Forum Juridicum: The Manifest Error Rule

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(This paper was delivered during a panel discussion on the Louisiana Manifest Error Rule at the Second Annual Conference of the Judges of the Courts of Appeal, which was held in New Orleans, Louisiana, on April 22, 1961. A Comment by David W. Robertson, “Appellate Review of Facts in Louisiana Civil Cases,” appearing in 21 Louisiana Law Review 402 (1961), provided in part the basis for the discussion.)

In the very beginning of this statement I wish to observe that the so-called manifest error rule is a misnomer. Even a casual review of the opinions of all of our appellate tribunals reveals the indisputable fact that in numerous instances they have reversed judgments purely on the evaluation of questions of facts which have not and could not be considered, under any definition, as “manifest.”

Adverting to the authority of Webster’s New International Dictionary of the English Language (1956) we find that the adjective manifest is derived from the Latin manifestus, meaning “seized by the hand, palpable.” The English word is defined as “evident to the senses, especially to the sight; apparent; distinctly perceived; hence, obvious to the understanding; evident to the mind; not obscure or hidden.” The most appropriate synonyms are given as “open, clear, visible, unmistakable, indubitable, indisputable, evident, self-evident.”

Many of the factual errors adjudged by our appellate tribunals have failed in an extensive degree to bear any reasonable analogy to the above definition.

The truth of the matter is that we have become accustomed to reiterate the so-called “manifest error rule” time, after time, after time; yet the effect of numerous opinions bears conclusive evidence either of our complete disregard for or of our, sometimes not too subtle, change in the interpretation and application of the rule.

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In all fairness it should be noted that many of our opinions contain a statement to the effect that:

“We find no error, manifest or otherwise, in the judgment appealed from.”

The author of the exhaustive discussion of the rule under consideration,¹ has traced its somewhat obscure origin as far back as the year 1823, to the case of Moore v. Angiolette,² in which the court stated:

“We agree in the conclusions of the district judge, whose decision, on questions of fact, always prevails in this court, unless manifestly erroneous.”

In the attempt to find the reason, or lack thereof, for this pronouncement, I have made an admittedly cursory examination of some earlier cases and have culled therefrom the following expressions which appear to me to have some bearing upon the true meaning of the “manifest error” phrase.

In Livingston v. Cornell³ the opinion of the court contains the following statement:

“The jury found a verdict for the plaintiff.

“If this verdict be set aside, it must be because it is contrary to evidence or contrary to law. . . . Whatever may be the opinion of the judges on this point, it is believed that the question was properly of the cognizance of the jury, and the court cannot say that they were without evidence, or decided contrary thereto.” (Emphasis added.)⁴

In Cavelier & Petit v. Collins⁵ the court declared:

“In reversing the decision of inferior tribunals, the great and primary object is to see that justice may be done, or that the law be not mistaken and violated; and it is certainly of little consequence by what mode of reasoning the judge forms his opinion, provided that, taken entire, it comports with the law, and due justice to the parties litigant.”

In Trimble's Syndics v. New Orleans Insurance Co.⁶ the court

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¹ Comment, 21 LOUISIANA LAW REVIEW 402 (1961).
² 12 Mart. (O.S.) 532, 533 (La. 1823).
³ 2 Mart. (O.S.) 281 (La. 1812).
⁴ Id. at 282.
⁵ 3 Mart. (O.S.) 188, 189 (La. 1813).
⁶ 3 Mart. (O.S.) 394 (La. 1814).
commented that the only issue was whether a ship, mentioned in the policy of insurance on which the action was founded, was seaworthy at the time she left New Orleans. After expressing considerable doubt as to the correctness of the conclusion reached by the jury on the basis of facts, the court concluded:

"A variety of testimony as it appears from the statement of facts, was offered to the jury who tried the cause in the court below: *we must presume that they weighed and discussed it as they ought to have done*; and under the existing circumstances of this case, taken altogether, we are of the opinion, that this verdict, and the judgment rendered thereon, ought not be disturbed." (Emphasis added.)

Two most enlightening observations are contained in the opinion of the court in *Abat v. Doliolle*:

"This case is a glaring instance of the difficulties in which courts involve themselves, by suffering the looseness of practice which generally prevails. The law, which requires that issues should be made and submitted to the jury, is disregarded, and juries, without any legal clue, endeavor to extricate themselves from the perplexing situation in which they are placed.

"*A jury have legal means of information not equally within the reach of a court; they know the character of the parties, and the weight to which the testimony of each witness is entitled.*" (Emphasis added.)

It seems to me that the logical basis for the establishment of the principle which has since, unfortunately, been converted into the manifest error rule, is to be found in the great weight originally given to the factual findings of judges and juries of the vicinage who were presumed to possess and apply their personal knowledge of the character and reputation of the witnesses who appeared before them and to weigh the consequent value of their testimony. This conclusion is not based upon some imaginary or far-fetched reason. The predicate has many times been enunciated by our appellate courts which are prone to declare that the trial judge (or jury) is in a better position to know the witnesses, to observe their conduct and demeanor on the witness stand, and, consequently, to evaluate the weight of their testi-

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7. *Id.* at 396.
mony more exactly than appellate tribunals whose examination of a case is confined to the cold, naked representation of a written record.

If these reasons were originally valid, I submit the proposition that such validity has substantially deteriorated due to obvious practical changes in the times and conditions in which we live. To say that trial judge or jury sitting in large centers of population, knows the witnesses, their characters, personal idiosyncrasies, reputations, etc., is a violent and unwarranted assumption. I think it is equally unfounded to conclude that the demeanor of a witness on trial of a case necessarily provides a fair and just basis for the evaluation of the credibility and validity of his testimony. Some individuals whom I know to be possessed in the highest degree of personal honor and complete integrity, would suffer such embarrassment, nervousness and discomfort upon the witness stand in a formal legal trial that their demeanor might well give the impression of such confusion and result in such discrepancies as to make their testimony appear incredible.

As a plain matter of fact the manifest error rule is subject to so many exceptions in our jurisprudence, that in my opinion it should be discarded. By way of illustration let me refer to what I regard as a classic example, namely, the case of Norman v. State, finally decided by the Supreme Court after granting writs.

The cited case was originally tried before a jury which, unable to reach an agreement, was discharged. A second trial was had by a jury which returned a verdict, in favor of the plaintiff, by a nine to three division. Judgment in accordance with the verdict was rendered by the trial judge and a motion for a new trial was overruled. On appeal to the Court of Appeal for the Second Circuit the judgment was amended (as to quantum) and affirmed, with one member of the court dissenting. Writs were granted by the Supreme Court and there was judgment reversing the judgments of the trial court and the court of appeal and dismissing plaintiff's suit, two judges dissenting therefrom and one judge being recused. An analysis of the opinions would show the following result:

9. 217 La. 904, 80 So.2d 858 (1955).
For the Plaintiff

9 Jurors
1 Trial Judge
2 Judges of the Court of Appeal
2 Justices of the Supreme Court

For the Defendant

3 Jurors
1 Judge of the Court of Appeal
4 Justices of the Supreme Court

If we wish to accept and follow the manifest error rule, the above divisions would appear to be impossible.

Further commenting upon the same case it is to be noted that the majority opinion of the court of appeal contains the following observation:

"Proceeding to a consideration of the merits of the case we observe that only questions of fact are concerned."

The dissenting opinion contained the following observation:

"First, I think the plea of contributory negligence is inescapable for the reason that beyond any reasonable doubt a warning sign bearing the words 'Load Limit 3 Tons' was in place and staring plaintiff in the face when he attempted to cross the bridge with a loaded truck weighing twenty-nine (29) tons. The presence of the sign in place or not is the crux of the issue of contributory negligence specially plead by defendant. The opinion avoids a specific finding as to whether the sign was there, but inferentially holds it was not. Therein lies manifest error." (Emphasis added.)

The above observation was reiterated in the Supreme Court opinion as follows:

"It can thus be seen that the question of the presence or absence of the sign became the vital issue in the case.

"An examination of the judgment of the Court of Appeal reveals that the prevailing opinion does not take an affirmative stand on this question but concludes that, since the plaintiff had satisfied a majority of the jury that the sign was not there, its verdict should not be disturbed."

The opinion of the Supreme Court did not go so far as to mention manifest error but declared:

10. 69 So. 2d 120, 123 (La. App. 1953).
11. Id. at 135.
"On all counts, we find the testimony of the State's witnesses to be superior to that given by plaintiff's witnesses . . ." (Emphasis added.)

The conclusion is inescapable that both the dissenting opinion in the court of appeal and the majority opinion of the Supreme Court predicated the ultimate conclusions upon the evaluation of the nature and weight of the testimony of the witnesses on trial. Adherence to the manifest error rule would preclude such consideration, for, concededly, one of the most persuasive reasons for the rule lies in the oft-asserted declaration that the trial judge or jury is better qualified than the judges of appellate courts to make such an evaluation.

Finally I would like to observe that, in my opinion, our adherence, even by lip service, to the manifest error rule is undesirable, primarily for the reason that errors of fact, even though not manifest, frequently result in unjust and inequitable conclusions which are as highly prejudicial to a party litigant as if the errors had been obvious. It is further appropriate to point out the fact that in many cases in which the trial judges fail to render written opinions, or in doing so omit an analysis of pertinent and material testimony, an appellate court is unable to determine with any certainty the impressions of the trial judge as to the value and effect of such testimony.

In conclusion let me say that it is my individual opinion that we should abandon the interminable recital of a theoretical adherence to the manifest error rule in favor of an approach which would permit the exercise of sound discretion in the consideration and determination of facts upon a basis of any prejudicial error which may be reflected by the record on appeal. It matters not to me whether this procedure be denominated as "clearly erroneous," "substantially erroneous," or "reversible error." By whatever name, so long as we are the judges of fact as well as law, our utmost efforts must always be directed toward achieving the ultimate purposes of justice.

13. Id. at 915, 80 So.2d at 862.