Summary Adjudication: France

It is not entirely appropriate to speak of French procedures analogous to summary judgment in the United States. A trial in the common-law sense is unknown in French civil procedure. Hence there is no room for a procedure short-circuiting the trial. However, there are a number of procedures considerably more expeditious than the regular procedure which involves a series of hearings and, sometimes, interlocutory judgments. Many of the courts of limited or specialized jurisdiction in France, such as the tribunaux d'instance (courts of limited jurisdiction) or the conseils de prud'hommes (labor courts), use procedures simpler than those used before the tribunaux de grande instance (courts of general jurisdiction) and the tribunaux de commerce (commercial courts). However, in this report only certain procedures accelerated by comparison with the standard procedure will be discussed: summary procedure, and two collection devices.

Summary Procedure

A so-called summary procedure (procédure sommaire) for the determination of minor or uncomplicated claims was included in the French Code of Civil Procedure of 1806. Originally, this procedure was faster and less expensive than the regular procedure before the tribunal civil, the predecessor of the tribunal de grande instance. But in the course of time, many of the existing differences between the two procedures were abol-

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1 On French Civil Procedure generally, see P. Herzog, Civil Procedure in France (1967), especially at 253–97 (proceedings before tribunal de grande instance), 299–301 (proceedings before tribunal d'instance), 299–301 (proceedings before commercial courts), 301–02 (proceedings before labor courts).

One method for accelerating law suits available fairly generally should be mentioned here, though it involves basically shortening or elimination of waiting periods, rather than—ordinarily—elimination of otherwise necessary steps: if speed is important, the plaintiff may address an ex parte petition to the presiding judge of the court for permission to summon plaintiff on less than the normal (eight days') notice, or to summon him for a day certain. Code de Procédure Civile art. 1033–1. If the court authorizes the summoning of defendant for a day certain, the defendant must appear on that day; otherwise he is in default. On the day fixed for the appearance, the court then decides when the formal hearing is to take place. The case, in other words, does not have to await its turn on the calendar. See Code de Procédure Civile art. 75–1 (not applicable before all courts in France).
ished. One major difference which remained was the so-called enquête procedure for the hearing of witnesses. In 1958, however, the enquête procedure in summary and regular cases was unified, thus abolishing the last really significant distinction.² For this reason, and by virtue of the establishment of an even more expeditious procedure for the collection of certain contract claims, the summary procedure has lost much of its significance. The impact upon summary proceedings of certain changes made in French civil procedure in 1965 and 1967 is not entirely clear.³

The situations in which the summary procedure must be used are specified in Article 404 of the Code of Civil Procedure (Code de Procédure Civile). According to that article, “pure personal claims based on an uncontested title” must be asserted in summary proceedings. This includes, in the main, contract claims based on a written instrument. There is some dispute as to the meaning of the term “uncontested title.” In one view, while there must be no dispute about the authenticity of the written instrument, the presence of other issues does not remove the case from the summary-procedure category. However, the majority view is that summary procedure becomes unavailable whenever there is a dispute involving the basic elements of the transaction, such as capacity of the parties to contract or absence of fraud and duress.⁴

The summary procedure must apparently also be used in appeals from the courts of limited jurisdiction, the tribunaux d’instance, to the cours d’appels. In other situations, the cours d’appels use procedures which are very similar to the regular procedure before the tribunaux de grande instance.⁵ In addition, provisional matters requiring speed must be handled in summary proceedings, even if they are part of a larger proceeding to be handled in the regular fashion. Included in this category are proceedings to obtain the cancellation of attachments and some domestic-relations matters. Actions for rent due frequently fall within the competence of the tribunal d’instance, or of the special courts created to deal with leases of farm lands, the tribunaux paritaires de baux ruraux. But when they are brought before the courts of general jurisdiction, the tribunaux de grande instance, summary procedure is to be used.

²See P. Herzog, op. cit. supra, note 1 at 488.
⁴See, e.g., Morel, Traité Elémentaire de Procédure Civile 372 (2d ed. 1949).
⁵As to procedure on appeal generally, see P. Herzog, op. cit. supra, note 1 at 408–416.
Finally, the Code of Civil Procedure provides that claims involving less than 10 F. must be brought as summary proceedings. By implication, this amount has probably been raised to 2,500 F. Even so, however, the provision seems obsolete, since claims for less than 5,000 F. now must be brought before the tribunal d'instance where the procedure is more expeditious than the summary procedure before the tribunal de grande instance.\(^6\)

The rules concerning appointment of attorneys (avoués), service of summonses, time to appear and costs are the same in summary as in regular proceedings. On the other hand, in summary proceedings, written conclusions (somewhat analogous to pleadings or motion papers) may be filed at any time; the rule excluding such papers immediately before a hearing is inapplicable.\(^7\) Furthermore, summary proceedings may be heard during the court's vacation period, though this is done only rarely, when speed is very important.\(^8\) Summary proceedings also get what amounts to a preference on the court calendar, but preferences are by no means limited to summary proceedings.\(^9\) Finally, costs in summary proceedings are taxed in the final judgment, not in a special proceeding.\(^10\)

An action brought as a regular proceeding, when it should have been brought as a summary proceeding, is irregular. But the error may not be invoked, in the first instance, before the Supreme Court, the Cour de Cassation; nor may the courts rely on it on their own motion.\(^11\)

**Collection Procedures**

More important than the summary procedure are the procedures for the collection of certain small claims, and claims based on negotiable instruments. A special procedure for the collection of small commercial debts, modeled on a procedure in use in Alsace-Lorraine, where the German Zivilprocessordnung (Code of Civil Procedure) had been retained

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\(^6\)The rule that claims for less than 10 F. (now only about $2.-) may be asserted in summary proceedings has been interpreted broadly to apply to all claims in personam brought before the tribunal de grande instance (or its predecessor, the tribunal civil), in which, because of the smallness of the amount involved, no appeal is possible. At present, however, substantially all in-personam claims which the tribunal de grande instance may hear, are subject to appeal, since claims for less than 5,000 F. must be brought before the tribunal d'instance. See Décret No. 68-424 of May 8, 1968, J.O. May 12, 1968, p. 4797, [1968] D.L. 190; and appeal is possible when the amount in controversy exceeds 2,500 F.


\(^9\)Cf. Code de Procédure Civile art. 80.

\(^10\)Ibid., art. 543.

\(^11\)J. Morel, op. cit. supra, note 4 at 374.
after 1918, was introduced in 1937 and revised in 1957. This procedure is mainly a collection device; it offers no particular advantage if the debtor interposes a defense on the merits. The procedure may be used for the collection of any contractual debt which is commercial in nature, provided the amount of the debt does not exceed the sum of 2,500 F. (approximately $500.00). Moreover, the procedure is available without limitation as to amount if the debt is based on a promissory note or an accepted draft (but not if a check is involved). The debtor must have his domicile, or at least a residence, in France where service on him can be effected. The proceedings must always be brought in the commercial court at the debtor’s domicile (or residence). Consent to jurisdiction (through a so-called election of domicile clause) is ineffective.

The proceedings are initiated by a petition (requête) addressed to the presiding judge of the commercial court. No notice is given to the debtor. The petition must contain the name and address of the debtor and indicate the basis of the claim. Any relevant documents must be attached. If the presiding judge believes the amount demanded to be due, he issues a decision authorizing the clerk of the court to send a “pay order” to the debtor. The decision benefits from a presumption of regularity. A rejection of the petition is not reviewable. The creditor’s only remedy in such a case is the institution of a regular action against the debtor.

The pay order must be sent to the debtor generally by registered mail, return receipt requested. It amounts to a command by the court to pay the debt within two weeks or to file objections within the same period if there are defenses to the claim. If no objections are filed and payment is not made, the creditor may ask the court to give final approval to the petition. Upon final court approval the clerk of the court endorses an execution authorization (formule exécutoire) on the pay order, thus converting it into a judgment for the sum mentioned, on which execution may be levied. The debtor may not obtain review of this judgment by appeal, nor may he challenge it via a petition to reopen.

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14See, e.g., Julien, supra, note 12, at 159.
15Law No. 57–756, supra, note 13, art. 4.
16Ibid., art. 2.
17Ibid., art. 3.
20Law No. 57–756, supra, note 13, art. 5. Final approval of the petition is ordinarily granted as a matter of course. Approval must ordinarily be sought within six months of the filing of the petition. The court may grant the debtor a grace period for payment. Id. arts. 7, 8.
If the debtor wishes to assert any defenses, he must file an objection (contredit) to the pay order within two weeks.\textsuperscript{21} Since any objections to the jurisdiction of the court must be raised at the earliest possible moment in France, jurisdictional objections must be noted specifically in the contredit; otherwise they are waived.\textsuperscript{22} The contredit may apparently take the form of a simple letter to the clerk; but it must be handed to him in person. After the receipt of the contredit, the clerk summons all parties by letter to a hearing before the commercial court. Ordinarily, eight days' notice must be given.\textsuperscript{23} The court first appoints one of its members to attempt settlement; if none can be worked out, the case is heard on its merits, as any other action. The debtor may appeal from a judgment against him,\textsuperscript{24} but if he has failed to appear at the hearing, he cannot obtain a reopening of his default.

The 1957 statute which revised the procedure for the collection of small commercial debts also created a very similar procedure for the collection of small non-commercial debts.\textsuperscript{25} It may be used for the collection of all non-commercial ("civil") debts based on contract, in which the claim is for a sum of money only, provided the amount demanded is less than 5,000 F., the present jurisdictional limit of the tribunal d'instance.\textsuperscript{26} The procedure is not available in quasi-contract or unjust enrichment cases, nor in tort claims.\textsuperscript{27} It can be used only against debtors having their domicile, or at least residence, in France, and service on the debtor in that county must be possible. Consent to jurisdiction through a so-called election of domicile is, again, inoperative.\textsuperscript{28}

The procedure is substantially similar to that in use before the commercial court. The creditor starts out by addressing an ex-parte petition to the judge of the tribunal d'instance. If it is approved, the clerk issues a pay

\textsuperscript{21}Law No. 57-756, \textit{supra}, note 13, art. 6. At the same time the debtor must make a deposit to cover court costs, which he recovers if he prevails.


\textsuperscript{24}Of course, an appeal is available only if the amount in controversy is sufficiently high to make an appeal possible. In other words, if it exceeds 2,500 F. Thus, appeal would be limited to cases involving promissory notes and accepted drafts. See text at note 13 supra.

\textsuperscript{25}However, the 'commercial' procedure is used more frequently than the 'non-commercial procedure. Julien, \textit{supra} note 12. Cf. Delau-Deshayes, \textit{supra} note 12.

\textsuperscript{26}Law No. 57-756, \textit{supra}, note 13. The 5,000-F. jurisdictional limit of the tribunal d'instance was established by DÉCRET No. 68-424, \textit{supra}, note 6, art. 1. Since the procedure is available in all contract actions, it is error for a court to refuse to make it available as a means for the recovery of insurance premiums, on the ground that it is usual for the insurance company to make a demand for the premium before initiating any legal proceedings. Cie Le Patrimoine v. Epoux Midol, Cass. Civ. (1st), Oct. 27, 1965, [1966] D.J. 21.


\textsuperscript{28}Law No. 57-756, \textit{supra} note 13, arts. 14, 19.
order.\textsuperscript{29} If the debtor fails to pay or to file objections (the so-called \textit{contredit}) within two weeks, execution may be levied against his property, and neither appeal nor reopening of the judgment is possible. If the debtor files objections, the judge of the \textit{tribunal d'instance} first attempts a settlement, and then hears the case on the merits. An appeal from the judge's decision is possible, but reopening of a default judgment is not.\textsuperscript{30} The procedure for the collection of small non-commercial debts, just as the procedure for the collection of small commercial debts, is thus useful mainly when the debtor is unlikely to interpose a defense.\textsuperscript{31}

\textsuperscript{29}Ibid., art. 12.

\textsuperscript{30}Ibid., arts. 15–19. Again, appeal requires an amount in controversy in excess of 2,500 F.

\textsuperscript{31}Cf. Julien, supra, note 12 at 158, n. 7.