Courts and Judicial Procedure

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I. COURTS

Most of the 1954 legislation on this subject relates to city courts and is of little general interest to the profession. The statutes of the past session produced a bumper crop of salary increases for judges, clerks, and other officers of the courts. The maximum jurisdictional limit for cases tried in the City Court of Lafayette was increased from three hundred to five hundred dollars, exclusive of attorney's fees and interest.

An additional judge was provided for the Sixteenth Judicial District Court, but with the requirement that one of the three judges of that court be an elector of St. Martin Parish, the second of Iberia Parish, and the third of St. Mary Parish. This requirement is patently unconstitutional, as the legislature has

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no power to add to the qualifications of the judiciary prescribed by the Constitution.\textsuperscript{7}

If there is one subject relating to the courts which requires standardization and uniformity throughout the state, it is the days and hours which offices of clerks of district courts are required to be open for the transaction of business. Four unfortunate precedents of local variation were established during the 1954 session.\textsuperscript{8}

The only legislation relating to the courts passed at the last session which is of general interest to the profession was the amendment of the clerk of court statute. The quasi-judicial powers of the clerk, granted under constitutional authority,\textsuperscript{9} were broadened in two respects to authorize him to sign orders: (1) for the issuance of reiterated summons to return to the matrimonial domicile in cases where separation from bed and board is sought on the ground of abandonment, and (2) to rule the inheritance tax collector into court in succession proceedings to fix the inheritance taxes due by the heirs or legatees.\textsuperscript{10}

\textbf{II. Civil Procedure}

\textbf{Actions}

No single rule of Louisiana procedure has had a more frustrating experience than that designed to prevent the abatement of actions upon the death of a party. In the draft of the first Code of Practice, the Livingston Committee included an article which provided expressly that "actions do not abate by the death of one of the parties after answer filed."\textsuperscript{11} This provision was retained without change in the 1870 revision.\textsuperscript{12} Despite the broad and sweeping language of the article, the Supreme Court held in \textit{Chivers v. Roger},\textsuperscript{13} by a divided court, that an action

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\item \textsuperscript{7} Knobloch v. 17th Judicial Dist. Democratic Executive Comm., 73 So.2d 433 (La. App. 1954).
\item \textsuperscript{9} LA. CONST. Art. VII, § 66.
\item \textsuperscript{11} Art. 21, LA. CODE OF PRACTICE of 1825.
\item \textsuperscript{12} Art. 21, LA. CODE OF PRACTICE of 1870.
\item \textsuperscript{13} 50 La. Ann. 57, 23 So. 100 (1898). For the effect of this decision, see Voss, The Recovery of Damages for Wrongful Death at Common Law, at
brought by a beneficiary under Article 2315 of the Civil Code abated upon his death, even though answer had been filed. This decision was followed consistently, although both before and after the *Chivers* case the Supreme Court held that there was no abatement of the action in such cases after rendition of a judgment in favor of a plaintiff who died pending appeal.

To overturn the rule of *Chivers v. Roger*, in 1946 the legislature adopted a statute providing that “there are no exceptions to the rule that an action does not abate by the death of one of the parties thereto after *issue joined*.” (Italics supplied.) This provision was duly incorporated into the Revised Statutes in 1950. Yet, in the first case in which the Supreme Court was called upon to apply the statutory rule, it held that the provision had been repealed impliedly by a 1948 amendment to Article 2315 of the Civil Code.

In drafting the *projet* of the proposed new Code of Practice, the Louisiana State Law Institute adopted the following provision on the subject:

> “An action does not abate on the death of a party. The heirs, legatees, administrator, or executor of the deceased party, as the case may be, may be substituted. This rule also applies to actions brought under Article 2315 of the Civil Code, unless the action has survived in favor of a survivor designated therein. The only exceptions to this rule are actions to enforce rights or obligations which are strictly

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18. Gabriel v. United Theatres, 221 La. 219, 59 So.2d 127 (1952), 13 Louisiana Law Review 518 (1953). This case appears to have been decided erroneously for two reasons. First, the 1948 amendment to Article 2315 of the Civil Code did not specifically and specially make any exception to the rule, as required by both *Gabriel v. United Theatres*, 221 La. 219, 59 So.2d 127 (1952). Second, even if the 1948 act and the 1948 amendment to Article 2315 were in conflict, *La. R.S. 13:3349* (1950) constituted the later expression of legislative will and should have prevailed. City of Alexandria v. LaCombe, 220 La. 618, 57 So.2d 206 (1952).
personal, and exceptions provided expressly, or by necessary implication, by statutes adopted hereafter.\(^{118}\)

Article 21 of the Code of Practice sought to prevent abatement after answer filed, while the 1946 act sought to prevent abatement after issue joined. The article proposed by the Law Institute goes further, and would prevent abatement after institution of the action.\(^{20}\) This article also embodies carefully selected language which would expressly overrule the Chivers decision. The last sentence of the Law Institute's article would retain the rule of statutory construction against implied repeal by subsequent legislation contained in the 1946 act; it would further recognize an exception which the courts would be compelled to make in any event—in the case of rights or obligations which are strictly personal.\(^{21}\)

Two separate acts on the subject were adopted during the 1954 session. One merely amends the pertinent provision of the Revised Statutes so as to prevent abatement of the action after institution of suit.\(^{22}\) The other, amending Article 21 of the Code of Practice, provides that:

"An action does not abate on the death of one of the

19. Art. 9, Book I, Preliminary Titles, Title III, Civil Actions, 1 Exposé des MOTIFS No. 5, p. 22 (Louisiana State Law Institute, May 3, 1954), as amended on June 5 and 6, 1954, by the Committee on Semantics, Style and Publications of the Louisiana State Law Institute.

20. There is no reason why the rule against abatement should obtain only if an answer has been filed, or issue joined. By the institution of the suit, the obligee indicates conclusively his intention to enforce the obligation, and the right of his heirs or legatees to continue its prosecution after his death should not depend upon the accidents of the defendant filing an answer or joining issue.

21. "The broad and sweeping language of the 1946 act and R.S. 13:3349, however, will present very considerable difficulties to the court. McMahon, Louisiana Legislation of 1946 (Civil Procedure), 7 La. L. Rev. 23, 36-40 (1946); Comment, 4 Loyola L. Rev. 75 (1947). For instance, if a citizen brought a suit to force the registrar of voters to permit him to vote, and died after issue joined but while the action was pending, could anyone successfully contend that the action had not abated? Yet both the 1946 act and R.S. 13:3349 state dogmatically that there are no exceptions to the rule that an action does not abate on the death of a party after issue joined. Similarly, if a husband sued for divorce or separation, and died after answer was filed but pending a decision, could anyone successfully contend that his action did not abate on his death? Of necessity, actions to enforce personal rights must be excepted from the rule. An obligation strictly personal—defined by Article 1997 of the Civil Code as an obligation which 'none but the obligee can enforce the performance, or when it can be enforced only against the obligor'—likewise must be excepted. . . .

'The proposed article, therefore, provides that 'actions to enforce rights or obligations which are strictly personal' are exceptions thereto. This language recognizes exceptions which, despite the sweeping language of R.S. 13:3349, our courts would be forced to make.' Art. 9, Book I, Preliminary Titles, Title III, Civil Actions, 1 Exposé des MOTIFS No. 5, p. 22 (Louisiana State Law Institute, May 3, 1954).

parties after suit has been filed, and the heirs, legatees, administrator, or executor of the deceased party may be substituted as parties in any case wherein they succeed, by operation of law, to the rights of the deceased party.”

These two statutes appear to have been intended to accomplish the objectives of the Law Institute in drafting its recommended article. The 1954 statutes, unfortunately, appear to go no further than the 1946 legislation in overturning Chivers v. Roger.

The institution of an action interrupts prescription in two different ways in Louisiana. First, under a 1932 statute, the mere filing of suit in a “court of competent jurisdiction” suffices to interrupt the current of prescription. Competency, within the intendment of this statute, has been interpreted to mean jurisdiction ratione materiae et personae. Second, under the pertinent Civil Code provision, even if the suit is filed in an incompetent court or in an improper venue, prescription is interrupted by the service of citation upon the defendant. One of the acts adopted at the last legislative session amends this Code provision by adding the language: “The provisions of this article likewise apply to actions ex delicto, heretofore or hereafter filed, in a United States District Court of America, when and if said court holds it is not a court of competent jurisdiction.” This amendment actually makes no change in the law of Louisiana, for the added language is merely declaratory of the jurisprudential rule on the subject.

Following the French law, the Louisiana Civil Code provides that if the plaintiff, after having instituted his suit, dis-

continues or abandons it, the interruption of prescription through the institution of the action shall be considered as never having happened. For years, the courts performed the very difficult task of determining, from the particular facts of each case, whether the plaintiff had abandoned his action. Then, in 1898, the pertinent Civil Code article was amended by adding a second paragraph providing that:

"Whenever the plaintiff having made his demand shall at any time before obtaining final judgment allow five years to elapse without having taken any steps in the prosecution thereof, he shall be considered as having abandoned the same."

Originally, the quoted language was interpreted in a number of decisions as applicable to appeals pending in the appellate courts, as well as cases pending in the trial courts. In 1932, however, the Supreme Court overruled this line of cases, and held that the quoted language had no application to appeals pending in the appellate courts. Quite recently, the Supreme Court adopted a rule treating as abandoned, and as requiring summary dismissal, appeals "pending on the regular docket, in which five years have elapsed without any steps being taken in the prosecution thereof."

An act adopted at the last session expressly extends the Code rule of abandonment to all appeals pending in all appellate courts, by adding a third paragraph to the pertinent Civil Code article, providing that:

"Any appeal, now or hereafter pending in any appellate court of this state, in which five years have elapsed without any steps having been taken in the prosecution thereof, shall be considered as abandoned, and the court in which said appeal is pending shall summarily dismiss such appeal."

31. Teutonia Loan & Building Co. v. Connolly, 133 La. 401, 63 So. 63 (1913).
It is unfortunate that the draftsman of this legislation did not track the language of the Supreme Court Rule on the subject, for the latter contains a provision which the statute lacks. The Supreme Court Rule afforded a reasonable period after it became effective for an appellant, who otherwise would have been cut down at the knees by the retroactive rule, to prevent the dismissal of his appeal by prosecuting it.\(^3^7\) The absence of any such reservation raises a very serious question as to the constitutionality of the 1954 act.\(^3^8\) This fact, however, presents no serious obstacle to the ultimate future enforcement of such a rule by the intermediate appellate courts, as it is believed that they have ample authority to adopt a rule similar to that of the Supreme Court.\(^3^9\)

**Venue**

Three statutes were adopted at the last session changing the rules relating to the parishes in which actions may be brought.

The first,\(^4^0\) amending Article 165(10) of the Code of Practice, made two important changes in the venue of actions brought to enforce insurance policies: (1) by adding a fourth optional venue for an action on a fire insurance policy,\(^4^1\) and (2) by providing three additional optional venues for an action on a policy of vehicle collision insurance.\(^4^2\)

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37. "The provisions of this section are intended to be retroactive and to become effective upon the adoption of these rules but the right is reserved to the appellant or appellants in any case now pending, in which no action has been taken for five years, to move for the transfer of the case to the preference docket within a period of six months following the publication of these rules in the advance sheets of the Southern Reporter." Rule VIII, § 3, Revised Rules of Supreme Court of Louisiana (1951).


40. La. Acts 1954, No. 261, amending Art. 165, LA. CODE OF PRACTICE of 1870. Only subdivision 10 of this article was changed by this amendment.

41. Prior to the 1954 amendment, an action on a fire insurance policy might be brought, at the option of the plaintiff: (1) at the domicile of the insurer, (2) at the place where the insurer's principal agency was established, and (3) in the parish where the loss occurred. The 1954 amendment purports to add two additional optional venues: (1) at the domicile of the insured, and (2) in the parish where the accident occurred. It will be noted that the latter is only an inaptly phrased repetition of the third optional venue mentioned above.

42. The amendment purports to afford five optional venues to the plaintiff suing to enforce a policy of vehicle collision insurance: (1) at the domicile of the insurer, (2) at the place where the insurer's principal agency
The second of these acts fills a long-felt need by providing expressly for the venue of interpleader proceedings. The Interpleader Act had no definite provisions on the subject, contenting itself with providing merely that the plaintiff might deposit the funds "in the registry of the district court having jurisdiction." The question of the proper venue of interpleader proceedings was first raised in *Louisiana Oil Refining Corporation v. Williams,* where the court held that an interpleader proceeding was an action in *rem* involving the ownership of the fund deposited, and that consequently the proper venue was the domicile of the plaintiff who owed the money deposited. Despite this ruling, however, the practice had developed in mineral rights cases of bringing the interpleader proceeding in the parish where the oil well was situated, though in none of these cases reaching the appellate courts was the venue challenged. Finally, in *Amerada Petroleum Corporation v. State Mineral Board,* where this practice was followed, the court held that the interpleader proceeding was properly brought in the parish where the oil well was situated.

The 1954 statute amends the Interpleader Act by providing two different venues for proceedings brought under the statute. If the money deposited is due, or claimed to be due,

"... on account of any sale, lease or other transaction affecting or pertaining to immovable property or any character of interest therein, such deposit shall be made in the registry of the district court having jurisdiction of the parish wherein said immovable property is situated, or, if said property be situated in more than one parish, then in the registry of any district court having jurisdiction over any parish wherein a part of said immovable property is situated."

In all other cases, the interpleader proceeding may be brought

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45. 170 La. 218, 127 So. 606 (1930).
46. Superior Oil Producing Co. v. Forrestier, 185 La. 11, 168 So. 313 (1936); Shell Petroleum Corp. v. Calcasieu Real Estate & Oil Co., 185 La. 751, 170 So. 785 (1936); Shell Petroleum Corporation v. Carter, 187 La. 382, 175 So. 1 (1937); Placid Oil Co. v. Hebert, 194 La. 788, 194 So. 893 (1940); Standard Oil Co. of Louisiana v. Hightower, 3 So.2d 472 (La. App. 1941).
47. 203 La. 473, 14 So.2d 61 (1943).
in any "district court having jurisdiction of the domicile of one or more of the claimants thereto."

The third statute on the subject provides the exclusive venue of actions to partition and liquidate the community of acquets and gains dissolved by a judgment of divorce or separation from bed and board. Under Demoruelle v. Allen, such a partition proceeding might have been brought either in the court which rendered the judgment of divorce or separation, or the court having jurisdiction over the property sought to be partitioned. Under the 1954 statute, venue of all such proceedings is vested exclusively in: (1) the court having jurisdiction over the last matrimonial domicile of the spouses; (2) if there is no such domicile in the state, then in the court having jurisdiction over the immovable property, and if the latter is situated in more than one parish, then in the court having jurisdiction over the principal immovable property; and (3) if there is no matrimonial domicile and immovable property in the state, then in the court having jurisdiction over the principal movable effects. Authority is granted to the court having jurisdiction to transfer the whole or any part of the proceeding to a forum "where it would be more to the advantage or manifest convenience of the parties to have such suits or actions heard or tried." The court which rendered the judgment of divorce or separation retains jurisdiction to render "orders and decrees protecting and preserving the rights of the parties to said property, prior to such partition or liquidation."

Third-Party Practice

Prior to 1954, the Louisiana counterpart to the modern third-party practice of Anglo-American jurisdictions has been the call in warranty. This procedural device was borrowed from French law and, since it was intended to implement both the personal and the real warranty, was much broader than the parent of modern American third-party impleader — the common law

50. 218 La. 603, 50 So.2d 208 (1950).
52. Id. § 2, La. R.S. 13:4991(B) (Supp. 1954).
54. The notes of the redactors of the Louisiana Code of Practice of 1825 cite "Pothier, civil procedure, chap. 2, art. 2, § 1" as the source of the call in warranty. Projet of the Code of Practice of 1825, 2 La. Legal Archives 65 (1937).
voucher to warranty in real actions.\textsuperscript{55} The call in warranty has worked very effectively with respect to the real warranty; but it has had a most hectic experience in Louisiana in performing its role of implementing personal warranties. For years, our Supreme Court restricted its use to the instances — entirely theoretical—where there was privity between the original plaintiff and the defendant in warranty.\textsuperscript{56} In 1905, this utterly unworkable rule was repudiated in \textit{Muntz v. Algiers & G. Ry.},\textsuperscript{57} and the way should have been opened for the effective use of this procedural device. Unfortunately, in the \textit{Muntz} case, the court gratuitously threw in a dictum to the effect that “there must be a contract of warranty between such defendant and the person so called in.”\textsuperscript{58} This was soon expanded into the direct holding that the call in warranty cannot be employed in cases involving personal warranty unless based upon a contract of warranty or upon a statutory provision expressly permitting the defendant in warranty to be called in.\textsuperscript{59} The result has been an inability to use the device for the purpose of obtaining a judgment over, in the numerous cases where the third party is indebted to the defendant for all or a part of the obligation sued upon by plaintiff, but the liability of the third person arises \textit{ex lege} rather than from an express contract of warranty.

For these reasons, in the projet of the proposed new Code of Practice, the Louisiana State Law Institute recommended that the call in warranty be discarded, and that there be substituted the “third-party action,”\textsuperscript{60} based substantially upon federal third-party practice.\textsuperscript{61} These two devices are not identical, as there are at least three differences between them.\textsuperscript{62} Under the Law In-

\textsuperscript{55} For a discussion of the role played by the common law voucher to warranty in the development of modern third-party impleader practices, see MILLAR, CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE 159 (1952).
\textsuperscript{56} See the list of cases overruled in \textit{Muntz v. Algiers & G. Ry.}, 114 La. 437, 38 So. 410 (1905).
\textsuperscript{57} Id. at 447, 38 So. at 414.
\textsuperscript{58} Id. at 447, 38 So. at 414.
\textsuperscript{60} Arts. 43-51, 62-67, Book II, Rules of Pleading and Practice in Ordinary Process, Title I, Pleading, \textit{Exposé des Motifs} No. 7, pp. 59-68, 79-85 (Louisiana State Law Institute, April 23, 1953), as amended by the Committee of Semantics, Style and Publications on August 1-2, 1953, and by the Council of the Institute on December 11-12, 1953.
\textsuperscript{61} Fed. R. Civ. P. 14, as amended on December 27, 1946.
\textsuperscript{62} First, under federal practice, the third-party defendant must be “a person not a party to the action.” Fed. R. Civ. P. 14(a). The proposed Louisiana article is broader: the third-party defendant may be “any person,
stitute's recommended third-party action the defendant may bring in by his petition any person, including a co-defendant, "who is his warrantor, or who is or may be liable to him for all or part of the principal demand." The defendant in reconvention likewise is permitted to call in a third party under the same circumstances, and any third-party defendant in turn may call in another under the same circumstances. The third-party defendant may assert against the plaintiff in the principal action any defenses which the third-party plaintiff has against the principal demand. The third-party petition may be filed without leave of court at any time up to and including the time the answer to the principal demand is filed; thereafter, it may be filed only with leave of court, if it will not retard the progress of the principal action. A third-party defendant may file the same exceptions and motions as a defendant in the principal action, except that, if the latter is filed in the proper venue, no objection of improper venue can be urged against the third-party action. The answer to the third-party action must be filed within the delay allowed the defendant in a principal action, "or at any time prior to a judgment by default" against the third-party defendant.

including a co-defendant." See Art. 62, Pleading, op. cit. supra note 60. The purpose of this difference was to eliminate the necessity for any counterpart of the federal cross-claim. Cf. FED. R. CIV. P. 13(g).

Second, under federal practice the defendant must move for leave to bring in the third-party defendant, and the matter addresses itself to the judicial discretion of the trial judge. FED. R. CIV. P. 14(a). The proposed Louisiana article, like the present Art. 382, LA. CODE OF PRACTICE of 1870, and Rule 56 of the FEDERAL RULES OF ADMIRALTY, grants to the defendant initially the right to bring in a third-party defendant.

Third, the only papers which must be served upon the third-party defendant in federal practice are the summons and a copy of the third-party complaint. FED. R. CIV. P. 14(a). This is in accord with our present rule of requiring the service of only the citation and the answer embodying the call in warranty upon the warrantor. Art. 383, LA. CODE OF PRACTICE of 1870. The Law Institute thought it advisable to require the service of citation and a certified copy of all of the basic pleadings upon the third-party defendant. See Art. 65, Pleading, op. cit. supra note 60.

63. See Art. 62, Pleading, op. cit. supra note 60.
64. Id. Art. 63.
65. Id. Art. 67.
66. Id. Art. 66.
67. Id. Art. 45.
68. Id. Art. 46.
69. Id. Art. 47. The "judgment by default" mentioned in this proposed article is the "preliminary default" of the professional vernacular, and not the "confirmation of default." This rule was adopted to prevent the third-party defendant from waiting until the commencement of trial to file his answer. Otherwise, the third-party plaintiff would either have to introduce all of his evidence prior to trial, on the confirmation of a default against the third-party defendant, or run the risk of being surprised by an answer filed by the third-party defendant immediately before the commencement of the trial.
The statute adopting third-party practice,\textsuperscript{70} based upon the third-party action proposed by the Louisiana State Law Institute, was the most important procedural enactment of the last session. It should constitute a material improvement over the Louisiana call in warranty. But the piecemeal adoption of the Law Institute's recommendations will result in a few minor difficulties. The articles on the third-party action proposed by the Law Institute were not complete in themselves, but were supplemented by other articles relating generally to all of the proposed incidental actions: reconvention, intervention, and the third-party action.\textsuperscript{71} The 1954 act adopted only the proposed articles on the third-party action. The result is that hiatuses exist on the questions of when the third-party petition may be filed; whether it may be filed with or without leave of court; whether a third-party defendant may file exceptions; and as to the remedy of the third-party plaintiff if the third-party defendant does not file his answer timely.\textsuperscript{72}

\textbf{Appellate Procedure}

Originally, under Article 911 of the Codes of Practice of 1825 and 1870, judgments of the Supreme Court became final after three judicial days of rendition. The unsuccessful party had to file an application for rehearing before the judgment became final.\textsuperscript{73} In 1879, this delay was enlarged somewhat by an amendment of Article 911, so that judgments rendered by the Supreme Court at New Orleans became final after six judicial days of rendition, while those rendered at other places continued

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\item \textsuperscript{71} Arts. 43-51, Pleading, op. cit. supra note 60.
\item \textsuperscript{72} No particular difficulties should be experienced because of the first two hiatuses. The incorporation of the third-party petition in the answer, and filing it with leave of court, should effectively sidestep all technical objections attributable to the lack of any express provision regarding the time and manner of filing the third-party petition. The courts should experience no difficulty in holding the articles of the Code of Practice on the exceptions applicable to the third-party petition.
\item The third hiatus, however, may cause difficulties. See note 69 supra. There are no express provisions in the statute as to the delay for filing an answer to the third-party petition. Assuming that the courts will bridge this gap by holding the delays for filing an answer to the principal demand applicable, the third-party plaintiff will be impaled upon the horns of a dilemma. In cases where the third-party defendant fails to answer timely, the third-party plaintiff must either take and confirm a default against him prior to trial, or run the risk of being surprised by his answer filed at, or shortly prior to, the commencement of the trial.
\item \textsuperscript{73} Art. 912, La. Codes of Practice of 1825 and 1870.
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to become final after three judicial days of rendition.\textsuperscript{74} In 1908, an act was adopted providing that judgments of the Supreme Court became final and executory on the fifteenth calendar day after rendition, within or without term time, and that applications for rehearing must be filed before the judgment became executory.\textsuperscript{75} While this statute contained no repealing clause, it impliedly repealed Article 911. Even though the 1908 act did not refer to the article, the majority of the authors on Louisiana practice works indicated that Article 911 had been re-enacted thereby.\textsuperscript{76}

In the revision of the general statutes of the state, through inadvertence, and under the impression that the delays for applying for rehearing in the Supreme Court were provided by Article 911, the Louisiana State Law Institute recommended the repeal of the 1908 statute, and this recommendation was adopted by the legislature.\textsuperscript{77} When the resulting hiatus was called to the attention of the Supreme Court, the latter immediately amended its rules so as to provide the delay for applying for rehearings.\textsuperscript{78} The Supreme Court, however, requested the Law Institute to prepare the necessary bill to bridge this gap legislatively. At the 1954 session, this bill was adopted, and the statute governing the delays for applying for rehearings in the intermediate appellate courts was expanded so as to include therein provision for a delay of fourteen calendar days for applying for rehearings in the Supreme Court.\textsuperscript{79}

Under Louisiana practice, a number of different rules exist as to who has the duty of lodging the transcript of appeals in the appellate court. In appeals from justices of the peace,\textsuperscript{80} and

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\item \textsuperscript{74} La. Acts 1879, No. 18, p. 32, amending and re-enacting Art. 911, La. Code of Practice of 1870.
\item \textsuperscript{75} La. Acts 1908, No. 223, p. 341.
\item \textsuperscript{76} Code of Practice of the State of Louisiana 503 (Dart ed. 1932); id. at 1021 (1942); 1 McMahon, Louisiana Practice 1040 (1939). An older annotated edition of the Code of Practice, however, did show Article 911 as being replaced by La. Acts 1908, No. 223, p. 341. Code of Practice of Louisiana 644 (Marr ed. 1927).
\item \textsuperscript{77} By La. Acts 1950(E.S.), No. 2, § 2, p. 4.
\item \textsuperscript{78} On January 15, 1954, the Supreme Court amended Rule XII, § 1, of its Revised Rules, so as to make the first sentence thereof read as follows: "Petitions for rehearings must be filed on or before the fourteenth calendar day after the rendition of judgment, and no extension of the time therefor will be granted."
\item \textsuperscript{79} La. Acts 1954, No. 51, amending La. R.S. 13:4446 (1950). This amendment makes no change whatsoever in the delays for applying for rehearing in any of the appellate courts.
\item \textsuperscript{80} Art. 1135, La. Code of Practice of 1870, as last amended by La. Acts 1908, No. 226, p. 343.
\end{itemize}
in cases involving one hundred dollars or less appealed from the city courts of New Orleans to the Court of Appeal for the Parish of Orleans, it is the duty of the justice of the peace or city court judge to lodge the transcript. In cases appealed from district courts to the Courts of Appeal, First and Second Circuits, it is the duty of the clerk of court. In cases appealed to the Supreme Court, those appealed from district courts to the Court of Appeal for the Parish of Orleans, and cases involving more than one hundred dollars appealed from city courts of New Orleans to the Court of Appeal for the Parish of Orleans it is the duty of the appellant to lodge the transcript in the appellate court. The rule that the appellant has this duty is fraught with danger, since, if he fails to lodge the transcript before or within three days of the original return day, or to obtain an extension thereof, the appeal will be dismissed. Even greater danger exists when the return day has been extended, for the three days of grace are not available for an extended return date.

One of the acts adopted in the last legislative session will operate to ameliorate the rigors of this rule somewhat. It provides that, in cases appealed to the Court of Appeal for the Parish of Orleans, whenever an extension of the return day has been obtained because of the clerk's noncompletion of the transcript, all delays thereafter are imputable to the clerk, and this delay shall effect an automatic extension of the return day until the transcript is actually lodged. The statute is an excellent one, but it does not go far enough. The solution of the problem recommended by the Louisiana State Law Institute is simpler, broader, and more effective.
Miscellaneous

Ten different 1954 acts, applicable to cases where process may be served upon the Secretary of State, permit this service upon a person in his office designated by the Secretary of State, during the latter's absence. 90

One of the 1954 procedural statutes regulates the effect of the redemption of immovable property previously sold under execution, which had been sold for taxes prior to the judicial sale. 91 Under this statute, the redemption vests "in the purchaser at such sale under execution a title as valid as if such redemption had been effected prior to the sale under execution." The act also prohibits any action by any debtor, his heirs, successors, or assigns to claim any property sold under execution under these circumstances, unless brought within six months of the effective date of the statute. Apparently, this 1954 act was adopted to overrule the decision in Guidry v. Sigler. 92 This case appears flagrantly unsound, 93 because of its unfortunate effect or any extension thereof, upon the payment to him by the appellant of all fees due in connection with the appeal, including the filing fee required by the appellate court to lodge the appeal. Failure of the clerk to prepare and lodge the record on appeal either timely or correctly shall not prejudice the appeal." Art. 12, Book III, Proceedings in Appellate Courts, Title I, Appellate Procedure, Exposés des Motifs No. 14, pp. 34-35 (Louisiana State Law Institute, May 3, 1954), as amended by the Committee on Semantics, Style and Publications of the Institute on June 5-6, 1954). This solution was suggested by the provisions of La. R.S. 13:4445 (1950) applicable now only to the Courts of Appeal, First and Second Circuits, which has worked most satisfactorily.


92. 21 So.2d 232, 233 (La. App. 1945), holding that "an attempted sale of property under execution where the property has been adjudicated to the state for the nonpayment of taxes and after the time for redemption has expired can confer no right or title in the purchaser at such sale." See also Guidry v. Sigler, 20 So.2d 631 (La. App. 1945).

93. The opinion is pitched upon the settled rule that, after the three-year period for redeeming property adjudicated to the state has expired, the
upon the title to immovables sold under execution, it had to be overruled legislatively.

Two identical acts adopted at the last legislative session amended the pertinent Code article\textsuperscript{94} and the appropriate statutory provision,\textsuperscript{95} respectively, prohibiting suspensive appeals in expropriation suits, and providing for the translation of ownership in the property sought to be expropriated upon the deposit by the plaintiff of the amount awarded to the defendant. The first statute merely changed the depositary from the sheriff to the registry of the court; the second made only editorial changes in the language of the statutory provision amended.

Prior to 1952, the city courts of New Orleans had jurisdiction over money demands not in excess of three hundred dollars;\textsuperscript{96} and a statute provided that the manner and form of proceedings “where said courts have concurrent jurisdiction with the district courts of all suits for moneyed demands above one hundred dollars and not exceeding three hundred dollars, shall be governed by the general rules regulating proceedings before the district courts,” with certain exceptions not pertinent here. (Italics supplied.)\textsuperscript{97} In 1952, the jurisdiction of these city courts was increased to permit them to adjudicate money demands not in excess of one thousand dollars.\textsuperscript{98} This left a hiatus with respect to the applicable procedure in suits for money demands above three hundred dollars, and not in excess of one thousand dollars. This gap was filled by a 1954 act deleting from the statute the words italicized above.\textsuperscript{99}

The dilatoriness of judges in rendering decisions in matters

\begin{itemize}
  \item The state becomes the absolute owner of the property, and can dispose of it as it sees fit.
  \item What the court overlooked was that “as long as the title thereto is in the state or in any of its political subdivisions” there was an \textit{absolute right} to redeem the property; and that all certificates of redemption “shall be in the name of the original owner, to enure, however, to the benefit of any and all persons holding rights under such owner.” La. R.S. 47:2224 (1950). The adjudicatee at the sale under execution not only had the right to redeem the property himself, but if it was redeemed by the judgment debtor, it enured to the benefit of the adjudicatee. The judicial sale, therefore, was not a nullity, but transferred the right to acquire a valid title through redemption from the state, as long as title remained in the state or one of its political subdivisions. Gamet's Estate v. Lindner, 159 La. 658, 106 So. 22 (1925); Lomel Realty Corp. v. Chopin, 177 La. 474, 148 So. 683 (1933). \textit{Cf.} Hayes v. Fridge, 156 La. 932, 101 So. 270 (1924).
\end{itemize}

\textsuperscript{96} \textit{La. Const.}. Art. VII, § 91, as amended, November 3, 1936.
submitted to them, and taken under advisement, has been the subject of legislation in Louisiana since 1884. In that year, an act was adopted requiring district and city court judges to render decisions in all cases submitted to them within thirty days, and to pass upon applications for new trial within seven days.\textsuperscript{100} The penalty for each violation of these provisions was the loss of three months of salary by the offending judge.\textsuperscript{101} Until this year, these provisions had no application to any of the courts in the Parish of Orleans.\textsuperscript{102} At the last session, however, the legislature removed this limitation, and made the statutory provisions applicable to the courts of all parishes, specifically including Orleans.\textsuperscript{103} Apparently, some of the judicial brethren in New Orleans have shown greater celerity in cashing their salary warrants than in deciding matters which they take under advisement.

The objectives of this type of statute are commendable; the approach to their attainment completely wrong. No real improvement in the administration of justice can be effected through threats and reprisals. A much more encouraging action of the last legislature was the appropriation of twenty-five thousand dollars to the Supreme Court to defray the expenses of the Judicial Council. Plans for the future work of this most important body include the periodical gathering of judicial statistics, which will point up both congestions of the docket and judicial lethargy. Within a period of three or four years, these statistics will produce results which no punitive measures could ever accomplish.