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The Louisiana Legislation of 1940†

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The regular session of the Louisiana legislature for the year 1940 may be aptly described as not only one of the most important in the legislative history of the state, but likewise one of the busiest sessions of recent years. With a record number of 1,430 bills introduced in both houses for consideration, a total of 411 official legislative acts resulted.¹ This latter figure includes twenty-eight proposed constitutional amendments for submission to the electorate in November of 1940,² and also thirteen concurrent

† This paper does not include a discussion of the enactments of the 1940 regular session dealing with political and administrative reform and changes in the tax structure of the state. This important legislation is separately considered elsewhere. Dakin, Louisiana Tax Legislation of 1940 (1940) 3 LOUISIANA LAW REVIEW 55; Hyneman, Political and Administrative Reform in the 1940 Legislature (1940) 3 LOUISIANA LAW REVIEW 1.

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1. Of the total of 1,430 bills introduced in both houses, 432 were introduced in the Senate and 998 were introduced in the House. Of the 432 Senate Bills, 205 passed and were sent to the House; 12 defeated; 130 withdrawn; 14 reported by substitute; 64 unreported by committee; 2 reported without action; 5 indefinitely postponed. Of the 998 House Bills, 404 passed and were sent to the Senate; 32 defeated; 353 withdrawn; 84 reported by substitute; 85 unreported by committee; 1 reported favorably but no action taken; 1 reported without action; 31 returned to calendar; 5 indefinitely postponed; 2 tabled.

Of the 205 bills which passed the Senate and were sent to the House, 142 passed the latter chamber and were sent to the Governor; 9 were proposed constitutional amendments and were passed; 6 defeated; 1 unreported by Legislative Bureau; 12 returned to calendar; 33 indefinitely postponed; 2 tabled. Of the 404 bills which passed the House and were sent to the Senate, 313 passed the latter chamber and were sent to the Governor; 19 were proposed constitutional amendments and were passed; 12 defeated; 31 unreported by committee; 29 indefinitely postponed.

Of the 142 Senate Bills which were sent to the Governor, 99 received his approval, 28 were vetoed, and 15 became law without his approval. Of the 313 House Bills which were sent to the Governor, 229 received his approval, 57 were vetoed, and 27 became law without his approval.

2. Nine of these originated in the Senate, while nineteen originated in the House.

resolutions.³ Of the total of 370 legislative acts having the effect of law, forty-two became effective by limitation without the approval of the Governor.⁴ The intensive consideration accorded all measures presented for executive approval after final passage is made manifest by the record number of eighty-five vetoes exercised by the Governor. Such widespread use of the veto power was in part made necessary by errors and duplications resulting from crowded calendars during most of the session. As a result there was not sufficient time to coordinate measures which dealt directly or indirectly with the same subject matter. One veto by the Governor was later recalled and executive approval given.⁵

Members of the legal profession in Louisiana will be directly affected by three significant measures of this legislative session. These are (1) the repeal of the law which had created the State Bar of Louisiana;⁶ (2) the enactment of a statute which memorializes the Louisiana Supreme Court to provide for the organization and regulation of the Louisiana State Bar Association;⁷ (3) the enactment of a new law which defines and regulates the practice of law.⁸ In abolishing the statutory organization and control of the legal profession, the legislature ordained that the Bar

3. Six of these were Senate Concurrent Resolutions and seven were House Concurrent Resolutions.

4. La. Acts 325-339, 341-367 of 1940.

5. La. House Bill 176 of 1940, creating a civil service system for certain municipal fire and police departments, became La. Act 253 of 1940 when the Governor recalled his veto and signed the bill.

Concerning the power of the chief executive to recall a veto, in *State v. Junkin*, 79 Neb. 532, 538, 113 N.W. 256, 258 (1907), it was stated: "As long as the bill remained in his [the governor's] possession, it was subject to his action. It was still within his power after he had notified the secretary of state by telephone that he had vetoed the bill, and before the bill with the accompanying veto was filed in the office of the secretary of state, to change his views as to the propriety of such legislation and to affix his approval to the measure. In such case we think there would be no question but that the act would become effective. So long as he was free to change his views, and to make such change effective by his approval, the bill was still susceptible to the exercise of the lawmaking power, and, until, by his voluntary action, the governor had put it beyond his power in any manner to affect the measure, he was still in as full and actual control of it as if he had never signed the veto message or notified the secretary that he desired to file it in his office." A bill signed by the governor does not become law while it remains in his possession within the time limited, but he may reconsider and retract any approval previously made. *Harpending v. Haight*, 39 Cal. 189, 2 Am. Rep. 432 (1870); *State v. Savings Bank*, 79 Conn. 141, 64 Atl. 5 (1906); *People v. Hatch*, 19 Ill. 283 (1857); *People v. McCullough*, 210 Ill. 488, 71 N.E. 602 (1904); *Commissioners of Allegany County v. Warfield*, 100 Md. 516, 60 Atl. 599, 108 Am. St. Rep. 446 (1905). See *Hebert and Lazarus*, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, n. 2.

6. La. Act 55 of 1940, repealing La. Act 10 of 1934 (2 E.S.), as amended by La. Act 21 of 1934 (3 E.S.) [Dart's Stats. (1939) §§ 449.6-449.47].

7. La. Act 54 of 1940.

8. La. Act 163 of 1940.

shall be a self-governing body empowered to regulate the affairs of all licensed attorneys in the state under the supervision of the Supreme Court, without interference from any other governmental department. The court already has begun proceedings in compliance with the legislative memorial by issuing an order announcing the formation of an advisory committee of fifteen lawyers to assist the court in this work.⁹

Of further interest to the legal profession was the first bi-annual report made to the legislature by the Louisiana Law Institute.¹⁰ This report was accompanied by seven specific proposals of changes in the criminal law and criminal procedure of the state, designed to remedy a number of obvious defects in the machinery of the criminal law which were brought to light by recent prosecutions for crimes growing out of the political scandals of the past few years. These proposals were in the form of specific statutory measures, all of which were approved by the legislature and enacted into law.¹¹ The Institute was directed to prepare a draft of a code of the substantive criminal law of Louisiana. Copies of this code will be submitted to the Governor, the Attorney General, and the legislature not later than April, 1942.¹²

The most discussed work of the 1940 legislative session was the complete reorganization of the governmental and fiscal administration of the state and the enactment of election and civil service reforms. Because of the need for more extensive treatment than space here permits, these laws are not embraced within the scope of the present paper.¹³ Furthermore, the tax structure

9. Order of the Supreme Court of Louisiana of August 22, 1940, In the Matter of the Creation of the Louisiana State Bar Association.

10. The Louisiana State Law Institute was established by authority of La. Act 166 of 1938 [Dart's Stats. (1939) §§ 9284.18-9284.22]. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80-82; Tucker, *The Louisiana State Law Institute* (1938) 1 *LOUISIANA LAW REVIEW* 139.

11. La. Act 6 of 1940 (providing for the selection of jurors in the trial of criminal cases); La. Act 7 of 1940 (instructing the Institute to prepare a projet of a Criminal Code for the State of Louisiana); La. Act 15 of 1940 (punishing the making or presenting of false claims against the state); La. Act 16 of 1940 (punishing a conspiracy to defraud or to commit an offense against the state); La. Act 17 of 1940 (authorizing the Institute to adopt a plan of membership); La. Act 57 of 1940 (providing the manner of charging certain offenses and the grading thereof); La. Act 259 of 1940 (punishing dual office holding).

12. La. Act 7 of 1940. A commission, composed of three lawyers in the state, was created and empowered by La. Act 137 of 1936 to draft a criminal code for the state. It was instructed to complete its report by 1938, but that date was extended to 1940 by La. Act 98 of 1938. Arts. 583.1-583.5, La. Code of Crim. Proc. of 1928 (Supp. 1939).

13. Hyneman, *Political and Administrative Reform in the 1940 Legislature* (1940) 3 *LOUISIANA LAW REVIEW* 1.

of the state has been subjected to an extensive overhauling. New tax statutes have been enacted and many of the present existing ones have been amended. These taxation measures likewise have been treated separately elsewhere.¹⁴

The enacted legislation of 1940 ranges over many divergent matters, and the volume of material is so great that it is impossible to attempt here anything approaching a detailed analysis of every enactment of this session. It has, therefore, been necessary to eliminate all matters which are purely local in nature. Also, appropriations, many regulatory measures, statutes relating to highways, public health and institutions, and many laws pertaining to political subdivisions have been omitted from the present discussion. In many instances, the classification is arbitrarily adopted for purposes of convenience and clarity. The order of presentation is not intended to reflect the relative importance of the matters discussed.

I. MATTERS PERTAINING TO THE CIVIL CODE

A. AMENDMENTS TO SPECIFIC CODE ARTICLES

Article 348. Tutor Authorized To Invest Minor's Funds In Insured Homestead Stocks

Article 347¹⁵ directs the tutor to invest in the minor's name the excess of revenues over expenses, whenever such excess amounts to five hundred dollars. Failure to do so renders the tutor liable for legal interest on such excess.¹⁶ Article 348¹⁷ enumerates the types of security permissible for such investments, and requires court approval in each case.¹⁸ A high degree of protection is thus assured to the minor.

The only effect of the 1940 amendment to Article 348¹⁹ is to list an additional type of security in which the minor's funds may be invested. The addition is patterned on Section 62(h) of the Louisiana Trusts Estates Act²⁰ so as to include shares of any

14. Dakin, *Louisiana Tax Legislation of 1940* (1940) 3 *LOUISIANA LAW REVIEW* 55.

15. La. Civil Code of 1870.

16. *Glenn v. Elam*, 3 La. Ann. 611 (1848); *Bird v. Black*, 5 La. Ann. 189 (1850).

17. La. Civil Code of 1870.

18. Cf. *Mather v. Knox*, 34 La. Ann. 410 (1882).

19. La. Act 370 of 1940.

20. With only two additional legal investments listed, the classes of securities in which the trustee may invest the trust funds are identical with those enumerated under Article 348. Louisiana Trust Estates Act, La. Act 81 of 1938, § 62 [Dart's Stats. (1939) § 9350.62].

building and loan or homestead corporation, or association when such shares are insured by the Federal Savings and Loan Insurance Corporation. The amount of the investment in the shares of any one homestead is limited to the amount that is so insured.

The list of permissible securities in Article 348 is all-inclusive so that the tutor may not invest the minor's funds in any other manner.²¹ This amendment extending the list of authorized securities applies also to fiduciaries other than tutors of minors.²²

Article 386. Judgment of Emancipation May Be Entered During Vacation

In cases of judicial emancipation, Article 386 authorizes the judge, after appropriate hearing, to enter a decree of emancipation relieving a minor of all disabilities and conferring upon him the full powers of majority.²³ The 1940 amendment provides specifically that the judgment may be rendered "either during term time or during vacation"²⁴ and eliminates any uncertainty as to the validity of such a decree entered during vacation time. The new amendment also provides that the decree may be entered in open court or in chambers.

Article 741. Holders of Mineral Interest Must Be Parties to Partitions by Licitation

An important change was effected by Act 336 of 1940, amending Article 741 of the Civil Code. As a result, the holdings of at least three supreme court cases are directly affected.

In the recent case of *Amerada Petroleum Corporation v. Reese*,²⁵ the court held that a lessee holding a mineral lease from

21. The burden of proof is on the tutor to show that an investment was made in compliance with law. *Succession of Buddig*, 108 La. 406, 32 So. 361 (1906).

If loss results from an investment in unauthorized securities, the tutor is under personal liability. Art. 347, La. Civil Code of 1870. *Glenn v. Elam*, 3 La. Ann. 611 (1848). An investment in unauthorized securities yielding more than five per cent interest will not entitle the tutor to keep the surplus; all profits actually earned by the investment become part of the minor's estate. *Carbello v. Carbello*, 171 La. 735, 132 So. 127 (1931).

22. Arts. 50 (curator of absentee), 415 (curator of interdict), La. Civil Code of 1870.

23. Cf. Arts. 366 (emancipation by notarial act), 379 (emancipation by marriage), La. Civil Code of 1870.

24. La. Act 308 of 1940 amends Article 386 so that it now reads: "The judge, either in open court or in chambers, either during term time or during vacation, after hearing the parties, shall render judgment in the premises. If there be a decree of emancipation, it shall declare that the minor is fully emancipated and relieved of all the disabilities which now attach to minors, and with full power to do and perform all acts as fully as if he had arrived at the age of twenty-one years."

25. 195 La. 359, 196 So. 558 (1940).

some co-owners in indivision without the consent of the others could not interfere with the absolute right of the co-owners to partition the property by licitation. Despite the contentions based on Act 205 of 1938,²⁶ such lessee was held not a necessary party to the proceedings.²⁷ The court was very emphatic in stating that the legislature enacted Act 205 of 1938 for the sole purpose of vitiating the decision in *Gulf Refining Company of Louisiana v. Glassell*,²⁸ and it did not intend to overrule the settled jurisprudence of the state to the effect that property which is leased by one co-owner in indivision without the consent of the others may judicially be partitioned by licitation, and the title pass free of the lease if the property is sold to a third person.

The court was undoubtedly correct in stating that a mineral lessee could not institute a partition proceeding;²⁹ and, in the light of the then existing law, the argument of plaintiff to the effect that he was deprived of a valuable property right without having been made a party to the proceedings was held without merit. In sustaining this latter proposition the court followed *Bickham v. Pitts*³⁰ wherein it was held unnecessary to join lessees and royalty owners in a suit to partition land by licitation where there had been no development, although they have been

26. Dart's Stats. (1939) §§ 4735.4-4735.5. A complete discussion of the act is found in Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 100-102.

27. Unless all of the co-owners in indivision of the property to be partitioned are made parties, the proceedings will be vitiated as to all. Art. 1412, La. Civil Code of 1870. *Guidry v. Guidry's Heirs*, 16 La. 157 (1840); *Kendrick's Heirs v. Kendrick*, 19 La. 36 (1841); *Willey v. Carter*, 4 La. Ann. 56 (1849); *Rightor v. De Lizardi*, 4 La. Ann. 260 (1849); *Boutté v. Executors of Boutté*, 30 La. Ann. 177 (1878); *Ware v. Vignes*, 35 La. Ann. 288 (1883); *Union National Bank v. Choppin*, 46 La. Ann. 629, 15 So. 304 (1894); *Gibbs v. Executor of Estate of Jackson*, 47 La. Ann. 767, 17 So. 291 (1895); *Smith v. Smith*, 131 La. 970, 60 So. 634 (1913); *Crayton v. Waters*, 146 La. 238, 83 So. 540 (1920); *Wheeler v. Mann*, 149 La. 866, 90 So. 225 (1921); *Latham v. Glasscock*, 160 La. 1089, 108 So. 100 (1926); *Stoma v. Smith*, 172 So. 202 (La. App. 1937).

28. 186 La. 190, 171 So. 846 (1936). Act 205 of 1938 was passed to change the rule of this case. The act elevated a lease from the classification of a personal right to that of a real right. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 100-102.

29. Article 1310 of the Civil Code prohibits a tenant from instituting a partition suit. Cf. *Daggett, Mineral Rights in Louisiana* (1939) 160: "This Act (205 of 1938) might be interpreted to permit a mineral lessee to bring an action for partition against his lessor and his lessor's co-owners, thus overruling *Gulf Refining Co. v. Hayne*. Such an interpretation would seem to be unfortunate, as it would inflict a great hardship on landowners. Since partition of the mineral lease has been allowed there would seem to be no necessity for the application of this statute to partition the lands upon which the lease bears. The theory of partition is between the owners of the 'thing held in common.'"

30. 185 La. 930, 171 So. 80 (1936).

held to be proper and necessary parties where the land was producing oil.³¹ While both cases are correctly decided under Article 741 as it appeared prior to the 1940 amendment, their rulings left the holders of mineral rights without an adequate remedy to protect their rights against an ex parte proceeding instituted for the purpose of depriving them of their mineral interest.

In *Spence v. Lucas*,³² the third case invalidated by the 1940 act, the lessees of an oil and gas lease sought a judgment recognizing their lease on an undivided half interest in the property. The lessees sought to be granted at least a preference over the owners in the proceeds of a sale for the value of their right of lease.³³ The court ordered a partition by licitation and, citing Article 1338 of the Civil Code,³⁴ refused to order a separate appraisal of the mineral rights or pay the holders thereof by preference from the proceeds of the sale.

Founded upon several articles appearing in the Proposed Mineral Code, which was rejected by the 1938 legislature, Act 336 of 1940 was passed for the purpose of changing the rules of the above cases.³⁵ Article 741 of the Civil Code, as it now reads,³⁶

31. *Liles v. Barnhart*, 152 La. 419, 93 So. 490 (1922).

32. 138 La. 763, 70 So. 796 (1916).

33. 138 La. at 768, 70 So. at 797.

34. Art. 1338, La. Civil Code of 1870: "In all judicial partitions where the property is divided in kind, the mortgages, liens and privileges existing against one of the coproprietors, shall, by the mere fact of the partition, attach to the shares allotted to him by the partition, and cease to attach to the shares allotted to his coproprietors. If any return of money be required to be made to any coproprietor whose share is mortgaged or otherwise incumbered, by reason of the share allotted to him being of less value than the other shares, then such sums of money shall remain in the hands of the parties bound to contribute them respectively, and shall be secured by mortgage on their respective shares, and be subject to the demand of those creditors of their coproprietors who possessed mortgage or privilege claims against him, and according to the rank and priority of the creditors. That in all judicial partitions, where a partition is made by licitation, the mortgages, liens and privileges existing against any one or more of the coproprietors, shall be by order of court transferred to the proceeds of sale in the hands of the notary, and the rights of all creditors shall be reserved on the said proceeds of sale to be urged by them, either before the notary or before the court, as may be necessary, provided the holders of such mortgages, liens and privileges be made parties to such judicial partition."

35. Arts. 149-156, La. Proposed Mineral Code of 1938.

36. Art. 741, La. Civil Code of 1870: "In any suit for partition by licitation all parties having an interest in either the land or mineral interest shall be made parties thereto. If it be determined that the property be disposed of by licitation, and the grantor of a mineral interest, or his successor who may be responsible for his warranty, becomes the owner of the whole, such mineral interest as he may have previously granted covering the whole of the property shall thereafter exist on the entire estate as if he had been always the sole owner.

"But before the property shall be offered for sale, there shall be an appraisalment thereof by a Notary and two appraisers appointed by the Court, in which appraisalment there shall be, first, an appraisalment of the entire

requires that all persons holding mineral interests in land be made parties to a partition by licitation. This should be interpreted as being for the sole purpose of protecting their property rights against *consent proceedings*, and not as giving them the right to institute suit for partition against their lessor and their lessor's co-owners.³⁷ This latter interpretation would do injustice to the theory of partition, which is a right to demand division of property held in common.³⁸

*Article 1863. Rescission on Account of Lesion
In Contracts of Exchange*

Article 1861³⁹ provides that lesion beyond moiety is available

estate as a whole, and second, a separate appraisalment of the rights of each party holding a record mineral interest in the property or in any portion thereof, or in any undivided interest therein. Such appraisalment shall be submitted to the Court for homologation, and the definitive judgment directing the sale of the property shall provide for an equitable division of the total price of the property as a whole to the interested parties in the proportion the interest of each bears to the whole.

"If by the licitation the estate be adjudicated to a third person, all mineral interests in the property shall become extinct, and the owners of such interests shall be relegated to the proceeds of the sale of the property for distribution or partition of the proceeds as hereinabove set out. But if the adjudication be to anyone who has granted in any way a mineral interest of any kind, such mineral interest shall ipso facto be perfected to the extent of the interest in the property acquired by such grantor.

"Provided, however, that the title to mineral interests in the property shall not be affected by any sale to effect a partition by licitation in any case where the title in and to the mineral interest may emanate from the whole of the co-owners of the land whether descending by single or separate title.

"The term 'mineral interests', as hereinabove used, is hereby defined and shall mean any form of interest in minerals, whether it be oil, gas and mineral leases, or an interest in the mineral rights, or a royalty interest, or any other form of interest whatsoever in which minerals or mineral rights in the property may be affected."

Prior to 1940, Article 741 read as follows:

"If in the suit for a partition it be determined that the estate be disposed of by licitation, and he who has granted the servitude becomes owner of the whole, the servitude then exists on the whole estate, as if he had always been the sole owner.

"But if by the licitation the estate be adjudicated to any other of the coproprietors, the servitude becomes extinct, and the person who granted it is bound to return the price he received for it."

37. Such an interpretation is in accord with Articles 149 and 150 of the Proposed Mineral Code, which was the source of the 1940 amendment to Article 741.

Art. 149, La. Proposed Mineral Code of 1938: "The action for partition does not lie between the owner (whether one or more) of a tract of land who has alienated the right to an undivided interest in the minerals and the owner of such right."

Art. 150, La. Proposed Mineral Code of 1938: "Neither does such action lie in any case in favor of or against one who is the owner by any species of title of a mere royalty in a given tract of land."

38. Arts. 1289 et seq., La. Civil Code of 1870.

39. La. Civil Code of 1870. Article 1861 first appeared as Article 1855, La. Civil Code of 1825. The corresponding article of the French Civil Code (Art. 1118)

in only two cases, sale and partition. Prior to 1940, Article 1863⁴⁰ stated, by way of emphasis, that rescission for lesion may be had in no other contracts, "not even in exchange, which bears some resemblance to the contract of sale." However, the Civil Code was self-contradictory in that it allowed rescission on account of lesion in the contract of exchange in certain cases provided by Articles 2664, 2665, and 2666.⁴¹ This anomaly was resolved by the

reads as follows: "*La lésion ne vicie les conventions que dans certains contrats ou à l'égard de certaines personnes, ainsi qu'il sera expliqué en la même section.*" (Translation) "Lesion only vitiates agreements in certain contracts or with respect to certain persons, as is explained in the same section." Under the French Civil Code, rescission may be had because of lesion in the following cases: Art. 1079 (divisions made by parents and other ascendants between their descendants); Art. 1305 (contracts made by minors); Art. 1313 (certain contracts made by persons of full age); Arts. 1674-1685 (sales).

40. La. Civil Code of 1870. There is no corresponding article in the French Civil Code. Article 1863 first appeared in Louisiana as Article 1857 of the Civil Code of 1825.

41. La. Civil Code of 1870. Under the French Civil Code there can be no rescission because of lesion in the contract of exchange. Art. 1706, French Civil Code provides: "*La rescision pour cause de lésion n'a pas lieu dans le contrat d'échange.*" (Translation) "Rescission on account of lesion does not take place in contracts of exchange."

Art. 2664, La. Civil Code of 1870: "The rescission of the contract on account of lesion is not allowed in contracts of exchange, except in the following cases."

Art. 2665, La. Civil Code of 1870: "The rescission on account of lesion beyond moiety takes place, when one party gives immovable property to the other in exchange for movable property; in that case, the person having given the immovable estate may obtain a rescission, if the movables which he has received, are not worth more than the one-half of the value of the real estate.

"But he who has given movable property in exchange for immovable estate, can not obtain rescission of the contract, even in case the things given by him were worth twice as much as the immovable estate."

Art. 2666, La. Civil Code of 1870: "The rescission on account of lesion beyond moiety, may take place on a contract of exchange, *if a balance has been paid in money or immovable property*, and if the balance paid exceeds by more than one-half the total value of the immovable property given in exchange by the person to whom the balance has been paid; in that case it is only the person who has paid such balance who may demand the rescission of the contract on account of lesion." (Italics supplied.)

It should be noted that, in the French version of the corresponding articles of the Civil Code of 1808 (p. 370, 7.7) and the Civil Code of 1825 (Art. 2636), the expression used is "in movable" instead of the word "immovable," as in the Code of 1870, and which is italicized above. The phrase "*s'il y a eu une soule en argent ou en effets mobiliers,*" was incorrectly translated and should read, "if a balance has been paid in money or in movable property." However, the correct translation appears in the English versions of the Codes both of 1808 and 1825. See *David v. Houren*, 6 Rob. 255 (La. 1843); *Phelps v. Reinach*, 38 La. Ann. 547 (1886); *Straus v. New Orleans*, 166 La. 1035, 118 So. 125 (1928); *Sample v. Whitaker*, 172 La. 722, 135 So. 38 (1931), to the effect that the French text is controlling in the event of a difference between the French and English versions. Cf. *Bradley v. Yancy*, 195 So. 110 (La. App. 1939) to the effect that the Revised Civil Code of 1870 must be interpreted like any other act of the legislature, without any controlling effect given to the French texts of the Codes of 1808 and 1825.

1940 amendment which provides: "Persons of full age are relieved for lesion in no other contracts than those above expressed, except as hereinafter provided regarding the contract of exchange."⁴²

Article 2632. Selection of Jury in Expropriation Suit

Article 2632 is concerned with the procedure to empanel a jury for the trial of an expropriation suit. Prior to the 1940 amendment⁴³ this article required members of the jury to appear on the tenth day after the date of the summons.⁴⁴ This delay was for the purpose of giving interested counsel an opportunity to investigate their eligibility.⁴⁵

The time available for such investigation has been reduced one-half by the 1940 amendment which provides that the jury drawn and summoned shall "attend on the day fixed in the order of court, provided that the summons shall be served on the freeholders not less than five calendar days, prior to the date fixed for attendance."⁴⁶ This shortening of the period may work a considerable hardship in certain instances.

It should also be noted that the original forty-eight freeholders selected by the clerk and sheriff has been increased to fifty; and that thirty-six are now drawn from this initial list, while formerly only twenty-four were selected.

Prior to the 1936 amendment⁴⁷ to Article 2632, no peremptory challenges were allowed. In *Orleans-Kenner Electric Railway Company v. Christina*,⁴⁸ it was contended that the Code of Practice, which allowed four peremptory challenges in civil cases, should prevail over Article 2632 of the Civil Code which allowed no peremptory challenges. The court said:

"We do not, however, find the quoted provisions of the re-

42. La. Act 280 of 1940.

43. La. Act 187 of 1940.

44. In *Orleans-Kenner Electric Ry. v. Skidmore*, 14 Orl. App. 241 (La. App. 1916), an undated summons which directed the jurors to appear in court on August thirteenth was served on August third. This service was held to be in compliance with Article 2632, the date accorded an undated summons being either the date of its issuance or the date of service thereof.

45. In *Louisiana Highway Comm. v. Treadaway*, 173 So. 209 (La. App. 1937), the defendant contended that a juror became ineligible by answering falsely questions concerning his ownership of real property. The court held, however, that the matter was one of which counsel should have availed himself before the commencement of the trial; since he did not investigate the qualifications of the jurors, his acceptance of them made it impossible later to raise any objections.

46. La. Act 187 of 1940.

47. La. Act 276 of 1936, § 1.

48. 139 La. 470, 71 So. 770 (1916).

spective Codes 'contrary or repugnant' to each other, since those of the Code of Practice relate to civil cases, in general, and those of the Civil Code to a particular class of cases which the law has thought proper to make, in the matter of challenges *as well as in other matters, an exception to the general rule.*"⁴⁹ (Italics supplied.)

Act 267 of 1936 was passed for the sole purpose of providing "the same number of peremptory challenges as is allowed by law in the trial of ordinary civil suits." This change is properly carried over into the 1940 amendment.

At the recent session of the legislature, an additional proviso was added to Article 2632: "If, for any reason, a jury cannot be empaneled from the thirty-six freeholders whose names are drawn as set forth, then, *from the remaining fourteen freeholders* the court shall have the right to summon as many additional freeholders as the court may deem necessary to complete the empanelling of the jury." Since the manner of selecting jurors under Article 2632 is an exception to the general rule, this special method of drawing additional jurors would likewise control instead of the general rules under Act 135 of 1898.⁵⁰

The only finding that the jury of freeholders in an expropriation suit can make is a determination of the value of the land with its improvements, and what damages, if any, the owner will sustain, in addition to the loss of the land, by the expropriation.⁵¹ Neither Article 2632, nor any other article in the Code, confers on the jury the function of determining the necessity for expropriation.⁵²

Article 3369. Extension of Effect of Inscription of Mortgages

Prior to 1940, Article 3369 provided that where the mortgages and privileges secure the payment of obligations which mature more than nine years from date, the registry preserved the evi-

49. 139 La. at 472, 71 So. at 771.

50. This act has been amended by La. Act 58 of 1904, § 1, and La. Act 99 of 1938, § 1 [Dart's Stats. (1939) § 1952]. *Orleans-Kenner Electric Co. v. Christina*, 139 La. 470, 71 So. 770 (1916) holds that the manner of selecting jurors under Article 2632 is an exception to the general rule, thus rendering Act 135 of 1898 inapplicable. See also *Bradley v. Shreveport Gas, Electric Light & Power Co.*, 139 La. 1029, 1034, 72 So. 725, 726 (1916).

51. See *Kansas City Ry. v. Meyer*, 166 La. 663, 117 So. 765 (1928).

52. This proposition becomes evident from *New Orleans Terminal Co. v. Teller*, 113 La. 733, 37 So. 624 (1904) wherein it was said that a jury created under Article 2632 is not an ordinary jury in a court of general jurisdiction, but is one in a court of special jurisdiction, capable of passing on only those matters which the law has prescribed shall be submitted to it.

dence of such mortgages and privileges for *one year* after the maturity of the last maturing note, bond or other obligation as fixed by the original instruments. Act 247 of 1940 extends this period to *six years* after the last maturing obligation. Also, it provides that the recordation of a supplemental written agreement between the parties extending the maturity of the last maturing obligation shall preserve the evidence of the original mortgage for six years from the last mentioned date.

Under the Code, the action on negotiable and non-negotiable bills and notes is prescribed by five years.⁵³ It consequently follows that since the primary obligation will not be enforceable at the expiration of the five year period, the accessory obligation securing their payment would likewise fall.⁵⁴ It is only when the notes are kept alive beyond the expiration of this five year prescriptive period that advantage can be taken of the full six years of the amended provision.⁵⁵

B. STATUTES RELATING TO CIVIL CODE SUBJECT MATTER

Adoption

Since 1924, adoption has been a fertile field for legislation. The successive enactments, however, have always left more or less confusion and uncertainty in the law of adoption and in the status of the artificial parent-child relationship.⁵⁶

Act 169 of the 1940 legislature has proved to be no exception. It provides that the adoption of persons over seventeen years of age shall be effected by notarial act signed by the adopter and the adopted (or the legal representative of the latter if he is a minor) and registered with the clerk of court in the parish where executed, or with the registrar of conveyances if the act was passed in the Parish of Orleans. Unless the repealing clause of the act is to be disregarded, no other formality is required.

In providing for adoption by notarial act, the 1940 statute returns to the procedure of Act 109 of 1924. The procedure provided by this earlier act had proved inadequate and it was super-

53. Art. 3540, La. Civil Code of 1870.

54. Art. 3285, La. Civil Code of 1870. *Aillot v. Aubert*, 20 La. Ann. 509 (1868).

55. A complete discussion of Article 3369, together with the 1938 amendment (La. Act 322 of 1938), was made in Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, 92.

56. The 1940 adoption act (La. Act 169 of 1940) culminates a series of measures beginning in 1865. See Comment (1938) 1 LOUISIANA LAW REVIEW 196, 197, n. 6.

seded by Act 46 of 1932⁵⁷ which divided adoptions into two classes: the adoption of persons under seventeen years of age,⁵⁸ and adoption of persons over the age of seventeen. For the adoption of persons over seventeen, the 1932 act required a petition to the district court and an investigation by the Board of Charities and Corrections. It is for this class of adoptions that the 1940 statute reintroduces the simple procedure of a notarial act. It is open to serious question whether such important changes in legal status and its incidents should be permitted without investigation and supervision by some public welfare agency.

Insofar as Article 214 of the Civil Code provided that any person may be adopted except those illegitimate children who cannot be legally acknowledged, it was repealed by the 1932 and 1938 acts, both of which authorize the adoption of any person "except one who has in him or her the blood of another race."⁵⁹ It was, no doubt, through an oversight that no such proviso is included in the 1940 act. If the repealing clause is not to be disregarded in this matter, the applicable provision of Article 214 is not revived, for the "repeal of a repealing law does not revive the first law."⁶⁰ Thus, while it is not possible to adopt a person under seventeen who has in him the blood of another race, the 1940 act permits any person over twenty to adopt any person over seventeen, regardless of impediments which would prevent legal acknowledgment.

In order to render the general law of adoption free from the present ambiguities and uncertainty, it is suggested (1) that there be enacted a procedure for adoption under the careful supervision of some reliable welfare agency similar to that provided by Act 46 of 1932 (over seventeen) and Act 428 of 1938 (under seventeen); (2) that Article 214 of the Civil Code be amended to provide that adoption shall confer upon the adopted the identical status of a child born in lawful wedlock, and that there be substituted the entire family of the adoptive for that

57. As amended by La. Act 44 of 1934 [Dart's Stats. (1939) §§ 4827-4839.2].

58. With regard to the adoption of children under seventeen, La. Act 46 of 1932 was superseded by La. Act 233 of 1936, which was repealed by La. Act 428 of 1938 [Dart's Stats. (1939) §§ 4839.26-4839.41]. The present status of the law requires that such an adoption be perfected entirely by judicial procedure in the juvenile court with investigation by the State Department of Public Welfare. For a discussion of the 1938 act see Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 96.

59. La. Act 46 of 1932, § 1, as amended by La. Act 44 of 1934, § 1 [Dart's Stats. (1939) § 4827]; La. Act 428 of 1938, § 1 [Dart's Stats. (1939) § 4839.26].

60. Art. 23, La. Civil Code of 1870.

of the adopted,⁶¹ rather than the mere substitution of parents as is the law at the present time;⁶² (3) that from a purely social viewpoint those persons (except one who has in him the blood of another race) who are barred from acknowledgment be not likewise barred from adoption.

Other statutes relating to adoption are Acts 234, 269, and 271 of 1940. Act 234 authorizes the Registrar of Vital Statistics to receive and record foreign adoption decrees which have been properly certified. Act 269 requires that every person adopted prior to the effective date of Act 428 of 1938 shall present to the Central Bureau of Vital Statistics his birth certificate, together with a certified copy of the final adoption decree or notarial act of adoption. This is for the purpose of causing a record to be made in the archives of the Central Bureau of the date of birth and the new name of the adopted, if such name has been changed, and the name and address of the adoptive parent or parents. With regard to the adoption of persons under seventeen years similar requirements are imposed by Act 428 of 1938,⁶³ whereas Act 169 of 1940 contains no provisions for making new birth records in the event the adopted is over seventeen years of age.⁶⁴

Act 271 confers on an unmarried mother, whether over or under twenty-one years of age, the right to surrender by notarial act the legal care, custody, and control of her illegitimate child to any institution or social agency approved by the State Department of Public Welfare. In the cases of unmarried mothers under twenty-one, the notarial act must make reference to an order of a court of competent jurisdiction authorizing her to surrender the child. In such event, she relinquishes all rights to the custody of the child; and the institution or social agency to which the child has been surrendered is given the right to place it for adoption and to act as its legal custodian in the adoption proceedings. The purpose of the statute is to make possible the adoption of a

61. Such a statute would not be unconstitutional. Article IV, Section 16 of the constitution provides that "no law shall be passed abolishing forced heirship." This section means only that forced heirship as an institution be not abolished and does not prevent the legislature from effecting a change in the status of a person. On this point see Comment (1938) 1 LOUISIANA LAW REVIEW 196, 202.

62. See Comment (1938) 1 LOUISIANA LAW REVIEW 196, 203.

63. La. Act 428 of 1938, § 10 [Dart's Stats. (1939) § 4839.35].

64. La. Act 46 of 1932, § 7 [Dart's Stats. (1939) § 4833], requires that the act of adoption, together with the order of approval, shall be filed and recorded in the office of the recorder of deeds in the parish where the judgment of approval was rendered. Since La. Act 169 of 1940 contains no similar provision, it may to this extent be interpreted as not superseding the 1932 act.

child from an institution without fear that the mother may later claim its custody on the ground that her previous surrender was invalid on account of her minority.

In connection with the foregoing legislation on adoption, it is also proper to note Act 370 of 1940 which creates a Juvenile Court Commission whose duty is to make a survey of juvenile delinquency, neglect and dependency throughout the state, with a view of protecting children and modernizing the juvenile court system. It is commissioned to prepare recommendations to the Governor, for subsequent enactment into law.

Amendment Relative to Ranking of Tax Privileges

Prior to 1940, the state, in all instances, had a privilege on the property of a tax debtor⁶⁵ to secure the payment of taxes due, or which might become due; this privilege was of the highest rank and enjoyed a preference over all others.⁶⁶ Property taxes on immovables do not constitute a personal obligation of the owner, but are charges only against the specific immovables.⁶⁷ Property taxes on movables, however, are not only secured by a first privilege upon all the movables of the taxpayer,⁶⁸ but also constitute a personal liability of the tax debtor.⁶⁹

Act 368 of 1940⁷⁰ creates a general privilege on both movable and immovable property of the tax debtor to secure the payment of the general occupational license tax.⁷¹ It has been held that

65. See the provisions of the tax statutes cited in note 71, *infra*.

66. It has been repeatedly held that this right to be paid by preference is the same as a first privilege on the property or its proceeds. *Cleveland Steel Co. v. Joe Kaufman Co.*, 155 La. 529, 99 So. 428 (1924); *Morelock v. Morgan & Bird Gravel Co.*, 174 La. 658, 141 So. 368 (1932).

67. See *Louisiana Oil Refining Co. v. Louisiana Tax Commission*, 167 La. 605, 606, 120 So. 23 (1929).

68. *Cleveland Steel Co. v. Joe Kaufman Co.*, 155 La. 529, 99 So. 428 (1924).

69. *Louisiana Oil Refining Co. v. Louisiana Tax Commission*, 167 La. 605, 120 So. 23 (1929).

70. La. Act 368 of 1940 amends and reenacts La. Act 15 of 1934 (3 E.S.) § 52, as amended by La. Act 429 of 1938, § 1 [Dart's Stats. (1939) § 8643].

71. La. Act 368 of 1940, § 1, provides that all the "property, assets and effects of such corporation shall be subject to seizure and sale for the payment of such unpaid franchise tax." In this respect it differs from the tax privileges on either movables or immovables.

Other statutes creating general privileges on all the property of the tax debtor to secure the payment of taxes are: Local Assessments Due Levee Boards, La. Act 65 of 1894, § 4 [Dart's Stats. (1939) § 6768] (on all property of the owner of lands); Severance Tax, La. Act 24 of 1935 (2 E.S.) §§ 1, 11 [Dart's Stats. (1939) §§ 8522, 8532] (on all property of the taxpayer and on all property from which minerals are severed); Income Tax, La. Act 21 of 1934, § 101, as last amended by La. Act 231 of 1938, § 1 [Dart's Stats. (1939) § 8587.101] (on all property of the taxpayer); Pipeline Franchise Tax, La. Act 15 of 1934 (3 E.S.) § 41, as amended by La. Act 333 of 1936, § 1 [Dart's Stats. (1939) § 8629.1] (on all property of the carrier); Corporation Franchise Tax,

where a tax privilege embraces all the property of the taxpayer, its collection should be so apportioned as to avoid prejudice to third persons claiming a special privilege only on certain property.⁷² The 1940 statute goes further. It subordinates the primary rank previously accorded the privilege of the state to secure its claims by providing that the tax shall take its rank as to all prior encumbrances as of the date of its filing, and that it shall take priority over all claims which shall be subsequently recorded, except

“(1) Vendor’s lien retained in any act of transfer of property to such corporation;”⁷³ and

“(2) Mechanics’ and materialmen’s liens growing out of construction in process at the time of the creation of the lien, privilege and mortgage herein authorized.”

In voluntarily subordinating the primary claim of the public fisc, there was inadvertently created a conflict between the 1940 act and those articles of the Civil Code dealing with privileges. The statute makes possible instances where the “vicious circle,” so often found in our law where three or more privileges are asserted on the same property, comes into operation, thereby leaving to the judiciary the final determination as to which should obtain preference.⁷⁴

Crop pledges. Act 309 of 1940 reduces the fee which the Recorder of Mortgages is entitled to charge for the recordation and filing of crop pledges to “not more than fifty cents for crop pledges for five hundred dollars and less, and not more than one dollar for crop pledges for more than five hundred dollars.”⁷⁵

La. Act 10 of 1935 (1 E. S.) § 8 [Dart’s Stats. (1939) § 8729] (on all property of the corporation); Electricity Excise Tax, La. Act 25 of 1935 (2 E.S.) § 6 [Dart’s Stats. (1939) § 8793] (on all property of producers of electricity).

72. *White Co. v. Hammond Stage Lines*, 180 La. 962, 158 So. 353 (1935).

73. Although at this point the statute only uses the word “corporation,” yet from a reading of the act as a whole it is clear that what is meant is “person, association of persons, firm or corporation.”

74. One example of a “vicious circle” created by the 1940 act is found in the case of movable property which is subject to a vendor’s privilege, a tax privilege, and a lessor’s privilege. The first named primes the second, which primes the third, and which in its turn primes the first. Art. 3263, La. Civil Code of 1870, and La. Act 368 of 1940.

75. La. Act 309 of 1940 amends and reenacts La. Act 114 of 1934, § 3 [Dart’s Stats. (1939) § 5063.3], which exacted the following charges for recording and filing crop pledges: “Crop pledges for five hundred dollars and less, fifty cents; for more than five hundred dollars and up to and including one thousand dollars, one dollar; for more than one thousand dollars and up to and including two thousand dollars, two dollars; for more than two thousand dollars, three dollars.”

Donation of life insurance policies. Act 292 of 1940 provides that the laws regulating the form of donations inter vivos shall not apply to donations of life insurance policies, nor to the naming of beneficiaries therein. It thus crystallizes the settled jurisprudence of this state to the effect that life insurance is not governed by the Code articles on donations.⁷⁶

In *Sizeler v. Sizeler*⁷⁷ it was held that the proceeds of life insurance policies form no part of the estate of the deceased, but inure to the beneficiary directly and by the sole terms of the policy itself. Naming a concubine as beneficiary is not a prohibited donation mortis causa within Article 1481.⁷⁸

In *Sherwood v. New York Life Insurance Company*⁷⁹ a man died leaving insurance policies payable to certain of his children, with a proviso that in the event of the death of any of the named beneficiaries the proceeds should be divided among the surviving brothers and sisters. While the payments were being made, one of the beneficiaries died. It was held that the children of the deceased beneficiary were not entitled to their parent's share under the policy because the benefit inured to the brothers and sisters designated in the policy. The court stated:

"It is the settled jurisprudence of this court that life insurance policies are neither donations inter vivos nor mortis causa, and that the provisions of the Civil Code relative to donations and collation will not be applied to such policies."⁸⁰

Although the courts have said that the rules of donations are not applicable to life insurance, they have never said that one could by insurance set at naught the rules of the Civil Code pertaining to forced heirship.⁸¹ While the language of Section 1 of the 1940 act is sufficiently strong to enable such a complete

76. *Sherwood v. New York Life Ins. Co.*, 166 La. 829, 118 So. 35 (1928); *Sizeler v. Sizeler*, 170 La. 128, 127 So. 388 (1930).

77. 170 La. 128, 127 So. 388 (1930).

78. La. Civil Code of 1870.

79. 166 La. 829, 118 So. 35 (1928).

80. 166 La. at 834, 118 So. at 37. The Louisiana Trust Estates Act, La. Act 81 of 1938, § 10 [Dart's Stats. (1939) § 9850.10], makes it possible to create a life insurance trust in this state. Prior to its passage, Article 1520 of the Civil Code prohibited the creation of fidei commissa even by life insurance, although a sort of modified trust was possible by virtue of the *Sherwood* case.

81. For a discussion of insurance as the only method used effectively to defeat the legitime of forced heirs, see Daggett, *General Principles of Succession on Death in Civil Law* (1937) 11 Tulane L. Rev. 399, 405; Nabors, *Civil Law Influences Upon the Law of Insurance in Louisiana* (1932) 6 Tulane L. Rev. 369, 384, 515. See also Comment (1938) 12 Tulane L. Rev. 262, 266.

evasion, Section 2 of the act states that "the adoption of this Act shall not be construed as effecting a change in the existing laws of this State. . . ." In view of the constitutional protection of forced heirship,⁸² Act 292 of 1940 cannot be interpreted as affording a possible means of evading the laws of forced heirship.

Inventory and Appraisement of Minor's Estate

Act 327 of 1940, repealing Act 220 of 1934,⁸³ provides that an inventory and appraisement may be dispensed with where the estate of a minor or interdict does not exceed five hundred dollars. To obtain the benefit of this exemption, the person applying for the tutorship or curatorship must annex to his application a sworn descriptive statement of the value of the property of the minor or interdict.

The 1934 act may have been intended to apply to all cases of interdicts, whether majors or minors, but Section 2 limited its scope to *minor* interdicts only. This is now remedied by the 1940 act, which covers all situations.

Mineral Legislation

The legislature at its regular 1940 session passed seven statutes relating to the mineral law of this state. Each covers a different phase of the subject and therefore requires separate treatment.

Conservation. Act 157 of 1940 was enacted for the recited purpose of conserving the oil and gas resources of the state. It prohibits the waste and depletion of those minerals and delegates the authority to enforce effectively the provisions of the act to the Commissioner of Conservation. The Commissioner is given authority to make, *after notice and a hearing*, "such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of the Act. . . ."⁸⁴ In order to effectuate its announced purpose the act contains a detailed enumeration of matters over which the Commissioner is to have jurisdiction. No rule, regulation or order can be made until after notice and a public hearing, except in case of an emergency, and in the latter event an order shall not remain in force longer than fifteen days. The Commissioner is vested

82. La. Const. of 1921, Art. IV, § 16: "No law shall be passed abolishing forced heirship. . . ."

83. This act is set out as Articles 316.1-316.3 in the supplement to Dart's Louisiana Civil Code.

84. La. Act 157 of 1940, § 3.

with broad authority, including the power to regulate the drilling, casing, plugging and operation of oil and gas wells and production therefrom, pooling of two or more separately owned tracts, and proration.

The statute prohibits the "sale, purchase or acquisition, or the transportation, refining, processing, or handling in any other way"⁸⁵ of illegal oil, gas or products thereof, and prescribes penalties for violations. Illegal oil and gas are defined as oil and gas "produced within the State of Louisiana from any well or wells in excess of the amount allowed by any rule, regulation or order of the Commissioner. . . ."⁸⁶ An illegal product is defined as any "product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any part thereof."⁸⁷

Section 21 repeals Act 134 of 1924⁸⁸ and Act 225 of 1936.⁸⁹ It repeals all other laws only insofar as they are in direct conflict with the provisions of the statute under consideration. All orders, rules, and regulations issued under the 1936 act are to continue in effect until repealed or superseded by new orders or regulations. This section also contains an express proviso to the effect that no crime committed or criminal prosecution instituted under previous laws shall be condoned, affected or defeated.⁹⁰

Monthly report to holders of mineral interest. Act 245 of 1940 requires "all operators taking or producing oil or gas from any lands in Louisiana, and who do not market same through a pipe line company"⁹¹ (Italics supplied) to furnish by registered mail a monthly report to each owner of royalty, oil or gas interest showing "the amount of all oil or gas produced from such lands during the previous calendar month,"⁹² the amount sold or disposed of and the amount on hand. Each owner must furnish his name and address to the operator affected by this statute.⁹³

85. *Id.* at § 18.

86. *Id.* at § 2(k), (l).

87. *Id.* at § 2(m).

88. Dart's Stats. (1939) § 4719.

89. Dart's Stats. (1939) §§ 9482.1-9482.16.

90. Section 22 of Act 157 of 1940 authorizes the transfer of powers of the Commissioner of Conservation to the new department created by the general reorganization of the executive department of the state government. Cf. La. Act 47 of 1940, tit. XXII.

91. La. Act 245 of 1940, § 1.

92. *Ibid.*

93. Section 2 of La. Act 245 of 1940 prescribes penalties for violations of the statute. Cf. La. Act 93 of 1936, §§ 15, 16 [Dart's Stats. (1939) §§ 4725.15, 4725.16], for provisions requiring daily reports of production under leases granted by the State Mineral Board.

State Mineral Board authorized to explore and develop mineral resources of state lands. Act 311 of 1940 authorizes the State Mineral Board "to explore for and to develop the mineral resources of any vacant and unappropriated lands belonging to the State of Louisiana, title to which is in the public, including rights of way, road beds, lake and river beds and other bottoms, land adjudicated to the State at tax sales and other lands and water bottoms whatsoever by whatever title acquired. . . ."⁹⁴ The board is authorized to conduct surveys and to undertake such exploration and development as it deems proper or necessary. The statute permits operations by the board acting directly through any appropriate agency or department thereof or by contract with any independent contractor upon such terms and condition as it thinks most advantageous to the state. The advisability of the state entering into the oil and gas business as an operator is questionable.⁹⁵

Use, lease, or sale of cemeteries for mineral development prohibited. Act 81 of 1940 was enacted for the ostensible purpose of preventing the recurrence of the regrettable events depicted in the suit of *Humphreys v. Bennett Oil Corporation*.⁹⁶ In that case the court awarded substantial damages to the plaintiffs for mental anguish resulting from the desecration by the defendant of the cemetery where their relatives were buried. Although the graves and tombs of plaintiffs' relatives were not physically disturbed, other graves in the cemetery were desecrated by defendant.

Sections 1 and 2 of the 1940 statute make it "unlawful for any person or persons, organization, copartnership, association, corporation, city, town, village, municipality or any other political subdivision of the State of Louisiana, who has platted, laid out and/or dedicated any tract of land for cemetery purposes and permitted human bodies to be interred therein, to use, lease or sell said tract of land or any part thereof for the purpose of

94. La. Act 311 of 1940, § 1. It is believed that this provision will be limited in its operation to those lands under the direct control and supervision of the state. Cf. *Placid Oil Co. v. Hebert*, 194 La. 788, 194 So. 893 (1940); *State v. Humble Oil & Refining Co.*, 197 So. 140 (La. 1940). Cf. also La. Act 162 of 1940 (supra p. 118) granting to all political subdivisions of the state the right to grant mineral leases on lands owned by them.

95. Section 5 of Act 311 of 1940 authorizes the transfer of powers of the State Mineral Board to the new department created by the general reorganization of the executive department of the state government. Cf. La. Act 47 of 1940, tit. XXII.

96. 197 So. 222 (La. 1940).

prospecting and/or drilling and/or to drill, mine or prospect for oil, gas, sulphur and/or other minerals thereon.⁹⁷ Section 3 makes it a misdemeanor for any person or persons and the officers and agents of the other parties or agencies enumerated in Sections 1 and 2 to violate any of the provisions of those sections, and prescribes the penalties for violation.⁹⁸ Section 4 provides that each day on which the violations are committed or carried on shall be deemed a separate offense punishable by the penalties prescribed.⁹⁹

Although the civil liability incurred by the invasion of the rights described above might not be a sufficient deterrent in all cases, it is believed that the criminal penalties imposed by the statute will forever prevent the recurrence of incidents such as gave rise to the *Humphreys* case.

Lease of state lands. Act 92 of 1940 amended the State Mineral Board Act¹⁰⁰ in certain details. The principal changes effected by the amendments were: (1) to authorize the State Mineral Board, prior to leasing state land, to secure additional information by geophysical and geological surveys; (2) to limit the maximum quantity of land that could be included in any one lease to five thousand acres; (3) to make the operation of the statute more flexible by allowing the Board receiving the bids to lease all or *any part* of the lands advertised and, in the event all bids were rejected, to immediately and publicly offer for competitive bidding all or any portions of the land advertised, the offering to be made under the provisions set forth in the statute.¹⁰¹

Lease of lands owned by state agencies or subdivisions and sixteenth section lands. Act 162 of 1940 grants full authority to the various levee districts, drainage districts, road districts, school boards, other boards, commissions, parishes, municipalities, state universities, state colleges, or penal or eleemosynary institutions of the State of Louisiana, or any subdivision of any of them, as well as any other subdivisions, agencies, units or institutions of the State of Louisiana to execute mineral leases covering any

97. La. Act 81 of 1940, § 1. Section 2 is substantially similar.

98. *Id.* at § 3.

99. *Id.* at § 4.

100. La. Act 93 of 1936, as amended by La. Act 80 of 1938 [Dart's Stats. (1939) §§ 4725.1-4725.21].

101. Sections 4 and 5 of La. Act 92 of 1940 contain provisions authorizing the transfer of the powers of the State Mineral Board and the Louisiana Highway Commission to the new departments created by the general reorganization of the executive department of the state department. Cf. La. Act 47 of 1940.

land owned by each, irrespective of the method by which the title was acquired. The same authority is granted to the school boards of the respective parishes to execute mineral leases covering sixteenth sections or indemnity lands granted by Congress to the state for public school purposes.¹⁰² The agency desiring to lease the property may by resolution direct the State Mineral Board to advertise for and proceed with the leasing of the land in the manner provided for the leasing of state lands for mineral purposes¹⁰³ or it may proceed to lease the same in accordance with the detailed procedure outlined in the statute. The procedure to be followed in either instance is for all practical purposes the same as that prescribed for the leasing of state lands by the State Mineral Board,¹⁰⁴ except in those instances where the agency grants the lease, it must be approved by the State Mineral Board and countersigned by the Board's duly authorized officer.¹⁰⁵

This statute applies to the various levee districts throughout the state, and to that extent supersedes the provision contained in Act 93 of 1936,¹⁰⁶ as amended, relative to the authority of the State Mineral Board to grant mineral leases on the lands granted by the state to the levee district.

Section 11 contains the general repealing clause and in addition repeals certain acts by number.¹⁰⁷

In the case of *Placid Oil Company v. Hebert*¹⁰⁸ it was held that Act 93 of 1936 did not expressly or by implication "authorize the State Mineral Board to lease the streets of a municipality

102. See Act of April 21, 1806, 2 Stat. 391, c. 39; Act of March 3, 1811, 2 Stat. 665, c. 46, § 10; 37 Stat. 90, 30 U.S.C.A. § 77 (1927). See also La. Const. of 1921, Art. XII, § 18.

103. La. Act 162 of 1940, § 3. Cf. La. Act 93 of 1936, as amended by La. Act 80 of 1938 and La. Act 92 of 1940 [Dart's Stats. (1939) §§ 4725.1-4725.21].

104. *Ibid.*

105. La. Act 162 of 1940, § 10.

106. La. Act 93 of 1936, § 4, as amended by La. Act 80 of 1938, § 2 [Dart's Stats. (1939) § 4725.4].

107. Section 11 repeals by number La. Act 160 of 1936 [Dart's Stats. (1939) § 4735.3], which authorizes any municipality, parish or school board to grant mineral leases upon any lands owned by them; La. Act 20 of 1922 [Dart's Stats. §§ 4726-4727], which authorizes parish school boards to execute mineral leases upon lands owned by such school board; La. Act 66 of 1928 [Dart's Stats. (1939) §§ 6867-6868], authorizing the boards of commissioners of the various levee districts to execute mineral leases owned or hereafter acquired by said levee districts; and those portions of Revised Statutes, Section 2962 as amended by La. Act 129 of 1908 and La. Act 54 of 1910 [Dart's Stats. (1939) § 7249] and Section 30 of La. Act 100 of 1922 [Dart's Stats. (1939) § 2550] to the extent that they authorize parish school boards to grant mineral leases on sixteenth section lands.

108. 194 La. 788, 194 So. 893 (1940).

for the production of oil, gas or other minerals." Mention was made of the fact that Act 160 of 1936¹⁰⁹ authorizes a municipality to grant mineral leases upon lands belonging to it, but an interpretation of the act was not necessary under the pleadings.

In the case of *State v. Humble Oil and Refining Company*¹¹⁰ the court held that Act 93 of 1936, as amended, authorizing the State Mineral Board to grant leases on "any lands belonging to the State or the title to which is in the public, including rights of way, road-beds, lake and river beds and other bottoms, lands adjudicated to the State at tax sale, and any other lands and water bottoms by whatever title acquired"¹¹¹ is a general law and did not divest the parish school boards of the authority granted them by a special statute to execute mineral leases on sixteenth section lands.

The obvious purpose of the act is to coordinate the laws relative to the leasing of the public lands which are not under the direct control of the state and to designate with certainty the authorities entitled to exercise that power.¹¹²

Mineral reservation under lands acquired by federal government made imprescriptible. Act 315 of 1940 provides that when the United States of America or any of its subdivisions or agencies acquires land by conventional deed or contract, condemnation or expropriation proceedings, which act or judgment contains a reservation of minerals or royalties or is made subject to a prior sale or reservation of minerals still in effect, the mineral rights so reserved or previously sold are imprescriptible.¹¹³

Mortgages to Trustees to Secure Notes or Bonds

Act 72 of 1914¹¹⁴ authorizes the execution of conventional mortgages to fiduciary trustees to secure the payment of two or

109. Dart's Stats. (1939) § 4735.3.

110. 197 So. 140 (La. 1940).

111. 197 So. at 143.

112. La. Act 162 of 1940, § 12, authorizes the transfer of powers of the State Mineral Board to the new department created by the general reorganization of the executive department of the state government.

113. Section 2 of Act 315 of 1940 is the general repealing clause and in addition repeals by number Act 68 and Act 151 of 1938. It will be noted that Act 68 of 1938 provides that mineral reservations under lands sold to or acquired by the State of Louisiana for spillway or floodway purposes are imprescriptible, and Act 151 of 1938 provides that prescription shall not run against mineral or royalty reservations contained in acts whereby the United States of America and the State of Louisiana or any of its subdivisions acquire real estate for use in any public work. The failure to include the acquisitions made by the State of Louisiana within the terms of the 1940 statute is worthy of note.

114. Dart's Stats. (1939) §§ 5003-5004.

more bonds, notes, or other obligations.¹¹⁵ The right to foreclose and to bring all actions connected with the mortgage is restricted to the trustee as the "irrevocably appointed special agent and representative" of the creditors. However, upon the trustee's failure to act, after having been requested so to do by a sufficient number of creditors, the bondholders or noteholders themselves may proceed independently to enforce their mortgage rights.¹¹⁶ Under the 1914 act, it was permissible for the mortgage to provide that the trustee shall not be obligated to foreclose unless so instructed by a certain proportion of the creditors—"not less than ten per cent. of the total outstanding indebtedness secured by such mortgage, and not more than fifty per cent. thereof"—who agree to indemnify the trustee for expenses and costs of suit. It is only in connection with this possibility that the 1940 amendment¹¹⁷ effects any change, omitting the specific statutory limits as to the number of creditors necessary to request the trustee to act, and leaving the parties a much wider latitude by requiring that this matter be fixed in the mortgage.¹¹⁸

Such a restrictive provision serves as a condition precedent to the creditor's right to take individual action and is inserted to avoid "unnecessary and burdensome costs and charges of independent suits by the individual bondholders."¹¹⁹ Such provisions have been held constitutional and are not to be viewed as depriving the creditors of all right of action or tending to oust the courts of their inherent jurisdiction, but rather as agreements

115. La. Act 72 of 1914, § 2 [Dart's Stats. (1939) § 5004], provides that the provisions of the Civil Code relative to substitutions, fidei commissa or other trust dispositions are not to affect conventional mortgages executed in conformity with the provisions of the act.

116. In *Rowe v. Louisiana Agricultural Corp.*, 155 La. 241, 99 So. 206 (1924), it was held that where a bondholder sought to enforce a mortgage running to a fiduciary trustee without first having requested the trustee to bring suit, the mortgagor was entitled to insist that foreclosure suit be brought by the trustee. Nor was the plaintiff allowed to enforce his rights *via ordinaria* rather than *via executiva*, the law not allowing one to do indirectly that which he is prohibited by his voluntary contract from doing directly. On the same point, and citing the *Rowe* case with approval, see *Shepherd v. Highland Baptist Church of Shreveport*, 155 So. 787 (La. App. 1934).

117. La. Act 291 of 1940.

118. "The provisions in different indentures vary in respect to the amount necessary to be held by the requesting holders, prerequisite to an individual bondholder's right to sue upon the trustee's failure to act, but the amount usually exceeds twenty-five per cent of the bonds outstanding." Note (1927) 27 Col. L. Rev. 579, 582.

119. *Rowe v. Louisiana Agricultural Corp.*, 155 La. 241, 245, 99 So. 206, 207 (1924).

which the mortgage creditors were at liberty to make and which are not illegal or contrary to public policy.¹²⁰

Payment of Taxes Preceding the Transfer of Property

There are two statutes requiring the payment of taxes before the execution of an act of sale transferring immovable property.¹²¹ Act 116 of 1938 is a special enactment applicable only in the Parish of Orleans¹²² and requires that payment of taxes be shown by a tax certificate annexed to the act of sale, except the payment of those taxes for the year in which the tax research certificate are applied for.¹²³ Act 110 of 1938 applies generally throughout the state,¹²⁴ and this was amended by Act 235 of 1940 so as to except the payment of those taxes for the year within which the transfer takes place. From a practical viewpoint this 1940 amendment is desirable because it makes the law uniform through the state.¹²⁵

Recordation of Writs Affecting Immovable Property

Prior to 1940 it was unnecessary (except in Orleans and Jefferson parishes) to record notice of the execution of any writ affecting immovable property in order to preserve the resulting lien and privilege.¹²⁶ Act 89 of 1940 requires the sheriffs of all

120. *Moore v. Tumwater Paper Mills Co.*, 181 Wash. 45, 42 P.(2d) 29 (1935) and cases cited therein.

121. La. Act 110 of 1938 [Dart's Stats. (1939) §§ 8449-8450] and La. Act 116 of 1938 [Dart's Stats. (1939) §§ 6247.12-6247.16]. For a discussion of these two acts, see Hebert and Lazarus, *Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 135.

122. Dart's Stats. (1939) §§ 6247.12-6247.16.

123. La. Act 116 of 1938, § 2 [Dart's Stats. (1939) § 6247.13] provides: "The tax collectors of all such municipal corporations (with a population in excess of three hundred thousand inhabitants) are hereby required, when making out tax research certificates to make a research and report the condition of the tax-rolls for ten years only, prior to the first of January of the year in which said tax research certificates are applied for. . . ."

In *Charles Wirth Realty & Inv. Co. v. Tropical Clothing & Mfg. Co.*, 160 So. 455 (La. App. 1935), which arose in Orleans Parish, it was held that a sheriff could not retain out of the proceeds of the sale of property an amount sufficient to cover the taxes for the year in which the sale took place. La. Act 116 of 1938, § 2, codified this ruling for cases where the taxes for the current year were not yet due at the time of the sheriff's sale; and it is submitted that the same rule should apply regardless of whether the taxes for the current year were due at the time of the conveyance of the property.

124. Dart's Stats. (1939) §§ 8449-8450. La. Act 110 of 1938 repealed La. Act 348 of 1936 which in turn repealed La. Act 170 of 1898, §§ 74, 75, the provisions of which were amended and reenacted by the 1938 act.

125. For a discussion of the confusion resulting from amending a statute applicable outside Orleans Parish while failing to amend the one pertaining to Orleans Parish, see *Third Dist. Land Co. v. Geary*, 185 La. 508, 169 So. 528 (1936).

126. *Williams v. Heffner*, 30 La. Ann. 1193 (1878); *First Nat. Bank v. Powell*, 130 La. 856, 58 So. 687 (1912).

parishes of the state, other than Orleans and Jefferson, to record in the office of the recorder of mortgages a notice of the execution of any writ affecting real property. The evident purpose of this statute is to make the recordation operate as notice to third parties of the existence of the privilege granted by the law to the seizing creditor. Sections 3625-3629 of the Revised Statutes¹²⁷ require a similar method of recordation in Orleans and Jefferson parishes. It is submitted that the 1940 act, like the statute which applies to Orleans and Jefferson, is mandatory and that hereafter an unrecorded writ will be inoperative as against third parties.¹²⁸ Hence, as regards the requirement of registry, the 1940 statute makes uniform the law throughout the state.¹²⁹ In the parishes of Orleans and Jefferson the sheriff is not required to take actual possession of property in order to make a valid seizure; a fictitious seizure is sufficient.¹³⁰ This is done by the sheriff making out three notices describing the property: the first is served upon the judgment debtor at the time of giving him notice of the seizure, the second is recorded in the mortgage records, and the third is recorded in his seizure book.¹³¹ In parishes other than Orleans and Jefferson, the taking of actual possession by the sheriff is required as essential to a valid seizure.¹³²

Whether the 1940 act will be interpreted so as to render a fictitious seizure sufficient and bring the practice in the rest of the state in unison with that of Orleans and Jefferson parishes seems doubtful in the light of the different terminology used in the two statutes.¹³³ It appears, however, that an actual possession

127. Dart's Stats. (1939) §§ 7499-7503.

128. *Whiteside v. Lafayette Fire Insurance Co.*, 143 La. 675, 79 So. 217 (1918). See also *First Nat. Bank v. Ft. Wayne Artificial Ice Co.*, 105 La. 133, 141, 29 So. 379, 383 (1900).

129. An illustration of the desirable effect of such a statute may be found in *First Nat. Bank v. Ft. Wayne Artificial Ice Co.*, 105 La. 133, 29 So. 379 (1900), wherein it was held that a seizure under a writ of attachment recorded in conformity with Sections 3625-3629 will take precedence over a sale recorded after the seizure.

130. La. Rev. Stats. of 1870, §§ 3625-3629 [Dart's Stats. (1939) §§ 7499-7503]. *Baltimore v. Parlange*, 25 La. Ann. 335 (1873); *Tharp v. Edmiston*, 179 La. 720, 155 So. 2 (1934).

131. *Ibid.*

132. Arts. 256, 257, 642, 656, 657, 658, 660, 661, 734, 736, La. Code of Practice of 1870. *Winn v. Elgee*, 6 Rob. 100 (La. 1843); *Major v. Hewes*, 135 La. 354, 65 So. 487 (1914); *Whiteside v. Lafayette Fire Ins. Co.*, 143 La. 675, 79 So. 217 (1918); *Harris v. First National Bank in Arcadia*, 185 La. 284, 169 So. 341 (1936); *Lewis v. Martin*, 169 So. 269 (La. App. 1936); *Turner v. Glass*, 192 La. 473, 188 So. 147 (1939).

133. La. Rev. Stats. of 1870, § 3629 [Dart's Stats. (1939) § 7503], which applies to Orleans and Jefferson parishes, provides: "The recording of the description and notice mentioned in the three thousand six hundred and

of the property is still essential to a valid seizure and that the only effect of the 1940 act should be that of notice to third parties of the existence of the privilege granted by the law to the seizing creditor.

*Sale of "Easements" or Flowage Rights
By Succession Representative*

Under previous law, an administrator, executor or curator could obtain an order for the sale of immovables only when it was necessary to sell the property in order to discharge the debts and legacies of the succession.¹³⁴ Act 168 of 1940 broadens their power in this matter by authorizing and empowering them to execute and sign a formal deed in favor of the United States of America, where the decedent had granted an option for the acquisition of "easements" or flowage rights in any of the spillways in the state and had died prior to its execution. However, the administrator, executor or curator must first obtain an order from the district court having jurisdiction of the estate of the deceased.¹³⁵

Well Drillers', Operators', and Materialmen's Privilege

Act 100 of 1940 creates a well drillers', operators', and materialmen's lien and privilege, and provides for its enforcement by the writ of provisional seizure without bond. It is more favorable to the lien holder than was its predecessor¹³⁶ by supplying an added security on all the oil produced from the wells and stored on the lease where the wells are located.¹³⁷ It should also be noted that the time for filing notice of the privilege, setting forth the nature and amount thereof, was extended from sixty to ninety days.

This lien and privilege is declared to be superior to all others, except a tax lien or a bona fide vendor's lien and privilege. How-

twenty-seventh section, shall be deemed and considered as the seizure and possession by the sheriff of the property therein described, and it shall be unnecessary to appoint a keeper thereof." La. Act 89 of 1940 contains no corresponding section. However, Article 657 of the Code of Practice provides: "If it be land or a plantation which he (sheriff) has taken, unless the same has been leased or rented, it shall remain sequestered in his custody until the sale. Consequently, he may appoint a keeper or an overseer to manage it, for whom he shall be responsible."

134. Arts. 1049, 1164-1167, 1668-1670, La. Civil Code of 1870. Under Article 1669, a testamentary executor may sell immovable property when he is authorized by the will to do so.

135. Cf. Art. 1165, La. Civil Code of 1870.

136. La. Act 100 of 1940 amends and reenacts La. Act 145 of 1934 [Dart's Stats. (1939) §§ 5101.1-5101.5].

137. La. Act 100 of 1940, § 1.

ever, the vendor's lien and privilege on immovable property must exist and be filed for record before the work is begun or materials furnished, and on movable property it must be filed within seven days after the property subject to the privilege is delivered. The effect of the filing prevents the movables from becoming immovable by nature or destination. These liens on immovables are to be recorded in the manner provided by existing law; and liens on movables are to be recorded in the manner provided for the recordation of chattel mortgages.

II. MATTERS PERTAINING TO THE CODE OF PRACTICE

A. AMENDMENTS TO SPECIFIC CODE ARTICLES

Article 165. Exceptions to rule of suit at domicile. Article 165 of the Code of Practice enumerates ten exceptions to the rule that a civil suit must be brought at the domicile of the defendant. The ninth of these exceptions provides

"In all cases where any person, firm, or *domestic or foreign* corporation shall commit trespass, or do anything for which an action for damage lies or where any *domestic or foreign* corporation shall fail to do anything for which an action for damage lies, such person, firm or corporation may be sued in the parish where such damage is done or trespass committed or at the *domicile* of such person, firm or corporation."¹ (Italics supplied.)

When this exception was originally adopted, it was applicable exclusively to suits against corporations, and even then only when the fault which was alleged to have caused the damage was one of commission.² In 1908, however, the article was so amended as to make the exception also applicable in suits against corporations when the damage was caused by an omission.³ In 1926, the article was again amended in order to make the excep-

1. Art. 165(9), La. Code of Practice of 1870, as amended by La. Act 282 of 1940.

2. Art. 165(9), La. Code of Practice of 1870: "In all cases where any corporation shall commit trespass, or do anything for which an action for damage lies, it shall be liable to be sued in the parish where such damage is done or trespass committed."

3. *Ibid.*, as amended by La. Act 108 of 1908: "In all cases where any corporation shall commit trespass or do or fail to do anything for which an action for damages lies it shall be liable to be sued in the parish where such damage is done or trespass committed."

tion applicable in cases of suits against individuals,⁴ but its effect was of only limited operation, because the exception remained applicable only when the injury complained of was the result of an act of commission, and not when the damage was occasioned by a failure to act.⁵

In the light of the above, it is important to determine what has been accomplished by the present amendment. At the outset, it must be noted that it is sought to make the act applicable to foreign as well as to domestic corporations. Insofar as domestic corporations are concerned, the law has always been to the effect that in actions for damages, the suit can be brought either at the place where the cause of action arose or at the domicile of the corporation.⁶

With regard to foreign corporations, however, the situation is somewhat different. A foreign corporation is amenable to suit to enforce personal liability only when it is doing business within the jurisdiction in such a manner and to such an extent as to warrant the inference that the corporation is present there, and in such cases, service of process may be made upon its resident agent appointed for that purpose, or upon any other proper person designated by law.⁷ As presently amended, therefore, Article 165 (9) of the Code of Practice could apply only to those foreign corporations which are amenable to suit in Louisiana, and its provisions could not be extended to *any* other foreign corporation. In the light of the foregoing, therefore, it is submitted that the amendment accomplishes nothing; prior to the amendment the article was broad enough to include such foreign corporations.⁸

4. Art. 165(9), La. Code of Practice of 1870, as amended by La. Act 130 of 1926: "In all cases where any person, firm or corporation shall commit trespass, or do anything for which an action for damage lies or where any corporation shall fail to do anything for which an action for damage lies, such person, firm or corporation may be sued in the parish where such damage is done or trespass committed or at the domicile of such person, firm or corporation."

5. *Tripani v. Meraux*, 184 La. 66, 165 So. 453 (1936); *Esthay v. McCain*, 185 So. 670 (La. App. 1939).

6. Art. 165(9), La. Code of Practice of 1870, as amended by La. Act 130 of 1926. *Cope v. Louisiana State Live Stock Sanitary Board*, 176 So. 657 (La. App. 1937); *O'Brien v. Delta Air Corp.*, 188 La. 911, 178 So. 489 (1938); *Pelt v. Louisiana State Live Stock Sanitary Board*, 178 So. 644 (La. App. 1938). See also *Wisemore v. First Nat. Life Ins. Co.*, 190 La. 1011, 183 So. 247 (1938).

7. *Connecticut Mutual Life Ins. Co. v. Spratley*, 172 U.S. 602, 19 S.Ct. 308, 43 L.Ed. 569 (1899); *St. Louis S. W. R.R. v. Alexander*, 227 U.S. 213, 33 S.Ct. 245, 57 L.Ed. 486 (1913); *Louisville & N. R.R. v. Chatters*, 279 U.S. 320, 49 S.Ct. 329, 73 L.Ed. 711 (1929).

8. The article provides that in all cases "where any . . . corporation shall commit trespass . . . such . . . corporation may be sued in the parish where

In order to appreciate fully the present amendment, however, an examination of prior legislation and jurisprudence becomes necessary. It has been generally recognized that suits against foreign corporations on causes of action resulting from trespass, offenses or quasi offenses were governed by the provisions of Act 179 of 1918.⁹ Nevertheless, that act contains two provisions which are apparently conflicting and irreconcilable. Section 1 (6d) provides that:

“Where the [foreign] corporation has established an office in a parish other than where its agent for service of process resides, the venue of the suit shall, at the option of the plaintiff be in either the parish where the cause of action arose or in the parish of the residence of the corporation’s agent for service of process, if the cause of action result from a trespass or an offense, or quasi offense. . . .”

On the other hand, Section 1 (6f) states that the venue of the suit “shall at the option of the plaintiff, be either at the domicile of the corporation, or where it has its main office, or in the parish where the cause of action arose. . . .”

Under Section 1 (6d) it is evident that when a foreign corporation has established an office in a parish other than the one in which its agent for service of process resides, a plaintiff may sue, either at the domicile of the agent, or at the place where the cause of action arose. The presence of subsection 6f, however, has caused much confusion which the courts have not as yet satisfactorily removed. The argument has been advanced that this latter subsection could in no manner apply to foreign corporations, since a foreign corporation can have no domicile other than that of the state of incorporation, and that it cannot be presumed, in the absence of proof, that a foreign corporation would maintain its principal office in Louisiana. The conclusion to be drawn is that Section 1 (6f) can reasonably be construed to apply only to domestic corporations, and that its proper place is under Section 1 (5) of Act 179 of 1918, which deals with domestic corporations, and from which there is conspicuously absent the provision relating to venue of suits in cases of torts committed by

such damage is done or trespass committed or at the domicile of such . . . corporation.” It appears that the words “any corporation” are broad enough to include any corporation, whether domestic or foreign if amenable to suit in Louisiana.

9. La. Act 179 of 1918, § 1(6d), (6f), as amended by La. Act 48 of 1932, § 1 [Dart’s Stats. (1939) § 1933, (6d), (6f)]. *Abadie v. National Petroleum Corp.*, 150 La. 1076, 91 So. 516 (1922).

them.¹⁰ The Louisiana Supreme Court, however, has held otherwise. In *Abadie v. National Petroleum Corporation*,¹¹ suit was brought in Orleans Parish, where the defendant maintained an office from which it supervised all the affairs of the corporation in the state. The cause of action arose in Jefferson Parish. The defendant's agent for service of process resided in Iberville Parish. Though it was earnestly contended that under the provisions of Section 1 (6d) the suit should have been brought either in Jefferson or Iberville, the court held that Section 1 (6f) controls, it being the latest expression of the legislative will, and that since suit had been brought in the parish where the defendant had its "main office in the state" the lower court had jurisdiction *rationae personae*.¹²

This decision is difficult to support in view of the well settled principle of statutory construction that in construing different provisions of a statute, the court should, insofar as practicable, reconcile them, and, if possible, give a sensible and intelligent effect to each.¹³ The two provisions in question are not entirely irreconcilable, and they may be construed together so as to give effect to both. In all cases where the foreign corporation maintains an office in a parish other than that in which its agent resides, suit may be brought either at the place where the cause of action arose, or at the domicile of the resident agent; but if the corporation also maintains a "main office in the state" suit may also be brought in the parish where the main office is located. The corporation can always be sued at its domicile in the state of incorporation, regardless of the provision of the statute. The result of this construction is to allow the plaintiff an option

10. O'Niell, J., dissenting in *Abadie v. National Petroleum Corp.*, 150 La. 1076, 1078, 91 So. 516, 517 (1922).

11. 150 La. 1076, 91 So. 516 (1922).

12. The court nevertheless admitted that a foreign corporation could not be regarded as having a domicile in this state.

13. *Reynolds v. Baldwin*, 1 La. Ann. 162 (1846); *Woodruff v. Producers' Oil Co.*, 142 La. 368, 76 So. 803 (1917); *Downs v. Drew*, 166 La. 439, 117 So. 454 (1928); *Houghton v. Hall*, 177 La. 237, 148 So. 37 (1933); *Jackson State Nat. Bank of Jackson v. Merchants' Bank & Trust Co. of Jackson*, 177 La. 975, 149 So. 539 (1933); *Shreveport Armature & Electric Works v. Harwell*, 172 So. 463 (La. App. 1937); *Post Office Employees' Credit Union v. Morris*, 192 La. 891, 189 So. 566 (1939).

The rule announced in the *Abadie* case appears to have been followed in *Nelson v. Continental Asphalt & Petroleum Co.*, 11 La. App. 450, 123 So. 474 (1929). But in *Armes v. Williams Bros.*, 17 La. App. 555, 136 So. 160 (1931), suit was brought in the parish of the agent's domicile and the court upheld the jurisdiction of the court, apparently giving full force and effect to Section 1 (6d) of the statute. See also *Brown v. Texas & P. Ry.*, 18 F. (2d) 677 (W.D. La. 1927); *Boykin v. Hope Production Co.*, 58 F. (2d) 1041 (W.D. La. 1931).

of bringing suit at either of four places: (1) the domicile of the corporation in the state of incorporation; (2) the place where the cause of action arose; (3) the residence of the agent, if he resides in any parish other than that wherein an office is maintained; and, (4) the parish where the corporation has its main office in the state, if it has such an office.

In view of the foregoing, it is difficult to see that the amendment under discussion has accomplished anything. It provides that a foreign corporation may be sued either at its domicile (which can mean nothing more than its state of incorporation)¹⁴ or at the place where the cause of action arose.

It may be said that Act 282 of 1940 repeals the provisions of Act 179 of 1918; but since it contains no repealing clause, the repeal can be only of all those laws that are inconsistent or in conflict with its provisions.¹⁵ It is submitted, however, that the two acts are not in conflict: both provide for suits to be brought in the parish where the cause of action arose or at the domicile of the corporation, and although the latter act stops there, it cannot be implied that other laws on the same subject matter which are not in conflict are impliedly repealed. On the contrary, all laws on the same subject matter are to be construed together and effect given to both wherever possible.¹⁶

Act 282 of 1940, therefore, has accomplished nothing, except, perhaps, to create doubt and more confusion on this subject. It is urged that adequate legislation be enacted to do away with the present situation which has been aggravated by the unfortunate adoption of this act.

Article 259. Release of attached property. Prior to its amendment in 1940,¹⁷ Article 259 of the Code of Practice provided that the defendant could obtain the release of property that had been attached by giving a bond for one and one-half times the value of the property upon condition that he would satisfy any judgment rendered against him in the suit, to the value of the property attached.¹⁸

14. *Abadie v. National Petroleum Corp.*, 150 La. 1076, 91 So. 516 (1922).

15. *Bank of Lecompte v. Lecompte Cotton Oil Co.*, 125 La. 844, 51 So. 1010 (1910); *New Orleans v. New Orleans Jockey Club*, 129 La. 64, 55 So. 711 (1911); *State v. Grace*, 173 La. 215, 136 So. 569 (1931); *State v. Standard Oil Co. of Louisiana*, 188 La. 978, 178 So. 601 (1938); *Stoker v. Police Jury of Sabine Parish*, 190 So. 192 (La. App. 1939).

16. Art. 17, La. Civil Code of 1870. In *re De Armas*, 10 Mart. (O.S.) 158 (La. 1821); *State v. Coco*, 152 La. 241, 92 So. 883 (1922); *Shreveport v. Urban Land Co.*, 177 La. 357, 148 So. 256 (1933).

17. La. Act 281 of 1940.

18. Art. 259, La. Code of Practice of 1870.

As presently amended, the article provides that property attached may be released by the defendant upon his giving bond "equal to one and one-fourth ($1\frac{1}{4}$) the value of the property attached, or exceeding by one-fourth ($\frac{1}{4}$) the value of the claim, with the surety of a good and solvent person . . . that he will satisfy such judgment, to the value of the property attached, as may be rendered against him in the pending suit."¹⁹

It is evident that the purpose of the amendment is to allow a defendant greater liberty and opportunity for bonding property attached, especially in cases where the claim is small and the value of the property great, and at the same time to afford sufficient protection to the plaintiff. As the law stood prior to this act, if a defendant were sued for a claim of one hundred dollars and the property attached were valued at one thousand dollars, he could not secure the release of the property unless he gave bond of fifteen hundred dollars. Under the present law, he may give bond for only \$125 (one-fourth over and above the value of the claim). In such a case the judgment could not be in excess of the amount claimed and the bond would be sufficient to protect the plaintiff.

Article 593. Time allowed for taking devolutive appeal changed. Article 593 of the Code of Practice provides the periods of time within which devolutive appeals shall be brought. Insofar as nonresidents are concerned, the prescriptive period prior to the present amendment was two years, computed from the day on which the final judgment was rendered.²⁰

As amended by Act 130 of 1940, the article now provides that as against nonresidents who have not made or caused to have been made a personal appearance in the case, the prescriptive period shall be two years from the day the final judgment is rendered; but that when the nonresident appears either personally or through counsel employed by him, the time granted shall be only one year.²¹ With regard to those judgments rendered less than one year prior to the effective date of this act, nonresidents who have made an appearance either personally or through

19. *Ibid.*, as amended by La. Act 281 of 1940.

20. Art. 593, La. Code of Practice of 1870; *Kraeutler v. The Bank of the United States*, 12 Rob. 456 (La. 1846); *Scott v. Rusk*, 2 La. Ann. 266 (1847); *S. Blum & Co. v. Wyly*, 111 La. 1092, 36 So. 202 (1904); *Bank of Webster v. McDonald*, 137 La. 574, 68 So. 959 (1915). Such was the rule even where the nonresident had made a personal appearance in the case. *S. Blum & Co. v. Wyly*, *supra*.

21. Art. 593, La. Code of Practice of 1870, as amended by La. Act 130 of 1940, § 1.

counsel employed by them, and whose right to appeal was in existence on the date the act became effective, the prescriptive period is fixed at six months, to be computed from the effective date of the act.²²

Thus, in those cases where nonresidents have appeared in the suit either personally or through counsel appointed by them, the evident intention of the legislature is to limit the time within which they may appeal and to allow them the same time now given to residents. From the very language of the statute, nonresidents who are sued upon substituted service through the appointment of a curator ad hoc and who have not therefore made a personal appearance, still have two years within which to lodge an appeal.

The act also provides that in cases involving questions concerning the validity of any bonds or certificates of indebtedness of any public board or political subdivision or of any taxes or assessments necessary to pay the same, the prescriptive period for an appeal shall be thirty days from the date on which the judgment was rendered. It is not unlikely that the validity of this provision under the Louisiana constitution may be questioned. It will be noted that this is a new provision, not formerly in the article of the Code, and that the title of the amendatory act does not in terms indicate that this addition is to be made.²³ However, there is a well settled principle that the title of an act which states as its object the amendment and reenactment of a particular section of a statute or a particular article of a code, sufficiently meets the constitutional requirement²⁴ without stating the nature of the amendment, if the amendment is germane to the subject covered in the original section or article.²⁵ As to whether or not the subject covered by the paragraph in question is germane to the

22. *Id.* at § 2.

23. The title of La. Act 130 of 1940 reads: "An Act To amend and reenact Article 593 of the Revised Code of Practice; to provide the period within which a non-resident who has caused a personal appearance to be made for him may appeal; and to repeal all laws in conflict herewith."

24. La. Const. of 1921, Art. III, § 16: "Every law enacted by the Legislature shall embrace but one object, and shall have a title indicative of such object." La. Const. of 1921, Art. III, § 17: "No law shall be revived or amended by reference to its title, but in such cases the act revived, or section as amended, shall be re-enacted and published at length."

25. *State v. Garrett*, 29 La. Ann. 637 (1877); *Williams v. Western Star Lodge*, 38 La. Ann. 620 (1886); *State v. Brown*, 41 La. Ann. 771, 6 So. 638 (1889); *State v. Read*, 49 La. Ann. 1535, 22 So. 761 (1897); *State v. American Sugar Refining Co.*, 106 La. 553, 31 So. 181 (1901); *State v. Williamson*, 133 La. 1052, 63 So. 515 (1913); *State v. Louisiana Oil Refining Corp.*, 181 La. 659, 160 So. 290 (1935).

subject matter already covered in the original article of the Code of Practice is a question upon which no opinion can be readily afforded within the limits of the present discussion.²⁶

Article 986. Suits on unliquidated claims against executor. As originally adopted, Article 986 of the Code of Practice provided that in the enforcement of money claims against successions, the plaintiff could bring his action "in the ordinary manner before the court of probate where the succession was opened, or before the district court, according to the amount involved."²⁷ (Italics supplied.)

The original reason for the provision relating to the choice of courts in which the action must be brought is evident. The Constitution of 1868 established the parish courts wherein all successions must be opened or settled.²⁸ It was also provided therein that all suits in which a succession was either plaintiff or defendant should be brought in either the parish or district courts, according to the amount involved.²⁹

The jurisdiction of parish courts was exclusive and original in cases involving more than one hundred and less than five hundred dollars. District courts had jurisdiction of all matters involving five hundred dollars or more; so that a suit to enforce a money claim against a succession had to be brought in the parish court where the succession was opened, if the claim was less than five hundred dollars, and in the district court, if the claim was for more than that amount.³⁰

With the abolition of parish courts in 1879³¹ and the establishment of district courts with "unlimited original jurisdiction in all . . . probate and succession matters and when a succession is a party defendant,"³² the pertinent language of Article 986 of

26. Cf. La. Act 140 of 1932, § 67, as amended by La. Act 44 of 1934 (2 E.S.) § 3 [Dart's Stats. (1939) § 744.35] (providing for the time of taking appeals from orders appointing bank liquidators); La. Act 24 of 1930, § 1 [Dart's Stats. (1939) § 2210] (fixing the time within which appeals are to be taken from judgments rendered in divorce or separation cases); La. Act 46 of 1932, § 12 [Dart's Stats. (1939) § 4838] (providing for the time for taking appeals in adoption cases); La. Act 26 of 1926, § 1 [Dart's Stats. (1939) § 5983] (regulating the time for taking appeals for the purpose of contesting decisions of sewerage districts); La. Act 135 of 1880, § 6 [Dart's Stats. (1939) § 7667] (prescribing the time for taking appeals in suits to remove local officials).

27. Art. 986, La. Code of Practice of 1870.

28. La. Const. (1868) Arts. 73, 87.

29. *Id.* at Art. 87.

30. *Ibid.*

31. La. Const. (1879) Art. 80. Cf. La. Const. of 1921, Art. VII, § 1.

32. La. Const. (1879) Art. 109. Cf. La. Const. of 1921, Art. VII, § 35.

the Code of Practice relating to the jurisdiction of courts before which suits to enforce money claims against successions were to be brought has become obsolete, since all such suits must now be brought in the district courts.³³

The 1940 amendment³⁴ strikes out the outmoded language, and in addition provides that such actions may be brought either in the ordinary manner or by way of opposition to the account filed in the succession proceedings by the curator or administrator.

Article 1029. Homologation of partition by notary. Because all judicial partitions are made by a notary appointed for that purpose by the judge before whom the action is brought,³⁵ it is necessary that the partition as made by the notary be homologated by the court.

Since 1932, when Article 1029 of the Code of Practice was amended, the party seeking the homologation has been required to file a copy of the proces verbal of the partition proceedings with the clerk of the court having jurisdiction. Notice of the filing of such proces verbal must be afforded by publishing the same in the newspapers three times in ten days. The notice must warn all interested parties to make opposition to the proces verbal within ten days from the first publication of such notice. If there is no opposition, he may petition and obtain the homologation of the partition by simply showing that the publication had been made according to law and that no opposition had been filed within the time prescribed.³⁶

Article 1029 of the Code of Practice, as originally adopted, provided a more adequate and less complicated method for the homologation of partition proceedings: The party seeking the homologation was required only to file in court a copy of the proces verbal and rule the co-owners into court to show cause, within ten days from the service of the order, why the partition

33. La. Const. of 1921, Art. VII, § 35.

34. La. Act 233 of 1940: "If the claim be not liquidated, or if the curator or testamentary executor or administrator has any objection to it, and consequently refuses to approve it, the bearer of the evidence of such claim, whatever may be its amount, may bring his action against the curator or testamentary executor or administrator in the ordinary manner, or by way of opposition to the account filed in the said succession proceedings by the curator or administrator."

35. Art. 1027, La. Code of Practice of 1870.

36. Art. 1029, La. Code of Practice of 1870, as amended by La. Act 208 of 1932, § 1.

should not be homologated.³⁷ It is difficult to see in what respect the amendment of 1932 offered any additional advantage. Not only did it substitute a most undesirable method of public notice in place of personal citation on the rule to show cause, but it also made the method more cumbersome and expensive.

Fortunately, however, the legislature by adopting Act 369 of 1940 has restored the article of the Code of Practice to its original form.

B. STATUTES RELATING TO CODE OF PRACTICE SUBJECT MATTER

Cross-examination of adversary. Legislation authorizing litigants to examine their opponents as under cross examination was first enacted in 1908. The act then simply provided that in such cases the parties availing themselves of the provisions of the statute were not to "be held as vouching to the court for the credibility of the opponents" nor as estopped from thereafter impeaching their testimony.³⁸

It must be noted that the act did not make provision as to who is the proper person to be examined in cases where the opponent is a corporation or other legal entity. Since a corporation can only act through its officers, it may have been logical to conclude that the officers of such corporation or other body were subject to cross-examination under the act. In such cases, the testimony thus elicited would be binding on the corporate body. This question, however, was never adjudicated by the appellate courts, although in one instance at least, cross-examination of the president of a corporation was permitted without question.³⁹

It was perhaps this confusion which prompted the legislature to pass Act 115 of 1934.⁴⁰ The new act embraced verbatim the provisions of the act of 1908, and in addition it provided that "where any of the parties . . . is a corporation . . . or other legal entity, other than an individual, the parties examining shall be entitled to examine . . . the particular officer or officers or other representatives . . . having . . . knowledge, charge or supervision

37. Art. 1029, La. Code of Practice of 1870: "When the partition is completed by the notary, any person interested may deposit a copy of the proceedings on it, in the office of the court which directed it, and may move that his co-heirs shall be called to state, within ten days after service of the order on them for that purpose, any reasons that they may have why the partition shall not be homologated."

38. La. Act 126 of 1908, § 1, superseded by La. Act 115 of 1934, § 1 [Dart's Stats. (1939) § 1995].

39. *Interstate Rice Milling Co. v. Hibernia Bank & Trust Co.*, 176 La. 308, 145 So. 548 (1933).

40. La. Act 115 of 1934 [Dart's Stats. (1939) §§ 1995-1995.2].

. . . of the matter in question," irrespective of whether or not the person was at the time still connected with the corporation.⁴¹

However, it should be noted that, by the very language of the act, the testimony thus elicited from these officers or representatives will be binding on the corporation only insofar as it is connected with the particular matter of which they had knowledge, charge or supervision. Act 310 of 1940 has so amended this section of the 1934 statute as to allow the parties to cross-examine their opponent's agent or representative when the opponent is an individual. The evident purpose of this is to allow the parties an opportunity to discover the true state of affairs in matters whereof the agent, and not the individual, has knowledge, charge or supervision. As the act stood prior to 1940, if a person's agent had negligently injured a plaintiff, the latter could not call the agent for the purpose of cross-examining him under the act as to the matters pertaining to the accident. The recent amendment has remedied this situation, with the result that the testimony which might thus be elicited from the agent will be binding upon the principal insofar as the particular transaction in question is concerned.

In this connection it is important to consider the well settled principle that the testimony of a defendant, elicited under the provisions of the statute, is not binding upon and is not to be considered as against a codefendant.⁴² To what extent is this rule changed by the adoption of the amendment in question? It is well settled that when an agent and a principal are co-defendants, the testimony of one cannot be used as evidence against the other.⁴³ In *Parks v. Hall*,⁴⁴ a case involving an automobile accident, the question presented was whether or not at the time of the accident, the agent (Hall) had reentered and resumed his services as the agent of his codefendant, after having been engaged on a mission of his own. In order to show that he had so reentered the employment of his principal, the agent was called for cross-examination, under the act, and questioned as to what he was doing, and where he was going at the time of the accident. The court of appeal ruled that the testimony so obtained

41. *Id.* at § 2 [Dart's Stats. (1939) § 1995.1].

42. *Edwards Bros. v. Berner*, 154 La. 791, 98 So. 247 (1923); *Parks v. Hall*, 179 So. 868 (La. App. 1937); *Schwartz Supply Co. v. Breen*, 184 So. 228 (La. App. 1938).

43. *Parks v. Hall*, 179 So. 868 (La. App. 1937).

44. 179 So. 868 (La. App. 1937). The decision in this case was annulled and causes remanded by the supreme court, 189 La. 849, 181 So. 191 (1938), but on a different point.

from the agent, insofar as the other defendant was concerned, should have been excluded upon the timely objection by counsel. In other words, the court held that the testimony of the agent was not competent to prove his destination at the time.

Does the act of 1940 change the above conclusion? Had the agent in the *Hall* case not been a party defendant, he would certainly have been regarded as an agent having knowledge, charge and supervision of the "matter in question." Does it not follow, then, that his testimony as to where he was going would be binding on the principal? Would the principal be allowed to prove that the agent was going South when the agent had already testified that he was going North? It appears that the effect of the amendment is to make the testimony of an agent binding on the principal insofar as the particular matter in question is concerned, and a principal will be bound by the testimony of his agent relative to the particular transaction in which he was employed.

Would the rule be different in cases wherein both the principal and the agent are made parties to the suit? It is submitted that the rule of the case of *Parks v. Hall* is still in force. As already stated, the purpose of the amendment was to allow the parties a better opportunity to elicit facts pertinent to the case, by permitting the cross-examination of witnesses (other than opponents) who may have knowledge of those facts, without the necessity of vouching for their credibility. The amendment was not designed to overrule the settled jurisprudence to the effect that the testimony of one of the parties on the same side, cannot bind the other.

Discovery procedure. Act 304 of 1940 creates a new and far reaching discovery procedure⁴⁵ for the benefit of the state and its political subdivisions. It enables them to ascertain prior to trial what action, if any, may be available to them, and what defenses may be interposed. The procedure afforded may be brought into play for any claim in excess of five hundred dollars (exclusive of interest and costs) arising out of contracts, transactions, and other acts in connection therewith.⁴⁶ The act was evidently designed to facilitate the prosecution of suits in the state scandal cases by permitting the Attorney General to de-

45. For an excellent discussion of the present discovery statutes in Louisiana, see Comment (1940) 2 LOUISIANA LAW REVIEW 525, 536 et seq.

46. Some of the provisions of the act are similar to the Illinois Discovery Statute, Rule 17 (Dec. 1933) of the Supreme Court of Illinois [Ill. Ann. Stat. (Smith-Hurd, 1936) c. 110, § 259.17].

termine even prior to the filing of suit, whether or not the state's claim will meet with an insuperable defense.

The act provides that whenever the state, or any of its political subdivisions, including public boards and commissions, believes that it probably has an action such as described above against a person or corporation, it may file a petition to this effect praying that such person or corporation be cited to appear to testify as to matters pertaining to the contract or transaction or other acts from which the probable right of action will arise.

The petition must set forth the name and address of the defendant in the action for discovery, and it must state that the petitioner probably has a right of action against the defendant for a sum or property amounting to more than five hundred dollars. It must also contain a description of the contract or transaction upon which the right of action is probably founded. The petition must also contain averments to the effect that the plaintiff has not sufficient information to enable it to ascertain whether or not it has a right of action against the defendant for the recovery of the relief to which it is probably entitled; that the defendant has such information which can be obtained only by the examination of the defendant and other persons and from the inspection of documents or other papers in their possession. Finally, it must be alleged that the defendant has refused to disclose such information upon written demand by the plaintiff, or has so evasively disclosed the facts that the plaintiff has not been sufficiently informed.

If the petition conforms substantially to the provisions of the act, the court must issue an order authorizing the plaintiff to proceed to the examination of the defendant and other witnesses on a date set forth for the purpose, and after the defendant has been duly cited. The plaintiff is entitled to examine the defendant, if an individual, or any officer or officers, if a corporation or other legal entity. He may also examine any other person or persons not defendants residing in the parish wherein the action for discovery is brought. Such examination is conducted orally as under cross-examination.⁴⁷ The defendant, however, is not permitted to question any of the witnesses.

There are provisions in the act with respect to witnesses who reside outside the parish where the examination is conducted, or who, though residing in the parish, are physically unable to at-

47. Cf. Rule 17 (Dec. 1933) of the Supreme Court of Illinois [Ill. Ann. Stat. (Smith-Hurd, 1936) c. 110, § 259.17].

tend. These persons may be examined by the plaintiff either orally under commissions or in response to written interrogatories. In such cases, the defendant may object to any questions submitted, or to the introduction of any documents; but he can not propound interrogatories nor question any of the witnesses. Since it is provided that "the provisions of law with respect to the taking of testimony under commissions in other actions shall govern the taking of testimony in actions for discovery and investigation" unless otherwise provided, it is evident that the state may examine such nonresident witnesses as under cross-examination under the doctrine of *Soule v. West*.⁴⁸

In addition to the power granted with respect to the testimony of witnesses, the state is also allowed to require the disclosure of a list of documents or other papers relating to the matter with respect to which the action for discovery is pending. The list should contain two schedules: one which shows all those documents the defendant is willing to produce and the names and addresses of the persons in possession of them, and another which lists those papers the defendant refuses to produce, and his reasons therefor, together with the names and addresses of the parties in possession thereof. The plaintiff may require that any documents or papers described in this latter list be copied and photographed. No documents not so produced can be admitted in evidence at the instance of the defendant "in any other action between the plaintiff and the defendant."⁴⁹

The state may also apply to the court for an order for a *subpoena duces tecum* directed against the defendant or any other person, requiring the production of documents or other records or papers which are alleged to relate to the matter with respect to which the action for discovery is pending. If, however, it is inconvenient to bring such records into court, the party subpoenaed may be ordered either (1) to produce certified copies thereof, or (2) to allow the inspection of the originals to be copied and photographed by the plaintiff. The penalty for non-compliance with the subpoena is the exclusion of such documents from evidence on the behalf of the defendant "in any action between the plaintiff and him."

Another important provision is that the plaintiff may require the defendant to admit or deny the genuineness of any document

48. 180 La. 1092, 158 So. 567 (1935).

49. Cf. Rule 17 (Dec. 1933) of the Supreme Court of Illinois [Ill. Ann. Stat. (Smith-Hurd, 1936) c. 110, § 259.17].

which is produced in connection with the testimony of any witness,⁵⁰ and if the defendant admits that a document is genuine, he cannot thereafter deny its authenticity in "any other action between the plaintiff and him."

Both plaintiff and defendant are relieved from the payment of costs. The plaintiff, however, must pay the usual fees to the official court stenographers and officers taking testimony under commissions, when the latter do not receive salaries. These sums so expended by the plaintiff may be recovered from the defendant in a suit against him for the claim with respect to which the action for discovery arose.

Failure to comply with the provisions of the act is punishable by fine not exceeding two hundred and fifty dollars and by imprisonment for not more than thirty days.

Final judgments affecting immovable property must describe property affected. Act 30 of 1940 provides that all final judgments, whether rendered by the district or appellate courts, which affect the title to immovable property, shall particularly describe the property thereby affected.

At the outset it should be noted that the evident purpose of the act is to make judgments rendered in suits in which title to specific immovable property is involved, or is to be affected, so certain that everyone may know, without further examination, which was the particular property involved or affected thereby.⁵¹

At common law, all judgments affecting the title to real estate must contain an adequate description of the property, and if there is no description, or if the description given is uncertain or incorrect, the judgment is void, even as between the parties.⁵² However, since identification of the property is the purpose of the requirement, if this can be done by reference to the pleadings or other records, the judgment will be good.⁵³

In Louisiana, the question as to validity of judgments lack-

50. Cf. Rule 18 (Dec. 1933) of the Supreme Court of Illinois [Ill. Ann. Stat. (Smith-Hurd, 1936) c. 110, § 259.13].

51. The act can have no application to personal money judgments which, when recorded, operate as a judicial mortgage on the property of the party against whom rendered. The judgment per se does not affect the property; it is the recordation which creates the mortgage. Art. 545, La. Code of Practice of 1870.

52. *Newport v. Hatton*, 195 Cal. 132, 231 Pac. 987 (1925); *Latham v. Lindsay*, 130 Ky. 669, 113 S.W. 878 (1908); *Moore v. Unknown Heirs of Gilchrist*, 273 S.W. 308 (Tex. Civ. App. 1925).

53. *Latham v. Lindsay*, 130 Ky. 669, 113 S.W. 878 (1908); *Moore v. Unknown Heirs of Gilchrist*, 273 S.W. 308 (Tex. Civ. App. 1925).

ing a sufficient description of the property affected thereby, has apparently never been squarely presented to the courts. However, in *MacManus v. Stevens*⁵⁴ the court reversed a judgment maintaining a possessory action, and assigned as its ground the fact that the property was not adequately described in the pleadings, and consequently no valid judgment could be rendered,⁵⁵ and in the case of *Hill, McLean & Co. v. Miller*,⁵⁶ a plea of discussion was disallowed because the surety claiming the right failed to give an adequate description of the property.⁵⁷ In *Chenault v. Howard*,⁵⁸ the court on appeal reversed a judgment in a partition suit wherein the description of the property was different from that given by the plaintiff in his petition.

However, in the case of *Baptiste v. Southall*,⁵⁹ it was held that a judgment fixing the rights of the parties to certain community property, which failed to describe the property could be "interpreted" so as to include therein an adequate description.

From the foregoing, it may well be said that the rule in Louisiana in this respect is to the effect that a judgment which affects the title to the immovable property involved in a suit is void and ineffective if it lacks a description of the property and the property cannot be identified by reference to the pleadings; or when the description of the property in the pleadings differs from that appearing in the judgment. However, the court will interpret such a judgment so as to include therein a proper description if

54. 10 La. Ann. 177 (1855).

55. Commenting on the refusal of the lower court to dissolve the injunction obtained, the supreme court took occasion to say: "The district Judge seems to have perceived the embarrassment occasioned by his having overruled the defendant's exception, when he came to draw up a decree, and he sought to remedy it by ordering the plaintiff to be put in possession of 'the land in controversy, up to the time certified to by John F. McKneely and John East.'"

"It is fatal error to leave these things to be determined after judgment. The pleading and judgment taken together, should disclose with certainty the thing adjudged, that litigation may have an end." (Italics supplied.) 10 La. Ann. at 178.

56. 7 La. Ann. 621 (1852).

57. In the course of the opinion the court states: "How can it be ascertained that a given quantity, a quarter section of land, in a large tract, is, or not, in litigation, unless a description of it be had? It may be ascertained by those familiar with the facts; but, in a majority of cases, the inquiry would be full of embarrassment.

"The more the subject is considered, the more apparent will be the necessity of requiring from the surety, such a description of the property which he requires the creditor to discuss, as will enable him fully to understand its situation, extent, title, and condition, as available to him for the payment of his debt." 7 La. Ann. at 624.

58. 151 La. 991, 92 So. 587 (1922).

59. 157 La. 333, 102 So. 420 (1924).

the parties so request it, and such an interpretation is not such an amendment as is prohibited by Article 547 of the Code of Practice.⁶⁰

Be that as it may, however, it appears that Act 30 of 1940 is mandatory, and requires all such judgments to contain a particular description of the property affected thereby under pain of nullity. Such being the case, a reference to the pleadings in order to identify the property in question will not be permitted. However, it is apparent that in all cases where an adequate description is contained in the pleadings or other records, the parties interested may apply to the court for an "interpretation" of the judgment so as to include therein a complete description, under the rule stated in *Baptiste v. Southall*.

Judicial advertisements. In all parishes of the state, except the Parish of Orleans, judicial advertisements are required to be published (with certain exceptions)⁶¹ in an English newspaper printed in the parish in which the proceedings are held.⁶² Since the primary purpose of publishing legal notices and judicial advertisements is to give them the widest publicity possible, it is often difficult to fix the distinction between a *newspaper*, as that term is used in the statutes, and the numerous publications devoted to some special purpose, and which circulate only among certain classes of people, and which are not within the purview of statutes requiring publication of legal notices in some newspaper.⁶³ Prior to 1940, the question of whether a particular journal could be regarded as a newspaper was one to be determined from the facts in each particular case.⁶⁴ Act 155 of 1940, however,

60. To the argument that the "interpretation" constituted an amendment to the judgment prohibited under Art. 547, La. Code of Practice of 1870, the court answered: "It cannot be successfully contended that a judgment which takes nothing from, and adds nothing to, an original judgment, except a particular description of properties in which the original judgment decrees the appellant to be without right, title, or interest to any part thereof, is an alteration or amendment of that judgment." 157 La. at 337, 102 So. at 421.

61. ". . . and if there be no newspaper published in the parish, the advertisements or notices shall be made by posting them at or near the front door of the courthouse, or the place used as such, and at two other public places in different parts of the parish. . . ." La. Act 49 of 1877, § 16 [Dart's Stats. (1939) § 4435].

62. *Ibid.*

63. *State v. Commissioner of Public Finances*, 161 La. 915, 109 So. 675 (1926).

64. *McDonald v. Shreveport Mut. Bldg. Ass'n*, 178 La. 645, 152 So. 318 (1933); *Pugh v. Prudhomme*, 181 La. 113, 158 So. 638 (1935). See also *In re Sterling Cleaners & Dyers*, 81 F. (2d) 596 (C.C.A. 7th, 1936). The nullity of a foreclosure sale because the advertisement thereof was defective (in a publication not a "newspaper") is not an absolute nullity but only an irregularity or relative nullity, and is therefore subject to ratification by the party

lists the characteristics which a periodical must have if it is to be classed as a newspaper. Accordingly, the term is defined as follows:

“. . . [a] publication appearing at regular intervals, which shall be at least once a week, having a second-class mailing privilege, having a bona fide paid circulation to actual subscribers, publishing an average of at least forty (40%) news matter, and containing reports of happenings of recent occurrence of a varied character, such as political, social, moral and religious subjects, and designed for the information of the general reader; providing such newspaper at the date of insertion of such advertisements or notices, shall have been regularly and continuously printed and published in such parish for at least two (2) years.”⁶⁵

However, much of the benefit to be derived from the act is nullified by the phrase, “nothing contained here shall affect newspapers now in operation.”⁶⁶

Payment of costs as condition precedent to issuance of order discontinuing suit or reconventional demand. The Code of Practice provides that the plaintiff may discontinue his suit at any state of the proceedings prior to judgment, upon paying the costs of court.⁶⁷ After discontinuance the plaintiff may bring his action anew, but no further proceedings can be had therein until the costs of the first suit shall have been paid, and the defendant may cause the second to be dismissed upon his exception to the effect that the costs by him expended have not been paid.⁶⁸

whose property has been sold. *Bryson v. Lee*, 181 La. 1019, 160 So. 797 (1935); *Williams v. Burnham*, 189 La. 376, 179 So. 459 (1938). An absolute want of advertisement may be cured by the prescription of five years. *Louaillier v. Castille*, 14 La. Ann. 777 (1859).

65. La. Act 155 of 1940, § 1.

66. *Ibid.*

67. Art. 491, La. Code of Practice of 1870. This right is not permitted, however, when the rights of a defendant will be prejudiced thereby. *Davis v. Young*, 35 La. Ann. 739 (1883); *State v. Howell*, 139 La. 336, 71 So. 529 (1916); *McMillan v. Lorimer*, 160 La. 400, 107 So. 239 (1926); *Person v. Person*, 172 La. 740, 135 So. 225 (1931); *Rives v. Starke*, 196 So. 657 (La. 1940).

In earlier decisions, a distinction was made between a judgment of dismissal and a judgment of nonsuit; accordingly a plaintiff in a suit had no right to insist upon a judgment of voluntary nonsuit under the provisions of this article. It is now well settled, however, that there is no essential difference between a discontinuance and a voluntary nonsuit and that a plaintiff is entitled to either. *Davis v. Young*, 35 La. Ann. 739 (1883); *State v. Heflin*, 4 La. App. 322 (1926); *Smith v. New Orleans Public Service*, 179 So. 606 (La. App. 1938).

68. Art. 492, La. Code of Practice of 1870, as amended by La. Act 28 of 1922.

The payment of costs is not a prerequisite, however, and the plaintiff may have his suit discontinued upon his simple motion to that effect.⁶⁹ There is, therefore, no guaranty that a plaintiff who has discontinued his suit will ever pay the costs incurred, the only prohibition directed against him being that he shall not be allowed to prosecute his suit anew, until he has paid them.

This situation has been remedied in the Parish of Orleans by the passage of Act 186 of 1940 which provides that in parishes of 200,000 inhabitants or more, no order dismissing or discontinuing any suit or reconventional demand on the voluntary motion of any one of the parties shall be issued or signed, unless and until all costs shall have first been paid and evidence of such payment is made part of the motion to dismiss.⁷⁰

It will be noted, however, that the provisions of Articles 491 and 492 of the Code of Practice can have no application to suits brought in forma pauperis where the parties have been excused from the payment of costs,⁷¹ and consequently the provisions of Act 186 of 1940 can not apply to the discontinuance of suits brought under the forma pauperis act.⁷²

Also it should be pointed out that, as to the Parish of Orleans, the provisions of Article 492 of the Code of Practice have been rendered obsolete by the adoption of this act, since all costs must have been paid before a discontinuance can be ordered.

It is to be deplored that this act has been limited to the Parish of Orleans, and it is urged that it be so amended as to make its provisions applicable throughout the state.

Payment of court costs under paupers act. Act 322 of 1940 is a special statute enacted pursuant to the constitutional provisions which permit the passage of special laws, provided that the requirements thereof have been complied with.⁷³ It stipulates that the Police Jury of Ouachita Parish shall make monthly payments to the Clerk of Court of that parish, of all court costs incurred

69. *State v. Rost*, 48 La. Ann. 455, 19 So. 256 (1896); *Shreveport Long Leaf Lumber Co. v. Jones*, 188 La. 519, 177 So. 593 (1937).

70. La. Act 186 of 1940, § 1: ". . . no order or judgment shall be rendered or signed by any court of the State of Louisiana, in parishes having a population of over 200,000 dismissing or discontinuing any suit or reconventional demand, now pending or hereafter filed and pending, on the voluntary motion of any or all of the parties thereto, unless and until all costs and commissions due the Clerk of Court and the Sheriff shall first have been paid, to be evidenced by certificates of those officers to be filed with and made part of the motion to dismiss or discontinue."

71. *Smith v. New Orleans Public Service*, 179 So. 606 (La. App. 1938).

72. La. Act 156 of 1912 [Dart's Stats. (1939) §§ 1400-1404].

73. La. Const. of 1921, Art. IV, § 6.

under the pauper act, upon presentation of an itemized account approved by either of the judges of the Fourth Judicial District Court. The Police Jury is thereby subrogated to the rights of all court officers as to all sums collected by them as costs in such cases. It is further provided that all judgments rendered under the act, in which the party availing himself of it is cast for costs, are to be recorded by the Clerk of Court in the mortgage records of the Parish of Ouachita, and when so recorded shall operate as a judicial mortgage in favor of the Police Jury for the amount of the costs so paid by it. This recordation may also be made at the expense of the Police Jury in any other parish and when so made shall have the same effect therein as when made in Ouachita Parish.

Public sale of movables under seizure after nonpayment of storage. A 1940 act⁷⁴ provides that a sheriff or constable must sell at public auction movable property under seizure which has been stored in his warehouse for a period exceeding two years without the payment of any storage charges by the parties in interest. The procedure is summary and by rule against the seizing plaintiff and other parties in interest, as shown by the record,⁷⁵ to show cause why the stored property should not be sold to satisfy the storage and other charges. On trial of the rule, the sheriff or constable, as the case may be, is entitled to a judgment ordering the sale of the property upon producing evidence that no storage charges have been paid for over two years.

When the property is ordered sold pursuant to the provisions of the act, the sale is without appraisalment, to the highest bidder, for cash, after advertisement as required by law for the sale of movable property.⁷⁶ A suspensive appeal may be taken from an

74. La. Act 185 of 1940.

75. Provision is made for the appointment of a curator ad hoc to represent a party to the suit who cannot be served. *Id.* at § 1.

76. For the law relating to the judicial advertisement of movables, see Arts. 655, 667-670, La. Code of Practice of 1870; Arts. 1116, 1117, La. Civil Code of 1870; La. Act 49 of 1877, § 16 [Dart's Stats. (1939) § 4435]; La. Act 49 of 1877, § 17 [Dart's Stats. (1939) § 4436]; La. Act 49 of 1877, § 18, as amended by La. Act 82 of 1900, § 1 [Dart's Stats. (1939) § 4437]; La. Act 270 of 1914, § 1 [Dart's Stats. (1939) § 4438]; La. Act 49 of 1877, § 15, as amended by La. Act 75 of 1938, § 1 [Dart's Stats. (1939) § 4439]; La. Act 104 of 1878, § 1 [Dart's Stats. (1939) § 4440]; La. Act 274 of 1928, §§ 1-3 [Dart's Stats. (1939) §§ 4441-4443]; La. Act 33 of 1916, § 1 [Dart's Stats. (1939) § 4444]; La. Act 24 of 1914, §§ 1, 3 [Dart's Stats. (1939) §§ 4445, 4446]; La. Act 167 of 1914, § 1; La. Rev. Stats. of 1870, § 23 [Dart's Stats. (1939) § 4447]; La. Act 243 of 1908, § 1, as amended by La. Act 64 of 1932, § 1 [Dart's Stats. (1939) § 9008]; La. Rev. Stats. of 1870, § 3410, as last amended by La. Act 146 of 1888, § 1 [Dart's Stats. (1939) § 9009]; La. Rev. Stats. of 1870, § 3425 [Dart's Stats. (1939) § 9014].

order of sale if the appellant furnishes bond for double the amount of the charges, costs and commissions due the sheriff or constable.⁷⁷ No proceedings to sell movables originally seized and stored prior to the passage of the act may be taken or filed until three months have elapsed since its effective date.⁷⁸

Recusation of judges. Prior to 1940, any judge having a personal interest in a suit pending in his court was under the ministerial duty to enter an order recusing himself, upon his recusable interest being suggested by one of the parties whose interest is opposed to that of the judge.⁷⁹

In the case of *Shreveport Long Leaf Lumber Company v. Jones*,⁸⁰ the plaintiff applied to the supreme court for writs of certiorari and mandamus to compel the trial judge to recuse himself and appoint a judge of an adjoining district to try the case. The application, however, was denied on grounds of prematurity and want of notice because the plaintiff failed to show that he first applied to the trial judge asking that he recuse himself.⁸¹ Furthermore, where proper application is first made upon the judge, who disavows his interest in the case and therefore refuses to be recused, the motion for recusation must be referred to a judge in an adjoining district.⁸² This is so because it would be an unwarranted exercise of authority in the judge to assume

77. La. Act 185 of 1940, § 1. From the proceeds of the sale are deducted first the costs of the sale, as well as the costs, charges and commission due the office of the sheriff or constable, and any remaining balance is deposited in the registry of the court, or turned over to the clerk in the absence of such registry. *Id.* at § 3.

78. The act applies to movable property on storage with any sheriff or constable at its effective date. *Ibid.*

79. La. Act 40 of 1880, as amended [Dart's Stats. (1939) §§ 1907-1913]; La. Act 74 of 1884 [Dart's Stats. (1939) §§ 1914-1915]; La. Act 70 of 1876 [Dart's Stats. (1939) §§ 1916-1918]; La. Act 177 of 1910, § 1 [Dart's Stats. (1939) § 1919].

80. 185 La. 30, 168 So. 484 (1936).

81. The Supreme Court of Louisiana stated: "We feel confident that when the district judge has been properly apprised of the motion of relator to recuse himself, he will forthwith do his plain mandatory duty and appoint a judge of the adjoining district to try the case. It is unthinkable that a judge who is a party litigant would attempt to try his own case." *Shreveport Long Leaf Lumber Co. v. Jones*, 185 La. 30, 33-34, 168 So. 484, 485 (1936).

Where a district judge recuses himself because of interest and the litigant applies for the appointment of a lawyer having requisite qualifications to hear and try the case, the district judge is required to make such an appointment, and is not authorized to select a judge of a neighboring district to sit in his place. *Central Lumber Co. v. Jones*, 182 La. 1, 161 So. 1 (1935). For a subsequent treatment of the same case, see 175 So. 849 (La. App. 1937).

82. *State v. Hingle*, 48 La. Ann. 1074, 20 So. 280 (1896); *State v. Livaudais*, 161 La. 882, 109 So. 536 (1926).

to determine a question so exclusively personal to himself and which affects his own competency.⁸³

Act 124 of 1940 has relieved the profession of such a detailed, and often unsatisfactory, procedure for securing the recusation of a judge who is alleged to be prejudiced. The new act reads as follows:

"It is further provided that in cases in which a district judge shall be recused for cause of interest, the party whose interest is opposed to that of the district judge, shall have the right if he so desires, to make application to the Court having Appellate Jurisdiction of the matter for the appointment of a judge to try said case, and the Appellate Court shall appoint a district judge of one of the judicial districts of the State of Louisiana to try said case. In suits where there exists no right of appeal, the application for recusation of the district judge shall be made directly to the Supreme Court."

Repeal of law regulating selection and fees of appraisers in Orleans Parish. Act 293 of 1940 repeals the prior statute⁸⁴ regulating the selection, qualifications and fees of appraisers in the Parish of Orleans. That statute directed the civil district judge having jurisdiction of the legal proceedings to appoint appraisers and fix their fees when he ordered an inventory to be taken of any property, rights or claims within the jurisdiction of the Civil District Court. As a result of the repeal, the selection of appraisers and the fixing of their fees in such cases is governed by the general statutes on the subject.⁸⁵

83. See *State v. Nunez*, 147 La. 394, 405, 85 So. 52, 56 (1920).

84. La. Act 337 of 1936 [Dart's Stats. (1939) §§ 1602.16-1602.22]. The constitutionality of this statute has been questioned and its repeal recommended. See Sarpy, *Unreal Appraisements in Louisiana Estates* (1940) 2 LOUISIANA LAW REVIEW 426, 431n.

85. See Arts. 652, 653, 671-676, 770, 975, La. Code of Practice of 1870; Arts. 49, 66, 149, 316, 415, 1039, 1040, 1326, 1666, La. Civil Code of 1870; La. Act 33 of 1870, § 1 [Dart's Stats. (1939) § 1354]; La. Act 101 of 1870, § 10, as amended by La. Act 22 of 1935 (4 E.S.) § 1 [Dart's Stats. (1939) § 1360]; La. Rev. Stats. of 1870, § 2492 [Dart's Stats. (1939) § 6286]; La. Rev. Stats. of 1870, § 3066 [Dart's Stats. (1939) § 7417]; La. Rev. Stats. of 1870, §§ 64, 576, 3426 [Dart's Stats. (1939) § 9017]. 2 McMahon, *Louisiana Practice* (1939) 1493, n. 34, and 1594n.

House Bill 110, introduced during the regular legislative session of 1940, incorporated a proposed statute regulating in all parishes of the state the selection of appraisers and prescribing their qualifications, duties and fees when any state court ordered an inventory to be taken. Although the bill was reported favorably by the House committee to which it was assigned, the whole subject matter was tabled. See *Calendar of the House of Repre-*

Sufficiency of affidavit for issuance of a writ of attachment. Prior to the passage of Act 190 of 1912,⁸⁶ the jurisprudence was to the effect that, in order to obtain a writ of sequestration under the provisions of Article 275(8) of the Code of Practice,⁸⁷ the plaintiff had to prove the particular grounds upon which he based his fear that the defendant would remove, conceal or dispose of the property in controversy.⁸⁸ Since that time, it has been repeatedly held that it is sufficient for a plaintiff, in order to be entitled to the maintenance of the writ, to make an affidavit in accordance with the language of the act, and that all it is necessary to allege is that it is within the power of the defendant to dispose of, conceal, or part with the property in his possession which belongs to the plaintiff or on which he has a privilege.⁸⁹

Similarly, in order to obtain a writ of attachment on any of the grounds mentioned in Article 240 of the Code of Practice, it is well settled that proof to sustain the allegations of the petition must be made, otherwise the writ will be dissolved.⁹⁰ Thus, though the affidavit or petition may be a sufficient basis for the issuance of the writ, it is not per se proof of the allegations

sentatives, Legislature of Louisiana of the Regular Session of 1940, at 60. For a complete discussion of this subject, see Sarpy, *op. cit. supra* note 84, at 426-435.

86. La. Act 190 of 1912, § 1 [Dart's Stats. (1939) § 2156].

87. Art. 275(8), La. Code of Practice of 1870: "A sequestration may be ordered in all cases, when one party fears that the other will conceal, part with, or dispose of the movable in his possession, during the pendency of the suit, upon complying with the requisites of the law."

88. *American Furniture Co. v. Grant-Jung Furniture Co.*, 50 La. Ann. 931, 24 So. 182 (1898); *Vives v. Robertson*, 52 La. Ann. 11, 26 So. 756 (1899); *Pierce v. Sturdivant*, 108 La. 558, 32 So. 530 (1902); *Boimare v. St. Geme*, 113 La. 898, 37 So. 869 (1904). But cf. *Lowden v. Robertson*, 40 La. Ann. 825, 5 So. 405 (1888), where it was held that the plaintiff need not show the particular grounds upon which he based his fear that the defendant would remove or otherwise conceal or dispose of the property. The rule of this case was never expressly overruled despite following decisions to the contrary and it was this which prompted the legislature to adopt Act 190 of 1912 which codified the rule of the *Robertson* case, in accordance with the recommendations of the Louisiana Bar Association. *Philip Werlein, Ltd. v. Lofas*, 10 Or. App. 280 (La. App. 1913); *Barnett Furniture Co. v. Martel*, 3 La. App. 234 (1925).

89. *Bomer-Ferguson Co. v. Shapiro*, 148 La. 736, 87 So. 729 (1921); *Gueydan v. T. P. Ranch Co.*, 156 La. 397, 100 So. 541 (1924); *Barnett Furniture Co. v. Martel*, 3 La. App. 234 (1925); *Le Blanc v. Guy*, 14 La. App. 162, 128 So. 715 (1930); *Blitz v. Guenin*, 187 So. 690 (La. App. 1939).

90. *Gordon v. Baillio*, 13 La. Ann. 473 (1858); *Hoy & Co. v. Weiss*, 24 La. Ann. 269 (1872); *Winter v. Davis*, 48 La. Ann. 260, 19 So. 263 (1896); *Abel & Bach Co. v. Duffy*, 106 La. 260, 30 So. 833 (1901); *Fidelity & Deposit Co. of Maryland v. Johnston*, 117 La. 880, 42 So. 357 (1906); *Levy Sons Co. v. Hacker & Fife*, 6 La. App. 592 (1927); *Newsom & Co. v. Smith*, 9 La. App. 693, 120 So. 248 (1929); *W. F. Taylor Co. v. Campisi*, 14 La. App. 210, 128 So. 706 (1930).

therein made, and the writ will be set aside if it appears on the trial to have been obtained without sufficient cause.⁹¹

The proof required to sustain an attachment under clauses 4 and 5 of Article 240 of the Code of Practice⁹² is proof of an act or acts showing the fraudulent intent of the defendant to place his property beyond the reach of his creditors or to give an unfair preference to some of them.⁹³

Act 105 of 1940, which tracks the language of Act 190 of 1912 insofar as possible, simplifies the procedure in cases where the state is plaintiff in a suit to recover money or property alleged to have been obtained through fraud or through rebates or overcharges in connection with any contract or transaction. In such cases, when a writ of attachment is prayed for, all that it is necessary to prove, in order to sustain the writ, is that it "lies within the power of the defendant to mortgage, assign or dispose of his property, rights or credits or some part thereof, or to convert his property into money or evidences of debt, during the pendency of the suit." The act therefore has the effect of relaxing the proof required to sustain a writ of attachment whenever the state is plaintiff in the cases therein enumerated, and accomplishes in a very limited manner what the Act of 1912 accomplished with regard to writs of sequestration.

It is apparent that the 1940 act was designed with the objective in mind of facilitating the attachment of property belonging to defendants involved in the recent state scandals. This accounts for the fact that the benefits of its provisions are extended only to actions in which the state is plaintiff. This restriction appears to be sound. The abuse to which the provisions are susceptible might well be a continuous source of embarrassment to defendants.

91. *Gordon v. Baillio*, 13 La. Ann. 473 (1858).

92. Art. 240, La. Code of Practice of 1870: "A creditor may obtain such attachment of the property of his debtor, in the following cases:"

"4. When he has mortgaged, assigned or disposed of, or is about to mortgage, assign or dispose of his property, rights or credits, or some part thereof with intent to defraud his creditors or give an unfair preference to some of them.

"5. When he has converted, or is about to convert his property into money or evidences of debt, with intent to place it beyond the reach of his creditors."

93. *Winter v. Davis*, 48 La. Ann. 260, 19 So. 263 (1896); *Abel & Bach Co. v. Duffy*, 106 La. 260, 30 So. 833 (1901); *General Motors Acceptance Corp. v. Sneed*, 167 La. 432, 119 So. 417 (1929).

III. MATTERS PERTAINING TO CRIMINAL LAW AND PROCEDURE

Presaging extensive official investigations and legal actions as a consequence of public scandals, the legislature created an investigating commission¹ and empowered its "agents or representatives. . . when specifically authorized by it, and/or the Attorney General, under the Constitution and laws of the State . . ." to inquire into the affairs, "functions, transactions, contracts, purchases, sales and expenditures . . ." of all state employees, departments and subdivisions.² In effect, the Attorney General is made the chief agent and executive officer of the commission, for he is empowered (a) to institute or have instituted prosecutions of any violations of state criminal statutes,³ either upon his own motion or when instructed by the commission; (b) to take or have taken depositions within or without the state; (c) to issue subpoenas to compel the attendance of witnesses and the production of documents; and (d) to issue interrogatories covering any matter relating to the disbursement or expenditure of public moneys.⁴ The law creating the commission is to be effective for four years, and this body is ordered to make a report of its activities to the legislature at its next extraordinary or regular session,⁵ with a full report to be submitted to the legislature of 1944, at which time the commission will stand dissolved.⁶

A. MATTERS RELATING TO SUBSTANTIVE LAW

Of the substantive criminal statutes designed to preserve the integrity of public office, one of the most important is the new

1. La. Act 13 of 1940. The membership of the commission is composed of the Governor as chairman, the Attorney General of the state and the Executive Counsel to the Governor. Id. at § 1.

2. La. Act 13 of 1940, § 3(a).

3. Id. at § 3(c). Authority is also conferred to institute civil proceedings in the name of the state for the recovery and return of anything of value that may have been wrongfully diverted or acquired from the state. They are further authorized to make settlement of or to compromise such claims. Id. at §§ 2, 3(b). The laws relating to the prescription of civil proceedings instituted under the act or by order of the Attorney General are made inapplicable to them in view of a "paramount public interest"; the venue of any such proceeding may lie in the Nineteenth Judicial District Court (Baton Rouge), or at the domicile of the defendants or any one of several named in the proceeding, at the discretion of the commission, and that body is relieved of the necessity of posting bond in the event it decides to commence such a proceeding by attachment. Id. at § 3(b). See note 15, *infra*. In order to expedite the work of the commission, there are provisions authorizing the transfer of judges and the appointment of special judges *ad hoc*. Id. at § 5.

4. La. Act 13 of 1940, § 4.

5. Id. at §§ 6, 8.

6. Id. at § 9.

law punishing dual office holding.⁷ This was enacted upon the recommendation of the Louisiana State Law Institute, although it contains a greater number of exceptions to its application than originally suggested by that body.⁸ It has always been a fundamental principle in our state government that that government should be divided into three distinct departments, and that no one of them, nor any person or persons holding office in one department should exercise power properly belonging to either of the others, except as expressly directed or permitted by the constitution.⁹ The constitutional prohibition against dual office holding is a specific application of that principle.¹⁰ The new act tracks the language of this provision of the constitution more closely than did the law enacted to execute it, and which the 1940 statute is intended to supersede.¹¹ However, the recent enactment

7. La. Act 259 of 1940.

8. The proposal by the Louisiana State Law Institute is contained in the Special Report of the Louisiana State Law Institute to the Legislature of Louisiana Recommending Certain Criminal Statutes (May, 1940) 8-9. The legislature excepted the following additional persons: (1) those pursuing a learned profession who are employed by any subdivision of the state on a fee or commission basis, (2) school teachers teaching in grade schools or in high schools or other educational institutions, or (3) officers in the naval or military service of the United States detailed to educational institutions in the State of Louisiana. The act also does not apply to notaries public or to officers in the National Guard or in the Reserve of the United States Army, Navy or Marine Corps. La. Act 259 of 1940, § 1.

9. La. Const. (1812) Art. I, §§ 1, 2; La. Const. (1845) Arts. 1, 2; La. Const. (1852) Arts. 1, 2; La. Const. (1864) Arts. 3, 4; La. Const. (1879) Arts. 14, 15; La. Const. (1898) Arts. 16, 17; La. Const. (1913) Arts. 16, 17; La. Const. of 1921, Art. II, §§ 1, 2.

10. La. Const. of 1921, Art. XIX, § 4.

11. The Law Institute suggested the passage of the new statute in substitution for La. Act 123 of 1921 (E.S.) [Dart's Stats. (1939) §§ 7702-7704] which reads, in part:

"Section 1. . . . no person shall hold or exercise, at the same time, more than one office of profit, except that of justice of the peace or notary public."

La. Act 259 of 1940, § 1 states:

"Section 1. . . . no member of Congress, or person holding or exercising any office or position or employment of profit under the United States or under any state of the United States or under any foreign power shall be eligible to be a member of the Legislature or shall hold or exercise any office or position or employment of profit under the State of Louisiana; and no person holding or exercising any office, position or employment of profit in one of the three departments of government of the State of Louisiana shall hold or exercise another office or position or employment of profit in that department or any other department of the State . . . or in any parish, municipality or Board, Commission or subdivision of the State. . . ."

It will be noticed that there are two distinct general inhibitions in the 1940 act, as in Art. XIX, § 4 of the Constitution of 1921—one prohibiting any person from holding or exercising an office under this state contemporaneously with his holding an office under another sovereignty; and the other prohibiting any person from holding at the same time more than one office. Cf. *State v. Mason*, 17 La. App. 504, 505, 133 So. 809, 810 (1931).

In drafting the 1940 law the Law Institute made no reference to any

appears to supplement a related statute passed at the extra legislative session this year, since none of its provisions are in conflict with it,¹² although there is conflict with the preceding law.¹³ The

office or employment of "trust." This term was regarded as being merely confusing. The vice to be condemned lies in the profit that flows from dual office holding. (Special Report, op. cit. supra note 8, at 8).

12. La. Act 14 of 1940 (E.S.) prohibits any person's receiving over the same period of time more than one salary for any service or employment as an officer or employee of the state or of any state department, board, commission, or political corporation. Both Act 14 and the more recent act contain a proviso to the effect that nothing therein should in any way affect state officials' salaries which are presently fixed by law and payable from more than one source. Id. at § 1. The punishment therein provided applies to any state officer or any member or officer of any state department, board, commission, or political corporation, or any person found guilty of accepting employment or public funds in violation of the act. Id. at § 2.

It is submitted that no change is made by La. Act 259 of 1940, § 2 in the punishment provided in the above section, although the former act specifies no place of imprisonment whereas the latter specifies the parish jail. Other 1940 acts also fail to mention the place of imprisonment. La. Acts 9, § 4; 13, § 4(c); 15, § 1; 16, § 1; 28, § 3; 63, §§ 1, 2, 5; 76, § 2; 80, § 3; 113, § 2; 290, § 1. Generally, the courts have held that when a criminal statute prescribes the punishment of imprisonment without specifying the place thereof, it implies imprisonment in the common jail or prison of the county. *Brooks v. People*, 14 Colo. 413, 24 Pac. 553 (1890); *Miller v. People*, 104 Colo. 622, 94 P. (2d) 125 (1939); *Walden v. State*, 50 Fla. 151, 39 So. 151 (1905); *State v. Toy*, 65 Mont. 507, 211 Pac. 303 (1922); *Ex parte Cain*, 20 Okla. 125, 93 Pac. 974 (1908); *Commonwealth v. Francies*, 250 Pa. 350, 95 Atl. 798 (1915); *Commonwealth v. Smith*, 116 Pa. Super. 146, 177 Atl. 73 (1935). But a statute which provides that a crime shall be a felony, punishable by imprisonment, by implication will be held to mean imprisonment in the state prison. In re *Pratt*, 19 Colo. 138, Pac. 680 (1893); *Chapman v. Lake*, 112 Fla. 746, 151 So. 399 (1933). Cf. La. Act 63 of 1940, §§ 1, 2, 5.

Under Louisiana law every sentence to imprisonment without qualification as to nature or place means imprisonment with labor on public works. La. Act 51 of 1906, § 1 [*Dart's Crim. Stats.* (1932) § 679]. In *State v. Cunningham*, 130 La. 749, 759, 58 So. 558, 561 (1912) the Supreme Court of the state has said:

"The single object of the Act [above cited] as expressed in the title is to provide that all sentences to imprisonment, whether with fine or in default of payment of fine, and whether under state law or municipal or parish ordinance, unless otherwise qualified (as, for instance, by the addition of the words 'at hard labor,' which would mean in the penitentiary), shall mean imprisonment with labor. . . ." (Italics supplied). But see *State v. Hebert*, 158 La. 209, 215-217, 103 So. 742, 745 (1924).

Whenever the word imprisonment appears in a statute unqualified as to nature, it means without hard labor. *State v. Ryder*, 36 La. Ann. 294 (1884); *State v. Hyland*, 36 La. Ann. 709 (1884). Cf. La. Rev. Stats. of 1870, §§ 980, 982, 1515, 1517 [*Dart's Crim. Stats.* (1932) §§ 682, 684].

Art. 341, La. Code of Crim. Proc. of 1928, provides:

"A misdemeanor is defined to be an offense, the punishment of which is necessarily a fine or imprisonment in the parish jail or both."

The Louisiana courts have held, both before and after the adoption of the Code, that criminal statutes providing such punishment, although specifying no place of imprisonment, create misdemeanors—offenses which are punishable by imprisonment in the proper parish jail. *State v. Eubanks*, 114 La. 428, 38 So. 407 (1905); *State v. Williams*, 114 La. 940, 38 So. 686 (1905); *State v. Broxton*, 188 La. 456, 177 So. 572 (1937). Cf. La. Act 123 of 1921 (E.S.) § 3 [*Dart's Stats.* (1939) § 7704].

13. La. Act 123 of 1921 (E.S.) [*Dart's Stats.* (1939) §§ 7702-7704]. La. Act

venue provision¹⁴ of the recent act is modernized as recommended by the Law Institute.¹⁵ The prosecution may be brought either at the defendant's domicile or in any parish in which he may perform the duties of either employment.

A 1940 law,¹⁶ more comprehensive than any other relating to the same subject matter,¹⁷ imposes both civil and criminal penalties on persons carried on the public pay rolls or employment lists as "deadheads" and also on their employers. Any public employee or employer who violates its provisions commits a *felony* punishable by both fine and imprisonment, with or with-

14 of 1940 (E.S.) and La. Act 259 of 1940 repeal this statute by implication. They purport to cover the whole subject matter of dual office holding which is irreconcilable with its provisions. Furthermore, the punishment prescribed by the 1921 law is repugnant to that provided by the two recent acts. *State v. Smith*, 118 La. 248, 42 So. 791 (1907); *State v. Jones*, 127 La. 442, 53 So. 985 (1911); *State v. Tate*, 185 La. 1006, 171 So. 108 (1936). The 1940 statutes change the punishment by: (1) prescribing a minimum fine of one hundred dollars, while no minimum was fixed by the 1921 law, (2) increasing the maximum imprisonment from six months to one year, and (3) omitting the penalty of automatic vacation of the first employment by the acceptance of a second. La. Act 259 of 1940 effects this last result by providing that no person shall be *eligible* to accept a second office while holding another. Cf. La. Act 123 of 1921 (E.S.) §§ 2, 3, [Dart's Stats. (1939) §§ 7703-7704]; La. Act 14 of 1940 (E.S.) § 2; La. Act 259 of 1940, §§ 1, 2.

14. La. Act 259 of 1940, § 2.

15. The venue provision was drafted in accordance with the following observation of the Louisiana State Law Institute:

"One handicap that the state is under that does not apply to the Federal Government is the question of restricted venue, the restrictions of Section 9 of Article I of the Constitution holding the venue to one parish in which the offense was committed in the absence of legislative authority to the contrary. It is well known that modern crimes are not confined to such small units as a parish but almost every offense spreads through the channels of commerce across parish and even state lines. Our criminal statutes on the subject of venue should be modernized to keep pace with this progress of crime, at the same time safeguarding even the criminal from double prosecution for the same offense." Special Report, *op. cit. supra* note 8, at 6. Cf. La. Const. of 1921, Art. I, § 9; Art. 13, La. Code of Crim. Proc. of 1928.

16. La. Act 63 of 1940.

17. La. Act 26 of 1873, as amended by La. Act 57 of 1888 [Dart's Stats. (1939) §§ 7773-7775] and La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800]. The former law punishes for extortion in office (a) officials or employees whose employment and compensation is authorized by the constitution and laws of Louisiana in either the executive, judicial, legislative or military departments of the state government or of its parishes, districts or municipalities, who *fraudulently* carry or cause to be carried upon the employment or pay roll lists of their offices the names of persons as employees whose salaries are allowed for services not rendered; and (b) such public officials and employees who charge or receive or take, directly or indirectly, any more than the lawful compensation for their services. La. Act 26 of 1873, §§ 1, 2, as amended by La. Act 57 of 1888, §§ 1, 2 [Dart's Stats. (1939) §§ 7773-7774]. *Quaere*: Are these provisions unconstitutional on the ground that their penal clause, providing that a conviction of the offender or a verdict in favor of the party injured shall operate *ipso facto* as a vacation of the office of the offending official or employee, violates Article IX of the Louisiana Constitution of 1921 as an attempt by criminal proceedings to effect a

out hard labor.¹⁸ The state, or any of its institutions or subdivisions, is authorized to bring a civil action for the recovery against both such employee and employer in solido of the amounts paid out of its funds, together with a penalty of fifty per cent of that sum wrongfully paid out and received.¹⁹ Conviction under the act operates ipso facto as a vacation of the employment of the person so convicted.²⁰ The act is applicable to (a) any person who (1) receives compensation from the state or its subdivisions or institutions, or (2) permits his name to be carried on any employment list or pay roll to receive such compensation,²¹ for services not actually rendered by himself or grossly inadequate for the payment so received or listed,²² with intent to defraud the state or its various subdivisions;²³ (b) any elected official, employee, or appointee of the state or its subdivisions who (1)

removal of officials from public office in defiance of the constitutional method of removal? Cf. *State v. Thompson*, 28 La. Ann. 444 (1876).

La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800] punishes any person who knowingly permits his name to be carried on the lists or pay rolls of the state, parish, municipal or other political corporations as employee and receives a salary for services not actually rendered.

La. Act 63 of 1940, § 8, provides that its passage shall not affect prosecutions or other actions based upon offenses committed under either of the above laws before its effective date.

18. La. Act 63 of 1940, §§ 1, 2, 5. See note 12, supra. Violations of the previous "deadhead" statutes were deemed *misdeemeanors* on the part of public employers, punishable by a fine of not more than one thousand dollars and/or imprisonment not exceeding five years, at the court's discretion; obtaining money by false pretenses by "deadhead" public employees, was punishable by imprisonment at hard labor or otherwise not exceeding twelve months. La. Act 26 of 1873, La. Act 57 of 1888, § 3 [Dart's Stats. (1939) § 7775]; La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800]. Both public employers and their "deadhead" employees violating the 1940 act are punishable by a minimum fine of \$500 and a maximum of \$5,000, and by imprisonment, with or without hard labor, for a minimum of six months or a maximum of five years. La. Act 63 of 1940, § 5.

19. La. Act 63 of 1940, § 7. Public "deadhead" employees under the old law were made civilly liable for damages or injuries sustained by any person aggrieved or injured by their acts. La. Act 26 of 1873, La. Act 57 of 1888, § 3 [Dart's Stats. (1939) § 7775]. Formerly, no civil liability was imposed upon "deadhead" employees. La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800].

20. La. Act 63 of 1940, § 6. This penalty applies both to public "deadhead" employees and their employers, while the former law penalized only the latter, and also provided that a verdict in a civil action of an aggrieved person also should have the same effect. La. Act 26 of 1873, § 3, as amended by La. Act 57 of 1888, § 3 [Dart's Stats. (1939) § 7775].

21. Permitting one's name to be carried on a public pay roll as a "deadhead" was regarded as merely incidental to the defense denounced by La. Act 155 of 1888. *State v. Matheny*, 194 La. 193, 193 So. 587 (1940).

22. Under La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800] there could be no crime unless the defendant received a salary or pay for services not actually rendered either by himself or some other person. *State v. Farrell*, 130 La. 228, 57 So. 893 (1912); *State v. Matheny*, 194 La. 193, 193 So. 587 (1940).

23. La. Act 63 of 1940, § 1.

carries, or causes or permits to be carried upon the employment or pay roll list of his office the name of any person as employee with knowledge that such person is receiving compensation for services not actually rendered or grossly inadequate, or who (2) permits any compensation to be paid for such services.²⁴ The venue provisions of the "deadhead" law are illustrative of the recent legislative trend toward modernization of our criminal statutes in this respect.²⁵

It has been made a misdemeanor for a person convicted in any federal or Louisiana court of a crime punishable by imprisonment in the penitentiary, and not afterward pardoned with express restoration of franchise, to register,²⁶ vote,²⁷ or hold office or appointment of honor, trust, or profit in the state,²⁸ and any citizen of the state who is a duly registered and qualified voter may institute legal proceedings to remove any person who thus holds office illegally.²⁹

A number of statutes in the nature of corrupt practice acts, relating to the administration of the state government and to elections, were enacted at the recent session of the legislature. The past practice of making deductions, uniform or otherwise,

24. *Id.* at § 2. La. Act 57 of 1888, § 2 [Dart's Stats. (1939) § 7774] prohibits a public officer from carrying *fraudulently* a "deadhead," or pretended, employee on a pay roll for *salaries or pay not rendered*. *Saint v. Irion*, 165 La. 1035, 116 So. 549 (1928).

The continued receipt or payment of compensation to a bona fide employee who is absent from his job for a "reasonable time" due to illness does not constitute a violation of the 1940 act either by such employee or his employer. La. Act 63 of 1940, § 3.

25. See note 15, *supra*. The venue for prosecutions under La. Act 155 of 1888 [Dart's Crim. Stats. (1932) § 800] is governed by the place where the money or pay is knowingly received for services not actually rendered, for that is where the offense is committed. *State v. Matheny*, 194 La. 198, 193 So. 587 (1940). Cf. La. Const. of 1921, Art. I, § 9; Art. 13, La. Code of Crim. Proc. of 1928. La. Act 63 of 1940, § 4, provides that the venue for prosecutions under the statute will lie (1) in the parish wherein any check or draft for the payment of any pretended services, prohibited by the statute, is drawn, or (2) in the parish wherein the employment list or pay roll records of the employment are ordinarily kept, or (3) in the parish wherein any draft, check or payment for pretended services was received or cashed or deposited.

26. Cf. La. Act 122 of 1921 (E.S.) §§ 7, 22, 31 [Dart's Stats. (1939) §§ 2621, 2636, 2645].

27. Cf. La. Act 97 of 1922, § 10, as amended by La. Act 110 of 1934, § 1 [Dart's Stats. (1939) § 2660]; La. Act 130 of 1916, §§ 35, 36, 80, as amended by La. Act 217 of 1934, La. Act 6 of 1934 (1 E.S.) [Dart's Stats. (1939) §§ 2742, 2743, 2787].

28. La. Act 129 of 1940. The act serves as an enabling statute under Art. VIII, § 6, La. Const. of 1921. Cf. La. Const. of 1921, Art. VIII, § 23. As to the effect of a pardon, see La. Act 85 of 1873 [Dart's Crim. Stats. (1932) §§ 736, 737] and *State v. Lee*, 171 La. 744, 132 So. 219 (1931).

29. La. Act 129 of 1940, §§ 2, 3.

from the salaries of public employees is made criminal by Act 176 of 1940.³⁰ This statute is directed to two classes of persons: (a) any person holding any office (elective or otherwise) or employment for profit, including those who work on a commission basis, under the state or its subdivisions or boards; (b) any other person or organization. These persons are prohibited from soliciting or receiving for any purpose whatever money from any other officer or employee when such payment is a reward for securing such employment or is made under any suggestion or influence the consequence of which will be the loss or impairment of value to the employee of such office or employment. Proof that payments were collected from or paid by such public employees on a uniform or progressive percentage basis constitutes prima facie evidence that they were made under such suggestion or influence.³¹ Any public officer or employee who violates this act ipso facto forfeits his employment³² and is guilty of a misdemeanor punishable by a fine or imprisonment or both.³³

The legislature has enacted another law particularly designed to protect the pocketbooks of public employees from the demands of a political machine for monetary contributions to the campaign chest.³⁴ It prohibits any public employee of the state or its subdivisions who receives a salary of two hundred dollars per month or less from contributing money for the purpose of any general or primary election or from making any kind of contribution for any political purpose whatsoever.³⁵ The act also stipulates that any person or organization soliciting or receiving such contributions from any such public employee shall be guilty of a misdemeanor punishable by a fine or jail sentence or both.³⁶ In addition to this criminal penalty, it is provided that the office or position held by the offending officer or employee should be deemed vacated ipso facto upon the making of the prohibited contribution.³⁷

Excepted from application of the statute³⁸ are (1) persons

30. Cf. 43 Stat. 1073 (1925), 18 U.S.C.A. § 208 (1927); 35 Stat. 1110 (1909), 18 U.S.C.A. § 210 (1927); Note (1933) 85 A.L.R. 1146.

31. La. Act 176 of 1940, § 1.

32. Id. at § 2. Cf. 19 Stat. 169 (1876), 18 U.S.C.A. § 213 (1927).

33. La. Act 176 of 1940, § 3. Cf. 35 Stat. 1110 (1909), 18 U.S.C.A. § 212 (1927).

34. La. Act 298 of 1940. Cf. 43 Stat. 1073 (1925), 18 U.S.C.A. § 208 (1927); 35 Stat. 1110 (1909), 18 U.S.C.A. § 211 (1927); Note (1933) 85 A.L.R. 1146.

35. La. Act 298 of 1940, § 1.

36. Id. at §§ 2, 4.

37. Id. at §§ 3, 4.

38. Id. at § 1.

holding either an elective office or an office, the appointment to which is required by law to be confirmed by the state Senate; (2) persons whose employment is secured by an irrevocable contract; or (3) those who are in the classified civil service under the laws recently enacted.³⁹

The act does not prevent any person from serving as an authorized representative at the polls, for which no remuneration is fixed by law, or from paying his own expenses while so serving. Neither is it to be construed as preventing any person from being a candidate for any elective office and from incurring and paying all lawful expenditures incident to his candidacy and election campaign.⁴⁰

Act 9 of 1940 is designed to prevent the padding of public pay rolls preceding a gubernatorial election. This act declares it unlawful for any officer, department head, board, commission or commissioner, institution, or employee of the state or its subdivisions, during the six months immediately preceding an election for governor to increase the number of its public employees more than five per cent over its average number, or to increase its pay roll or other operating expenses more than fifteen per cent over the average amount of such expenditures, for each of the months of the first six months in the twelve months preceding such election.⁴¹ Punishment, as in the case of a misdemeanor, is provided for any person and for each of the members of a body violating the provisions of the statute.⁴² It is noteworthy, however, that the provisions of this law may be suspended in time of "public emergency."⁴³

Act 76 of 1940 effects an increase in the severity of the criminal penalty heretofore⁴⁴ provided in cases of bribing or otherwise influencing a voter to cast or withhold his vote at any general, special or primary election. The minimum fine is fixed at five hundred dollars as compared with the former penalty of one hundred dollars. Furthermore, the minimum and maximum prison terms are set respectively at six months and one year instead of thirty days and six months, respectively.⁴⁵ Insofar as the earlier law on the subject imposed disfranchisement and

39. La. Acts 171 and 172 of 1940. The statute does not apply to officers and employees of the state and of the City of New Orleans since they are in the classified service under these new civil service laws.

40. La. Act 298 of 1940, § 1.

41. La. Act 9 of 1940, §§ 1, 2.

42. *Id.* at § 4.

43. *Id.* at § 3.

44. La. Act 9 of 1934 (2 E.S.) § 3 [Dart's Stats. (1939) § 2832.3].

45. *Ibid.*; La. Act 76 of 1940, § 2.

deprivation of the right to hold public office as an additional consequence of committing the offenses therein denounced,⁴⁶ it is unaffected by the recent enactment, as the two acts can be read together and construed in harmony with each other.⁴⁷

To prevent the possibility of assigning names to public property in honor of persons who may later end their careers as criminal offenders, or other undesirable persons, the legislature has recently provided that the naming of public property in honor of any living person is prohibited and has ordered the removal of all evidences of such designations which may have been made in the past.⁴⁸

To further protect public property and moneys, the legislature, upon the recommendation of the Louisiana State Law Institute, adopted three far-reaching substantive criminal laws.

Heretofore, no state statute directly punished the act of defrauding the state, and further, the general crime of conspiracy had not been denounced in Louisiana, although combinations to commit twelve named felonies have been made criminal.⁴⁹ To

46. La. Act 9 of 1934 (2 E.S.) §§ 1, 2 [Dart's Stats. (1939) §§ 2832.1-2832.2]. Cf. La. Const. of 1921, Art. VIII, §§ 6, 23.

47. Although containing no repealing clause, La. Act 76 of 1940 repeals the 1934 statute by implication, to, and only to, the extent of any inconsistency or conflict, but both laws must be construed together as being related to the same subject matter and read in harmony, for no clear purpose of repeal is evidenced by the legislature. *State v. Callac*, 45 La. Ann. 27, 12 So. 119 (1893); *State v. Police Jury of Parish of Plaquemines*, 6 Orf. App. 229 (La. App. 1909); *State v. Hanna*, 142 La. 224, 76 So. 619 (1917). Cf. La. Act 78 of 1890, §§ 2, 3 [Dart's Crim. Stats. (1932) §§ 797, 798].

48. La. Act 80 of 1940.

49. La. Act 8 of 1870 (E.S.) §§ 5-7 [Dart's Crim. Stats. (1932) §§ 837-839]. There was no crime in Louisiana of a conspiracy to commit embezzlement. *State v. Smith*, 194 La. 1015, 195 So. 523 (1940).

"These sections cover conspiracies to commit the crimes of murder, rape, robbery, burglary, arson, perjury, forgery, assault and battery. It is a serious offense, and has been so recognized by the federal government for more than 30 years, and by most of the states of the Union, to *conspire* to commit any offense against the state, whether a felony or a misdemeanor, for this strikes at the very stability of government itself. A deliberate agreement to commit a misdemeanor is far more reprehensible than the commission of the misdemeanor itself. Furthermore, it is difficult to determine, in advance of punishment, which are felonies and which are misdemeanors in Louisiana.

"A conspiracy to defraud the State or its subdivisions or institutions should also be punishable, as this Statute would provide, without resort to the cumbersome 'confidence game' and 'false pretenses' statutes which often do not apply to the facts in a definite fraud case." Notes of the Louisiana State Law Institute in submitting its proposed draft of the 1940 statute contained in its Special Report, op. cit. supra note 8, at 13. Cf. La. Act 107 of 1902, § 6, as amended by La. Act 151 of 1936, § 1 [Dart's Crim. Stats. (Supp. 1939) § 944]; La. Rev. Stats. of 1870, § 813, as amended by La. Act 151 of 1936, § 2 [Dart's Crim. Stats. (Supp. 1939) § 945]; La. Act 151 of 1936, §§ 3, 5 [Dart's Crim. Stats. (Supp. 1939) §§ 945.1, 945.2]; La. Act 43 of 1912, §§ 1-3 [Dart's Crim. Stats. (1932) §§ 946-948]; *State v. Smith*, supra.

remedy this situation, the legislature enacted Act 16 of 1940 which denounces and punishes a conspiracy to commit any offense against the state, or to defraud the state, its subdivisions or institutions.

It should be noted that the phrase, "any offense against the State of Louisiana" is ambiguous. A reasonable deduction is that the legislature intended to denounce all conspiracies to commit any acts which have been made criminal by the laws of Louisiana. All crimes are offenses against the state, and the titles of indictments are worded to carry out this idea. On the other hand, it is possible that the legislature intended to make criminal only conspiracies designed to injure the state in its *political* capacity. If this latter interpretation is the correct one, the statute embraces only those combinations of persons who have acted together to destroy, injure, or convert the tangible or intangible property of the state or its political subdivisions, or who have conspired together to impede the exercise by the state of its sovereign authority.

The present act was copied almost verbatim from a provision of the federal criminal code.⁵⁰ Although the interpretation placed upon this federal act by the United States courts is not binding upon the judiciary of Louisiana, yet the federal interpretation will probably be regarded as highly persuasive.⁵¹

The federal courts have adopted the broader interpretation and have regarded the provision in the United States Criminal Code as embracing any and all conspiracies to commit any act condemned as criminal by the laws of the United States.⁵²

50. 35 Stat. 1096 (1909), 18 U.S.C.A. § 88 (1928).

51. *In re Murff*, 50 La. Ann. 998, 23 So. 965 (1898).

52. *Thomas v. United States*, 156 Fed. 897, 17 L.R.A. (N.S.) 720 (C.C.A. 8th, 1907); *Radin v. United States*, 189 Fed. 568 (C.C.A. 2d, 1911), cert. denied 220 U.S. 623, 31 S.Ct. 724, 55 L.Ed. 614 (1911). The crime of conspiring "to commit an offense against the United States" has been further construed to include any act prohibited by federal law in the interest of the public policy of the United States although not of itself punishable by a criminal proceeding. *United States v. Hutto*, 256 U.S. 524, 41 S.Ct. 541, 65 L.Ed. 1073 (1921); *Biskind v. United States*, 281 Fed. 47, 28 A.L.R. 1377 (C.C.A. 6th, 1922), cert. denied 260 U.S. 731, 43 S.Ct. 93, 67 L.Ed. 486 (1922). Such conspiracy may affect either private interests or the rights of the government itself. *United States v. Sanche*, 7 Fed. 715 (C.C. W. D. Tenn. 1881).

The offense of conspiring "to defraud the United States" has been restricted to the federal government in its sovereign capacity, and it is immaterial that the fraud contemplated has not been declared a crime by federal law. *United States v. Clark*, 121 Fed. 190 (D.C. M.D. Pa. 1903); *Curley v. United States*, 130 Fed. 1 (C.C.A. 1st, 1904), cert. denied 195 U.S. 628, 25 S.Ct. 787, 49 L.Ed. 351 (1904); *Salas v. United States*, 234 Fed. 842 (C.C.A. 2d, 1916); *Falter v. United States*, 23 F. (2d) 420 (C.C.A. 2d, 1928), cert. denied 277 U.S. 590, 48 S. Ct. 528, 72 L.Ed. 1003 (1928).

The venue for prosecutions under the act may lie either in the parish where the conspiracy was formed or where any of the acts in furtherance thereof were committed.⁵³

To supply another omission in our statutory definition and punishment of serious criminal offenses, the legislature adopted a statute,⁵⁴ similar to a federal provision,⁵⁵ punishing the making or presenting of a false claim against the state, its subdivisions, or its institutions.⁵⁶

Upon the recommendation of the Louisiana State Law Institute,⁵⁷ a legislative reenactment⁵⁸ of Article 225 of the Code of Criminal Procedure was effected in order to validate that article insofar as it purports to change substantive law which was in force at the time of the adoption of the Code.⁵⁹

The constitutional mandate⁶⁰ under which the Code was prepared and adopted referred only to a "Code of Criminal Procedure." Subsequently, the Supreme Court of Louisiana, in a decision which has attracted much comment,⁶¹ held that the power conferred by this mandate authorizing the legislature to ignore the usual formalities of lawmaking, must be restricted to matters of criminal procedure. It stated emphatically that the Code of Criminal Procedure, adopted pursuant to special constitutional authority, must be confined exclusively to procedural matters, and can make no changes in the substantive criminal law. In

53. La. Act 16 of 1940, § 1. See note 15, *supra*. Cf. La. Act 126 of 1936 [Dart's Crim. Stats. (Supp. 1939) § 839.1]; *State v. Smith*, 194 La. 1015, 195 So. 523 (1940).

54. La. Act 15 of 1940.

55. 40 Stat. 1015 (1918), 18 U.S.C.A. § 80 (1927). Cf. 52 Stat. 197 (1938), 18 U.S.C.A. § 80 (Supp. 1939).

56. The Louisiana State Law Institute, in referring to its proposed draft of the act stated:

"... Strangely, there is no statute covering this subject, except by resort to the rather cumbersome 'confidence game' or 'false pretenses' statutes, which do not fit many cases. For instance, false expense accounts or false vouchers for services should be covered by a statute such as this, which the Federal Government has used effectively since prior to 1910, and which has been sustained many times." Special Report, *op. cit. supra* note 8, at 10.

57. See Special Report, *op. cit. supra* note 8, at 6-7, 14-15.

58. La. Act 57 of 1940.

59. La. Act 2 of 1928.

60. Constitutional amendment proposed by La. Act 262 of 1926; adopted November 2, 1926. Cf. La. Act 276 of 1926 (enabling act).

61. *State v. Rodosta*, 173 La. 623, 138 So. 124 (1931), noted in (1932) 7 *Tulane L. Rev.* 144. This case held Article 238 of the Code of Criminal Procedure unconstitutional insofar as it abolishes the distinction between an accessory before the fact and the principal, thereby changing substantive law.

line with this pronouncement, the supreme court has on several occasions held invalid articles contained in the Code of Criminal Procedure, on the ground that they effect changes in the substantive criminal law either by altering previous rules, or by creating new provisions.⁶²

Article 225, now under discussion, consisted in part of an old statute⁶³ which permitted the insertion of several counts in one indictment for any number of distinct acts of stealing, embezzlement, obtaining money by false pretenses, or of swindling, all committed during a period of six calendar months from the first to the last. However, Article 225 also added a new provision which directed that the grade of the offense charged should be determined by aggregating the amounts or value of such thefts, embezzlements, or other acts.⁶⁴

The necessity for legislative reenactment of the article was disclosed as a result of a recent district court decision⁶⁵ holding that the article is unconstitutional insofar as it attempts to grade the crime of embezzlement, thereby changing the penalty for the offense. The district judge stated that there was a law existing prior to the adoption of the Code, which set the grade of the

62. *State v. Rodosta*, 173 La. 623, 138 So. 124 (1931); *State v. Campbell*, 173 La. 831, 138 So. 853 (1931); *State v. Florane*, 179 La. 453, 154 So. 417 (1934). See *State v. Whitlock*, 193 La. 1044, 1054, 192 So. 697, 700 (1939); *State v. Clement*, 194 La. 395, 401-402, 193 So. 685, 687 (1940).

63. La. Rev. Stats. of 1870, § 1059.

64. Article 225 reads as follows: "It shall be lawful to insert several counts in the same *indictment* against the same defendant for any number of distinct acts of stealing, of embezzlement, of obtaining money by false pretenses, or of swindling, which may have been committed by him against the same person within the space of six calendar months from the first to the last of such acts, and the *aggregate amount of these thefts, embezzlements, obtaining by false pretenses, or swindling, shall determine the grade of the offense charged*; provided, that whenever anyone, by virtue of his office or employment or of any fiduciary relationship which he shall have towards another, shall have entrusted to him any money or other property, and shall embezzle the same, while so entrusted to him, *he may be charged in one indictment and in one count with the embezzlement of the aggregate amount embezzled by him during the entire time of his holding such office, employment or relationship, which said aggregate amount shall determine the grade of the offense charged*; provided, further, that proof of the embezzlement by defendant at any time during his term of office, employment, or fiduciary relationship, of any part of the money or other property with which he shall have been trusted shall warrant a verdict of guilty of that grade of the offense shown by the value of such money or property to have been committed." (Italics supplied.)

65. *State v. Caldwell and Lorio*, Criminal Docket No. 10,232, Division "B," Nineteenth Judicial District Court for the Parish of East Baton Rouge (La. 1940).

crime of embezzlement and prescribed the penalty therefor,⁶⁶ and that this provision was substantive in nature.⁶⁷

Upon the basis of this decision, fortified by the supreme court cases on the subject,⁶⁸ the article would seem to be unconstitutional also insofar as it attempts to grade the crimes of stealing and of obtaining by false pretenses, because laws were extant before the Code of Criminal Procedure was adopted grading and prescribing the punishment for these offenses and containing no provisions permitting the state to charge in one indictment the aggregate value of a number of separate commissions of these crimes.⁶⁹

In reenacting the article the 1940 act⁷⁰ adds a proviso prohibiting the cumulation in the same indictment of separate acts of any two or more of the several offenses mentioned.

Other late pieces of criminal legislation relate to a variety of offenses. Act 114 of 1940 was enacted in order to effect a state-wide denouncement of prostitution and related crimes as offenses against the state.⁷¹ The scope of the statute is sufficiently comprehensive to apply to most of the common types of sexual offenders who menace the public morals of a community.⁷² Heretofore, our state laws relating to such crimes were designed to deter prostitution and similar offenses only indirectly through

66. *Id.* at 12-13: "Certainly it cannot be said that an article of the Code of Criminal Procedure grading the crime of embezzlement and changing the penalty therefor as it previously existed, is merely a change in pleading, evidence and practice. Substantive law provides the penalty; procedural law provides the method of enforcing it. To permit the addition of various small items of embezzlements, theretofore misdemeanors, triable by a jury of five, thereby creating a felony, triable by a jury of twelve, and the changing of the penalty for said offense, in my opinion, would be to permit the creation of substantive law in the Code of Criminal Procedure, and the changing of substantive law as it existed prior to the adoption of the Code, in violation of the constitutional mandate to the Legislature to adopt a Code of *Procedure* only."

67. *State v. Caldwell and Lorio*, Criminal Docket No. 10,232, Division "B," Nineteenth Judicial Court for the Parish of East Baton Rouge (La. 1940).

68. Note 62, *supra*.

69. See La. Act 107 of 1902, § 6 and La. Rev. Stats. of 1870, § 813 [Dart's *Crim. Stats.* (1932) §§ 944-945], as amended by La. Act 151 of 1936 [Dart's *Crim. Stats.* (Supp. 1939) §§ 944-945.2] (false pretenses); La. Act 124 of 1874, § 8 [Dart's *Crim. Stats.* (1932) § 1053], and La. Act 107 of 1902, § 5 [Dart's *Crim. Stats.* (1932) § 1054], the latter amended by La. Act 150 of 1936 [Dart's *Crim. Stats.* (Supp. 1939) §§ 1054.1-1054.3] (larceny).

70. La. Act 57 of 1940, § 1.

71. La. Act 159 of 1912, § 8.1, as added by La. Act 3 of 1935 (2 E.S.) § 1, punishes as vagrants in the City of New Orleans any person who commits the offenses now denounced by La. Act 114 of 1940, and its constitutionality has been upheld. *State v. Martin*, 185 La. 1080, 171 So. 452 (1936).

72. *Cf.* La. Act 114 of 1940, § 1.

punishing those who promote delinquency in women,⁷³ while leaving the streetwalkers themselves unpunished. The task of directly striking at the latter class of persons was left by the state to its political subdivisions, which, with one exception,⁷⁴ were authorized, although not directed, to classify and penalize these persons as vagrants.⁷⁵ Although vagrancy has been a state offense since 1855,⁷⁶ such sexual offenders as are punished by the 1940 act were never classified as vagrants under that law.⁷⁷ The new law enables the state to supplement and check any parish or municipal officers who are neglectful in curbing this type of immorality in their several localities.

A recent statute makes it a misdemeanor for any person wilfully and knowingly to purchase, receive for sale, or accept a donation of, pledged agricultural products from any pledgor with the intention of depriving the pledgee of his pledge thereon, unless the latter has given his written consent to such disposal.⁷⁸ This law serves as a companion measure to an existing penal statute applicable to a pledgor who wrongfully disposes of a pledged agricultural product.⁷⁹

In order to further prevent the distribution of bogus legal documents of value, the legislature has made criminal the act of selling or offering to sell, causing to be sold or offering to be

73. La. Act 134 of 1890 [Dart's *Crim. Stats.* (1932) §§ 1156-1158]; La. Act 40 of 1892 [Dart's *Crim. Stats.* (1932) § 1160]; La. Act 167 of 1910, § 1 [Dart's *Crim. Stats.* (1932) § 1155]; La. Act 287 of 1910, § 1 [Dart's *Crim. Stats.* (1932) § 1154]; La. Act 288 of 1910, § 1 [Dart's *Crim. Stats.* (1932) § 1161]; La. Act 295 of 1910, § 1 [Dart's *Crim. Stats.* (1932) § 1159]; La. Act 307 of 1910 [Dart's *Crim. Stats.* (1932) §§ 1144-1153]; La. Act 226 of 1912 [Dart's *Crim. Stats.* (1932) §§ 1243-1246]; La. Act 115 of 1918, § 1 [Dart's *Crim. Stats.* (1932) § 1143].

74. In 1935 the legislature denounced prostitution and related acts in New Orleans as vagrancy. La. Act 3 of 1935 (2 E.S.) § 1, adding Section 8.1 to La. Act 159 of 1912.

75. La. Act 178 of 1904, as amended by La. Act 205 of 1908 [Dart's *Crim. Stats.* (1932) §§ 1247-1249]. Cf. *State v. Westmoreland*, 133 La. 1015, 63 So. 502 (1913); *New Orleans v. Postek*, 180 La. 1048, 158 So. 553 (1935). The 1940 act is not to be construed as repealing this law or any other law that defines "crimes and misdemeanors involving illegal sexual relations." La. Act 114 of 1940, § 3.

76. La. Rev. Stats. of 1870, §§ 953-955, 3877-3890 [Dart's *Crim. Stats.* (1932) §§ 1233-1242]. *State v. Westmoreland*, 133 La. 1015, 63 So. 502 (1913).

77. La. Rev. Stats. of 1870, §§ 953, 3877 [Dart's *Crim. Stats.* (1932) § 1233].

78. La. Act 139 of 1940. Crop pledges are authorized by La. Act 66 of 1874, as amended by La. Act 44 of 1874 and La. Act 93 of 1922 [Dart's *Stats.* (1939) §§ 5053-5060].

79. La. Act 192 of 1908 [Dart's *Stats.* (1939) §§ 5061-5062]. Art. 3173, La. Civil Code of 1870 provides:

"The debtor who takes away the pledge without the creditor's consent, commits a sort of theft."

Any other person who wrongfully assists in depriving the pledgee of his pledge also commits a like offense and should be punished.

sold, soliciting for or offering to purchase, any paper which simulates an official document such as is issued by or from any judicial or administrative tribunal and intended to secure or collect a sum of money or other thing of value.⁸⁰ The statute is supplementary to an earlier law prohibiting the uttering, issuing, circulating and disposal of simulated legal papers.⁸¹

Act 28 of 1940 punishes the presenting of an affidavit or other document known to contain false information for the purpose of securing any one of the many tax exemption benefits granted by Article X, Section 4, of the Louisiana Constitution of 1921.⁸² The same act attempts to punish another prevailing practice with respect to tax exemption. Tax assessors and other officials and employees of the state or its political subdivisions are prohibited from listing at any excessive value for purposes of taxation any property for which an exemption under the constitution has been applied.⁸³

B. MATTERS RELATING TO PROCEDURAL LAW

*Amendments to Specific Articles of the Code of Criminal Procedure*⁸⁴

Article 151. Number of witnesses citable at the expense of the parish in criminal cases. Articles 150 and 151 of the Code of Criminal Procedure, as last amended,⁸⁵ provided that without a formal judicial application not more than six witnesses could be summoned on each side at the expense of the parish in misdemeanor cases and twelve in trials for felonies. The 1940 session has again amended⁸⁶ Article 151, so that now, in the absence of a special application to the judge, only twelve witnesses on each side may be cited at parish expense. This limitation applies equally to trials for misdemeanors and felonies. Furthermore, the maximum number of witnesses which in any event may be called at parish expense is set at twenty for each side. Insofar as the amendment places trials of all offenses on the same footing,

80. La. Act 290 of 1940.

81. La. Act 135 of 1932 [Dart's Crim. Stats. (Supp. 1939) § 943.1].

82. La. Act 28 of 1940, §§ 1, 3. All property declared exempt by the constitutional provision mentioned in the 1940 act is exempted from the annual state levy authorized by La. Act 109 of 1921 (E.S.) § 3 [Dart's Stats. (1939) § 8294].

83. La. Act 28 of 1940, §§ 2, 3.

84. La. Code of Crim. Proc. of 1928.

85. Arts. 150, 151, as amended by La. Act 367 of 1938, La. Code of Crim. Proc. of 1928 (Supp. 1939). See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, 128.

86. La. Act 106 of 1940.

it marks a return to the policy of the original provisions of the Code of 1928.⁸⁷

The amended codal provision applies to and governs the summoning of witnesses at parish expense upon the trial of motions to quash an indictment, a bill of information, a petit or grand jury venire or panel, or a plea in bar in addition to the final trial of a criminal case.⁸⁸

Since Article 151 operates as a limitation upon the effect of Article 150, there is no conflict between them, and, therefore, the failure of the legislature to correspondingly amend the latter codal provision, although an unfortunate oversight, cannot be regarded as a restriction of the former's effect.⁸⁹

*Articles 189 and 200. Term of service of grand juries.*⁹⁰ Article 189⁹¹ regulates the time at which grand juries shall be impaneled in the parishes composing their respective districts, except Orleans Parish,⁹² and provides, with certain restrictions, that each grand jury shall "remain in office until a succeeding Grand Jury is impaneled." Article 200⁹³ relates exclusively to the Parish of Orleans. It provides that the "grand jury of the Parish of Orleans shall serve for six months unless sooner discharged by the court."⁹⁴ The legislature amended both codal articles by adding provisions to the effect that in the Parish of Orleans the grand jury or any of its members may not be discharged before the expiration of six months service unless for *legal cause*,⁹⁵ and that

87. Arts. 150, 151, La. Code of Crim. Proc. of 1928.

88. *Ibid.*

89. Art. 150, as amended by La. Act 367 of 1938, La. Code of Crim. Proc. of 1928 (Supp. 1939), states that its provisions apply "except as provided in the next succeeding section [Art. 151]." Cf. Hebert and Lazarus, *loc. cit.* supra note 85.

90. Cf. La. Const. of 1921, Art. VII, § 42.

91. Art. 189, La. Code of Crim. Proc. of 1928.

92. Cf. Art. 196, as amended by La. Act 23 of 1934 (2 E.S.) § 1, La. Code of Crim. Proc. of 1928 (Supp. 1939), and La. Act 194 of 1940, *infra* page 165 et seq., fixing the time for impaneling the grand jury in Orleans Parish.

93. Art. 200, as reenacted by La. Act 23 of 1934 (2 E.S.) § 1, La. Code of Crim. Proc. of 1928 (Supp. 1939).

94. There must be a grand jury impaneled in each parish in the state at least twice a year for not more than eight or less than four months, except in Cameron Parish wherein at least one grand jury must be impaneled in each year. Art. 189, La. Code of Crim. Proc. of 1928.

95. Cf. Art. 172, La. Code of Crim. Proc. of 1928. This article reads in part as follows: ". . . the District Judge shall have discretion to decide upon the competency of jurors in particular cases where from physical infirmity or from relationship, or other causes, the person may be, in the opinion of the judge, incompetent to sit upon the trial of any particular case." (Italics supplied.)

in all other parishes in the state the grand jury or any of its members may not be discharged before the time fixed by the district judge for the impaneling of a new grand jury unless it be for such cause.

Any grand juror is entitled to apply to the supreme court for an immediate preferential review of the order by which he was discharged; but his application for review⁹⁶ must be made within two days from the date of the order. Pending action on the appeal, the applicant must continue to serve as a grand juror. Even though the court affirms the order or denies the application for review, this does not affect the validity of indictments returned by the grand jury between the date of the discharge order and the date of the court's action on the application.⁹⁷ Within two days after the order of discharge is affirmed by the supreme court or becomes final, the district judge must make the necessary appointment as prescribed by law⁹⁸ to fill any vacancies resulting therefrom.

Article 194. Preparation of the jury list for the Parish of Orleans. Under Article 194 as it originally appeared in the Code of Criminal Procedure, the Orleans Parish Board of Jury Commissioners was directed to select for jury service a minimum number of one thousand persons. In 1934 the article was amended so as arbitrarily to place the number of persons so selected at exactly one thousand.⁹⁹ At the 1940 legislative session the article was again amended¹⁰⁰ so as to restore the original version, providing for the selection of "not less than one thousand persons."

Article 195. Method of drawing and assigning petit jurors in Orleans Parish. Article 195 was reenacted in substantially its

96. Cf. La. Const. of 1921, Art. VII, §§ 2, 10(1); Rules IX, §§ 2, 3, and XIII, Rules of the Supreme Court of Louisiana, as amended to January 3, 1939. In the past, grand jurors aggrieved by their discharge at the order of the district judge, after they had been impaneled and sworn, have sought supreme court review of the order by petitioning the court to invoke its supervisory jurisdiction in the case and grant writs of certiorari, prohibition and mandamus. *State v. Platt*, 193 La. 928, 192 So. 659 (1939).

97. *Quaere*: Can it properly be said that such a grand jury, composed of eleven qualified men and one disqualified man, meets the requirements of La. Const. of 1921, Art. VII, § 42? There is probably no serious difficulty here. Since the legislature has the power to define the qualifications of jurors, it would appear that it can set forth the terms and conditions upon which disqualifications shall become operative. Cf. Art. 172, La. Code of Crim. Proc. of 1928.

98. Arts. 184 and 197, La. Code of Crim. Proc. of 1928 (Supp. 1939), as amended by La. Act 23 of 1934 (2 E.S.) § 1 and La. Act 194 of 1940.

99. La. Act 23 of 1934 (2 E.S.) § 1.

100. La. Act 194 of 1940, § 1.

original codal form.¹⁰¹ Subsequent amendments¹⁰² had directed that the Board of Jury Commissioners for Orleans Parish draw from the jury wheel 150 names when petit jurors were to be summoned for service in only two sections of the criminal district court, and not less than 75 additional names for each section of the court ordering a drawing for a special petit jury term (the number of jurors to be designated in the court order). The amendments provided further that, where the names were drawn, the commissioners should assign the number of jurors so drawn to the court for which the drawing was held. The 1940 amendments¹⁰³ require that the commissioners, together with the *criminal sheriff*, draw *not less than* 150 names in the first instance and not less than 75 *nor more than* 150 additional names in the second instance, without the requirement that the number of jurors be designated by the court in its order. The commissioners are then directed to assign not less than 75 of the jurors to each section of the criminal district court for which the drawing was held.

Article 196. Powers and control of the grand jury for Orleans Parish. It clearly appears that the 1940 amendments¹⁰⁴ to Article 196 of the Code of Criminal Procedure¹⁰⁵ are intended to incorporate language therein substantially corresponding to the interpretation placed upon that article by the dissenting opinion of Chief Justice O'Niell in the case of *State v. Platt*.¹⁰⁶ This decision involved an appeal to the supreme court by certain members of the grand jury then impaneled for Orleans Parish from an order of a district judge discharging them from the grand jury before the expiration of their normal term of service. The district judge based his action on the ground that legal cause for removal was supplied by the grand jurors' contempt of court in reading in open court a petition addressed to the judge. The petition that gave rise to the incident contained a request that the court employ special counsel to conduct the grand jury investigations then in progress and to recuse the district attorney and his entire staff because of alleged misconduct and non-cooperation in conducting the proceedings.

101. Art. 195, La. Code of Crim. Proc. of 1928.

102. La. Act 23 of 1934 (2 E.S.) § 1; La. Act 34 of 1936, § 1. See Art. 195, La. Code of Crim. Proc. of 1928 (Supp. 1939).

103. La. Act 194 of 1940, § 1.

104. *Ibid.*

105. The article was previously amended by La. Act 23 of 1934 (2 E.S.) § 1.

106. 193 La. 928, 996, 192 So. 659, 681 (1939).

With the recent amendments in italics, Article 196 now reads, in part:

"... The judge of the section of the Criminal District Court who shall have appointed said grand jury shall have control and instruction over the grand jury, *exclusive of all other judges of the Criminal District Court*, and such grand jury shall make all findings and returns in open court to said judge; *and in addition thereto, may make reports and requests in open court as provided by law.* . . ." ¹⁰⁷

The dissenting opinion in the above cited case stated:

"The declaration in article 196 of the Code of Criminal Procedure, that each grand jury, in the Parish of Orleans, shall be under the exclusive control and instruction of the judge who empaneled the grand jury, means nothing more than that that judge's authority to control and instruct the grand jury shall not be interfered with by any other judge of the criminal district court. The expression 'exclusive control and instruction' is not intended to prevent the grand jurors from doing anything but what the judge or the district attorney instructs them to do." ¹⁰⁸

The opinion continues by citing Article 204 of the Code of Criminal Procedure which prescribes the oath of the grand juror and Section 2140 of the Revised Statutes of 1870, supplying the penalty for the failure of a grand juror to comply with his oath.

Article 210. Restrictions upon the powers of the grand jury to act. As in the preceding instance, the guide for the draftsman in amending Article 210 may be found in the expressions contained in the dissenting opinion in the *Platt* case. It was argued in that case that the grand jurors' attempt to read the petition in question violated Article 210 restricting the powers of the grand jury to act. The 1940 amendments to this article ¹⁰⁹ and also to Article 196 have the effect of enlarging the powers of the grand jury in order to permit it to submit "reports or requests" to the court of the type under discussion in that decision, while

107. Cf. Art. 210, La. Code of Crim. Proc. of 1928, as amended by La. Act 194 of 1940, § 1.

108. O'Niell, C. J., dissenting in *State v. Platt*, 193 La. 928, 1000-1001, 192 So. 659, 682-683 (1939). The phrase "exclusive control and instruction," as above used, appeared in the original article prior to the 1940 amendment.

109. La. Act 194 of 1940, § 1.

otherwise restricting it to returning indictments, presentments, or inspectional reports.¹¹⁰

The dissenting opinion in the *Platt* case declared:

"The long list of decisions quoted in the majority opinion in this case, putting a limit upon what grand juries may say in their reports, have nothing to do with this case, because the petition which the seven grand jurors signed, in this case, and which Powell and De Armas attempted to read in open court, was not in any sense a grand-jury report. The report of a grand jury has a well defined meaning, and is something very different from the complaint and request made by the seven grand jurors in their petition to Judge Platt.

"It is argued that Powell and De Armas, by attempting to read the petition which was signed by them and by five other members of the grand jury, were attempting to violate article 210 of the Code of Criminal Procedure. But it seems to me that that article has no reference whatever to such a document as Powell and De Armas were about to read. The article of the Code has reference only to the findings, such as a true bill, or not a true bill, and the reports which are required to be made by not less than a quorum of the grand jury. . . . But the *report* referred to in these articles [210 and 211] of the Code is the grand-jury report, properly so-called, which must be made by not less than a quorum, of nine members, of the grand jury. That has nothing to do with such a document or petition as that which caused Powell and De Armas to be discharged from the grand jury. Their attempt to read the document was not a violation of any law. . . ."¹¹¹

110. Art. 210, La. Code of Crim. Proc. of 1928, as amended by La. Act 194 of 1940, § 1, provides in part:

"The grand jury shall have power to act only in one of the following ways:"

"It shall make no reports to the court other than the return of presentment or indictment or *reports or requests provided by law.*" (Amendment italicized.)

Prior to the 1940 amendment, the pertinent part of the article read: "It shall make no reports to the court other than the return of presentment or indictment, *except as specifically provided in Article 211 hereof.*" (Italics supplied.)

Article 211 of the Code of Criminal Procedure imposes upon the grand jury the duty of inspecting "every prison, place of detention, asylum and hospital within the parish" and requires it to make a report to the district judge of the results of such inspections.

111. O'Niell, C. J., dissenting in *State v. Platt*, 193 La. 928, 1002-1003, 192 So. 659, 683 (1939).

Article 197. Method of filling vacancies in the Orleans Parish grand jury. As originally enacted in the Louisiana Code of Criminal Procedure of 1928, Article 197 provided *inter alia*¹¹² that vacancies occurring in the membership of the Orleans Parish grand jury may be filled by drawing from the jury wheel *not less than* twelve names from which the district judge shall select the persons necessary to fill the vacancies. In 1934 this article was amended¹¹³ so as to delete the words in italics above, thus restricting the number to be drawn to precisely twelve names. The latest amendment, made in the 1940 session,¹¹⁴ reinstates the original wording of the article.

Article 199. Method of summoning tales jurors for petit jury service in the Parish of Orleans. The 1940 amendment¹¹⁵ to Article 199¹¹⁶ transfers the function of drawing names of tales jurors for petit jury service in Orleans Parish from the Board of Jury Commissioners or any one of them to the criminal sheriff or one of his deputies, as the original codal provision directed.¹¹⁷

Article 205. Charge to be given to all grand juries. Article 205¹¹⁸ has been amended¹¹⁹ so that upon the impaneling of the grand jury, the district judge is directed to charge the members *in open court* upon their duties and obligations as grand jurors, as well as to instruct them concerning their powers and rights in such capacity, and at the same time, it is required of the judge that he present to the grand jurors a written copy of the charge and instructions so given, with the right being granted to the jury at any time to ask for additional charges or instructions concerning these matters, which must be given in a like manner.

These provisions, in effect, remedy the complaint presented by the grand jurors in the *Platt* case: that the district judge called the jury into private consultation, and there, "with the admonition of secrecy under their oath," they "were given

112. Another method of selection provided to fill vacancies in the grand jury is for the judge of the impaneling section of the court to select the necessary number of persons from the petit jury panel of his section.

See Art. 184, La. Code of Crim. Proc. of 1928, for the manner of filling vacancies in the membership of the grand juries outside the Parish of Orleans.

113. La. Act 23 of 1934 (2 E.S.).

114. La. Act 194 of 1940, § 1.

115. *Ibid.*

116. Art. 199, as amended by La. Act 23 of 1934 (2 E.S.) § 1, La. Code of Crim. Proc. of 1928 (Supp. 1939).

117. Art. 199, La. Code of Crim. Proc. of 1928.

118. La. Code of Crim. Proc. of 1928.

119. La. Act 194 of 1940, § 1.

certain instructions as to the mode of their procedure, the conduct of their hearings, and the scope of their administrative powers, and the extent of the control of the District Attorney over the members of the Grand Jury and their proceedings,'¹²⁰ all of which "intimidated and confused" them and "were erroneous and had the effect of unlawfully curtailing and bridling the investigatory powers of the Grand Jury."¹²¹

Article 207. Time, place and adjournment of meetings of the grand jury. The amendments of 1940¹²² to Article 207 of the Code of Criminal Procedure provide that not only shall the grand jury meet "at the parish seat at such times as the judge may order," but shall also "meet at the parish seat at such times as they may assemble on their own motion, at any time and at any place within the parish, as directed by the judge or by a majority of the grand jury." Thus, the legislature took a further step toward making the grand jury a more autonomous body, and curtailed the degree of control over its actions which may be exercised by the district judge.

Articles 569 and 570. Electrocutation substituted for hanging as the method of executing the death sentence. Act 14 of 1940 amends Articles 569 and 570¹²³ by substituting electrocutation in the place of hanging as the legal method of executing prisoners condemned to death.¹²⁴ The law is to become effective June 1, 1941, or at such prior date as an electric chair may be obtained by the general manager of the state penitentiary, and when such fact has been certified by him to the sheriffs in the state.¹²⁵ If electricity is not available in the prison of the parish where the execution is to be performed, the sheriff, with the Governor's consent, may change the place of execution to an adjacent parish.¹²⁶ No one is permitted to be in the execution chamber "except those permitted by law," such persons being designated in the statute; and no person under the age of twenty-one may be allowed there.¹²⁷

Codal Article Repealed

Article 208. The repeal of Article 208 of the Code of Criminal

120. *State v. Platt*, 193 La. 928, 934, 192 So. 659, 660 (1939).

121. 193 La. 928, 935, 192 So. 659, 661 (1939).

122. La. Act 194 of 1940, § 1.

123. La. Code of Crim. Proc. of 1928.

124. La. Act 14 of 1940, § 1.

125. *Id.* at § 2.

126. *Id.* at § 1.

127. *Ibid.*

Procedure¹²⁸ and the recent amendments to Article 207,¹²⁹ granting to the majority of members of the grand jury the right to determine at what times and places that body shall meet within the parish, would seem to resolve most possible conflicts with the district judge as to such matters in favor of the members of the grand jury.¹³⁰

Other Procedural Statutes

The alternate juror law. Upon the recommendation of the Louisiana State Law Institute, the legislature adopted a draft¹³¹

128. La. Act 194 of 1940, § 2. The article provided:

"The grand jury may be called in special meeting at any time or at any place within the parish by the district judge, or by the foreman with the approval of the district judge."

129. La. Act 194 of 1940, § 1. See p. 165 et seq., supra.

130. In *State v. Johnson*, 116 La. 856, 863-864, 41 So. 117, 119 (1906), the supreme court made the following statement in answer to a charge by defendant that the grand jury illegally left the court house and visited the scene of the homicide, without being authorized by the court:

"... As to the charge that the grand jury visited the scene of the homicide without obtaining permission from the court, it appears that the place visited is within the corporate limits of Donaldsonville, the parish seat of Ascension Parish, and the judge in signing the bill [of exception] in relation to the matter, says:

"Being of opinion that the defendants were not concerned with the nature of the evidence taken and considered by the grand jury, this motion to quash on this ground is overruled," etc.

"The law requires a grand jury to hold its sessions at the seat of justice of the parish (Act 135, p. 221, of 1898, § 8); but it also requires it to visit the prisons within its district (Rev. St. 1870, § 2139), from which it follows that the sessions of the body are not, necessarily, to be held at the courthouse. A grand jury is authorized to act on evidence submitted to it, but its members are also required, under a very severe penalty in case of failure so to do, to act upon facts within their own knowledge (Rev. St. 1870, § 2140), from which it also follows that *they do not require the permission of the court to investigate crime, but are bound to take the initiative and determine for themselves the character of the evidence, or the sufficiency of the facts, necessary to their findings. Under these circumstances, we see no reason for holding that the action of the grand jury here complained of was unauthorized.* . . . We therefore conclude that the motion to quash was properly overruled." (Italics supplied.)

131. La. Act 6 of 1940. It was thought by the Louisiana Law Institute that an amendment of La. Const. of 1921, Art. I, § 9, relating to restrictions of a jury trial, would not be necessary to validate the statute as the federal alternate juror statute has been considered valid, and in every case where an attack upon the constitutionality of such a law has been made, it has been unsuccessful. California: *People v. Peete*, 54 Cal. App. 333, 202 Pac. 51 (1921); New York: *People v. Mitchell*, 266 N.Y. 15, 193 N.E. 445, 96 A.L.R. 791 (1934); North Carolina: *State v. Dalton*, 206 N.C. 507, 174 S.E. 422 (1934); New Jersey: *State v. Dolbow*, 117 N.J. Law 560, 189 Atl. 915 (1937), where the law permitted the court to dismiss a juror for any cause which, in his opinion, justifies dismissal, and to proceed with one of the alternate jurors as substituted; Pennsylvania: *Commonwealth v. Fugmann*, 330 Pa. 4, 198 Atl. 99 (1938). In addition to these states, alternate juror provisions also exist in Arizona, Idaho, Nevada, Ohio, Oregon, Utah, Washington, and Wyoming. See Special Report, op. cit. supra note 8, at 16-18.

of an act modeled after a federal enactment¹³² which provided for the selection of alternate jurors in the trial of criminal¹³³ cases in order to meet the contingency of a juror becoming so ill as to be unable to perform his duties or of the death of a juror before a verdict has been rendered.¹³⁴ The new act provides that if the district judge, before whom a criminal case is about to be tried, is of the opinion that the trial will be a protracted one, he may, after causing an entry to be made in the court minutes to that effect, and after the jury is impaneled and sworn, direct the selection of one or two alternate jurors, in his discretion. These jurors must take the same oath, be drawn from the same source, in the same manner and have the same qualifications and be subject to the same examination, orders of court and challenges as the regular jurors, in whose company they must attend the trial at all times. Each defendant is entitled to one peremptory challenge to each of the alternate jurors, and the prosecution is entitled to one challenge to each of the alternate jurors for each defendant.¹³⁵ Such jurors may be discharged upon the final submission of the case to the regular jury unless before that time one of the regular jurors dies or becomes too ill to perform his duty, in which event the court may order him discharged

132. 47 Stat. 380 (1932), 28 U.S.C.A. § 417a (Supp. 1939). Section 285 of the Code of Criminal Procedure of the American Law Institute consists of an alternate juror provision also similar to the Louisiana statute.

133. The view was expressed by a committee section of the Louisiana State Law Institute that, although such a provision if desirable did not come within its scope, it may be thought advisable to provide for alternate jurors in the trial of civil cases, but that the contingency of an ill juror in a civil case can usually be met by agreement of counsel. It might be said also that civil juries are rarely employed in most Louisiana courts. See Report by the Criminal Law Section of the Program and Work Committee to the Annual Meeting of the Louisiana State Law Institute, March 16, 1940, at 10-11. Such an alternate juror provision is contained in Rule 47(b), Federal Rules of Civil Procedure.

134. Cf. Art. 397, La. Code of Crim. Proc. of 1928, and annotations thereto, for cases warranting an order discharging the jury and an entry of a mistrial before rendition of the verdict.

135. As to the number of peremptory challenges to the regular jurors allowed for the prosecution and each defendant, Louisiana law provides that:

"In all trials for any crime punishable with death, or necessarily with imprisonment at hard labor, each defendant shall be entitled to challenge peremptorily twelve (12) jurors, and the prosecution twelve (12) for each defendant. In all other criminal cases each defendant shall have six (6) peremptory challenges and the state six (6) for each defendant." Art. 354, as amended by La. Act 365 of 1938, La. Code of Crim. Proc. of 1928 (Supp. 1939).

The number of regular jurors in a criminal case may be either five or twelve, depending upon the nature of the penalty which may be inflicted upon conviction. La. Const. of 1921, Art. I, § 9, and Art. VII, § 41; Arts. 337-339, La. Code of Crim. Proc. of 1928. See *supra* note 131.

and draw the name of an alternate juror who thereafter serves in his place.

It is suggested that further provision should be made in the statute to take care of instances when there is serious illness or death in the family of a juror or any other unforeseen emergency of such nature that a juror should not be expected to continue his duties. Alternate juror provisions in several of the states have provided for these contingencies.¹³⁶

Grand juries authorized to adopt their own rules of procedure. Grand juries throughout the state are authorized¹³⁷ to adopt, with judicial approval, rules of procedure to govern their ministerial functions. This act also appears to be a consequence of the friction between the court and grand jury which was the subject of the dispute in *State v. Platt*.¹³⁸ It is another effort by the legislature to impart a measure of independence to the grand jury.¹³⁹

District Attorneys required to submit report to every new grand jury. The legislature has enacted that district attorneys throughout the state are required to submit in open court to the judge and every new grand jury a report setting out in detail the existing status or disposition made of indictments brought in by the two preceding grand juries, together with reasons why any indictments have not been acted upon, if such is the case.¹⁴⁰

C. MISCELLANEOUS

The State Police Act¹⁴¹ was amended by Act 113 of 1940 so as to compel any police employee of the department making an

136. See for example: Cal. Pen. Code (Deering, 1931) § 1089, as amended by Laws of 1933, c. 521; New York Code of Criminal Procedure (McKinney, 1938) § 358-a, as amended by N.Y. Law of 1933, c. 588, N.Y. Law of 1939, c. 199; North Carolina Public Laws (1931) c. 103, as amended by Public Laws (1939) c. 35; Pa. Stat. (Purdon, 1936) tit. 17, § 1153.

137. La. Act 8 of 1940.

138. 193 La. 928, 192 So. 659 (1939). The court said in that case: "Therefore, the District Judge properly instructed these grand jurors in their meeting of October 6, 1939, that the grand jurors could not make rules and regulations to govern themselves, which were contrary to law and that they must realize that the law which gave them the official status as grand jurors, likewise made the District Attorney and his staff their legal advisors and placed them under the direction and instructions of the District Judge." (193 La. at 962-963, 192 So. at 670.)

139. See the dissenting opinion in *State v. Platt*, 193 La. 928, 996, 192 So. 659, 682 (1939), in which Chief Justice O'Niell states that the grand jury is "the most important institution in America."

140. La. Act 61 of 1940.

141. La. Act 94 of 1936 [Dart's Stats. (1939) §§ 9307.1-9307.28].

arrest to immediately thereafter place any person so arrested in the jail of the parish in which the arrest was made, under penalty of a fine or imprisonment or both.¹⁴² The new amendment also withdraws the authority by which the Superintendent of State Police formerly could call upon local peace officers for assistance in performing the duties imposed upon state police employees.¹⁴³

Act 237 of 1940 makes the statute¹⁴⁴ regulating the possession and transfer of firearms inapplicable to sheriffs or to municipalities of more than ten thousand inhabitants.¹⁴⁵

IV. CONSTITUTIONAL AMENDMENTS

During the 1940 regular session of the Louisiana legislature twenty-eight amendments to the Louisiana Constitution of 1921 were proposed. These will be submitted to the people for ratification at the regular election to be held November 5, 1940.¹ The amendments cover a great variety of subjects, including matters of political and governmental reform, and taxation. These two topics enumerated above have been separately treated elsewhere in the Louisiana Law Review, and a discussion of the pertinent

142. *Id.* at § 16 [Dart's Stats. (1939) §§ 9307.16], as amended by La. Act 113 of 1940, § 1.

143. La. Act 94 of 1936, § 21, as amended by La. Act 57 of 1938, § 1 [Dart's Stats. (1939) § 9307.21], as amended by La. Act 113 of 1940, § 2.

144. La. Act 17 of 1935 (4 E.S.) [Dart's Crim. Stats. (Supp. 1939) §§ 1279.7-1279.21].

145. *Id.* at § 14 [Dart's Crim. Stats. (Supp. 1939) § 1279.20], as amended by La. Act 237 of 1940, § 1.

1. As this issue goes to press (November 11, 1940) it appears probable that nineteen of the twenty-eight proposed amendments have been ratified by the voters of Louisiana. The following proposed amendments apparently have been defeated:

Amendment 4, *Taxation Exemption for Waste Materials and Income Tax Amendment* (La. Act 382 of 1940).

Amendment 12, *Taxation Exemptions to New Industries* (La. Act 399 of 1940).

Amendment 14, *Retirement and Pension of State Officials* (La. Act 378 of 1940).

Amendment 15, *Exempting from Taxation Property of Electric Cooperatives Organized Under Federal Rural Electrification Act* (La. Act 376 of 1940).

Amendment 20, *Limiting Taxes of Tensas Basin Levee District* (La. Act 393 of 1940).

Amendment 23, *New Orleans Union Station* (La. Act 385 of 1940).

Amendment 26, *Bank Tax Exemptions* (La. Act 389 of 1940).

Amendment 27, *Exemptions of Lodges, etc., from Taxation* (La. Act 398 of 1940).

Amendment 28, *Legislators' Salaries* (La. Act 379 of 1940).

constitutional amendments will be found therein.² The remaining proposed amendments are discussed in the paragraphs that follow.

Board of Supervisors of Louisiana State University

A complete reorganization of the Board of Supervisors of Louisiana State University has been proposed through constitutional amendment.³ The ultimate objective of the amendment is the creation of a board of fourteen members (exclusive of the Governor, who serves ex-officio as a member). Each member shall serve for fourteen years. The terms shall be overlapping, two members retiring on June first of each even numbered year. In order to place this scheme into operation with a minimum of disturbance of the tenure of presently appointed incumbents, the following provision has been made:

“. . . the successors to those members whose terms expire on January 1, 1941, shall be appointed to serve until June 1, 1942; the members whose terms expire on January 1, 1942, shall serve until June 1, 1944; the members whose terms expire on January 1, 1943, shall serve until June 1, 1946; the successors to those members whose terms expire on January 1, 1944, shall be appointed to serve until June 1, 1948; the members whose terms expire on January 1, 1945, shall serve until June

2. The following proposed amendments are discussed by Professor Hyneman, Political and Administrative Reform in the 1940 Legislature (1940) 3 LOUISIANA LAW REVIEW 1.

Voting Machines (La. Acts 372 and 375 of 1940) pp. 34-35.

Poll Tax Repeal (La. Act 374 of 1940) p. 29.

Legislators' Salaries (La. Act 379 of 1940) pp. 26-28.

Civil Service, (La. Act 381 of 1940) p. 15.

Reorganization (La. Act 384 of 1940) p. 1 et seq., p. 23 et seq.

The following proposed amendments are discussed by Professor Dakin, Louisiana Tax Legislation of 1940 (1940) 3 LOUISIANA LAW REVIEW 55.

License Plate Reduction (La. Act 373 of 1940) p. 82, n. 149; p. 85, n. 167.

Rural Electrification (La. Act 376 of 1940) p. 90.

Highway Commission Bonds (La. Act 377 of 1940) p. 82.

Severance Tax Fund (La. Act 380 of 1940) p. 80, n. 133.

Taxation Exemption for Waste Materials and Income Tax Amendment (La. Act 382 of 1940) pp. 57-58.

State Bond Issue (La. Act 383 of 1940) p. 87.

Bank Tax Exemptions (La. Act 389 of 1940) pp. 89-90.

Severance Tax on Natural Resources (La. Act 392 of 1940) pp. 79-80.

Prohibiting Gasoline Taxes by Municipalities (La. Act 395 of 1940) pp. 81-82.

Property Exemptions from Taxation (La. Act 398 of 1940) pp. 89-90.

Tax Exemptions to New Industries (La. Act 399 of 1940) p. 90.

3. La. Act 397 of 1940. See La. Act 196 of 1940, §§ 5, 6, 8, being the enabling provisions of the "Louisiana State University Code" under the amendment.

1, 1950; the members whose terms expire on January 1, 1946, shall serve until June 1, 1952; the members whose terms expire on January 1, 1947, shall serve until June 1, 1954. . . ."⁴

Vacancies are to be filled by the Governor for unexpired terms by and with the advice and consent of the Senate. More than one member may be appointed from the same parish and at least seven members must be graduates of the University. The board shall elect from its appointive members a chairman and a vice-chairman; and also a secretary, who need not be a member of the board.

Bond To Secure Amount Due Producers of Milk

It is proposed to add a new section to Article III of the Constitution of 1921⁵ whereby the legislature may require manufacturers, pasteurizers and distributors of milk or milk products to furnish bond as security for the payment of amounts which may be due or become due by them to the producers of milk.

Coast-Guard Station

Act 396 of 1940 proposes to amend Article XVI, Section 7 (h)⁶ of the Constitution of 1921 so as to grant authority to the Board of Levee Commissioners of the Orleans Levee District "to give, grant and donate unto the United States of America" a tract of land for the purposes of erecting a coast-guard station on Lake Pontchartrain, the location and size of which is to be determined by the Board.

Confederate Pensions

By another proposed constitutional amendment,⁷ confederate veterans or their widows whose pensions were reduced from sixty to thirty dollars per month on June 1, 1932, are to be reimbursed one thousand and eighty dollars in order to make up the deficiency from June 1, 1932, to June 1, 1935, when the pensions were again increased to sixty dollars. The State Board of Liquidation is authorized to incur an indebtedness of nine hundred thousand dollars to secure the necessary funds for this purpose.

Dock Board

It is proposed that the Board of Commissioners of the Port of New Orleans, organized by Article VI, Section 17 of the Con-

4. La. Act 397 of 1940.

5. The proposed new section will be Section 44, La. Act 394 of 1940.

6. La. Const. of 1921, Art. XVI, § 7(h), as amended in accordance with the proposal in La. Act 292 of 1928.

7. La. Act 390 of 1940.

stitution of 1921, be entirely reorganized by constitutional amendment.⁸ Upon its adoption, the terms of all present members will terminate. The new board is to be composed of members appointed by the Governor for four, five, six, seven and eight years, respectively, according to the procedure therein outlined. All appointments shall be made without confirmation by the Senate.

Judges—Judicial Districts

Under the Constitution of 1921, the legislature was prohibited from passing laws affecting either the salary, term of office, or jurisdiction as to amount of any judge of the courts of the state, whether said judge was appointed or elected.⁹ Any laws so affecting judges would take effect only at the expiration of the term of the judge to be affected thereby. The proposed 1940 constitutional amendment¹⁰ reenacts the main features of the previous provisions with the following changes: (a) the prohibition applies *only* with regard to *elected* judges; (b) the provisions of the amendment are not to affect existing constitutional provisions with respect to judges *appointed* to fill an unexpired term of less than one year;¹¹ (c) nor is the salary, term or jurisdiction of such appointed judges changed thereby. With the exception of the City Judge of Baton Rouge,¹² all judges are elected.¹³ The result is that the effect of this amendment is the exclusion of the City Judge of Baton Rouge from the prohibition contained in the constitution.

By another proposed constitutional amendment a new judicial district is to be created. Article VII, Section 31 of the Constitution of 1921, as amended pursuant to Act 79 of 1926, created twenty-six judicial districts. The eighth district was then composed of the parishes of Caldwell, Winn, and LaSalle. In 1928 this district was reconstituted so as to embrace the Parish of Grant,¹⁴ which formerly was included in the ninth judicial district. The thirteenth district was composed of the parishes of St. Landry and Evangeline; but in 1936, a new judicial district was created from the Parish of St. Landry, bringing the total num-

8. La. Act 388 of 1940.

9. La. Const. of 1921, Art. VII, § 40.

10. La. Act 386 of 1940.

11. La. Const. of 1921, Art. VII, §§ 7, 21, 69.

12. *Id.* at § 51, as amended in accordance with the proposal in La. Act 63 of 1936.

13. La. Const. of 1921, Art. VII, §§ 7, 21, 33.

14. La. Act 261 of 1928.

ber of judicial districts to twenty-seven.¹⁵ The 1940 constitutional amendment¹⁶ creates an additional district bringing the total number to twenty-eight. This new district is to be composed of the parishes of LaSalle and Caldwell, with the result that the eighth district will be composed of the parishes of Grant and Winn. Provision is also made for the appointment of the district attorneys and for the election of the district judge for the newly created judicial district.

New Orleans Union Station

Act 385 of 1940 proposes the repeal of Section 31.3 of Article XIV of the Louisiana Constitution. The subsection to be affected was inserted in the constitution in accordance with the proposal in Act 385 of 1938. Under Section 31.3, as it presently exists, the City of New Orleans is authorized to "acquire, construct, maintain or operate one of more railroad passenger stations."

Refunding Bonds of Public Belt Railroad

Act 391 of 1940 proposes to amend Article XIV, Section 27 of the Constitution of 1921 by adding thereto a new paragraph whereby the City of New Orleans is authorized to issue bonds, or notes to be known as City of New Orleans Public Belt Bonds, or Notes, the proceeds of which are to be used for the retirement or redemption of New Orleans Public Belt Railroad Bonds issued pursuant to the Constitution of 1921¹⁷ or New Orleans Public Belt Bonds issued pursuant to Act 45 of 1938,¹⁸ or for the payment or redemption of those bonds or notes authorized by this amendment.

Retirement and Pension of State Officials

It is proposed that a new section be added to Article XVIII of the constitution,¹⁹ providing for the retirement of any *elected* officer of the executive department on two-thirds pay at the age of seventy after twenty-four years of continuous service.²⁰

15. La. Const. of 1921, Art. VII, § 31, as amended in accordance with the proposal in La. Act 62 of 1936.

16. La. Act 387 of 1940.

17. La. Const. of 1921, Art. XIV, § 27.

18. *Ibid.*, as amended in accordance with the proposal in La. Act 45 of 1938.

19. La. Act 378 of 1940.

20. It is generally understood that this amendment was designed to cover one specific case. It is unlikely that many officers elected to any branch of the executive department will meet the qualifications that are laid down for retirement.

Tensas Basin Levee District

Article XVI, Section 2 of the Constitution of 1921 is to be amended²¹ so as to provide that the Tensas Basin Levee District may levy annually a tax of not more than one and one-half mills on the dollar on all taxable property within the alluvial portion of said district subject to overflow, for the purpose of maintaining levees. At present, *all* levee districts are authorized to levy not more than five mills on the dollar.

V. MISCELLANEOUS LEGISLATION

Banks and Banking

Banks and trust companies authorized to secure fiduciary deposits, which are transferred from trust to banking departments, by obligations or assets other than capital stock. Any savings, safe deposit, or trust banking company in Louisiana is authorized by law¹ to act as an executor, administrator, or other fiduciary, when appointed by any court or person. However, if appointed by a court as a fiduciary, or if a court authorizes the deposit of any valuables with it, the bank or trust company must let its paid-in capital stock serve as collateral security, unless the court otherwise orders.²

Two 1940 acts³ afford to such companies a means of preventing their capital stock from serving as security for fiduciary obligations. Any bank or trust company acting as a fiduciary, whose trust department deposits with its banking department moneys for which it is responsible in the capacity of trustee, is authorized by the 1940 legislation to secure such deposits by delivering collateral to its trust department. This collateral must consist of readily marketable bonds or other obligations or assets which have and shall maintain a market value of at least an amount equal to that of the same deposits.

Banks in liquidation regulated in respect to granting mineral leases. Act 73 of 1940 requires all mineral leases entered into by state banks in liquidation to be subject to the approval of the

21. La. Act 393 of 1940.

1. La. Act 45 of 1902, § 1 [Dart's Stats. (1939) § 582].

2. Id. at § 2 [Dart's Stats. (1939) § 583].

3. La. Acts 94 and 98 of 1940. The former statute authorizes the action therein provided when it is required by the Federal Reserve System.

Department of Minerals and of the district court having jurisdiction of the liquidation.⁴

Bank deposits received when insolvent. Act 243 of 1940 punishes the bank officer or owner who assents to the reception of deposits, or to the creation of debts by his institution, after knowing that it is insolvent or in failing circumstances, and makes him individually responsible for such deposits and debts.⁵ Although a similar statute⁶ existed previously, this act makes bank officials even more strictly accountable to the public than did the preceding law, which it expressly repealed.⁷ For example, the earlier law did not create any individual liability on the part of a bank officer.⁸ Moreover, it relieved him of any criminal responsibility if he could show that the insolvency or failing circumstances of his institution, at the time of the reception of deposits or creation of debts, was a consequence of the depreciation of assets due to a general economic depression affecting all banks similarly situated, or if his case fell within three other stipulated exceptions.⁹

Building and loan associations. A number of amendments have been made to the Louisiana Homestead and Building and

4. Cf. La. Act 93 of 1936, as amended by La. Act 80 of 1938 [Dart's Stats. (1939) §§ 4725.1-4725.21] and La. Act 92 of 1940; La. Act 47 of 1940, tit. XXII.

5. The 1940 statute substantially reenacts La. Act 108 of 1884 which was probably passed to execute the provisions of Article 241 of the Louisiana Constitution of 1879. These provisions were retained in Article 269 of the Louisiana Constitutions of 1898 and 1921.

6. La. Act 10 of 1934 [Dart's Stats. (1939) §§ 672-673.1]. This act expressly repealed La. Act 108 of 1884. It contained more severe penal provisions than either the acts of 1884 or 1940, but their significance was lessened by other provisions affording relief from the coverage of the act in certain instances. The penalty in the 1934 statute consisted of imprisonment in the penitentiary at hard labor from six to twelve years, or a fine not exceeding \$5,000, or both. The other two acts authorize a prison sentence of not less than five nor more than ten years, but omit any pecuniary punishment. See La. Act 108 of 1884, § 2; La. Act 10 of 1934, § 2 [Dart's Stats. (1939) § 673]; La. Act 243 of 1940, § 2.

7. La. Act 243 of 1940, § 3.

8. However, even prior to the passage of La. Act 10 of 1934, a depositor could bring an action in tort against a bank officer to recover any loss suffered as a result of his violation of La. Act 108 of 1884, although that statute did not impose any civil liability. Art. 2315, La. Civil Code of 1870. *Ellett v. Newland*, 171 La. 1019, 132 So. 761 (1931).

9. (1) If the insolvency or failing circumstances serving as the basis for prosecution under the act could be fairly construed as having been caused by depreciation of assets as a result of a general banking crisis caused by contemporaneous circumstances wherein the bank officer or owner could not reasonably apprehend or measure such depreciation, or (2) if there was no personal fraud, dishonesty or defalcation by the accused, or (3) if the state banking commissioner had been previously called in and the operation of the bank continued without objection from him. La. Act 10 of 1934, § 1 [Dart's Stats. (1939) § 672].

Loan Statute. Associations organized under its provisions in St. Landry Parish are authorized to make loans upon real estate in the Parish of Evangeline, but the geographical limitations on the operation of associations organized in other parishes remain unchanged.¹⁰ Subject to the regulations and approval of the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations,¹¹ these organizations, savings and loan associations,¹² et cetera, are authorized to sell, without recourse, any notes held by them, which were issued by the Federal Housing Administrator¹³ under the provisions of the National Housing Act.¹⁴ The recordation of the vendor's privilege and first mortgage securing a loan by a homestead association is made effective for a period of twenty years from that date, without their being reinscribed on the mortgage records.¹⁵ During the existence of any vendor's privilege and first mortgage, the statute now permits any association to advance money, under certain conditions, to a borrower for the payment of taxes, insurance premiums, special assessments on, repairs to, and maintenance of the property on which the original loan was made.¹⁶ Also, in connection with and as part of a real estate loan to be made by it, an association may accept, under certain terms, its own full paid or optional shares in addition to the special mortgage and vendor's privilege.¹⁷

Federal savings and loan associations. Act 95 of 1940 regulates the business of federal savings and loan associations¹⁸ in

10. La. Act 246 of 1940, amending La. Act 140 of 1932, § 15 [Dart's Stats. (1939) § 727]. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 124.

11. Cf. La. Act 16 of 1921, § 1, as last amended by La. Act 258 of 1928, § 1 [Dart's Stats. (1939) § 515]; La. Act 140 of 1932, § 64, as amended by La. Act 337 of 1938, § 9 [Dart's Stats. (1939) § 744.32].

12. Apparently the term "savings and loan associations" is intended to include federal savings and loan associations. See La. Act 95 of 1940, discussed at page 181 et seq., *infra*.

13. La. Act 312 of 1940, § 2, amending La. Act 140 of 1932, § 11 [Dart's Stats. (1939) § 723].

14. 53 Stat. 804 (1939), 12 U.S.C.A. § 1703 (Supp. 1939).

15. La. Act 312 of 1940, § 3, amending La. Act 140 of 1932, § 50, as previously amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18]. The amendatory act of 1938 failed to clearly state when the twenty year effective period began. Compare La. Act 280 of 1916, § 9, with La. Act 140 of 1932, § 50. Cf. *State v. Recorder of Mortgages*, 186 La. 661, 173 So. 139 (1937).

16. La. Act 312 of 1940, § 3(b), amending La. Act 140 of 1932, § 50, as previously amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18].

17. La. Act 312 of 1940, § 3(c), amending La. Act 140 of 1932, § 50, as previously amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18].

18. See 48 Stat. 647 (1934), 12 U.S.C.A. § 1468 (1936); 49 Stat. 297 (1935), 12 U.S.C.A. §§ 1464, 1465, 1467 (1936); 53 Stat. 1402, 12 U.S.C.A. § 1464(h) (Supp. 1939).

Louisiana, and ratifies all prior conversions of state chartered homestead or building and loan associations into such federal associations. The act contains the admonition, however, that it is not to be construed as granting the state's consent to any such future conversions.¹⁹ Most of the regulations governing the federal associations are duplicates of the rules presently controlling homestead or building and loan organizations.²⁰ These provisions relate to the shares of minors,²¹ the investment of funds in the names of two or more persons,²² the manner in which mortgages upon immovable property held by an association are affected by succession or other types of sales,²³ the purchase and sale of property by an association,²⁴ the sale of property without the consent of the mortgagee association,²⁵ foreclosure via *executiva*,²⁶ the inspection of records by members and shareholders,²⁷ liability for false statements tending to affect the financial stability of an association²⁸ and for being bribed to procure a loan from an association,²⁹ and the transfer of shares to legatees and heirs of a deceased shareholder.³⁰

Variations from homestead or building and loan regulations are found in the provisions relating to the shares of married women and the ranking of mortgages in favor of federal associations. The 1940 act provides that married women may own, transfer, pledge, subscribe for, borrow upon and surrender shares in federal savings and loan associations without their husbands' authorization. Those shares are not to be regarded as forming part

19. La. Act 95 of 1940, § 1.

20. La. Act 140 of 1932 as amended [Dart's Stats. (1939) §§ 716-723, 724-744.49].

21. La. Act 95 of 1940, § 3; La. Act 140 of 1932, § 32 [Dart's Stats. (1939) § 744].

22. La. Act 95 of 1940, § 4; La. Act 140 of 1932, § 35 [Dart's Stats. (1939) § 744.3].

23. La. Act 95 of 1940, § 5; La. Act 140 of 1932, § 52 [Dart's Stats. (1939) § 744.20].

24. La. Act 95 of 1940, § 6; La. Act 140 of 1932, § 50, as amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18].

25. La. Act 95 of 1940, § 7; La. Act 140 of 1932, § 51 [Dart's Stats. (1939) § 744.19].

26. La. Act 95 of 1940, § 8; La. Act 140 of 1932, § 47 [Dart's Stats. (1939) § 744.15].

27. La. Act 95 of 1940, § 9; La. Act 140 of 1932, § 55 [Dart's Stats. (1939) § 744.23]. Cf. *State v. Italo-American Homestead Ass'n*, 177 La. 766, 149 So. 449 (1933).

28. La. Act 95 of 1940, § 10; La. Act 140 of 1932, § 68 [Dart's Stats. (1939) § 744.36].

29. La. Act 95 of 1940, § 11; La. Act 140 of 1932, § 69 [Dart's Stats. (1939) § 744.37].

30. La. Act 95 of 1940, § 12; La. Act 140 of 1932, § 77 [Dart's Stats. (1939) § 744.45].

of the marital community, but are separate and paraphernal property of the wife when purchased with her separate and paraphernal funds.³¹ A married woman can deal with shares of associations governed by the Homestead and Building and Loan Statute "as a femme sole."³² This apparently subjects such shares to the rules of community property where such rules are otherwise applicable.³³

Under the Homestead Statute, a recorded vendor's privilege and mortgage in favor of a homestead or building and loan association enjoys priority over all other encumbrances and claims upon the property and its improvements subsequently recorded or claimed. This includes all tax liens except for ad valorem real estate taxes, corporation franchise taxes, and paving assessments.³⁴ The 1940 act accords the same ranking to the recorded privilege and mortgage in favor of a federal association, except that corporation franchise tax liens constitute no exception.³⁵

There is a slight variation between the two laws in respect to the periods from which and during which the vendor's privilege and mortgage remain effective. In the case of homestead or building and loan organizations the recordation of the privilege and mortgage is effective without the necessity of being reinscribed in the mortgage records for a period of twenty years from the date of inscription.³⁶ A vendor's privilege and mortgage in favor of a federal savings and loan association is effective from the date of its filing for a period of twenty-five years or for twenty years from the date of any reinscription.³⁷

Maximum interest rate on small loans reduced. Act 108 of 1940, over which there was bitter legislative controversy, effects a reduction of one per cent a month in the maximum rate of interest formerly permitted to be charged by small loan licensees on amounts not exceeding three hundred dollars.³⁸

31. La. Act 95 of 1940, § 2.

32. La. Act 140 of 1932, § 34, as amended by La. Act 337 of 1938, § 5 [Dart's Stats. (1939) § 744.2].

33. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 125.

34. La. Act 140 of 1932, § 50, as amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18].

35. La. Act 95 of 1940, § 5.

36. La. Act 140 of 1932, § 50, as amended by La. Act 337 of 1938, § 8 [Dart's Stats. (1939) § 744.18]; La. Act 312 of 1940, § 3.

37. La. Act 95 of 1940, § 5.

38. The maximum rate is reduced from 3½% to 2½% per month. See La. Act 108 of 1940, amending and reenacting La. Act 92 of 1928, § 13; La. Act 7 of 1928 (E.S.) § 13 [Dart's Stats. (1939) § 780].

An opinion of the Attorney General has held the act invalid as attempting to amend and reenact a law which had already been repealed.³⁹ Undoubtedly, the enactment of Act 7 of the extra session of 1928 impliedly repealed not only Section 13 of Act 92 of 1928, which is sought to be amended and reenacted by the 1940 statute, but also the remaining provisions of that act. Since its passage, Act 7 of the 1928 extra session has been recognized by the courts as Louisiana's "Small Loan Law," and Act 92 of 1928 has been judicially ignored even as to its non-conflicting provisions.⁴⁰ The later statute covers the whole subject of licensing and regulating the small loan business in such manner as to clearly indicate a legislative purpose not only to substitute its provisions for those of the earlier law which are inconsistent with it, but also to impliedly repeal that law as a whole.⁴¹

According to a declaration of the Supreme Court of Louisiana, the doctrine that a repealed law cannot be amended is a sound proposition insofar as it goes; but the doctrine means only that amending a repealed law, without reenacting or reviving it, accomplishes nothing.⁴² This question usually involves the issue of whether or not the amending and reviving statute has com-

39. See Baton Rouge State Times, July 30, 1940, at p. 9.

40. *Semble Foundation Finance Co. v. Robbins*, 179 La. 259, 153 So. 833 (1934); *Unity Plan Finance Co. v. Green*, 179 La. 1070, 155 So. 900 (1934); *Morris Plan Bank v. Schmidt*, 164 So. 270 (La. App. 1935); *South Shreveport Finance & Loan Co. v. Stephenson*, 184 La. 916, 168 So. 100 (1936); *Natchitoches Finance Co. v. Smith*, 175 So. 915 (La. App. 1937); *General Motors Acceptance Corp. v. Swain*, 176 So. 636 (La. App. 1937); *Industrial Loan Co. of Monroe v. Noe*, 183 So. 175 (La. App. 1938).

"The purpose of the Legislature in enacting the Small Loan Law [La. Act 7 of 1928 (E.S.)] was not merely to regulate the lending of money in sums of \$300 or less, but to regulate the charging, contracting for, or receiving interest on the money at a rate in excess of 8 per cent. per annum. Whenever a money lender desires to obtain a larger return on his money than 8 per cent. per annum interest, he may do so by paying the license, giving the bond, and complying with the other requirements of the statute granting the privilege." *South Shreveport Finance & Loan Co. v. Stephenson*, 184 La. 916, 920, 168 So. 100, 101 (1936).

For conflicting provisions, see La. Act 92 of 1928, §§ 2, 6, 13, 14, 19, 20; La. Act 7 of 1928 (E.S.) §§ 2, 6, 13, 14, 19, 20 [Dart's Stats. (1939) §§ 769, 773, 780, 781, 786, 787].

41. *United States v. Tynen*, 78 U.S. 88, 20 L.Ed. 153 (1871); *State v. Henderson*, 120 La. 535, 45 So. 430 (1908); *Knight v. Webster Parish School Board*, 164 La. 482, 114 So. 104 (1927); *Hymel v. Central Farms & Shipping Co.*, 183 La. 991, 165 So. 177 (1935); *State v. Tate*, 185 La. 1006, 171 So. 108 (1936).

42. *State v. Walters*, 135 La. 1070, 66 So. 364 (1914); *Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935). Cf. *State v. Cognevich*, 124 La. 414, 50 So. 439 (1909); *State v. Long*, 132 La. 170, 61 So. 154 (1913); *State v. Nelson*, 135 La. 678, 65 So. 893 (1914); *Police Jury of Caddo Parish v. Mayor and City Council of Shreveport*, 137 La. 1032, 69 So. 828 (1915).

plied with all the constitutional requirements.⁴³ If the object is expressed in the title, it is well settled that the legislature, in reviving or reenacting a law or section thereof, may make such amendments as relate to the subject or object of the original statute.⁴⁴ The fact that the title of the statute fails to refer to an intervening repealing law is immaterial.⁴⁵

Therefore, it may be concluded that there is legal justification for upholding the validity of the 1940 act though it amends a repealed law without mentioning the intervening repealing statute enacted during the extra legislative session of 1928. The act does not seek merely to amend the repealed statute,⁴⁶ for at the same time it revives or reenacts a section of that statute as amended and expresses that object in its title. Indeed, it goes further than merely indicating that object and specifically declares the object intended to be accomplished.⁴⁷ The body of the 1940 law executes the object indicated in the title by amending and reenacting Section 13 of Act 92 of 1928 as amended.⁴⁸

Security for deposit of state funds. To the list of collateral which the state or any of its subdivisions must require of fiscal agent banks as security for deposits of state funds therein,⁴⁹ the 1940 legislature added bonds and other obligations issued by a

43. *Ibid.* See La. Const. (1913) Arts. 31, 32; La. Const. of 1921, Art. III, §§ 16, 17.

44. *State v. Nelson*, 135 La. 678, 65 So. 893 (1914); *State v. Walters*, 135 La. 1070, 66 So. 364 (1914); *Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935). See *Police Jury of Caddo Parish v. Mayor and City Council of Shreveport*, 137 La. 1032, 1041-1042, 69 So. 828, 831 (1915).

45. *State v. Walters*, 135 La. 1070, 66 So. 364 (1914). See *Police Jury of Caddo Parish v. Mayor and City Council of Shreveport*, 137 La. 1032, 1041-1042, 69 So. 828, 831 (1915).

46. *Cf. Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935).

47. The title of La. Act 108 of 1940 reads as follows: "AN ACT To amend and re-enact, as amended, Section 13 of Act 92 of 1928; providing that every person, co-partnership and corporation, licensed under the provisions of said Act, may loan any sum of money not exceeding in amount the sum of Three Hundred (\$300.00) Dollars, and may charge, contract for and receive thereon interest at a rate not to exceed two and one-half (2½) per centum per month, the said Act to remain otherwise in full force and effect." See La. Const. (1913) Art. 31, and *Williams v. Guerre*, 182 La. 745, 162 So. 609 (1935).

It should be conceded that the remaining sections of Act 92 of 1928 are not reenacted or revived by the language in the above title stating that "the said Act [is] to remain otherwise in full force and effect," for if they have been impliedly repealed by Act 7 of 1928 (E.S.), they cannot be revived, at least without their reenactment in the body of the amending statute; and, furthermore, it is doubtful if that object is sufficiently indicated in the title.

48. The enacting portion of La. Act 108 of 1940 states: "Section 1. Be it enacted by the Legislature of Louisiana, That Section 13 of Act 92 of 1928 is hereby amended and re-enacted so as to read as follows:"

49. La. Act 77 of 1938, § 2 [Dart's Stats. (1939) § 6632.23].

housing authority pursuant to the Housing Authorities Law.⁵⁰ These obligations must be secured by a pledge of annual contributions to be paid by the United States government or any of its agencies.⁵¹

Corporations

Act 221 of 1940, amending Act 61 of 1898,⁵² authorizes certain public service and mining corporations to borrow such money as may be required for their corporate purposes. For this purpose they may issue bonds or other obligations secured by mortgage or pledge of any kind of property, whether owned at the time the mortgage is granted, or acquired thereafter.⁵³ It had been suggested that the 1898 act was perhaps rendered obsolete, so far as it relates to domestic corporations, by Section 12, II(h) of the Business Corporation Act,⁵⁴ but that it was still operative so far as foreign corporations were concerned.⁵⁵ However, the 1940 amendment specifically covers both domestic and foreign corporations, thus signifying a legislative intent of singling out the corporations therein enumerated for special treatment.

With regard to domestic corporations, the 1940 amendment is a more detailed enumeration of, and in one respect a further limitation on, their authority to borrow money than is found in the Business Corporation Act. In addition to the general limitation that the act of borrowing be done in furtherance of, or inci-

50. La. Act 275 of 1936 [Dart's Stats. (1939) §§ 6280.1-6280.26] is amended by La. Acts 208 and 209 of 1940. Cf. Act 277 of 1938, §§ 3(c), 4(b) [Dart's Stats. (1939) §§ 6280.31(c), 6280.32(b)].

51. La. Act 211 of 1940 amends La. Act 77 of 1938, § 2(a)(1) [Dart's Stats. (1939) § 6632.23(a)(1)].

52. Dart's Stats. (1939) § 1157.

53. Art. 3304, La. Civil Code of 1870 recognizes as valid a mortgage on after-acquired property. La. Act 221 of 1940 provides that "Any such mortgage shall be effective as to after-acquired or future property to the extent set forth therein. In any such mortgage it shall be sufficient to describe the property subject or to be subject thereto in general terms, and no recodation thereof shall be requisite except in the real estate mortgage records of the parish or parishes in which such property is situated."

54. La. Act 250 of 1928, § 12 [Dart's Stats. (1939) § 1092], the pertinent provision of which provides:

"II. Without limiting or enlarging the grant of authority contained in subdivision I of this section, it is hereby specifically provided that every such corporation shall have authority"

"(h) to borrow money and to issue, sell, pledge or otherwise dispose of, its bonds, debentures, promissory notes, bills of exchange and other obligations and evidences of indebtedness, and to secure the same by mortgage, pledge or other hypothecation of any kind of property. . . ." See Bennett, *The Louisiana Business Corporation Act of 1928* (1940) 2 LOUISIANA LAW REVIEW 597, 607-613.

55. See the compiler's note to Dart's Stats. (1939) § 1157.

dental to, the corporate purpose,⁵⁶ the 1940 amendment requires that any person, firm or corporation operating a motor coach or bus line under a permit from the Louisiana Public Service Commission secure the consent of the Commission before a mortgage or pledge of their permit can be given as security.

To more adequately prevent fraud in the sale of securities, a new Blue Sky Law⁵⁷ has been adopted which conforms in substance to the provisions of the Uniform Sale of Securities Act,⁵⁸ the Federal Securities Act of 1933,⁵⁹ and the acts of the states of New York⁶⁰ and South Carolina.⁶¹

Act 266 of 1940 provides for the organization of cooperative, nonprofit membership corporations for the purpose of supplying, promoting, and extending the use of electric energy. The act is so worded as to enable corporations formed under it to take advantage of the benefits offered by the Federal Rural Electrification Act.⁶²

Another statute to be noted is Act 190 of 1940, which dissolves certain charitable and benevolent corporations authorized by Article 447 of the Civil Code.⁶³ The reason which induced the legislature to pass the act was that the corporations had ceased to exercise their franchise, thus failing to accomplish the conditions upon which they had been given corporate life. In compliance with the requirements set forth in Article 447, adequate provision is made for establishing any contingent right or claim which anyone may have against the defunct institutions.⁶⁴

Debt Moratorium

By Act 2 of 1940 the debt moratorium statute which suspended all laws relative to the enforcement of debts was repealed.⁶⁵

56. La. Act 250 of 1928, § 12, I [Dart's Stats. (1939) § 1092, I].

57. La. Act 262 of 1940. This act amends La. Act 177 of 1920, as amended by La. Act 17 of 1934 (2 E.S.), La. Act 163 of 1936, and La. Act 209 of 1936 [Dart's Stats. (1939) §§ 1165-1179].

58. Uniform Sale of Securities Act, 9 U.L.A. 385 (1932).

59. 48 Stat. 74 (1933), 15 U.S.C.A. § 77(a)-77(a) (a) (Supp. 1939).

60. New York General Business Law, §§ 352-359(h).

61. S.C. Code (1932) §§ 8114-8136.

62. 49 Stat. 1363 (1936), 7 U.S.C.A. §§ 901-914 (1939). The act provides for an administrator appointed by the President, who is authorized to make loans to cooperative, nonprofit and limited-dividend associations, among others mentioned, for the purpose of rural electrification.

63. It should be noted that Article 447 of the Civil Code of 1870 first appeared as Article 438 of the Code of 1808, which was eleven years before the decision of the famous Dartmouth College case (Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 4 L.Ed. 629 (1819)).

64. School Board v. Meredith, 139 La. 35, 71 So. 209 (1916). Cf. Montpelier Academy v. George, 14 La. 395, 33 Am. Dec. 585 (1839).

65. La. Act 126 of 1938 was a reenactment of La. Act 2 of 1936 which was

Because the necessity for the immediate passage of the act was certified by the Governor to the legislature, it became effective immediately upon approval by the Governor.⁶⁶

Gambling—Abatement of Nuisance

Act 120 of 1940 abrogates the effect of Act 49 of 1938, which made difficult the abatement of nuisances created by gambling houses, and substantially restores earlier statutory provisions on the same subject. Whereas the 1938 law provided that the right to file suit to abate such nuisances could not be exercised unless the action was brought by twenty-five real estate taxpayers who had resided and voted continuously for five years in the locality of the alleged nuisance,⁶⁷ the 1940 act substantially re-enacts the original statute⁶⁸ by giving such right to ten taxpayers, whether natural or artificial persons and whether citizens or non-residents.⁶⁹ It also dispenses with the requirement⁷⁰ that the plaintiff in abatement proceedings must furnish bond to indemnify the defendant if the injunction is set aside, and restores the earlier provision⁷¹ that the plaintiff's petition must be supported by the ex parte affidavits of two reputable citizens clearly establishing the existence of the alleged nuisance.⁷²

Insurance

Of particular interest in the field of insurance is the enactment of the Uniform Unauthorized Insurance Act, which imposes severe restrictions on foreign insurers not qualified to transact business in the state.⁷³ The evident purpose of the statute is to

itself a reenactment of La. Act 2 of 1934 (2 E.S.) which in turn had replaced La. Act 159 of 1934. For a discussion of the 1938 act see Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, 128.

66. La. Act 2 of 1940, § 2.

67. La. Act 49 of 1938, § 1, amending La. Act 192 of 1920, § 3 [Dart's *Crim. Stats.* (Supp. 1939) § 1026].

68. La. Act 192 of 1920, § 3 [Dart's *Crim. Stats.* (1932) § 1026].

69. La. Act 120 of 1940, § 1.

70. La. Act 49 of 1938, § 1, amending La. Act 192 of 1920, § 10 [Dart's *Crim. Stats.* (Supp. 1939) § 1033].

71. La. Act 192 of 1920, § 10 [Dart's *Crim. Stats.* (1932) § 1033].

72. La. Act 120 of 1940, § 1.

73. La. Act 159 of 1940. The Uniform Act is found in 9 U.L.A. 278 (Supp. 1939). It was approved by the National Conference of Commissioners on Uniform State Laws in 1938. The act has also been adopted by Arkansas and South Dakota: Ark. Dig. Stat. (Pope, Supp. 1940) 411; S. D. Session Laws (1939) 160, c. 129.

Section 1 prohibits one from acting as an agent in this state for any insurer not authorized to transact business in Louisiana or from acting in this state for an insured in placing insurance with an unauthorized insurer.

Section 2 prohibits one from aiding in this state any unauthorized insurer in transacting insurance business in Louisiana.

Section 3 prohibits one from representing or aiding in this state any

place unauthorized insurers in as disadvantageous a position as the constitution will permit.⁷⁴

Under the provisions of a 1938 statute, foreign and domestic insurance companies (with certain exceptions) were required

insurer in effecting insurance covering any risk in any other state where such insurer is not authorized to transact business in the state where the risk is located.

Section 4 makes certain exceptions which are obviously desirable.

Section 5 provides for substituted service of process upon the Secretary of State in all proceedings arising out of insurance business transacted in this state with any of its citizens or residents. Cf. La. Act 105 of 1898, Art. II, §§ 1-3 [Dart's Stats. (1939) §§ 4018-4020]. It is submitted that "implied consent" as the basis of jurisdiction over nonresident motorists is also applicable to the assumption of jurisdiction by a state over business transacted within its borders by an unauthorized insurance company. Compare the following authorities which established the "implied consent" doctrine as applied to the nonresident motorist statutes: 1 Beale, Conflict of Laws (1935) 359, § 84.2; Restatement, Conflict of Laws (1934) §§ 81-94. See Doherty & Co. v. Goodman, 294 U.S. 623, 55 S. Ct. 553, 79 L.Ed. 1097 (1935), discussed in Goodrich, Conflict of Laws Since the Restatement (1937) 23 A.B.A.J. 119. For a discussion of the Louisiana nonresident motorist statute and similar problems arising under it, see Note (1939) 1 LOUISIANA LAW REVIEW 451. The explanation of its constitutionality will be founded upon the theory that to require the unauthorized insurer to "consent" to service upon a statutory agent is a reasonable exercise of the police power of the state. Cf. Spearman v. Stover, 170 So. 259 (La. App. 1936); Galloway v. Wyatt Metal & Boiler Works, 189 La. 837, 181 So. 187 (1938); Kane v. New Jersey, 242 U.S. 160, 37 S. Ct. 30, 61 L.Ed. 222 (1916); Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 (1927); Schilling v. Odlebak, 177 Minn. 90, 224 N.W. 694 (1929). The statute contains provisions for notification reasonably calculated to inform the defendant of the pending action. Hence, a judgment obtained thereunder would be valid, and not subject to the attack of denial of "due process of law." Cf. Spearman v. Stover, 170 So. 259 (La. App. 1936); Wuchter v. Pizzutti, 276 U.S. 13, 48 S.Ct. 259, 72 L.Ed. 446, 57 A.L.R. 1230 (1928); Restatement, Conflict of Laws (1934) § 75 and Restatement, Conflict of Laws, Louisiana Annotations (1937) § 75.

Section 6 prohibits any unauthorized insurer from instituting any action, suit or proceeding in this state to enforce any right, claim or demand arising out of the transaction of any business in Louisiana until such insurer shall have obtained a certificate of authority to transact business in this state. In this respect the 1940 act is similar to La. Act 8 of 1935 (3 E.S.) [Dart's Stats. (1939) §§ 1247.1-1247.3]. On this point see R. J. Brown Co. v. Grosjean, 189 La. 778, 180 So. 634 (1938).

Section 7 requires all unauthorized insurers to either post bond or procure a certificate of authority to transact the business of insurance in this state as conditions precedent to the filing of pleadings by such insurers in all proceedings instituted against them. As to the constitutionality of this section, see Ownbey v. Morgan, 256 U.S. 94, 41 S.Ct. 433, 65 L.Ed. 837 (1921).

Section 8 fixes a penalty for violating the provisions of the act.

Section 9 provides that the act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enacted it.

Section 10 declares the provisions of the act severable in the event any section is held invalid.

Section 11 provides that the 1940 act shall not be deemed or construed to repeal or affect any of the provisions of La. Act 8 of 1935 (3 E.S.) [Dart's Stats. (1939) §§ 1247.1-1247.3].

74. The commissioners' prefatory note states that "care was taken in the drafting of the Act to keep the same within constitutional bounds, and

annually to give a \$20,000 bond in favor of the State of Louisiana, to assure prompt payment of all claims arising out of any policy issued by such companies. Act 184 of 1940 restricts the application of this act to *foreign companies* only, thus returning the law on this subject to its status prior to the 1938 amendment.⁷⁵ Legal reserve life insurance companies are exempted from furnishing bond if they maintain \$100,000 unimpaired capital in the case of a stock company, and \$100,000 surplus above all liabilities if a mutual company, and if they maintain a \$100,000 deposit in Louisiana or in another state.⁷⁶

Act 105 of 1898, which governs the organization and management of insurance companies, was amended at the recent session of the legislature to make lawful the increase by any domestic insurance company of its capital stock by means of stock dividends.⁷⁷

Three changes of major importance affecting domestic industrial life insurance companies should be noted:

(1) *Voting Rights.* In *State v. Carradine*,⁷⁸ it was held that the Business Corporation Act (allowing one vote for each share)⁷⁹ was a general law relating to the right of shareholders to vote, and must yield to the special provisions of Act 105 of 1898, which limits the vote of each stockholder to ten per cent of the total stock, regardless of the amount owned.⁸⁰ The 1940 amendment vitiates the holding of this case by allowing stockholders in industrial life insurance companies one vote for each share standing in their names on the books of the corporation.⁸¹

especially within the bounds of the doctrine of the cases of *Fidelity Deposit Co. vs. Tafoya*, 270 U.S. 426, 46 Sup. Ct. 331, 70 Law Ed. 664; *New York Life Ins. Co. vs. Head*, 234 U.S. 149, 34 Sup. Ct. 879, 58 Law Ed. 1259; *Allgeyer vs. Louisiana*, 165 U.S. 578, 17 Sup. Ct. 427, 41 Law Ed. 832." 9 U.L.A. 279, § 7 (Supp. 1939).

75. La. Act 184 of 1940 repeals La. Act 139 of 1938 [Dart's Stats. (1939) § 4254] which amended La. Act 158 of 1932 [Dart's Stats. (1939) § 4254]. The 1932 act, like Act 184 of 1940, was applicable only to foreign insurance companies.

76. La. Act 184 of 1940, § 2, provides that the requirements imposed by the act are in addition to those now prescribed by law.

77. La. Act 102 of 1940, amending La. Act 105 of 1898, Art. I, § 11 [Dart's Stats. (1939) § 4011]. The 1898 act provided: "It shall not be lawful for any insurance company to increase its capital stock by the distribution of any portion of its net surplus." The same restrictions on the payment of cash dividends should be held to be applicable to the payment of stock dividends. La. Act 105 of 1898, Art. I, § 7, as amended [Dart's Stats. (1939) § 4007].

78. 12 La. App. 42, 125 So. 135 (1929).

79. La. Act 250 of 1928, § 32, I [Dart's Stats. (1939) § 1112, I].

80. La. Act 105 of 1898, Art. I, § 4(b), as amended [Dart's Stats. (1939) § 4004].

81. La. Act 102 of 1940, § 4(b).

(2) *Investments.* Whereas no insurance company organized under the provisions of Act 105 of 1898 is permitted to lend more than eighty per cent of its assets on real estate mortgages, nor more than ten per cent of its assets in any one mortgage,⁸² the 1940 amendment prohibits industrial life insurance companies from investing more than five per cent of their assets in any one mortgage.⁸³

(3) *Real Estate Holdings.* Under the 1898 act, the value of the buildings in which any insurance company has its principal office, the land upon which it stands, and other real property necessary in the transaction of its business cannot exceed fifty per cent of the company's total capital and net surplus.⁸⁴ As to industrial life insurance companies, the 1940 amendment limits the total value of such holdings to twenty per cent of the company's total admitted assets.⁸⁵

Prior to 1940, in all cases, the court was vested with unlimited discretion in appointing corporate receivers, appointing whomever it deemed best suited to the office.⁸⁶ Act 197 of 1940 accords a preference, in the event of an ancillary receivership in this state, to attorneys and employees of foreign insurance companies authorized to do business in Louisiana. The ancillary receiver is required to be domiciled in Louisiana, and, if an attorney, he must have been admitted to practice law in this state.

Since the business of insurance is almost wholly in the hands of corporations which can act only through agents, Act 83 of 1940 is of particular interest. The conduct of insurance agents has been held to be a matter of public concern; hence, complete legislative control does not violate the provisions of the Fourteenth Amendment.⁸⁷ By the terms of the 1940 statute it is un-

82. La. Act 105 of 1898, Art. I, § 5(d), as amended [Dart's Stats. (1939) § 4005].

83. La. Act 102 of 1940, § 4(d).

84. La. Act 105 of 1898, Art. I, § 6, as amended [Dart's Stats. (1939) § 4006].

85. La. Act 102 of 1940, § 6.

86. *General Motors Truck Co. v. Caddo Transfer & Warehouse Co.*, 176 La. 181, 145 So. 372 (1932).

In Louisiana, the practice of appointing receivers (whether primary or ancillary) is governed by La. Act 159 of 1898, as amended [Dart's Stats. (1939) §§ 1209-1218]. See also La. Act 227 of 1932 [Dart's Stats. (1939) §§ 4022.1-4022.13].

87. U.S. Const., Amend. XIV. *Nutting v. Massachusetts*, 183 U.S. 553, 22 S.Ct. 238, 46 L.Ed. 324 (1902); *LaTourette v. McMaster*, 248 U.S. 465, 39 S.Ct. 160, 63 L.Ed. 362 (1919).

lawful for any insurance agent to make, or counsel or aid others to make, a derogatory and untrue statement about any insurance company authorized to do business in Louisiana (or in the process of organization), where such statement is made with the intent to injure the company. Section 3 makes it unlawful for any insurance agent to misrepresent the provisions, terms and conditions contained in insurance contracts, to rebate any insurance premium, or to make misleading comparisons of policies of different insurance companies for the purpose of inducing any person to allow his insurance policy to lapse, or to forfeit or surrender it. Any violation of the statute subjects the insurance agent to the penalty of revocation or suspension of his license. For the purposes of the act, a very detailed definition of an insurance agent is provided.

Another statute allows assessment insurance associations⁸⁸ doing business under the provisions of Act 20 of the second extra session of 1935 and which have accumulated admitted assets and reserves in excess of \$100,000, to write life and accident insurance policies (the form to be approved by the Secretary of State) on the stipulated premium plan.⁸⁹ The forms of such life and accident policies need not have printed thereon the words "Assessment Plan."⁹⁰

Act 371 of 1940 requires the Casualty and Surety Rating Commission⁹¹ to furnish to any claimant, or attorney representing a claimant, under either a compensation or personal injury claim, the name of the employer's insurers, the amount of the policy, and the provisions and conditions of its coverage.⁹² The request for such information must be made at a "reasonable time."

88. "'Assessment insurance' exists when benefit to be paid is dependent upon collection of such assessments as may be necessary for paying the amounts to the insured. In other words, it is 'assessment insurance' if payments to be made by insured are not fixed unalterably by contract. On the contrary, an 'oldtime policy' is a contract where the amount to be paid by the insured is fixed, the premiums to be paid are unalterable, and the liability incurred by the defendant company is also fixed, definite, and unchangeable." 1 Words & Phrases (5th Series, 1939) 566.

In Louisiana, no assessment insurance policy can exceed \$5,000 and it must have plainly written in red ink on the first page thereof the words "Assessment Plan." La. Act 264 of 1940, amending La. Act 20 of 1935 (2 E.S.) § 9 [Dart's Stats. (1939) § 4170.22].

89. La. Act 264 of 1940 amends La. Act 20 of 1935 (2 E.S.) § 9 [Dart's Stats. (1939) § 4170.22].

90. See note 73, *supra*.

91. This commission was created by La. Act 44 of 1936, as amended by La. Act 186 of 1938 [Dart's Stats. (1939) §§ 4277.1-4277.12].

92. La. Act 371 of 1940.

Act 160 of 1940 prohibits any companies doing business as casualty, surety, fidelity, guaranty or bonding insurers from paying commissions on premiums paid for bonds or insurance executed under the terms or requirements of any contract with the State of Louisiana or any of its political subdivisions, to persons who are not duly licensed as insurance agents in this state (under penalty of revocation of the license of the company or agent). The purpose of the statute is to prevent companies from insuring risks arising out of state contracts and allowing nonresident agents to earn the commission therefrom. Act 353 of 1938,⁹³ which was repealed at the recent session of the legislature,⁹⁴ was a much more comprehensive statute. It prohibited the paying of commissions to nonresident agents on account of policies written as protection against risks arising in Louisiana.

Legal Holidays

A new statute was enacted designating the days which are to be regarded as legal holidays and half-holidays in this state.⁹⁵ The act is intended to be all-inclusive, thus abrogating the confusion resulting from three similar statutes passed at the 1938 session of the legislature.⁹⁶ However, the 1940 amendment limits Mardi Gras as a legal holiday to certain designated parishes and municipalities within the state.⁹⁷ This raises the question of the constitutionality of the act. Is it a *local* law within the meaning of the constitution and thus invalid because notice of intention to apply for its passage was not published?⁹⁸

Municipal Corporations

Act 231 of 1940 authorizes municipalities with a population in excess of 12,500 to install and operate parking meters as an

93. Dart's Stats. (1939) §§ 4278.10-4278.14. A discussion of this act was made in the last legislation article: Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, 132.

94. La. Act 161 of 1940.

95. La. Act 285 of 1940, amending and reenacting La. Act 165 of 1932, § 1, as amended [Dart's Stats. (1939) § 3795].

96. La. Acts 84, 91 and 307 of 1938 [Dart's Stats. (1939) § 3795]. All three statutes amended La. Act 165 of 1932, § 1. For a discussion of the resulting conflict on this subject after the passage of these three acts see Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 LOUISIANA LAW REVIEW 80, 133-134.

97. Mardi Gras is made a holiday in the parishes of Orleans, St. Bernard, Jefferson, St. Charles, St. John the Baptist, and East Baton Rouge, and in all municipalities in the State of Louisiana, where the governing authorities of the same so declare by ordinance.

98. La. Const. of 1921, Art. IV, § 6. Cf. *State v. Clement*, 188 La. 923, 178 So. 493 (1938), where a statute prohibiting trapping within 150 miles of Gulf of Mexico was held invalid as a "local or special law."

aid to the regulation and control of parking vehicles on their streets. Provision is made whereby the municipality may fix and require the payment of a fee for the privilege of parking opposite such meters when they are in operation.

The case of *Shreveport v. Brister*⁹⁹ involved a criminal prosecution instituted by the city for a violation of the provisions of the Shreveport Parking Meter Ordinance.¹⁰⁰ The defendant had parked a motor vehicle in a meter zone without depositing a coin in the meter. In holding the ordinance ultra vires because its adoption was prohibited by Act 10 of the first extra session of 1934,¹⁰¹ the court said:

"The Statute here prohibits the levying of a license of any character whatsoever, either under the municipality's taxing power or police power, unless such a license is levied by the State."¹⁰²

This decision was soon affirmed by the case of *Monsour v. Shreveport*.¹⁰³ It was indicated, however, that Section 2 of the 1934 act expressly validated such a license where express and special legislative authority was previously secured.

In accordance with this dicta, the legislature passed Act 231 of 1940, which specifically provides:

"That all municipalities within the state of Louisiana with a population of twelve thousand five hundred (12,500) or more, are hereby authorized and empowered, in their discretion, to provide by ordinance for the installation, operation, maintenance, policing and supervision of parking meters on their streets, to be designated in an ordinance, as an aid to the regulation and control of parking of vehicles therein, and to fix and require the payment of a fee for the privilege of parking opposite such meters when they are in operation."

Public Records

Act 195 of 1940 effects a substantial revision of the provisions contained in the Public Records Act.¹⁰⁴ The general result accom-

99. 194 La. 615, 194 So. 566 (1939).

100. Ordinance 40 of 1939 of the City of Shreveport, La.

101. Dart's Stats. (1939) §§ 8648.1-8648.3.

102. *Shreveport v. Brister*, 194 La. 615, 621, 194 So. 566, 568 (1939).

103. 194 La. 625, 194 So. 569 (1940). In *Shreveport v. Brister*, 194 La. 615, 194 So. 566 (1939), it was conceded that the ordinance in question, levying the alleged license, was not expressly authorized by any provision of either the constitution or statutes of Louisiana, and that the city was acting under its implied or inherent powers.

104. La. Act 242 of 1912, as amended by La. Act 185 of 1916, La. Act 255 of 1920, and La. Act 267 of 1928 [Dart's Stats. (1939) §§ 7825-7845]. La. Act

plished is the greater facilitation of the inspection of public records by any person or judicial tribunal without unnecessary delay. Yet, it affords protection against harmful interference with legislative investigations or criminal prosecutions by prohibiting the use of records relevant to these matters until after the disposition of such investigation or prosecution. Only major provisions of the new act will be stated in order to reveal changes made in the earlier statute.¹⁰⁵

Any elector of the state or taxpayer who has paid any tax collected under legislative authority within a year of the day on which application is made for the use of any record declared public by the act, or anyone presenting written authority to act for such person, may exercise the privilege of examining, copying, photographing and taking memoranda of any public records as so defined.¹⁰⁶

Delay in making a public record available to an authorized applicant can be justified only on the ground that such record is in active use at the time a request is made for it. In no case will the fact that a record is being audited justify a refusal to allow an inspection to be made, except when the record is in active use by an auditor.¹⁰⁷ When the person to whom an application is made does not have the custody of the record in question, he must include in his certificate the name of the person then having custody thereof.¹⁰⁸

Any suit to enforce the provisions of the act brought in a court of original jurisdiction must be tried by preference and in a summary manner. Any appellate court to which the suit may

5 of 1940 (E.S.), amending La. Act 6 of 1935 (2 E.S.), § 4 [Dart's Stats. (1939) § 8911.4], declared the records of the State Bond and Tax Board "to be public and . . . subject to inspection, photographing and copying as provided by law." However, most of the functions heretofore vested in the Board have been transferred to and vested in the Department of Finance by the Administrative Code of 1940. See La. Act 47 of 1940, tit. VI, § 2.

105. La. Act 195 of 1940, §§ 1, 6, 8, 12, 14 and 15 reenact without change the provisions contained in La. Act 242 of 1912, § 1, as amended by La. Act 255 of 1920, § 2 [Dart's Stats. (1939) § 7825]; La. Act 242 of 1912, § 9 [Dart's Stats. (1939) § 7833]; Id. at § 15 [Dart's Stats. (1939) § 7839]; Id. at § 17 [Dart's Stats. (1939) § 7841] Id. at § 18, as amended by La. Act 255 of 1920, § 4 [Dart's Stats. (1939) § 7842]; La. Act 267 of 1928, §§ 1, 2 [Dart's Stats. (1939) §§ 7843-7844]. The 1940 statute omits the provisions contained in La. Act 242 of 1912, §§ 6, 8, 12-14 [Dart's Stats. (1939) §§ 7830, 7832, 7836-7838].

106. La. Act 195 of 1940, § 7. Cf. La. Act 242 of 1912, § 7 [Dart's Stats. (1939) § 7831].

107. La. Act 195 of 1940, § 9. Cf. La. Act 242 of 1912, § 10 [Dart's Stats. (1939) § 7834].

108. La. Act 195 of 1940, § 10. Cf. La. Act 242 of 1912, § 11 [Dart's Stats. (1939) § 7835].

come must place it on its preferential docket, hear it without delay and render a decision within ten days after the hearing.¹⁰⁹

If a record relating to any investigation being conducted under legislative auspices is in the custody of an attorney whose duties are performed under legislative authority, it is not classified by the act as a public record. Thus it is not subject to inspection by authorized persons until after the investigation is completed.¹¹⁰ The provisions of the law also do not apply to any records held by a state investigator or investigating agency as evidence in the investigation of a criminal charge until after the records have been used in open court or until final disposition of the charge.¹¹¹ However, any citizen may file a petition in the district court of the parish where the record is held to have the district judge determine summarily and by preference, in open court or in chambers, whether a record is being held bona fide. No appeal may be taken from the district judge's decision.¹¹²

Gubernatorial records were not amenable to the provisions of the earlier law.¹¹³ Although such records as are ordinarily kept in the governor's custody in the usual course of the duties and business of his office are not now available as public records, the new act states that its provisions are not to be construed to prevent any person, otherwise authorized by the statute to do so, from examining and copying any books or papers relating to money or financial transactions in the control of or handled through the governor.¹¹⁴

The following records and documents are excluded from the provisions of the Public Records Act: (1) tax returns or any other information concerning persons applying for or receiving old age assistance, aid to the blind or to dependent children; (2) records in the custody of any state agent or agency whose duty involves the investigation, management or liquidation of a private business, when such records relate to the business and are confidential in nature; (3) records held by the State Bank Commissioner or his agent insofar as they concern solvent banks engaged in the banking business at the time a request is made to inspect them; (4) daily reports and indorsements of insurance companies doing business in the state, filed with the Louisiana

109. La. Act 195 of 1940, § 11.

110. *Id.* at § 2.

111. *Id.* at § 3.

112. *Ibid.*

113. La. Act 242 of 1912, § 4 [Dart's Stats. (1939) § 7828].

114. La. Act 195 of 1940, § 5.

Casualty and Surety Rating Commission according to law;¹¹⁵ (5) records of public hospitals in the state, except in certain enumerated cases.¹¹⁶

Not only is the offending custodian of public records made subject to the penal provisions of the statute, but so also is any other person who hinders or attempts to hinder the inspection of any records declared subject thereto by any conspiracy, understanding or cooperation with any other person.¹¹⁷

A 1940 act requires detailed monthly reports to be made by various parish and district officers and boards (except the Parish of Orleans) to the respective police juries and clerks of court to be filed and kept as public records for a period of at least one year.¹¹⁸

Public Works Contracts

The amendment to the Public Works Contract Act governs only contracts for public works or purchases of material where the value exceeds five hundred dollars. Such public works by any public corporation or political subdivision of the state and purchases of materials and supplies to be paid for out of public funds, must be advertised and let by contract to the lowest responsible bidder.¹¹⁹

Sheriffs

Act 320 of 1940 requires sheriffs and deputy sheriffs of each parish in the state (except Orleans and Caddo) to carry a life insurance policy of the group insurance type. These policies must be written by insurance companies legally authorized to do business in this state and through legally commissioned and licensed agents residing in Louisiana.

Spouse Law

Act 15 of the extra session of 1940, prohibiting public employment of both spouses when the salary of either exceeded a designated sum, was repealed in the regular session.¹²⁰ Although

115. *Id.* at § 4.

116. *Id.* at § 6. *Quaere* the effect of this provision upon La. Act 170 of 1932, § 1 [Dart's Stats. (1939) § 1067]; La. Act 108 of 1936; La. Act 90 of 1938, § 1 [Dart's Stats. (1939) § 1067.1]. See Hebert and Lazarus, *The Louisiana Legislation of 1938* (1938) 1 *LOUISIANA LAW REVIEW* 80, 128-130.

117. La. Act 195 of 1940, § 13. *Cf.* La. Act 242 of 1912, § 16 [Dart's Stats. (1939) § 7840].

118. La. Act 286 of 1940.

119. La. Act 127 of 1940, amending La. Act 73 of 1926, § 1, as previously amended by La. Act 20 of 1935 (4 E.S.) § 2 [Dart's Stats. (1939) § 6730].

120. La. Act 229 of 1940.

Louisiana was the only state having such an act, similar statutes have been contemplated in twenty-one states. Most of these either were killed in committee or rejected by the legislature.¹²¹ In an advisory opinion submitted by the highest court of Massachusetts to the legislature of that state, six similar bills were held unconstitutional in their entirety.¹²² One writer has suggested that there is no fundamental distinction between the repealed Louisiana law and the Massachusetts bills.¹²³

"[The] assumption of a marital status should not disqualify one from entering into or continuing in the public service as a public employee, since such status bears no relationship whatever to ability. It would be a dangerous public policy indeed to assume that marriage renders one unfit to perform duties of a public nature, or that one's ability to serve the state or the nation is hampered by assuming marital obligations."¹²⁴

Unfair Sales Act

Another weapon to compel the maintenance of prices in retail and wholesale trade was devised by the lawmakers at the 1940 regular session.¹²⁵ It is now declared to be unfair competition¹²⁶ and actionable injury to sell goods below cost as defined in the statute.¹²⁷ Such a sale is made a misdemeanor subject to punishment by fine,¹²⁸ and district attorneys are authorized to institute proceedings to prevent and restrain violations.¹²⁹ Persons threatened with injury or who are injured as a result of violations of the act are given the right to sue for injunctive relief. A successful litigant is to be allowed a reasonable attorney's fee.¹³⁰

Uniform Laws

Four of the uniform laws approved by the National Conference of Commissioners on Uniform State Laws were passed at

121. Note (1940) 2 LOUISIANA LAW REVIEW 553, 556.

122. Opinion of the Justices, 22 N.E. (2d) 49 (Mass. 1939).

123. Note (1940) 2 LOUISIANA LAW REVIEW 553.

124. *Id.* at 557.

125. La. Act 338 of 1940.

126. *Id.* at § 3.

127. *Id.* at § 2. Legitimate clearance sales, and sales of like character, and sales on contract to a government institution are exempted. *Id.* at § 6.

128. *Id.* at § 4.

129. *Id.* at § 5.

130. *Ibid.*

the recent session of the legislature. Act 99 of 1940, known as the Uniform Federal Tax Lien Registration Act,¹³¹ makes uniform the law relating to the registration of federal tax liens. It was passed for the avowed purpose of authorizing the filing of notices of tax liens in accordance with the provisions of Section 3186 of the Revised Statutes of the United States.¹³²

The Uniform Transfer of Dependents Act¹³³ authorizes the Department of Public Welfare, subject to the approval of the attorney general, to enter into reciprocal agreements with corresponding agencies of other states regarding interstate transportation and support of poor and indigent persons.¹³⁴

The Uniform Unauthorized Insurance Act¹³⁵ and the New Blue Sky Law,¹³⁶ which conforms in substance to the Uniform Sale of Securities Act, are discussed elsewhere in this article.

131. 9 U.L.A. 94 (Supp. 1939). The Uniform Federal Tax Lien Registration Act has been adopted by the following states and territories: Alaska [Alaska Comp. Laws (1933) §§ 2101-2107]; Delaware [Del. Rev. Code (1935) §§ 3355-3359]; Hawaii [Hawaii Rev. Laws (1935) §§ 5190-5195]; Idaho [Idaho Code Ann. (1932) §§ 44-201 to 44-205, 44-210]; Kentucky [Ky. Stat. Ann. (1936) §§ 4281t-8 to 4281t-13]; Maryland [Md. Ann. Code (Flack, Supp. 1935) Art. 17, §§ 9, 9A-9F]; Montana [Mont. Rev. Codes Ann. (Anderson & McFarland, 1935) §§ 2155.1 to 2155.7]; Nevada [Nev. Comp. Laws (Hillyer, 1929) §§ 2123-2131]; New Mexico [N.M. Stat. Ann. (Courtright, 1929) §§ 82-601 to 82-607]; New York [Lien Law, §§ 240-245]; Pennsylvania [74 Pa. Stat. Ann. (Purdon, 1939) §§ 141-147]; South Carolina [S.C. Code (1932) § 2576(1-7)]; South Dakota [S. D. C. (1939) §§ 39.1601-39.1606]; Tennessee [Tenn. Code Ann. (Williams, 1934) §§ 8029-8034]; Utah [Utah Rev. Stat. Ann. (1933) §§ 52-6-1 to 52-6-4]; Wisconsin [Wis. Stat. (1939) § 74.76]; Wyoming [Wyo. Rev. Stat. Ann. (Courtright, 1931) §§ 66-901 to 66-907].

132. As amended by 37 Stat. 1016 (1913) and 43 Stat. 994 (1925), 26 U.S. C.A. § 115 (1928).

133. La. Act 68 of 1940. The uniform act has been adopted by the following states: Colorado [Colo. Stat. Ann. (Michie, Supp. 1939) c. 124, § 18]; Maine [Me. Laws (1933) c. 188]; North Dakota [N.D. Laws (1939) c. 196]; South Dakota [S.D. Laws (1939) c. 201].

134. As to the difficulties inherent in necessary provisions for the care of dependents, see the Commissioners' Prefatory Note, 9 U.L.A. 237, 238 (Supp. 1939).

135. *Supra*, p. 188 et seq.

136. *Supra*, p. 187.