

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9. 361 So. 2d 1206 (La. 1978).

10. *Id.*

11. Emmons v. Agricultural Ins. Co., 245 La. 411, 158 So. 2d 594 (1963); Succession of Videau, 228 So. 2d 352 (La. App. 4th Cir. 1969).

12. 361 So. 2d at 1206.

13. 357 So. 2d 539 (La. 1978).

14. 350 So. 2d 281 (La. App. 3d Cir. 1977).

15. 357 So. 2d at 541.

16. LA. R.S. 23:1271 (Supp. 1966); Meinerz v. Treybig, 245 So. 2d 557 (La. App. 3d Cir.), *cert. denied*, 258 La. 580, 247 So. 2d 395 (1971).

17. LA. R.S. 23:1272 (Supp. 1974).

18. LA. CIV. CODE art. 3071 provides that a settlement must be in writing.

The judgment of a trial court overruling an exception is rarely reviewed by an appellate court prior to appeal from final judgment;[19] the appellate courts consistently hold that the overruling of an exception does not cause the "irreparable injury" necessary to provoke an interlocutory appeal[20] or to merit discretionary review through supervisory writs.[21] In many cases, however, the erroneous overruling of an exception results in an unnecessary trial on the merits. While the appellate courts generally have disregarded the unfairness to the defendant in such cases, the Fourth Circuit in *Mangin v. Auter*[22] indicated its willingness to grant writs where the unfairness and judicial inefficiency are clear. In *Mangin* the trial judge overruled a peremptory exception urging liberative prescription; on review by a five-judge panel, the Fourth Circuit upheld the three-judge panel's prior decision to grant the writ. The court stressed that the exception had been tried on undisputed facts, appeared meritorious on its face, and would, if sustained, terminate the litigation.[23] The court's decision is laudable, but it does not herald any abandonment of the general rule that interlocutory judgments overruling exceptions will not be reviewed prior to trial on the merits. In most cases, the manner in which the exception should be disposed of is not clear, and when the exception eventually is found to be without merit, the resulting delay and additional expense of a "piecemeal" trial impose an undesirable burden upon the plaintiff and the appel-

19. Examples of cases where review of interlocutory appeal was granted are: Batson v. Time, Inc., 298 So. 2d 100 (La. App. 1st Cir.), *cert. denied*, 299 So. 2d 803 (La. 1974); Jennings v. Coleman, 250 So. 2d 845 (La. App. 4th Cir. 1971); Molero v. Bass, 190 So. 2d 141 (La. App. 4th Cir. 1966), *cert. denied*, 250 La. 2, 193 So. 2d 523 (1967); Osborn Funeral Home, Inc. v. La. State B'd of Embalmers, 162 So. 2d 596 (La. App. 2d Cir. 1964).

20. *See, e.g.*, Alex Theriot, Jr., Inc. v. Lager, Inc.; 345 So. 2d 1263 (La. App. 1st Cir. 1977); Waters v. Waters, 264 So. 2d 275 (La. App. 4th Cir. 1972); Alexander v. Hancock Bank, 241 So. 2d 810 (La. App. 3d Cir. 1970); Lounsberry v. Hoffpauir, 199 So. 2d 553 (La. App. 3d Cir. 1967); Voisin v. Luke, 203 So. 2d 916 (La. App. 1st Cir. 1967); Bryant v. X-L Finance Co., 166 So. 2d 377 (La. App. 1st Cir. 1964); Gierczic v. Gierczic, 150 So. 2d 84 (La. App. 4th Cir.), *cert. denied*, 244 La. 219, 151 So. 2d 692 (1963).

21. Stevens v. Patterson Menhaden Corp., 191 So. 2d 692 (La. App. 1st Cir.), *cert. denied*, 250 La. 5, 193 So. 2d 524 (1967).

22. 360 So. 2d 577 (La. App. 4th Cir. 1978).

23. *Id.* at 578.

late courts. Under the circumstances of the instant case, however, the result seems proper, and the case and its rationale reinforce the argument that these types of decisions always should be discretionary.[24] Since discretionary review is always available under the writ power,[25] the codal provision granting appeal of right from interlocutory judgments causing irreparable harm[26] arguably is superfluous.

ATTACHMENT

In *Bowers v. D. C. Greene*[27] the Third Circuit held that a writ of attachment based upon a defendant's nonresidency may be maintained even though the defendant is personally served within the state. The decision of the court was based upon two early cases interpreting article 240 of the Code of Practice[28] and the conclusion that article 3502 of the Code of Civil Procedure made no change in the law.[29] The effect of the decision, permitting seizure of the assets of a defendant before he has been given notice and an opportunity to be heard, illustrates that nonresident attachment may be subject to two constitutional infirmities. Where nonresident attachment is invoked as a means of obtaining jurisdiction, the seizure may violate due process unless there is a sufficient relationship between the property, the debtor, the debt and the state in which seizure occurs to make it reasonable for jurisdiction to be exercised in that manner.[30] It may also be constitutionally infirm because there is insufficient urgency or judicial control to satisfy the "fair notice and opportunity to be heard" requirements of due process.[31]

24. *See* Greater Tangipahoa Utility Co. v. City of Hammond, 247 So. 2d 410 (La. App. 1st Cir. 1971).

25. LA. CONST. art. V, § 10.

26. LA. CODE CIV. P. art. 2083.

27. 360 So. 2d 639 (La. App. 3d Cir. 1978).

28. Roper v. Brooks, 201 La. 135, 9 So. 2d 485 (1942); Poulan v. Gallagher, 147 So. 723 (La. App. 2d Cir. 1933).

29. 360 So. 2d at 641.

30. *See* Shaffer v. Heitner, 433 U.S. 186 (1977).

31. *See* North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975); Fuentes v. Shevin, 407 U.S. 67 (1972).

CLASS ACTIONS

The Code of Civil Procedure permits maintenance of a class action if 1) the parties are so numerous that joinder is impracticable; 2) the plaintiff adequately represents the class; and 3) "the character of the right sought to be enforced for or against the members of the class is . . . common to all members of the class . . . ."[32] The latter requirement, not further defined by the Code, has been the focal point of dispute over utilization of the class action in Louisiana. Early decisions by intermediate appellate courts concluded that the character of the rights were common when either the members of the class were indispensable parties or they were necessary parties.[33] In *Stevens v. Board of Trustees*[34] a three-man majority of the court provided a potential springboard for expanded use of the class action device; the opinion rejected the notion that the "commonality" concept in the class action was limited by the joinder concepts of indispensable and necessary parties.[35] Instead, the rights of the members of the class have sufficient connection, and thus the class action is available, if they share a common question of law or fact and a policy decision justifies the maintenance of a class action.[36] The policies to which the majority alluded were judicial efficiency, fairness to the parties, and the potential for utilizing the class action as a method of implementing substantive legislative policy.[37]

The *Stevens* rationale was extended in the last term to permit the use of the class action in litigation of a "mass tort." In *Williams v. State*[38] five inmates filed a class action to recover damages on behalf of approximately 600 inmates who allegedly were served contaminated food at the state penitentiary. The four-man majority of the court concluded that where the pro-

32. LA. CODE CIV. P. arts. 591-92.

33. Stevens v. Board of Trustees of Police Pension Fund, 295 So. 2d 36 (La. App. 2d Cir. 1974); Caswell v. Reserve Nat'l Ins. Co., 234 So. 2d 250 (La. App. 4th Cir.), *cert. denied*, 256 La. 364, 236 So. 2d 499 (1970); Veal v. Preferred Thrift & Loan of New Orleans, Inc., 234 So. 2d 228 (La. App. 4th Cir. 1970).

34. 309 So. 2d 144 (La. 1975). Justice Dixon was recused.

35. *Id.* at 147, 149.

36. *Id.* at 147, 150-51.

37. *Id.* at 151.

38. 350 So. 2d 130 (La. 1977).

posed class action involves numerous minor claims arising out of a single incident in which the claimants sustained similar injuries and damages, small in nature, the trial judge should certify it as a class action.

The majority of the court also spoke to the difficult issue of notice to absent members of the class. Federal due process requires that in the early stages of a class action, all identifiable prospective members of the class must be given reasonable notice of the pendency of the action and an opportunity to withdraw from the class;[39] however, the Code of Civil Procedure makes no provision for notice. The majority concluded that the inherent power of Louisiana courts includes the power to provide for reasonable notice to absent members of the class.[40] While the question of the type of notice was relegated to further proceedings, the majority pointed out that due process does not mandate formal service of process; while individual written notice may be required for claims of any magnitude, notice by publication may satisfy the requirements of due process in some cases.[41] *Stevens* and *Williams* were strong cases for certification of the class action. In *Stevens* the common questions of law and fact were the only significant disputed issues in the case. In *Williams* judicial efficiency was attained by combining litigation of 600 small claims, and state substantive policy was promoted by assuring that wrongful conduct producing negligible damage claims to a large number of victims would be deterred through the civil judicial process. Where the claims of class members present different factual backgrounds and different questions of liability or damages, it is arguable that the class action should not be sanctioned.[42]

COURT COSTS

The Code of Civil Procedure permits a litigant to prosecute a claim without pre-payment of costs if he is "unable to pay the costs . . . because of his poverty and lack of means

39. *See* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

40. 350 So. 2d at 138.

41. *Id.*

42. *But see* State *ex rel.* Guste v. General Motors Corp., No. 61,840 (La. Sup. Ct. Rehearing April 9, 1979).

. . . ."[43] The terms "poverty" and "lack of means" are nebulous standards, and the Code furnishes no other test for courts to apply in determining whether a litigant should be relieved of the burden of pre-payment of costs. The appellate courts generally have left the matter to the discretion of the trial judges, rarely overruling their decisions.[44] In *Benjamin v. National Super Markets, Inc.*[45] the supreme court reaffirmed this practice but set forth guidelines to aid a judge in the exercise of his discretion. The court first noted that it is not the litigant's income but "what happens to the money that comes in" which determines the question of indigency.[46] It thus concluded that a litigant earning approximately $1,200 per month was not disqualified from proceeding in forma pauperis where his monthly expenses amounted to a substantially larger sum. Nor did the plaintiff's ownership of certain assets preclude use of forma pauperis; a litigant should not be required to dispose of his equity in a modest family home and furniture, or a modest automobile essential for family transportation, to pay advance court costs.[47] Reasserting that appellate courts should not disturb the decision of the trial judge in such a matter in the absence of clear abuse of discretion,[48] the supreme court reversed the Fourth Circuit, which had overruled a trial court order permitting an appeal in forma pauperis.

DIRECT ACTIONS

By its terms, the Louisiana direct action statute applies to liability policies written outside the state if the accident giving rise to the action occurs within Louisiana.[49] In the landmark

43. LA. CODE CIV. P. art. 5181.

44. McCoy v. Winn-Dixie La., Inc., 339 So. 2d 976 (La. App. 4th Cir. 1976), *rev'd on other grounds*, 345 So. 2d 1175 (La. 1977); Houston v. Brown, 292 So. 2d 911 (La. App. 2d Cir. 1974); Bodcaw Co. v. Enterkin, 273 So. 2d 325 (La. App. 3d Cir. 1973).

45. 351 So. 2d 138 (La. 1977).

46. *Id.* at 140.

47. *Id.* at 141. For this proposition the court cited: Gilmore v. Rachl, 202 La. 652, 12 So. 2d 669 (1943); Fils v. Iberia, St. M & E. R. Co., 145 La. 544, 82 So. 697 (1919); Roy v. Gulf States Utilities Co., 307 So. 2d 758 (La. App. 3d Cir. 1975).

48. 351 So. 2d at 142.

49. LA. R.S. 22:655 (Supp. 1962).

case of *Webb v. Zurich*[50] the supreme court extended the coverage of the statute to an accident occurring outside the state where the insurance policy was delivered in the state. The court's sweeping language in *Webb* gave rise to speculation that the statute might also apply to an accident occurring outside the state on a policy written outside the state, if there were other contacts with Louisiana sufficient to make it constitutionally permissible to apply Louisiana law. The speculation was laid to rest by the supreme court's decision in *Esteve v. Allstate Insurance Co.*[51] There, the court held that the extension of the statute in *Webb* represents the outer limits of the reach of the direct action statute, and, accordingly, the statute is available only if the policy is issued in Louisiana or the accident occurs in Louisiana.[52]

DISCOVERY

In *Viator v. Sonnier*[53] the trial court ordered a personal injury plaintiff to submit to examination by three physicians, to postpone scheduled surgery for two weeks and to permit observers and filming of the surgery. The court's order also provided that the sanction for non-compliance with the order would be the rejection at the trial of any evidence of the surgery. The Third Circuit, analogizing from Federal Rule 35(a) and cases thereunder, concluded that article 1464 of the Code of Civil Procedure gives the judge authority to order examinations of the injured party by three physicians when the examinations are justified by the circumstances.[54] However, the appellate court rejected the contention that the trial judge was authorized by Louisiana discovery law to permit observers or filming of the surgery or to order a party to postpone surgery which had been recommended by a physician.[55]

The court also was critical of the trial court's action in specifying in the order compelling discovery the penalty for

50. 251 La. 558, 205 So. 2d 398 (1967).
51. 351 So. 2d 117 (La. 1977).
52. *Id.* at 120.
53. 355 So. 2d 1091 (La. App. 3d Cir. 1978).
54. *Id.* at 1093.
55. *Id.*

non-compliance. When a party fails to comply with an order compelling physical examination, article 1471 of the Code of Civil Procedure authorizes the court to impose sanctions, "unless the party failing to comply shows that he is unable to produce such person for examination." The court reasoned that by incorporating the sanction into the order, the court denied a party the right to explain his failure.[56]

EXCEPTIONS

If a petition alleges a single set of facts and seeks only one type of relief thereon under a single theory of liability, and the defendant contends that the plaintiff may not recover as a matter of law, the defendant may properly resist the demand through the peremptory exception urging no cause of action.[57] What if the plaintiff seeks two different types of relief or the same relief under two or more theories of liability and the defendant contends that plaintiff may recover, as a matter of law, one, but not both types of relief, or under one, but not both theories? May he then urge his objection to the improper theory or demand through the peremptory exception urging no cause of action? The Louisiana jurisprudence is that if the petition does state a cause of action as to one of the theories or one of the demands for relief, the exception of no cause of action should not be maintained.[58] The evil in maintaining such an exception is that the judgment rendered thereon becomes immediately appealable, resulting in a "piecemeal" trial of claims based upon the same facts. An illustration of the rule is *Walker v. Western Southern Life Ins. Co.*,[59] in which plaintiff sued his insurer for disability benefits and for damages for mental anguish, humiliation and inconvenience resulting from the failure to pay the benefits. The trial judge sustained defendant's exception of no cause of action to the demand for the nonpecuniary damages, but on appeal the Second Circuit reversed, pointing out that the use of the exception to strike an

56. *Id.* at 1094.

57. LA. CODE CIV. P. art. 927.

58. Louisiana & Ark. Ry. Co. v. Goslin, 258 La. 530, 246 So. 2d 852 (1971), *appeal after remand*, 300 So. 2d 483 (La. 1974), *cert. denied*, 420 U.S. 963 (1975).

59. 361 So. 2d 892 (La. App. 2d Cir. 1978).

element of claimed damages is an improper use of the procedural device.[60]

The Second Circuit did not point out how the defendant should have objected to an improper demand or an invalid theory of recovery. The proper procedure apparently would have been a motion to strike,[61] but use of that device would pose problems. One such problem is the limited time period within which such a motion may be urged.[62] Another is the possibility that a judgment sustaining a motion to strike may be appealable,[63] thus producing the same piecemeal litigation which prompted courts to prohibit the use of the peremptory exception urging a partial no cause of action. Perhaps a more satisfactory solution, suggested by Judge Lemmon of the Fourth Circuit,[64] is:

> "to overrule the exception and to admit evidence [relevant to the theory or demand which the trial judge has found insufficient] . . . only by means of a proffer. Then, after completion of the trial on the merits, the appeal, *if any appeal is ever taken,* would present all issues at one time.[65]

EXECUTORY PROCESS

Articles 2635 and 2636 of the Code of Civil Procedure require a plaintiff seeking executory process to submit with his petition the note "evidencing the obligation secured by the mortgage" sought to be enforced. Where the plaintiff seeks to enforce a collateral mortgage by executory process, dispute exists over whether the collateral mortgage note or the "hand note" which it secures is the note evidencing the obligation secured by the mortgage. A body of jurisprudence is developing

60. *Id.* at 894.

61. LA. CODE CIV. P. art. 964.

62. A motion to strike must be filed within ten days of service of the pleading; a defendant may move to strike within fifteen days of the service of the petition. LA. CODE CIV. P. art. 964.

63. *See* LA. CODE CIV. P. arts. 1841, 2083.

64. Tano Corp. v. Louisiana Health Service & Indem. Co., 355 So. 2d 604 (La. App. 4th Cir. 1978) (Lemmon, J., concurring).

65. 355 So. 2d at 607 (emphasis by the court).

which holds that the collateral mortgage note is the evidence of the obligation which must be produced.[66]

JURY TRIALS

In *St. Pierre v. General American Transportation Corp.*[67] the trial judge submitted a personal injury action to the jury on special interrogatories, beginning with the question whether plaintiff was contributorily negligent. After judgment for defendant, plaintiff appealed, and a majority of the Fourth Circuit affirmed, reasoning that the plaintiff was not prejudiced by the order in which the interrogatories were presented; even if there was prejudice, the plaintiff waived the right to urge the matter on appeal because he failed to object to the order of the interrogatories before the jury retired.[68] The concurring judge felt that "had the proper defendants been sued" the order in which the interrogatories were presented was "so essentially foreign to the traditional analysis of negligence . . . that . . . justice would require a reversal."[69]

The practice of reserving objection to jury charges until after the jury has retired, permitted in some areas of the state, received appellate scrutiny during the 1977-78 term. Noting that article 1793 of the Code of Civil Procedure, as a prerequisite to appellate review of jury charges, requires that objection to the charges be made before the jury retires, the Fourth Circuit[70] concluded that counsel may not assert as error allegedly erroneous charges to which objection is made after the jury has retired, even though the parties stipulate to that method of procedure. Four justices of the supreme court, concurring in a denial of writs because the error was harmless, expressed the view that where counsel agree to delay objections until after the

66. *See* Fuller v. Underwood, 355 So. 2d 62 (La. App. 2d Cir. 1978); Tri-South Mortgage Investors v. New Communities, Inc., 353 So. 2d 292 (La. App. 1st Cir. 1977), *cert. denied*, 354 So. 2d 1052 (La. 1978). *See also Cameron Brown South, Inc. v. East Glen Oaks, Inc.*, 341 So. 2d 450 (La. App. 1st Cir. 1976), in which the court recognized that the "hand note" represents the indebtedness but held that the collateral mortgage note is the "instrument evidencing the obligation secured by the mortgage."

67. 360 So. 2d 595 (La. App. 4th Cir. 1978).

68. *Id.* at 597-98.

69. *Id.* at 599 (Garsaud, J., concurring).

70. Outlaw v. Bituminous Ins. Co., 357 So. 2d 1350 (La. App. 4th Cir. 1978).

jury has retired, it is error for an appellate court to refuse to consider objections to the charges.[71]

RES JUDICATA

In 1976 the supreme court sounded the death knell for estoppel by judgment (collateral estoppel) in Louisiana,[72] and in 1978, in *Welch v. Crown Zellerbach Corporation,*[73] the court formally interred the doctrine. *Welch* arose when plaintiff, injured in the course of his employment, brought suit against the independent contractor whom he alleged to be his statutory employer. After plaintiff was successful in the trial court, the appellate court reversed,[74] finding that the plaintiff had failed to introduce admissible evidence establishing that the contractor was his statutory employer. Plaintiff then brought suit against the owner, alleging that he was a statutory employee of both the contractor and the owner. The trial court sustained exceptions of prescription, peremption and res judicata, and the First Circuit affirmed on the exception of peremption, not reaching the plea of res judicata.[75] The supreme court held that the claim was not barred by prescription and concluded that the prior judgment did not bar relitigation. The court had little difficulty in finding that Louisiana's limited doctrine of res judicata did not bar relitigation; the contractor was not a party to the first suit, and since res judicata requires an identity of parties, that doctrine was inapplicable.[76] The court, speaking through Justice Dixon, had even less difficulty with the doctrine of collateral estoppel, stating that the device was "a doctrine of issue preclusion alien to Louisiana law."[77] Although Justice Dixon alluded to the difficulty of applying common law collateral estoppel in Louisiana because of the difference between the civil law concept of "cause" and the common law

71. 359 So. 2d 1293 (La. 1978).
72. Mitchell v. Bertolla, 340 So. 2d 287 (La. 1976).
73. 359 So. 2d 154 (La. 1978).
74. Welch v. Robert Campbell, Inc., 316 So. 2d 822 (La. App. 1st Cir.), *cert. denied,* 321 So. 2d 523 (La. 1975).
75. 351 So. 2d 1255 (La. App. 1st Cir. 1977).
76. 359 So. 2d at 156.
77. *Id.*

concept of "cause of action" upon which application of collateral estoppel is based, the decision clearly was based upon the incompatability of a broad common law preclusion device with Louisiana's limited res judicata. Wrote the court: "The adoption and application of an issue preclusion device which would broaden the operation of res judicata in Louisiana would subvert the original ideal established by codes."[78]

Justice Dixon then made it clear that it was the court's intention to finally and fully bury the doctrine of collateral estoppel. Alluding to prior Louisiana decisions recognizing collateral estoppel, he noted that "no clear understanding of the application of that doctrine has been developed in the cases or in legal literature. Therefore, we hold that none of the variations of the common law doctrines of res judicata apply in Louisiana."[79]

78. *Id.* at 157.
79. *Id.*