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Procedure: Civil Procedure

Henry G. McMahon

Carlos E. Lazarus

in the substantive or procedural law was squarely presented in *State v. Williams.*[73] In that case the accused was charged with manslaughter committed on June 5, 1948, and was brought to trial on March 29, 1949. If the responsive verdict statute affected substantive rights it would not be applicable to defendant's crime, which had been committed before its effective date. If it was procedural in nature, it should govern the defendant's trial in 1949. The trial judge had applied the new statute and had charged the jury that the only appropriate verdicts were guilty or not guilty. Defense counsel had unsuccessfully urged the judge to include attempted manslaughter and negligent homicide in his statement of the possible verdicts. Justice Frugé again wrote the opinion for a unanimous court. In upholding the trial judge's charge pursuant to the new act, the supreme court squarely held that the change effected by the responsive verdict statute was upon the procedural rather than the substantive law.

In a way, it may prove helpful, in future cases involving the validity of amendments of the Code of Criminal Procedure, that Judge Frugé chose to posit the *Simpson* case decision upon the broad ground of recognizing a proper limitation upon the supreme court's prior holding in the *Rodosta* case. A complete separation of substantive and procedural laws is frequently impractical, even impossible. It would be quite unfortunate if amendments of the Code of Criminal Procedure were to be subject to challenge if they partook somewhat of substantive criminal law principles. Similarly, amendments of the Criminal Code may often overlap related principles of procedural law. Judge Frugé's brief handling of this question should establish a sound guiding principle when other similar technical objections may be raised to the constitutionality of future legislation which may necessarily partake somewhat of both substantive and procedural law.

CIVIL PROCEDURE

Henry G. McMahon and Carlos E. Lazarus†*

TRIAL

Amendment of petition. The difficult problem concerning the right of a plaintiff to amend his petition after the issue has been joined by the filing of an answer was again presented in

73. 216 La. 419, 43 So. 2d 780 (1949).

* Dean and Professor of Law, Louisiana State University Law School.
† Coordinator of Research, Louisiana State Law Institute.

Holley v. Butler Furniture Company.[1] The plaintiff sued for damages caused to the automobile he was driving when it collided with defendant's truck. Although he had alleged ownership of the automobile, it developed during the trial that the plaintiff neither owned the car nor had he paid for the repairs made to it, whereupon the defendants filed an exception of no right of action. While the court had this exception under consideration and before judgment thereon, the plaintiff filed an amended petition alleging a verbal mandate from his father, the real owner of the car, to recover the damages in question. Simultaneously, the father also filed a petition of intervention alleging ownership of the car, reiterating the plaintiff's allegations in the supplemental petition, and in the alternative, praying for judgment in his favor as the real owner of the car. The lower court sustained the exception, denied the right of plaintiff to amend, and dismissed the intervention. This judgment was affirmed by the court of appeal, and on a writ of review the supreme court correctly held (1) that under Article 15 of the Code of Practice, the plaintiff had no interest in the suit and therefore the exception of no right of action was correctly sustained; (2) that, under the rule that an intervention falls or stands with the main demand, the lower court had properly dismissed the petition of the intervener; and (3) that the plaintiff had no right to amend[2] the petition since the amendment changed the substance of the demand in contravention of Article 419 of the Code of Practice.[3]

Call in warranty. As a general rule, in an action for trespass, a call in warranty is not permissible because the defendant is bound to answer for his own wrong and cannot call on a warrantor to assist him in his attempt to escape liability.[4] However, where the defendant denies the trespass and by way of defense

1. 217 La. 8, 45 So. 2d 747 (1950).

2. The court said inter alia "[the plaintiff's allegation] that he had an oral mandate, we think, as did the Court of Appeal, was an afterthought—an attempt by the plaintiff to bolster up his petition." Holley v. Butler Furniture Co., 45 So. 2d 747, 748 (La. 1950). Be this as it may, unless the record showed that the amended petition was an "afterthought," the court was not in a position to assume it as a fact.

3. It is well recognized that a petition may be amended at any time before issue is joined without leave of court. Tremont Lumber Co. v. May, 143 La. 389, 78 So. 650 (1918); Thomas v. Leonard Truck Lines, 7 So. 2d 753 (La. App. 1942). After issue is joined, the recent trend is to permit an amendment in the discretion of the court, provided, however, that it does not change the substance of the demand. Art. 419, La. Code of Practice of 1870. Rials v. Davis, 212 La. 161, 31 So. 2d 726 (1947). See also Seale v. Stephens, 210 La. 1068, 29 So. 2d 65 (1946), wherein the cause was remanded with instructions to permit an amendment even though it was offered after the trial had begun.

4. Bossier's Heirs v. Jackson, 114 La. 707, 38 So. 525 (1905).

alleges ownership of the property, the defendant has the right to call his vendor in warranty. This important distinction was made in the cases of *Blanchard v. Norman-Breaux Lumber Company*[5] and *Dalton v. Norman-Breaux Lumber Company.*[6]

Damages. The principle that attorney fees are not an element of damages for which recovery may be had, in the absence of statute or contract, is well established as a general proposition. Not so, however, when attorney fees are claimed as damages in a possessory action. The supreme court and the courts of appeal adhere to opposite rules.[7] In *Efner v. Ketteringham*,[8] the supreme court missed an opportunity to settle the conflict, preferring to follow a recent decision[9] in which it was held that attorney fees would not be allowed where the plaintiff had not offered sufficient proof to establish his claim.[10]

Nullity of judgment. In *Adams v. Perilloux*,[11] the court points out that although a judgment obtained through ill practices on the part of the party in whose favor it was rendered may be annulled at the instance of the party aggrieved,[12] the evidence of artifice, deception, or fraud, must be clear and unambiguous. In this case, the court found that the mere fact that defendant's attorney was under the impression that a judgment by default would not be taken and that the plaintiff's attorney had secured the services of another attorney to take and confirm the default was not sufficient to show ill practices on the part of the plaintiff.

APPELLATE JURISDICTION

The question of determining the amount in dispute for the purpose of appellate jurisdiction continues to be a difficult problem which cannot always be solved by the application of the basic general rules often reaffirmed by the court. As a general proposition, jurisdictional amount is to be determined, not by the amount of the judgment appealed from, but by the amount in dispute at the time the case is submitted to the trial court for decision.[13] Moreover, the record must affirmatively show that the

5. 216 La. 551, 44 So. 2d 112 (1950).
6. 216 La. 559, 44 So. 2d 114 (1950).
7. Cf. Cooper v. Cappel, 29 La. Ann. 213 (1877); Williams v. Harmanson, 41 La. Ann. 702, 6 So. 604 (1889), and Bryson v. George, 31 So. 2d 492 (La. App. 1947).
8. 47 So. 2d 331 (La. 1950).
9. Rhodes v. Collier, 215 La. 754, 41 So. 2d 669 (1949).
10. 47 So. 2d 331, 332 (La. 1950).
11. 216 La. 566, 44 So. 2d 117 (1950).
12. Art. 607, La. Code of Practice of 1870.
13. Kennedy v. Perry Timber Co., 217 La. 401, 46 So. 2d 312 (1950).

court has appellate jurisdiction,[14] and neither the stipulation of counsel nor the affidavit of the appellant that the amount in dispute is over the required $2000 will suffice.[15] In such cases, the court will transfer the appeal to the proper court rather than dismiss it altogether.[16] However, it is not often an easy matter to determine what the "amount involved" really is, since it is not always that the amount which the plaintiff stands to gain is equal to what the defendant stands to lose. In many instances, therefore, the court has had to resort to what has been called "the defendant's viewpoint theory" as the test for jurisdictional amount.[17]

In cases of executory proceedings to foreclose a mortgage or to enforce a judgment, the rule seems to have been established that where the debtor enjoined the seizure and sale of the property, the test of appellate jurisdiction was the amount of the debt or of the judgment, but where a third person enjoined the seizure, the value of the property governed the jurisdiction of the court.[18] In *Cannella v. Succession of Cannella*,[19] the supreme court pointed out the fallacy of this rule, holding that the injunction proceedings, whether instituted by the debtor or by a third person claiming ownership of the property, are merely incidental to the main demand, and that under the constitutional provisions,[20] where there is an appeal from a reconventional or other incidental demand, the appeal lies to the court having jurisdiction of the main demand. The effect of the *Cannella* case is, therefore, to overrule the prior jurisprudence as announced in the *Lhote* case and the authorities therein cited.[21]

14. Succession of Rouen, 216 La. 957, 45 So. 2d 91 (1950).

15. Fontenot v. Babineaux, 47 So. 2d 678 (La. 1950); Thalheim v. Gruhler, 216 La. 502, 43 So. 2d 907 (1949).

16. La. R.S. (1950) 13:4441; Nash v. Curette, 216 La. 190, 43 So. 2d 262 (1949).

17. For cases illustrative of the application of this rule, see The Work of the Louisiana Supreme Court for the 1948-1949 Term, 10 LOUISIANA LAW REVIEW 120, 124, note 18 (1950).

18. Lhote & Company v. Church Extension Society, 115 La. 487, 39 So. 502 (1905); Tremont Lumber Co. v. Talbot, 140 La. 887, 74 So. 183 (1917); Louisiana Western Lumber Co. v. Stanford, 178 La. 1052, 152 So. 755 (1934).

19. 216 La. 464, 43 So. 2d 795 (1949).

20. La. Const. of 1921, Art. VII, § 1.

21. In the course of its opinion, the court states: "For example, it was declared in Lhote & Co. v. Church Extension Society . . . that where a judgment debtor enjoins the execution, the test of jurisdiction is the amount of the judgment . . . but that if a third person enjoins . . . jurisdiction is governed by the value of the property. . . . But in making this observation . . . the court failed to give consideration to the provisions of Section 1 of Article VII of the Constitution. In reality, the statements hark back to early decisions which were handed down long before the appellate jurisdictional clause . . . had been placed in our organic law." Cannella v. Suc. of Cannella, 216 La. 464, 470, 43 So. 2d 795, 797 (1949).

Another interesting point arose in the cases of *Breland v. City of Bogalusa*[22] and *Mouton v. City of Lafayette*.[23] These cases involved the validity of municipal ordinances expanding the corporate limits of the municipalities involved. The court announced the established principle that where the litigation involves solely a contested civil or political right which cannot be specifically valued, the supreme court is without jurisdiction. Although the court could have very appropriately rested its decision on this principle, it went further in assuming that the right involved was susceptible of evaluation and could be gauged by the amount of taxes the contestants would have to pay, or by the total amount of revenues which the respective municipalities expected to collect from the area to be incorporated. On further examination, however, the court found these values fell short of the necessary jurisdictional amount and accordingly ordered the cases transferred to the court of appeal.[24]

Beauvais v. D. C. Hall Transport, Incorporated,[25] presented an appeal by the defendants from a judgment awarding the plaintiffs damages for personal injuries, but rejecting their claims for property damages. The plaintiffs answered the appeal praying that the award for personal injuries be increased to the amount claimed and that the claim for property damage be allowed. Since all the damages asserted arose out of the same circumstances, and since part of these was for personal injury, the court properly declined to entertain jurisdiction, and transferred the case to the court of appeal.[26]

APPELLATE PROCEDURE

W. T. Burton Company v. Stevens Company[27] reaffirms the established principle that after an appeal has been perfected by the filing of the appeal bond, the failure to file the transcript on time amounts to an abandonment of the appeal.[28] However, there

22. 47 So. 2d 334 (La. 1950).
23. 47 So. 2d 670 (1950).
24. McCaleb, J., concurring in the *Breland* case, however, denies that the constitutional provision vesting the court with jurisdiction when the amount in dispute exceeds $2000 is applicable, and vigorously points out that the case merely presented the prosecution of a justiceable right incapable of monetary appraisal.
25. 217 La. 388, 46 So. 2d 307 (1950).
26. Accord: Sibley v. Petty Realty Co., 215 La. 597, 41 So. 2d 230 (1949). Kirkwood v. McFarland, 217 La. 386, 46 So. 2d 307 (1950), in which the appeals were also transferred to the intermediate appellate court under similar circumstances.
27. 216 La. 1090, 45 So. 2d 634 (1950).
28. In Hamilton v. Dabbs, 216 La. 867, 44 So. 2d 896 (1950), it was properly held that if a suspensive appeal has been abandoned by the failure to lodge

seems to be considerable confusion in determining just what constitutes a timely filing of the record in the appellate court. Article 833 of the Code of Practice has been interpreted as giving the appellant three days of grace, after the return day, in which to file the transcript or apply for an additional time to do so. Whether these three days are ordinary calendar days, legal, or judicial days has been the subject of recent litigation. In *State ex rel. Marcade v. City of New Orleans*,[29] it was held that the three days of grace provided for in the code were calendar days and not judicial days.[30] It was further held that these three days included Sundays and legal holidays, so that where the return day fell on Friday, the last day within which to lodge the transcript or apply for an extension of time was the Monday immediately following, even though the intervening Saturday and Sunday were legal holidays. The court recognized the established principle that if a statute allows a period of time within which to do a certain act, and such period is more than a week, intervening Sundays and holidays are computed, but where the period is less than a week, Sundays and legal holidays are not counted. The court reasoned, however, that since the original

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the transcript timely, the appellant cannot afterwards take a devolutive appeal from the same judgment. Cf. Vacuum Oil Co. v. Cockrell, 177 La. 623, 148 So. 898 (1933), to the effect that where a suspensive appeal has not been perfected, the appellant may properly apply for and obtain, within one year from the judgment, an order for a devolutive appeal. See also Redmond v. Mann, 24 La. Ann 149 (1872), holding that where the appeal bond is not filed in time and the appeal is dismissed on that ground, the appellant cannot thereafter renew his appeal.

29. 216 La. 587, 44 So. 2d 305 (1949).

30. In holding that the three days were calendar days as distinguished from judicial days (days on which the court is in session) or legal days (days on which legal and judicial business may be transacted), the court relied on two prior decisions wherein the problem seems to have been discussed at length. See Brooks v. Smith, 118 La. 758, 43 So. 399 (1907), and Keplinger v. Barrow, 132 La. 244, 61 So. 217 (1913). The theory of these cases was that La. Acts 92 of 1900 and 106 of 1908 (La. R.S. [1950] 13:4438), which required the fixing of a definite day for the filing of the transcript in the supreme court, whether in term time or vacation, impliedly repealed the provisions of La. Act 54 of 1870 (E.S.) providing that if the court was not in session on the return day, the appellant had three judicial days after the court reconvened within which to file the transcript. These decisions appear to be sound, since under the factual situations there involved, it was necessary to determine the validity of Act 54 of 1870. But see Martin Lumber Co. v. Mullin, 173 La. 389, 137 So. 72 (1931); Holz v. Fishel, 40 La. Ann. 294, 3 So. 888 (1888); Lopes v. Sahuque, 114 La. 1005, 38 So. 810 (1905). In the *Lopes* case, the court very tersely points out that the 1870 statute was designed merely to take care of the situation where the court was not in session at the time the appeal was made returnable, and that it did not otherwise change the long established practice that in term time, the appellant had three judicial days of grace within which to file his transcript. If this is true, it follows that the implied repeal of the 1870 statute by the acts of 1900 and 1908 should not have affected the practice, and that the three days spoken of in Article 883 of the Code of Practice might very well be judicial days.

period of time for filing the transcript was fixed by law at not less than fifteen days, and that since the three days of grace were merely an extension of this time, the intervening Saturday and Sunday should be counted in the computation. Pretermitting the question as to whether the three days of grace are calendar, judicial, or legal days,[31] and adopting the majority rule holding that they are calendar days, it is difficult to conceive that the three days are an extension of the original period allowed, so as to include Sundays and legal holidays in the computation. It must be noted that, strictly speaking, Article 883 of the Code of Practice is conditional in that it makes it discretionary with the court whether the motion for a further delay applied for within the three days of grace will be granted.[32] In other words, the appellant must file the transcript on the return day. Thereafter, he has three days within which to apply for further delay which may or may not be granted. If the motion for an extension is denied, can it be said that the original return day has been nevertheless extended to the last day on which the motion may be made? Moreover, another long established rule of practice in pari materia is to the effect that a motion to dismiss an appeal based on irregularities in the order or in the appeal bond must be filed within three days after the return day in order to be effective; and in *Elliot v. Heard*,[33] the court recently took occasion

31. The vigorous dissent of Moise, J., leaves considerable doubt as to the correctness of the majority opinion. A closer examination of the authorities relied on by the court indicates their inapplicability to the factual issues presented in the principal case. In the *Brooks* case, the appeal was returnable on August 15 and extended to September 15, 1906. The transcript was filed on September 20. The appellants contended that since the appeal was returnable during the vacation of the court, the filing of the transcript on the first day of the next term was timely. In the *Keplinger* case, the appeal was returnable on December 17, and the transcript was filed on December 22. The appellants, in opposition to a motion to dismiss, took the position that since the court did not sit during the week following December 17, they had three judicial days after the first session following to file the transcript.

Conceivably, a judicial day may also be a legal day. So that what the court may have had in mind in the *Lopes* case when it said that the act of 1870 did not affect the established practice of granting three judicial days when the appeal was returnable in term time may very well have been legal days (exclusive of Sundays and legal holidays) during which the court is not officially on vacation.

32. Art. 883, La. Code of Practice of 1870. "If the appellant has not filed [the transcript] on the day appointed by the inferior judge . . . *and was prevented from doing so* by any event not under his control, he may . . . apply to the court *before the expiration of three days* . . . and may demand a further time . . . *which may be granted* by the court if the event causing the delay be proved to its satisfaction . . ." See also Rule III of the Supreme Court of Louisiana, as amended April 4, 1939, 191 La. xxxix, providing in part as follows: "A motion for an extension of time for filing a transcript *shall state specifically the cause which prevents* the completion of the transcript. . . ."

33. 217 La. 218, 46 So. 2d 249 (1950).

to stress that these three days are legal days, that is, exclusive of Sundays and legal holidays. It is difficult to reconcile these two decisions, particularly in view of the trend to liberalize appeals, for whereas an appellant is unduly restricted as to the time within which he may file the transcript, the appellee enjoys the further delay that may be caused by intervening legal holidays. As a further argument in favor of regarding the three days as a separate delay is the fact that the appellee may proceed to execute the judgment if the appellant has not obtained a further delay and has failed to file the transcript "on the day directed by the court below,"[34] which execution, however, may be enjoined by the appellant if, at the time of filing his motion for an extension of time, "the appellee has already required of the clerk the certificate necessary for the pursuit of such execution."[35]

Far from being settled, the question is apparently still open in view of what was subsequently said in *Hamilton v. Dabbs*, that the three days of grace provided for in Article 883 of the Code of Practice are judicial days.[36]

Another interesting point involving appellate procedure was presented in *Succession of Tullier*,[37] wherein a suspensive appeal was taken from a judgment refusing to appoint an administrator on the ground that an administration was not necessary. The appellees moved to have the appeal dismissed insofar as it was suspensive, and to have it declared devolutive. They relied principally on the case of *Succession of Wintz*,[38] in which it had been held that a judgment refusing to appoint an administrator can only be appealed devolutively. The court pointed out, however, that the only exceptions to the rule that an appeal taken within the ten days from the rendition of the judgment will stay execuion are those contained in the articles of the Code of Practice,[39] and that the exception made in the *Wintz* case was unauthorized.[40]

In *Angellette v. Hardie*,[41] the court reaffirms the rule that an appeal from an interlocutory judgment is permitted only where irreparable injury may be done. The court could also, in the

34. Art. 884, La. Code of Practice of 1870.
35. Art. 883, La. Code of Practice of 1870.
36. "The established jurisprudence of this court is that where a suspensive appeal has been abandoned by a failure to file the transcript within three judicial days after the return day . . . the appellant cannot afterwards take a devolutive appeal." Hamilton v. Dabbs, 216 La. 867, 868, 44 So. 2d 896 (1950).
37. 216 La. 821, 44 So. 2d 880 (1950).
38. 111 La. 40, 35 So. 377 (1902).
39. Arts. 580, 1059, La. Code of Practice of 1870.
40. See Succession of Tyler, 192 La. 365, 188 So. 31 (1939).
41. 216 La. 461, 43 So. 2d 794 (1949).

same manner, have disposed of the issues presented in *In re Canal Bank and Trust Company*,[42] where an appeal was taken from a judgment denying an accounting. In that case, the court denied the plaintiffs' rule on the executor of the bank in liquidation to file an accounting prior to distributing the assets. The court held inter alia, however, that since the judgment was the only judgment rendered in the case, it was, for all intents and purposes, a final judgment from which a direct appeal could be taken.

In *Irwin v. Irwin*,[43] the court pointed out that the motion to remand on grounds of newly discovered evidence authorized by Article 906 of the Code of Practice is premature when filed prior to the hearing on appeal. The reason for this is that before the case can be remanded, the appellate court must first determine whether a final judgment can be rendered "in the state in which it is," and this cannot be done without hearing the appeal.

REHEARING

In *Antoine v. Consolidated-Vultee Aircraft Corporation*,[44] the question was again raised as to whether the constitutional provision requiring that notice of all judgments rendered by the courts of appeal be given to the counsel of record as a prerequisite to their finality,[45] was applicable to the Court of Appeal for the Parish of Orleans. Act 16 of 1910[46] provided that judgments rendered in the courts of appeal become final and executory on the fifteenth calendar day after rendition, provided that in the interim an application for a rehearing could be filed.[47] In the *Antoine* case, the relator filed an application for rehearing on the fifteenth calendar day after the judgment had been rendered,[48] and contended that since, under the constitutional provision, notice of the judgment was required and had not been given, his application was timely. The supreme court reviewed the constitutional

42. 216 La. 410, 43 So. 2d 777 (1949).
43. 216 La. 71, 43 So. 2d 221 (1949).
44. 217 La. 251, 46 So. 2d 260 (1950).
45. La. Const. of 1921, Art. VII, § 24. ". . . Notice of all judgments shall be given to the counsel of record; and the court shall provide by rule for the giving of such notices. No delays shall run until such notice shall have been given."
46. La. R.S. (1950) 13:446.
47. The statute also provided that judgments appealed from the city courts of New Orleans became final on the sixth calendar day after rendition.
48. The wording of this statute was a trap for the unwary, for it was generally assumed that the application could be timely filed on the fifteenth and sixth day, respectively, after rendition of the judgment on appeal. The possibility of this error has now been eliminated by the Revision of 1950. Cf. La. R.S. (1950) 13:4446.

and statutory provisions and properly concluded that they were applicable exclusively to the courts of appeal for the first and second circuits, and held that since under the provision of the act of 1910, the judgment became final on the fifteenth calendar day, the application should have been filed on or before the fourteenth day.[49]

MISCELLANEOUS

In a sequel to *Rhodes v. Collier*,[50] the court announced the rule that the possession required to maintain an action of jactitation is no different from that required for the possessory action, and consequently could not be defeated by the mere unauthorized trespasses of a defendant claiming possession without any color of title.[51]

Arnold v. Arnold[52] reaffirmed the well-settled principle that an appeal taken after a year from the judgment is absolutely null. And in *Kennedy v. Perry Timber Company*,[53] the court pointed out that under the provisions of Act 112 of 1916 as amended,[54] the adequacy of the appeal bond is to be tested in the court of original jurisdiction and not by the appellate court.

In *Kelly v. Ozone Tung Cooperative*,[55] the three plaintiffs in the suit appealed praying for an increase in the award. The court of appeal affirmed the judgment as to two of the appellants but reversed it as to the third, who duly applied for a rehearing praying that the judgment as to him be reinstated. His reasons were that he had not perfected his appeal because he had not signed the appeal bond, and that consequently the judgment in his favor rendered below had become final. Exercising its supervisory jurisdiction, the supreme court said that the action of the court of appeal in refusing the rehearing was proper,[56]

49. See Lacaze v. Hardee, 199 La. 566, 6 So. 2d 663 (1942), holding that in the first and second circuits, the fourteen days delay for applying for a rehearing begins to run the day after notice of the judgment is received by counsel.

50. 215 La. 754, 41 So. 2d 669 (1949), noted in The Work of the Louisiana Supreme Court for the 1948-1949 Term, 10 LOUISIANA LAW REVIEW 120, 250 (1950).

51. Marks v. Collier, 216 La. 1, 43 So. 2d 16 (1949).

52. 217 La. 362, 46 So. 2d 298 (1950).

53. 217 La. 401, 46 So. 2d 312 (1950).

54. La. R.S. (1950) 13:4572.

55. 216 La. 778, 44 So. 2d 865 (1950).

56. It was also pointed out that the appellant had argued his point on appeal and lost, and that since the appellee could not have urged the irregularity, the appellant himself was precluded from doing so. Cf. Lewis v. Burglass, 186 La. 36, 171 So. 564 (1936), and Lagraize v. Tracy, 211 La. 765, 30 So. 2d 828 (1947), to the effect that an appellee may, by his actions, be

holding that where the appeal bond is signed by two of three appellants from the same judgment, the failure of the third to sign the bond does not invalidate or affect the validity of the appeal.[57]

deemed to have waived his right to have an appeal dismissed, even where the appellant has failed to file his transcript on time.

57. Since the appellant is primarily bound for the debt involved, it is not necessary for him to sign the appeal bond as principal. Maddox v. Butchee, 201 La. 876, 10 So. 2d 687 (1942).