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THE NEW LOUISIANA CODE OF PRACTICE:
A SYNTHESIS OF ANGLO-AMERICAN AND CONTINENTAL CIVIL PROCEDURES

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INTRODUCTION

For the past century and a half Louisiana has been a veritable laboratory of comparative law. Its juridical heritage from France and Spain, and its acquisition by the United States, precipitated an immediate struggle for supremacy between the Roman and English systems of law. Louisiana's admission to the North American union required adoption of the constitutional and public law of America. A flourishing trade and commercial intercourse with its sister states made the adoption of Anglo-American commercial law expedient. The failure of the Louisiana Legislature, in 1824, to adopt Edward Livingston's enlightened penal code, resulted in a juridical vacuum into which the Anglo-American common law of crimes and criminal procedure found it relatively easy to enter. But in the extremely important area of private law the Roman law system emerged triumphant: the civilian customs and institutions of the former colony were retained and perpetuated through the adoption of the Louisiana Civil Codes of 1808 and 1825, the latter modeled upon the Code Napoleon. A lesser victory was scored by the Roman system in the field of civil procedure, where Livingston skillfully blended continental procedural principles with judicial administrative provisions of Anglo-American origin.

Competition between these two great legal systems did not end, how-

ever, with this early demarcation of spheres of influence. The training of Louisiana lawyers in the national law schools of America, the ultimate loss by the Louisiana lawyer of the ability to read French and Spanish, and the greater availability of American legal literature, all permitted the influence of Anglo-American law to erode the civil law and procedure of the state. These inroads of the English common law, however, were the result of interstitial seepage between the provisions of the positive law of Louisiana, rather than an undermining of its foundations. In due time a reaction was to set in.

The great improvement in legal education in Louisiana, which commenced roughly thirty years ago, brought an almost immediate revival of interest in its civil law and procedure. The publication of law reviews by the three law schools of the state provided, for the first time, the scholarly research and doctrinal writings so necessary to the sustenance of any civilian system. A decade or so later, the Louisiana State Law Institute was established as the official research and legal reform agency of the state, with generous support from public funds. The Institute, utilizing as it does the combined knowledge and energies of the judiciary, the practicing lawyers and the law faculties, has given a tremendous impetus to law reform and improvement. Since its creation in 1938, it has produced a compiled edition of the Louisiana civil codes and procedural codes, and drafted one of the most advanced criminal codes in America, which was officially adopted in 1942. Despite the curtailment of manpower during World War II, the Institute completed in 1949 a projet of all of the miscellaneous statutes of the state, which was adopted by the Legislature as the Louisiana Revised Statutes of 1950. Since

that time, the Institute has been engaged, under a mandate from the Legislature, in preparing projets of a new Civil Code and a new Code of Practice for Louisiana. The first of these projects probably will require an additional fifteen years; the new procedural code should be completed in time for legislative adoption in the early part of 1955. In view of the possibility of early completion of the new Code of Practice, the bulk of the energies of the staff and Council of the Law Institute are now being concentrated upon this work.

The work which the Louisiana State Law Institute is doing in the drafting of the projet of a new Code of Practice is much more extensive than a mere revision of the former procedural code. True, those principles and devices of its old procedure, which have proven effective and workable in actual practice, will be retained. But the improvements in procedure achieved under the new Federal Rules of Civil Procedure, by the most recent procedural codes of the various American states, and by the more advanced Codes of Civil Procedure of continental countries are being carefully studied, with a view of improving Louisiana's procedure through a borrowing of the more effective principles and devices of other states and countries. More than any other American code, the new Code of Practice of Louisiana will be a product of comparative research and of the comparative method.

Procedure is only the means of enforcing and implementing the substantive law of the particular jurisdiction. To perform its proper role, therefore, it must be correlated to the substantive law which it must enforce. As the substantive law of Louisiana is partly of Roman and partly of English origin, it is not surprising to find that in the past its civil procedure has been a blend of continental and Anglo-American procedures.

An appraisal of the future procedural system, which will be ushered in with the adoption of the new Louisiana Code of Practice, and an evaluation of the contributions which will be made thereto by both continental and Anglo-American civil procedures, are the objects of the present paper. Such an analysis, however, would be impossible without some mention of the various procedural systems in effect in Louisiana in the past. We must address ourselves initially, therefore, to a brief consideration of these procedural systems.

THE LOUISIANA PROCEDURAL SYSTEMS PRIOR TO 1825

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Though France claimed the vast Louisiana territory as early as 1682, by virtue of the explorations of La Salle, no serious effort was made to colonise any part of the vast expanse until 1699, when d'Iberville set up the first settlement on the coast of the Gulf of Mexico. No civil government worthy of the name was established until 1712, when the colony was granted to Crozat. Under the latter's charter, it was provided that the Custom of Paris--that most interesting combination of Germanic custom and Roman law which had been codified in the sixteenth century--should be in effect throughout the territory. The expenses of colonisation proved too great a drain upon the resources of even the immensely wealthy Crozat, so that in 1717 he was compelled to surrender his charter. Thereupon, a grant of the colony was made to John Law's Company of the West, under a charter which confirmed the applicability of the Custom of Paris to the Louisiana territory. After the bankruptcy of the Company of the West in 1732, the French monarch was forced to take over the Louisiana territory as a crown colony; but until the Spanish took possession of Louisiana under the cession of 1762, the Custom of Paris continued to

be the basic private law of the colony, modified slightly from time to time by royal ordinances.[1]

The judicial system of Louisiana may be said to have been founded during the Crozat administration, with the establishment of the Superior Council as the first court of the territory.[2] The procedure employed in civil cases in the Superior Council of the colony was based primarily upon the four titles of the Custom of Paris relating to real actions, actions generally, arrests and executions, and the seizure and sale of movables.[3] Otherwise, the procedure applicable was that employed in cases before the Châtelet of Paris.[4] From an examination of Pigeau's work on the subject, it appears that the procedure of the Châtelet was based largely upon the Ordonnance Civile of 1667, Louis XIV's famed procedural code, generally regarded as the foundation of the present French Code of Civil Procedure.

Few lawyers were to be found in the colony at this time, and little litigation occurred during this period of French dominion. This procedural system thus failed to make any lasting impression upon the small population, with the result that French civil procedure played a relatively minor role in shaping the adjective law of Louisiana.

(6) Under the secret Treaty of Fontainebleau in 1762, France ceded the entire Louisiana territory to Spain. The latter's initial attempt, under the timid de Ulloa, to take possession of the colony three years later resulted in resistance from the French colonists, which permitted Louisiana to remain under the de facto control of the French commander until 1769. In that year, Don Alejandro O'Reilly took possession of the territory with a strong Spanish force, ruthlessly punished the leaders of the resistance, and firmly established Spanish rule over the colony. His first official acts were proclamations issued in the

name of His Most Catholic Majesty, abolishing the colonial government, establishing the new Spanish Province of Louisiana, abrogating French law in the colony, and establishing a short code of laws for the people.[5] This code was intended only for temporary use, and only for such time as the colonists could become more familiar with the laws of Spain.

The judicial system created under O'Reilly's Proclamation consisted of regional trial courts throughout the territory under Alcaldes Ordinary, with an appeal in petty cases to the Cabildo, or municipal council of New Orleans, and in the more important cases to the Audencia in Havana, with the Council of the Indies in Spain as the appellate court of last resort.

Annexed to the brief code embodied in O'Reilly's Proclamation was a set of "instructions as to the manner of instituting suits, civil and criminal, and of pronouncing judgments in general",[6] compiled by two of the Spanish lawyers on O'Reilly's staff. The headnote thereon evidences the fact that both O'Reilly's "code" and the instructions annexed thereto were based upon the Recopilación de las Indias, the great digest of the laws and regulations enacted by Spain during the preceding centuries for the people of their colonial empire, and the Recopilación de Castilla. Both of these latter codes contained references to the monumental Código de las Siete Partidas and the Nueva Recopilación de las Leyes de Espana, as well as to the earlier Spanish codifications, the Fuero Real, the Fuero Viejo de Castilla, and even to the ancient Forum Judgo. From the numerous citations of these Spanish codes by the courts of Louisi during the initial period of American dominion, it seems reasonable to conclude that the colonial lawyers were completely familiar therewith. The same evidence indicates that the works of Gregario López,[7] of Hevia Bolaños,[8] and of Febrero,[9]

likewise were available, and were accepted as authoritative in procedural matters during the Spanish regime. Although Spain held the colony for little more than a third of a century, its procedural law played an extremely important role in shaping the subsequent civil procedure of Louisiana.[10]

Under the secret treaty of San Ildefonso in 1800, Spain retroceded the Louisiana territory to France. The latter, however, made no effort to regain possession of the colony until late in 1803. Prior to taking possession, France sold the entire territory to the United States of America, which assumed control thereof on December 20, 1803.

As France exercised sovereignty over the colony in this period for less than a month, no effort was made to abrogate the Spanish laws then in force. The American government, after taking over the colony, moved slowly in effecting changes in the law of Louisiana. The former French colony was first divided. That portion north of the present northern boundary of the State of Louisiana was organized as the District, then the Territory, of Louisiana, and finally as the Territory of Missouri. The remainder of the former colony, comprising all of the present State of Louisiana except the West Florida Parishes, was organized as the Territory of Orleans. Three acts of the Congress of the United States affecting the latter territory were passed during the first two years after the Louisiana Purchase.[11] The first left unchanged all of the laws then in force, simply vesting the administrative power in different officers.[12] The second[13] and third of these congressional acts reorganized the territorial government to conform to the American pattern, provided for the writ of habeas corpus and for trial by jury, but expressly declared that all laws in force in the territory should

continue in effect until changed by subsequent legislation.

The Legislative Council of the Territory of Orleans, empowered by Congress to legislate for this new American possession, made more significant changes almost immediately. The Crimes Act of 1805[14] defined a large number of crimes and misdemeanors, repealed all prior criminal legislation, recognized the accused's right to a trial by jury, and provided that all such trials should be conducted according to the common law of England. The most important of these early territorial statutes, subsequently known as the Practice Act of 1805,[15] recognized the Superior Court of the Territory, previously established in New Orleans by the territorial governor, and provided a simple procedure for the trial of cases therein. A third act[16] divided the territory into counties, created county and justice of the peace courts therefor, and adopted a simplified version of the procedure embodied in the Practice Act of 1805 for the trial of cases in these courts.

The Practice Act of 1805 merits extended consideration here for at least two reasons. For one thing, it was the handiwork of the distinguished Edward Livingston, who, ruined financially by the defalcations of a subordinate while holding the office of Mayor of New York, emigrated to Louisiana to regain his fortune, subsequently became an enthusiastic convert to the civil law, and led the fight for codification in Louisiana. For another, important segments of the Louisiana Code of Practice of 1825 were taken bodily from the 1805 legislation.

The most radical changes made in the civil procedure of Louisiana by the Practice Act of 1805 were the establishment of the trial by jury, and the requirement that the testimony of all available witnesses be taken in

open court, with depositions permitted only for witnesses who were ill, aged or beyond the control of the court. Other provisions established a simplified form of pleading, created the provisional remedies of attachment and arrest, provided for the enforcement of judgments under the writs of fieri facias and distringas, and authorized the court to issue writs of quo warranto, procedendo, mandamus and prohibition. The statute went into great detail in prescribing the form of citations, writs, and other mandates to be issued by the court. As Livingston was a staunch disciple of the great English reformer, Jeremy Bentham, the simplified procedure embodied in the Practice Act of 1805 reflected Bentham's influence.

Considerable difference of opinion exists today as to the source of this legislation. Mr. Benjamin Wall Dart, the distinguished editor of the latest editions of the present Louisiana Code of Practice, and the son of Louisiana's leading legal historian, has voiced the opinion that the provisions of the Practice Act of 1805 "were in effect restatements of the Spanish procedure with additions made necessary by the new order resulting from France's transfer of Louisiana to the United States."[17] On the other hand, America's most distinguished student of comparative civil procedure, Professor Robert Wyness Millar of the Northwestern University School of Law, is of the opinion that the Practice Act of 1805 was primarily a refinement and simplification of contemporary American chancery practice,[18] a view in which the present writer originally concurred.[19] Further research by the writer over a period of years, however, has convinced him that there is considerably more validity to Mr. Dart's position than the writer had originally thought.

A determination of the primary sources of the Practice Act is made extremely difficult by the very fact which, paradoxically enough, appears to lend support to the views of both Mr. Dart and Professor Millar: the striking similarity between many aspects of Anglo-American chancery practice and Spanish procedure. This is not surprising, in view of the fact that the equity system of England for years was administered by the ecclesiastics, who applied the procedural principles of canon law in providing the foundation for chancery practice. Thus, both systems trace a legitimate ancestry back to the same Romano-canonical source.

The present writer has been unable to find any recorded expressions of the views of Edward Livingston on the subject. Fairly convincing evidence is available, however, to indicate that the courts and legal profession of Louisiana regarded the Practice Act of 1805 as being based primarily upon Spanish procedure.

The last section of the Practice Act of 1805[20] authorized the superior court to issue writs of quo warranto, procedendo, mandamus and prohibition, and expressly provided that these "said writs shall pursue the forms, and be conducted according to the rules and regulations prescribed by the common law." The first year after the admission of Louisiana to statehood, the newly created Supreme Court found it necessary to determine whether the common law rules relating to mandamus or the rules relating to its Spanish counterpart, incitativo, were applicable in Louisiana. In determining this issue, the court observed:[21]

> * * * * The common law names in judicial proceedings have naturally been adopted in a practice which is carried on in the English language, but they ought to be considered rather as a translation of the names formerly used, than as emanations from

> the English jurisprudence; the words mandamus, procedendo, certiorari, prohibition, &c., sometimes employed in our practice, may be good equivalents for incitativo, evocacion, inhibicion, &c; but their adoption as words can, by no rule of law, or common sense, be considered as having introduced the English practice itself. * * * *

This was the language of a court composed, not exclusively of native Louisianians who might be expected to be unsympathetic to any attempt to supersede the Spanish procedural rules with which they were familiar, but of a court having a majority of its judges trained exclusively under the common law system.[22]

A later case,[23] although decided three years after the end of the period which we are now considering, in answering a somewhat similar question, confirmed the judicial view quoted above. In this later case, speaking through Mr. Justice Porter, the court said:

> "The repeal of laws is never presumed; and if the new and old laws can stand together, they should be so construed. It would be going far, to hold that the special enactment of a remedy which previously existed, should introduce the consequences that attended that remedy in another system of jurisprudence. In this respect there is a material difference between this case and that construction which should be given to our laws introducing jury trial, and the writ of habeas corpus; for they being unknown to our jurisprudence, the understanding of them was ex necessitate, to be sought somewhere else. The use of common law terms is easily accounted for, in the desire of the legislature to use those words which would convey in the most clear and concise manner, to persons acquainted with the English language alone, the remedies defined. * * * *

Louisiana was admitted as a member state of the North American union in 1812, under a constitution adopted earlier in that year. Neither this constitution nor the statutes implementing its provisions, made any substantial changes in the procedural law of Louisiana, other than the creation of a system of courts based on the American pattern, and consisting of

a supreme court, district courts and justice of the peace courts. The Practice Act of 1805 remained in effect until its repeal when the Code of Practice went into effect in 1825.

The civil procedure of Louisiana at the end of this period, therefore, was based primarily upon the Spanish procedure in force during the period of Spanish dominion. Two significant changes had been made therein by the Practice Act: the adoption of the institution of jury trial; and requirement that the testimony of all available witnesses be given in open court. The adoption of the common law rules of evidence followed in the wake of the adoption of the jury trial almost as a necessary consequence.[24] The requirement of viva voce testimony in open court resulted in the direct and cross-examination of witnesses as under the English practice. As a result of these changes, the trial of litigation in Louisiana, at least during this period, took on the complexion of the common law trial. But otherwise, as the result of the continuance in effect of Spanish procedure, except to the extent that it ran counter to the provisions of the Practice Act and other legislation, Spanish influence upon the civil procedure of the state during this period remained paramount.

THE CODE OF PRACTICE OF 1825

Pursuant to a legislative resolution of March 14, 1822, L. Moreau-Lislet, Edward Livingston and Pierre Derbigny were appointed as a committee to revise and amend the so-called Civil Code of 1808,[25] to prepare a commercial code,[26] and to submit "a treatise on the rules of civil actions and a system of the practice to be observed before our courts."[27] No more able a group of jurisconsults could have been selected for these tasks. Livingston,

who had come to Louisiana in 1804, probably was the most distinguished American legal scholar of his day, entirely familiar not only with the common law, but with Roman, French and Spanish law as well. Derbigny had been the outstanding practitioner before the Spanish courts of the colony, one of the first justices of the Supreme Court of Louisiana, and subsequently Secretary of State and Governor. Moreau-Lislet, a distinguished veteran of the colonial period, had previously served as Attorney General of the state, and, with Carleton Hunt, had prepared the first English translation of the Siete Partidas.

Early in 1823, the three redactors submitted to the Legislature the projet of the new procedural code, which was subsequently approved and went into effect in 1825. This Code of Practice, in form and arrangement, was typically civilian, consisting of eleven hundred and fifty-five articles numbered consecutively and divided into titles, chapters and sections. As Colonel Tucker, the distinguished President of the Louisiana State Law Institute, has pointed out, it was "the product of a mixture of French, Spanish and Roman law elements, together with common law elements of English origin."[28]

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The draftsmen of this procedural code, in the comments in their projet,[29] not only gave their reasons for the adoption of controversial devices and principles, but listed the sources of the more important articles of the code. An examination of these source notes is extremely interesting. The direct Roman influence was slight, only eight references having been made to the Digest and three to the Institutes, all in the title dealing with actions. Spanish procedural law, as might be expected, served as the basis of a number of extremely important segments of the new codification, with sixty-three references to the Spanish codes and procedure writers. There

must be considered in this connection, however, the forty-five references to the Practice Act of 1805 (the majority of which in turn was bottomed upon Spanish procedure), and the sixty-nine references to Louisiana statutes (a few of which were predicated on general concepts of Spanish law). French procedural theory, which had played a rather negligible role in the preceding era, increased its influence upon the adoption of the Code of Practice. Thirty references in the redactors' source notes were to the works of French commentators, with the more important and indirect influence reflected through the twenty-six references to the Civil Code of 1808, which was based largely upon the Code Napoléon.

The Spanish procedural law constituting direct sources of the procedural code was drawn principally from the Siete Partidas, and the procedural works of Febrero and Hevia Bolaños. The writings of Domat and Pothier constituted the direct borrowings from French procedural theory. Important segments of Louisiana's procedural law, such as succession procedure, reflected the indirect influence of French procedure.

One of the deficiencies of the redactors' source notes is that very few references to Anglo-American law are listed, although even a cursory examination of this code indicates quite clearly that the Anglo-American contribution, though lesser than the Romanistic one, was considerable. Some idea of the relative weight thereof can be gleaned from the brief analysis of Louisiana's first procedural code which follows.

(13) Influence Romanistic

Procedural concepts and devices which reflected the primary influence of continental law include the code provisions relating to actions generally, real actions, jurisdiction, demand and incidental demands, cumu-

lation of actions, consolidation of actions, pleading (including the exceptions), the provisional remedies of arrest, sequestration, provisional seizure and injunction, interrogatories on facts and articles, contestatio litis, real tenders, judgments, nullity and rescission of judgments, ordinary, summary and executory processes, and succession procedure. The primary influence of Anglo-American law was reflected in the code provisions relating to judicial administration (composition of courts, functions of judicial officers, assignment and continuance of cases, etc.), the provisional remedy of attachment,[30] production of evidence, trial of cases (including trial by jury), new trial, execution of judgments (particularly the enforcement of moneyed judgments), and the extraordinary remedies. Both systems of procedural law appear to have contributed to the code provisions relating to citation and service of process, depositions, appellate procedure, and proceedings before justice of the peace courts.

(14) We have seen heretofore that, under the Practice Act of 1805, the institution of jury trial had been adopted, and that this led to the jurisprudential adoption of the common law rules of evidence. Under the Anglo-American system, the appellate court reviewed only questions of law and ordinarily could not reverse the jury verdict on factual issues; under the continental system, the appellate court reviewed both legal and factual issues, as presented by the record. A compromise had been effected for the Superior Court of the Territory of Orleans: the court reviewed issues of law on appeal, and if any appellate review of factual questions was desired, the case was completely retried by a new jury selected in the appellate court. Very shortly after Louisiana's admission to the Union, its Supreme Court held that, under the Constitution of 1812, no retrial of a factual issue could be

had before a new jury.[31] This was followed shortly by a decision[32] holding that the appellate court could review the transcript of the evidence presented in the trial court, to determine the correctness of the jury's findings of fact. The principle of appellate review of the facts thus adopted was repeatedly affirmed by the court,[33] and was confirmed in subsequent constitutions of the state, at first impliedly[34] and then expressly.[35]

The effects of this decision, which did not make themselves evident for some years, were to prove far-reaching. As the appellate courts were free to substitute their findings on factual issues for the trial jury's verdict, and not infrequently did so, jury trials in civil cases ultimately were had with relative infrequence. As a result, the technique of applying the common law rules of evidence completely changed in the vast majority of civil cases. Instead of being used to determine the admissibility of evidence sought to be presented to the lay jury, they were now used by the trial judge, skilled through experience in the marshalling and evaluation of evidence, to weigh evidence, usually admitted subject to the objections urged. In the area of the trial, continental procedure had regained much of the ground previously lost to Anglo-American procedure; and if the former did not emerge triumphant, at least it effectively neutralised much of the latter's earlier victory.

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The influence of Anglo-American procedure, however, continued to increase during this period, as a reading knowledge of Spanish and French grew rarer in the profession, and Anglo-American legal literature became increasingly available. Members of the Louisiana Bench and Bar began to turn to English and American cases and the common law writers for guidance. The courts in this period occasionally invoked the dubious aid of Anglo-American

precedents in the solution of procedural problems really calling for the application of the principles of continental civil procedure. Not a great deal of damage was done thereby, but this interstitial seepage subsequently was to pave the way for an increased reception of Anglo-American procedural law.

THE CODE OF PRACTICE OF 1870

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The purposes of the revision of Louisiana's two codes following the Civil War were the elimination of all references therein to the institution of slavery, and the integration therein of all related special legislation adopted since 1825. The Code of Practice of 1870 went no further than this, and did little to change the civil procedure of Louisiana.

Important changes, however, were otherwise brought about during this period. The former judicial view that common law terms in the procedural code and statutes were to be regarded merely as translations of the names of their continental counterparts[36] now yielded to an excessively generous evaluation of the common law contribution to the procedure of the state,[37] and increased resort to the legal compendia then being published in America.

The American code procedure movement, which was ushered in by New York's adoption of the David Dudley Field Code of Procedure in 1848 and which spread rapidly throughout America during the period now under consideration, had much to do in extending the influence of Anglo-American procedure over Louisiana practice. Paradoxically enough, the initial flow of influence was reversed, for it was the Louisiana Code of Practice of 1825 which provided the inspiration for the Field Code; and "from it very many of the best portions of the Field Code were adopted."[38] In time, the current reversed directions.

The Field Code, figuratively speaking, was a protest against the complexities and technicalities of contemporary Anglo-American procedure. It unified common law procedure and chancery practice as far as was then practicable, and it sought to eliminate unnecessary technicalities and to simplify procedure. But it was a procedural system designed to implement Anglo-American law, and consequently was an Anglo-American code; and it, and its offspring in the various American states, had to be interpreted and applied largely by lawyers still dominated by the procedural philosophies of the old system. Considering the background of these American procedure codes, cases interpreting their provisions should never have been accepted by the Louisiana courts in the solution of the procedural problems of Louisiana; but unfortunately they were.

The system of pleading developed by these American codes was intended to require brief, simple statements of the controlling facts on which each litigant's position was based. As ultimately developed by judicial interpretation, there evolved a system of pleading rules almost as technical as the common law rules which they displaced. No lessening of the importance of the role played by pleading in Anglo-American procedure resulted from the adoption of American code pleading. In the present writer's opinion, the Louisiana courts adopted the system of "fact pleading" of the American codes shortly after the turn of the twentieth century, through acceptance of the judicial decisions of the various American states on the subject. The original simplicity of the system of pleading in the Louisiana Code of Practice of 1825 gradually ossified into a harsher and more technical system, with penalties for a breach of what actually are rules of judicial etiquette ranging from time-consuming amendments of the pleadings to the more drastic dismissal of the suit.

This new system obtains today in Louisiana, although in recent years its rigors have been mitigated appreciably by the commendably liberal attitude of the Louisiana courts.[39]

At just about the same time that the rules of fact pleading were received in Louisiana, the common law rules of joinder of parties effected a partial entry into the jurisprudence of the state. The provisions of the Codes of Practice relating to cumulation of actions, taken directly from Spanish procedure as the redactors' source notes indicate, contained no requirement of connexity with respect to subjective cumulation (litisconsortium). The early Louisiana jurisprudence had solved the problem through the jurisprudential adoption of the requirement of a common interest, or community of interest, between the plaintiffs joining, or the defendants joined, in the suit—substantially the same concept as the "community of jural interest" of the German Code of Civil Procedure.[40] In 1909, objection was raised by the defendant in a case to the union of actions by a plurality of plaintiffs. The result reached by the court was completely sound, and thoroughly harmonious both with the earlier jurisprudence of the state and with generally accepted continental principles of subjective cumulation. However, three gratuitous and erroneous observations were voiced in the opinion, to the effect that: (1) Spanish and French procedure had no rules which would afford any solution of the problem presented; (2) the early Louisiana jurisprudential rules on the subject were derived from Anglo-American procedure; and (3) a resort should be made "to the books of the common law" for aid in the solution of related problems. Since the only non-Louisiana authorities cited in this opinion were equity precedents applying the negative test of multifariousness, based upon the same Romano-canonical principles which

constitute the source of continental rules of cumulation of actions, it seems clear that the court did not intend to invite a resort to the applicable common law rules, but rather to the pertinent rules of chancery practice.[41] Subsequent cases,[42] however, misconstrued the quoted language as vouching for the acceptability in Louisiana of the common law rules of joinder of parties, which were designed to implement attributes of the common law joint, several, and joint and several, obligations--concepts completely alien to the civil law of Louisiana. Not too much damage has been done as yet through the application of these common law procedural rules in isolated cases, but the potentialities of further damage are alarming.[43]

The adoption, since 1870, of a small number of procedural statutes has further increased the content of Anglo-American procedure in Louisiana practice. Limitations of space permit the writer to refer only to the most important of these legislative acts.

The code provisions relating to injunctions originally were taken indirectly from French procedure, through the medium of provisions of the Civil Code of 1808. With the rapid social and economic development in Louisiana during the past four decades, this injunction procedure had become unworkable, and even anachronistic. Considerable improvement in the injunction practice had been made in prior years in several American jurisdictions. The injunction practice in the Federal courts particularly had been improved through the adoption of a statute drafted by an extremely able congressional committee after an extended study of the subject. In 1924, Louisiana adopted a statute[44] regulating the issuance of interlocutory injunctions, which was taken almost verbatim from this Federal statute. The adoption of this legis-

lation, and the gradual reception of equity principles relating to the issuance of injunctions which occurred both before and after this enactment, have resulted in an injunction procedure virtually of Anglo-American origin.

THE PROPOSED NEW CODE OF PRACTICE

The expansion of the judicial systems of America during the past half-century has not kept pace with the increase of wealth, the growth of population, and the economic development of the country. As a consequence, the large increase in litigation has thrown almost an unbearable burden upon these judicial systems, which aggravated the congestion of their dockets and delayed unreasonably the disposition of cases. The problem has not been as acute in Louisiana as in other American jurisdictions, where jury trials have impeded the expeditious dispatch of judicial business. The problem, however, is present to some extent in the state, and the rapid industrial development of Louisiana during and since World War II warns of its aggravation in the near future, unless proper measures to meet it are taken timely.

In all American jurisdictions during recent years there has been a resulting quickening of interest in judicial administration and civil procedure. The more expeditious dispatch of judicial business has been needed urgently, and with this need came the realisation generally that it could be met only through more effective judicial administration, and the simplification of procedure through the elimination of unnecessary delays and technicalities.

These mounting pressures resulted in the adoption, by the Supreme Court of the United States under legislative authority, of the Federal Rules of Civil Procedure, which went into effect in 1938. These rules made a number

of radical changes not only in Federal practice, but in generally accepted procedural notions throughout America. They are rapidly changing American procedural philosophy. The more important concrete changes made by these Federal rules include: the unification of law and equity in the Federal courts, though the constitutional right to a jury trial in an action at law has been preserved; the grant of the broadest judicial discretion to the trial judge; the simplification of pleading; the broadening of the rules respecting joinder of actions and parties; the adoption of an effective system of discovery to permit a party to ascertain prior to trial the evidence available to his adversary; and the adoption of pretrial procedure to permit the trial judge, at a conference with the opposing attorneys in advance of trial, to formulate and narrow the issues to be presented on the trial. Under these rules, the "sporting concept" of common law procedure has been abandoned. No longer, at least in the Federal courts, will a law suit be a duel between skilled protagonists.

The impact of this new procedural system upon the various American jurisdictions has been both immediate and tremendous. Six of the American states have already adopted, either verbatim or in substance, the Federal Rules of Civil Procedure; and a larger number of American jurisdictions have borrowed some of the new procedural devices embodied therein.[45] And only fifteen years have elapsed since they went into effect. Even this early, it is safe to state that the Federal rules have altered the procedural thinking of the legal profession in America.

Since this new procedure is based largely upon the former chancery practice in the Federal courts, it has effected a closer approach to conti-

nental civil procedure. Even more of a factor in bringing this new procedural system closer to continental ideas of procedure, however, has been the changed procedural philosophy which is its real foundation.

A new Code of Practice probably would have been enacted in Louisiana even if the Federal Rules of Civil Procedure had not been adopted, as plans for this revision had been projected earlier, and the establishment of the Louisiana State Law Institute in 1938 made the execution of these plans feasible. But the adoption of the new Federal rules has virtually guaranteed Louisiana a more liberal and effective procedural code of its own than otherwise would have been possible.

Actual work by the Louisiana State Law Institute on its legislative mandate to prepare a projet of the new Code of Practice commenced late in 1950, with the appointment of the three Reporters therefor and the selection of a research staff to assist them. The Reporters appointed were Professor Leon D. Hubert, Jr., of the Tulane University College of Law faculty, Professor Leon Sarpy of the law faculty of Loyola University, and the writer, who was designated as Coordinator of the revision. Each of the Reporters taught the courses in Louisiana Practice at his respective institution, and each had had more than eleven years of practice before entering the teaching profession.

The first six months were spent in the determination of questions of general policy, and in the preparation of a tentative outline of the proposed new code. Consideration was given initially to the possibility of basing the code upon the Federal Rules of Civil Procedure, but this alternative was rejected because of the need for a procedural system correlated to the civil law of the state. The final decision was to retain the basic pro-

cedure of Louisiana, but to borrow freely from other systems, in those areas where the state's procedure either had no counterparts of the particular principle or device borrowed, or a less effective one. The modus operandi of the drafting and consideration of proposed new articles adopted was patterned upon that employed successfully by the Law Institute in the redaction of the Criminal Code of 1942: the initial draft of the various titles by the Reporters, consideration thereof by advisory committees of judges and practicing lawyers, redrafts to embody the suggestions and criticism of the committees, consideration thereof by the Council of the Law Institute, redrafts to reflect the action of that body, consideration thereof by the membership of the Institute and the profession generally, and final action thereafter by the Council. To date, roughly sixty per cent. of the work on the new code has been completed.

The tentative outline of the proposed code[46] has not been changed in the progress of the Institute's work, except with respect to a few chapters and sections. This outline indicates a code of the conventional civilian pattern, divided into books, titles, chapters, sections, and articles numbered consecutively. Its subject arrangement is based largely upon the present Code of Practice, but to some extent has been influenced by the arrangement of the Italian Code of Civil Procedure. The initial book, captioned "Preliminary Titles," includes the four titles on General Dispositions, Courts, Civil Actions, and Parties. Book II, "Rules of Pleading and Practice in Ordinary Process," is composed of titles on Pleading, Citation and Service of Process, Production of Evidence, Pretrial Procedure, Trial, and Judgments. The third book, "Proceedings in Appellate Courts," contains only two titles, on Appellate Procedure, and Supervisory Procedure. It was not deemed necessary to subdivide

Book IV, on "Execution of Judgments" into titles. Book V, "Summary and Executory Processes," is divided into titles on Summary Process, and on Executory Process. The sixth book, on "Probate Procedure," is divided into seven titles: General Dispositions, Intestate Successions, Testate Successions, Partition of Successions, Ancillary Probate Procedure, Administration of Small Successions, and Separation of Patrimony. The final book integrates into the new Code of Practice important segments of procedural law which heretofore have been contained principally in the Civil Code or in special statutes. This Book VII, "Special Proceedings," includes titles on Provisional Remedies, Real Actions, Extraordinary Remedies, Domestic Relations Cases (divorce, separation, annulment), Personal Status Cases (emancipation, tutorship, interdiction, curatorship), Partition between Co-owners, Concursus Proceedings, Ancillary Remedies of Creditors, Receivership, Eviction, and Procedure in Courts of Limited Jurisdiction.

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A considerable number of borrowings from the Federal Rules of Civil Procedure will be made by Louisiana's new procedural code. Of these, probably the most important is discovery procedure. Despite the advanced position of several of the continental procedural codes on this subject,[47] prior to 1952 virtually the only counterpart of this device in Louisiana was interrogatories on facts and articles,[48] taken originally from French procedure to secure admissions from the opposing litigant in the period when parties otherwise were incompetent to testify. So great was the professional demand for discovery in the state, as soon as the Law Institute had completed its work upon this section of the new code early in 1952, an

informal request was made for the drafting of a proposed statute embodying the contemplated code provisions. This request was complied with,[49] and shortly thereafter, in the legislative session of 1952, the proposed statute was adopted.[50] The new Louisiana discovery procedure is substantially the pertinent provisions of the Federal rules, with slight changes made to adapt them for local use.

An informal legislative request for the drafting of a proposed statute on pretrial procedure likewise was complied with,[51] which similarly was adopted by the legislature in 1952,[52] making Louisiana's pretrial procedure substantially identical with Federal Rule 16.

The third party practice of the Federal rules also will be incorporated into the new Code of Practice as an incidental demand, replacing the call in warranty, originally derived from French procedure. The fourth important borrowing by the proposed Louisiana procedural code from the Federal rules will be the motion for summary judgment, for which Louisiana has no counterpart whatsoever. This most effective device, developed originally by the more advanced American procedural codes, but broadened and made more effective under the Federal rules, permits a litigant to test the correctness of the factual allegations of his adversary's pleading, through the submission by both parties in advance of trial of the affidavits showing the evidence available in support or opposition thereto, and enables the trial judge to render judgment summarily in cases where no genuine issue of fact exists.

Louisiana's probate procedure, originally based upon the succession procedure of France, probably will be retained in simplified form, but with some borrowings from the Model Probate Code drafted recently at the University

of Michigan in cooperation with the American Bar Association's Committee on Model Probate Code.[53]

A change which may be claimed to reflect the influence of Anglo-American law will be the new code's acceptance of the common law terminology "jurisdiction" and "venue", in lieu of the civilian classification "jurisdiction ratione materiae" and "jurisdiction ratione personae".[54] The paramount law of Louisiana, of course, is the Constitution of the United States. The requirements of the due process and full faith and credit clauses of the Federal constitution to some extent are based upon the common law concept of "jurisdiction over the person". The latter has nothing in common with the continental "jurisdiction ratione personae", of which "venue" is the common law counterpart. The new terms are being adopted to eliminate confusion of nomenclature, but as virtually all of the former Louisiana rules are being retained without substantial modification, this represents merely a change of terminology.

(27)

Contemporary American procedure was not resorted to exclusively in the search for more effective procedural devices and principles. The incidental demand of intervention, originally derived from Spanish procedure, is being broadened under the new code to include the functions of the third opposition. The latter, which had its source in French procedure, permits a third party to intervene in pending proceedings, so as to assert either a claim of ownership of, or a higher privilege on, property under seizure. As it actually is a form of intervention, simplification of procedure required its merger with the parent incidental demand. Perhaps a more formidable problem in intervention was that due to the nebulous nature of the present code provision on the juridical interest of the intervener,

one which had been aggravated rather than solved by the conflicting jurisprudence of the Louisiana courts. The most acceptable solution of this problem was found in the provisions of the Italian Code of Civil Procedure on voluntary intervention.[55]

Though the title on Actions has not yet been considered by the Council, the great probabilities are that the concept of cumulation of actions will be retained as being simpler and more flexible than the common law joinder of actions and parties,[56] even as liberalized under the Federal rules. If so, a specific rule as to when actions may be cumulated by plural plaintiffs or against plural defendants (litisconsortium) must be included in the new code. The provisions of the German Code of Civil Procedure[57] appear to the Reporters to provide the solution most acceptable to Louisiana practice. Further, cumulation of actions actually presents no difficulties of pleading, but merely of trial. Hence, the trial judge should be left completely free to order the separate trials of the actions cumulated whenever he deems it advisable, and even in those rare cases where the actions are cumulated properly, yet cannot conveniently be tried together. The Reporters consequently are recommending the adoption of a code provision based upon the corresponding article[58] of the Italian Code of Civil Procedure.

A number of drastic changes made to effect the simplification of Louisiana procedure, and to leave the decision in procedural matters in many instances to the discretion of the trial judge, may possibly be attributed to the influence of both the Federal Rules of Civil Procedure and of the more recent procedural codes of the continent. Conversely, changes made in some important segments of Louisiana procedure, such as the exceptions, incidental demands, executory process, the real actions, and provisional remedies, are

attributable to the influence of neither Anglo-American nor continental procedure, but should be regarded as the indigenous and natural development prompted by difficulties encountered in their years of use in Louisiana practice.

CONCLUSIONS

The new Louisiana Code of Practice, like its predecessor of 1825, will be the product of a synthesis of Anglo-American and continental civil procedures. Opinions will vary as to whether the influence of one or the other of these procedural systems has predominated in shaping the Louisiana practice of the future. The casual observer, noting instantly the pattern of judicial organisation and administration of Louisiana, its requirements of pleading, and its rules of discovery and production of evidence, pretrial and trial procedures, enforcement of judgments, appellate practices and even its judicial techniques, will conclude that the new Louisiana Code of Practice is essentially an Anglo-American code. The student of comparative civil procedure, however, discovering the Spanish and French roots of the remaining bulk of Louisiana practice, will arise from his study with the conclusion that, despite the continual lessening of the continental influence since 1825, it will still dominate Louisiana procedure under the new Code of Practice.

In the opinion of the writer, the accuracy of these variant evaluations is academic. The result to be obtained under the new procedural codification is the really important consideration; and, in the opinion of the writer, this result will justify the heavy investment of time, money and energy by the Louisiana State Law Institute.

Louisiana need not apologize for its hybrid system of procedure. On the one hand, its French and Spanish heritage led to the retention of an essentially civilian system of substantive private law; on the other, its membership in the American union led to the adoption of a system of public law definitely of English origin. It was more or less inevitable that its civil procedure should reflect both Anglo-American and continental influences. The jurisprudential development of its procedure during the period 1850 to 1930 was in part aimless—the result of the accidents of the lack of knowledge of foreign languages and the greater availability of common law literature. The future procedural codification, like the Code of Practice of 1825, will result from careful evaluation of competing procedural principles and devices, in order to select those which will provide the most workable rules.

The pragmatic justification of comparative law is the opportunity for developing the law of the particular jurisdiction through the borrowing of the most workable elements of competing legal systems. This is precisely what the Louisiana State Law Institute is seeking to accomplish in its redaction of the new Louisiana Code of Practice.

FOOTNOTES

for

McMahon, The New Louisiana Code of Practice: A Synthesis of Anglo-American and Continental Civil Procedures

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1. For interesting accounts of this period of the legal history of Louisiana, see Dart, Courts and Law in Colonial Louisiana, 22 Louisiana Bar Association Reports 17 (1921), 4 Louisiana Historical Quarterly 255 (1922); Dart, The Louisiana Judicial System, 1 Louisiana Digest 1 (1937); Wigmore, Louisiana: The Story of Its Legal System, 1 Southern Law Quarterly 1 (1916).

2. Dart, Courts and Law in Colonial Louisiana, 22 Louisiana Bar Association Reports 17, 25 (1921), 4 Louisiana Historical Quarterly 261, 265 (1922).

3. See Titles 4, 5, 8 and 16, Coutume de Paris.

4. Pigeau, La procédure du Châtelet de Paris (1787).

5. See Ordinances and Instructions of Don Alexander O'Reilly, in 1 Louisiana Law Journal, No. 2, page 1 (1841).

6. 1 Louisiana Law Journal, No. 2, page 27 (1841).

7. Las Siete Partidas glosadas por el Lic. Gregario López.

8. Hevia Bolaños, Curia Filipica.

9. Febrero, Librêria de escribanos.

10. Dart, Civil Procedure in Louisiana under the Spanish Regime, 12 Louisiana Historical Quarterly 22 (1934); Dart, The Influence of the Ancient Law of Spain in the Jurisprudence of Louisiana, 6 Tulane Law Review 83 (1931), 18 American Bar Association Journal 125 (1931); Dart, The Law Library of a Louisiana Lawyer in the 18th Century, 25 Louisiana Bar Association Reports 12 (1924); Tucker, Source Books of Louisiana Law, 6 Tulane Law Review 280 (1932), 7 Tulane Law Review 82 (1932), 8 Tulane Law Review 396 (1934), and 9 Tulane Law Review 244 (1935).

For detailed accounts of the legal history of Louisiana during the period of Spanish dominion, the reader is referred to Wigmore, Louisiana: The Story of Its Legal System, 1 Southern Law Quarterly 1 (1916); Dart, The Colonial Legal Systems of Arkansas, Louisiana and Texas, 12 American Bar Association Journal 481 (1926); Dart, Courts and Law in Colonial Louisiana, 22 Louisiana Bar Association Reports 17 (1921), 4 Louisiana Historical Quarterly 255 (1922); Dart, The Place of Civil Law in Louisiana, 6 Tulane Law Review 163 (1932).

11. Act of October 31, 1803.

12. Act of March 26, 1804.

13. Act of March 2, 1805.

14. Acts of the Legislative Council of the Territory of Orleans of 1805, c. L.

15. Ibid., c. XXVI.

16. Ibid., c. XXV.

17. Benjamin Wall Dart, Introduction, Code of Practice of the State of Louisiana v (2d ed., 1942).

18. Millar, The Fortunes of the Demurrer, 31 Illinois Law Review 596, 604 (1937).

19. The Exception of No Cause of Action in Louisiana, 9 Tulane Law Review 17, 19 (1934).

20. Acts of the Legislative Council of the Territory of Orleans of 1805, c. XXV, § 22.

21. Agnes v. Judice, 3 Mart. (O.S.) 182, 185-186 (La. 1813).

22. The Supreme Court of Louisiana on the date this case was decided was composed of three judges only: Chief Justice Dominick A. Hall, and Associate Justices George Mathews and Pierre Derbigny. Dart, The History of the Supreme Court of Louisiana, 133 Louisiana Reports xxx, xxxix (1913).

23. Abatman v. Whitman, 7 Mart. (N.S.) 162, 163-164 (La. 1828).

24. See Planters' Bank v. George, 6 Mart. (O.S.) 670, 12 Am. Dec. 487 (La. 1819).

25. It is not within the scope of this paper to discuss the redaction and adoption of the various civil codes of the state. For present purposes, it suffices to point out that the so-called Civil Code of 1808, drafted by Moreau-Lislet and James Brown to serve as a digest of the civil law in force in the then Territory of Orleans, was based largely upon the Code Napoléon or one of the initial drafts thereof, but contained numerous provisions of definitely Spanish origin. Why these commissioners, appointed to draft a new code based upon the Spanish civil law then in force, turned to the new French codification presents some interesting questions which cannot be considered here. Probably the most logical explanation has been offered by the writer's colleague, Professor Joseph Dainow of the Law Faculty of Louisiana State University. The alternative to the compilation of a completely new code based on Spanish civil law "which was closest to the same basic legal patterns, and

with many adaptations to more modern and acceptable social and economic theories, was the French codification. One of the most significant attributes of the French Civil Code was its reflection of the new freedom of the Revolution. This was undoubtedly one of the reasons for its influence and precept in so many countries all over the world. Its use in Louisiana, in a place with such a strong French background, was quite natural." Dainow, The Louisiana Civil Law, Civil Code of Louisiana (Dainow's ed., 1947) pages xiii, xviii.

The Civil Code of 1825, drafted by Livingston, Derbigny and Moreau-Lislet, likewise was based upon the Code Napoléon or a draft thereof, with adaptations to make it conform to use in Louisiana, an admixture of Spanish civil law, and the inclusion of some of the legal philosophies of Pothier, Domat and possibly Toullier. On this point, see Tucker, Source Books of Louisiana Law, 6 Tulane Law Review 280, 281-292 (1932), and authorities cited therein; and Dainow, op. cit. supra.

26. The projet of a Commercial Code, prepared by Livingston, was in due course submitted to the Legislature, but never adopted. The resulting vacuum led first to the jurisprudential adoption of Anglo-American commercial law, subsequently adopted as positive law through the enactment of a number of comprehensive statutes on the various subjects thereof.

27. The legislative resolution is reprinted in Tucker, Source Books of Louisiana Law, 6 Tulane Law Review 280, 286-287 (1932).

28. Tucker, Source Books of Louisiana Law, 7 Tulane Law Review 82, 85 (1932).

29. The projets of the Code of Practice and Civil Code of 1825 have been officially reprinted by the State of Louisiana as Volumes 1 and 2 of the Louisiana Legal Archives (1937).

30. Attachment on mesne process, though not of common law, is of English, origin. For an interesting account of its development, its obsolescence in England, and its general use throughout the American states, see Millar, Civil Procedure of the Trial Court in Historical Perspective 481-497 (1952).

31. Syndics of Brooks v. Weyman, 3 Mart. (O.S.) 9 (La. 1813).

32. Abat v. Doliolle, 4 Mart. (O.S.) 316 (La. 1816).

33. In Martineau v. Hooper, 8 Mart. (O.S.) 699 (La. 1820); Mitchel v. Jewel, 10 Mart. (O.S.) 645 (La. 1822); Morris v. Hatch, 2 Mart. (N.S.) 491 (La. 1824). See, also, Scott v. Turnbull, 10 Mart. (O.S.) 335 (La. 1821); Dunn & Wife v. Duncan's Heirs, 10 Mart. (O.S.) 671 (La. 1822); La Pointe v. Guidry, 7 La. 246 (1834); Montgomery v. Russell, 10 La. 330 (1834); Williams v. Lanier, 14 La. 210 (1839); Hood v. McCardle, 16 La. 240 (1840); Nott & Co. v. Kirkman, 19 La. 14 (1841).

The subject is discussed in an interesting manner in Brumfield,

Louisiana Practice--Trial de novo on Appeal, Proceedings of the National Association of Claimants' Compensation Attorneys 560 (1951).

34. Cf. Art. 63, Constitution of 1845; Art. 62, Constitution of 1852; Art. 70, Constitution of 1864; Art. 74, Constitution of 1868.

35. Art. 81, Constitution of 1879; Art. 85, Constitution of 1898; Arts. 85, 95, Constitution of 1913; Art. 7, §§ 10, 29, Constitution of 1921.

36. See the cases cited in notes 21 and 23 hereof.

37. See, for instance, Gill v. City of Lake Charles, 119 La. 17, 43 So. 897 (1907), and the writer's criticism thereof in Parties Litigant in Louisiana, 13 Tulane Law Review 385, 391-396 (1939).

38. Clark on Code Pleading 28, note 70; 19 American Bar Association Reports 427 (1896); 54 Albany Law Journal 198, 204 (1896).

39. On this subject, the reader is referred to the writer's article The Case Against Fact Pleading in Louisiana, 13 Louisiana Law Review 369 (1953). The opposing view is presented in Tucker, Proposal for Retention of the Louisiana System of Fact Pleading; Exposé des Motifs, 13 Louisiana Law Review 395 (1953).

40. Section 59.

41. Gill v. City of Lake Charles, 119 La. 17, 43 So. 897 (1907).

42. Dubuisson v. Long, 175 La. 564, 143 So. 494 (1932); Gates v. Bisso Ferry Co., 172 So. 829 (La. App. 1937); Delesdernier Estate v. Zettwoch, 175 So. 137 (La. App. 1937).

43. The writer has discussed these cases, and the potential problems presented thereby, in his article on Parties Litigant in Louisiana--III, 13 Tulane Law Review 385 (1939).

44. Louisiana Act 29 of 1924, now Sections 4062 through 4067 of Title 13 of the Revised Statutes of Louisiana of 1950. For the reasons for the adoption of this legislation, see Spencer, Discussion of Act 29 of 1924, Relating to Writs of Injunction, 26 Louisiana Bar Association Reports 15 (1925).

45. The influence which the Federal Rules of Civil Procedure have had already upon the civil procedures of the various American states is indicated by Chief Justice Vanderbilt of the Supreme Court of New Jersey in his work, Minimum Standards of Judicial Administration (1949), passim.

46. For a more detailed breakdown of subject matter, see the Louisiana State Law Institute's pamphlet, Tentative Outline of the Proposed Code of Practice (May 8, 1952).

47. On this subject, see Millar, The Mechanism of Fact-Discovery: A Study in Comparative Civil Procedure, 32 Illinois Law Review 261 (1937).

48. Craig, Discovery Procedure and Its Louisiana Counterparts, 2 Louisiana Law Review 525 (1940).

49. See the Louisiana State Law Institute's pamphlet, Proposed Depositions and Discovery and Pretrial Procedure Statutes (May 8, 1952).

50. As Louisiana Act 202 of 1952, incorporated into the Revised Statutes of Louisiana of 1950 as Sections 3741 through 3794 of Title 13 thereof.

51. Op. cit. supra note 49.

52. As Louisiana Act 84 of 1952, incorporated into the Revised Statutes of Louisiana of 1950 as Section 5151 of Title 13 thereof. A narrower statute, adopted earlier as Louisiana Act 158 of 1950, and likewise based upon Federal Rule 16, was repealed by the 1952 act.

53. See Simes, Model Probate Code (1946).

54. See the Louisiana State Law Institute's Exposé des Motifs No. 3, Book I, Preliminary Titles, Title II, Courts, Chapter 5, Venue (April 23, 1953).

55. Art. 105. In this connection, see the Louisiana State Law Institute's Exposé des Motifs No. 7, Book II, Rules of Pleading and Practice in Ordinary Process, Title I, Pleading, pages 74 and 75 (April 23, 1953).

56. For an excellent comparison of the common law rules of joinder and parties with those of cumulation of actions under the procedural law of the various continental countries, see Professor Robert Wyness Millar's essay, The Joinder of Actions in Continental Civil Procedure, 28 Illinois Law Review 26, 177 (1933).

57. Sections 59 and 60.

58. Art. 103.