Louisiana Law Review

Volume 10 | Number 2
The Work of the Louisiana Supreme Court for the 1948-1949 Term
January 1950

Public Law: Constitutional Law

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power to adopt reasonable rules to assist the accomplishment of its functions, and, second, as a matter of statutory construction (particularly in the light of the considerations supporting the first ground) the proviso in the 1948 act, while stating that *it* should not be construed to require written contracts, did not in terms—or by necessary implication "prohibit School Boards from requiring written contracts with permanent teachers." The result reached by the court is unquestionably a proper one, according with what was undoubtedly the legislative purpose leading to the enactment of Act 353 of 1948, namely, to excuse noncompliance with the written contract requirement of the prior law where school boards regarded such action to be unnecessary and not otherwise. "It was never contemplated that the tenure law would be employed for the purpose of defeating the functions of a School Board or as a means of ignoring or refusing to obey rules of the board adopted in aid of its administrative authority."[16]

CONSTITUTIONAL LAW

*Charles A. Reynard**

In the course of the term the court had occasion to apply established principles of constitutional law to the facts of particular cases (discussed below) but by far the most important decision of interest to students of the subject was *Orleans Parish School Board v. Louisiana State Board of Education.*[1] Truly a product of "the jurist's art"[2] the opinion in that case is almost certain to be condemned by some as judicial acquiescence in legislative disregard of constitutional limitations. Indeed, it was condemned as such by Judge McCaleb in his dissenting opinion. But to others, aware of the importance of the role played by political, social and economic considerations in constitutional interpretation, the decision will simply reflect the action of the court, as one organ of government, responding to the needs of a developing social and economic order.

The constitutional provision in question was Article XII, Section 14, relating to state school funds. That section in its present form, after enumerating the various sources from which it shall be constituted, states "that the Legislature must and shall provide, by appropriate tax levies, appropriation or otherwise, a

16. 41 So. (2d) 461, 464.

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1. 41 So.(2d) 509 (La. 1949).

2. Hamilton, The Jurist's Art (1931) 31 Col. L. Rev. 1073.

minimum amount in this State Public School Fund of not less than Ten Million Dollars . . . [to be] . . . kept in separate bank accounts . . . and all such funds, including any appropriation from the general fund, shall be apportioned and distributed to the parishes and paid out to the parish school boards on the following basis: [¾ on a per-educable child basis and ¼ on an equalization basis.]"

In 1948 the legislature enacted a minimum teachers' salary act,[3] and in the course of making appropriations,[4] allotted a sum in excess of $37,000,000 for each of the school years 1948-1949 and 1949-1950 to be allocated in accordance with the ¾-¼ formula,[5] together with the further sums of $8,000,000 for 1948-1949 and $11,300,000 for 1949-1950 "to be withdrawn from the treasury and distributed by the Louisiana State Board of Education to the various parish and city school boards to carry into effect" the minimum salary act's provisions.[6] Finally, by a third act[7] the legislature proposed that Article XII, Section 14, be amended to provide, inter alia, that "Anything contained in this section or any other provision of this constitution to the contrary notwithstanding, the Legislature may appropriate sufficient moneys out of the State Public School Fund to pay . . . the amounts necessary to provide for the payment of minimum salaries as may be fixed by the Legislature, to teachers. . . . " The proposed amendment was defeated in the November, 1948, elections.

As the state school board was preparing to allocate and distribute the $8,000,000 item in accordance with the provisions of the minimum salary act (which differed from the ¾-¼ formula prescribed by Article XII, Section 14) the Orleans Parish School Board brought injunction proceedings to restrain such action, alleging that under the state board's plan Orleans Parish would receive less than $200,000 whereas, under the constitutional formula, which it alleged to be applicable, it was entitled to approximately $1,000,000.

A majority of the court,[8] acknowledging that the language of Article XII, Section 14, "furnishes the impression that an ap-

3. La. Act 155 of 1948.
4. La. Act 350 of 1948.
5. Id. at Schedule 110, Items 6 and 7.
6. Id. at Schedule 110, Item 8. This item was originally appropriated by the terms of Section 5 of Act 155 (the minimum salary law) but was item-vetoed by the governor with the explanation that it was duplicated in the General Appropriation Act.
7. La. Act 512 of 1948.
8. Chief Justice O'Niell did not participate and Judge McCaleb filed a dissenting opinion.

propriation from the State Public School Fund can legally be made only if and when the money is apportioned and distributed to the parishes and paid out to the parish school boards in accordance with the prescribed formula," nevertheless denied the injunction, concluding that the formula was applicable only to the $10,000,000 minimal amount designated in the controversial provision.

The case is an excellent illustration of the extent to which a court, in the process of constitutional interpretation, exercises a considerable degree of freedom in the selection of the appropriate principle or doctrine to support the decision it deems best fitted for the occasion. In the instant case the court might have utilized the two principal arguments stressed by the dissenting judge to invalidate the statute: (1) that resort to extraneous material may be made only to resolve, not to create, ambiguity, and, in this case the literal clarity of constitutional provision declaring that "all such funds, including any appropriation from the general fund [shall be distributed in accordance with the formula]," compelled the conclusion that the act was invalid, and (2) that the rejection by the voters of the proposed amendment expressly authorizing a departure from the formula constituted a clear reflection of their will to oppose such a method of distribution. Instead, however, the majority chose two other equally respectable doctrines to reach an opposite result which it deemed more suitable in the circumstances: (1) that statutes enacted by the legislature are presumed to be valid, and (2) where a constitutional provision is susceptible of two interpretations, one of which will sustain a legislative enactment and the other will not, the former is to be preferred.

The apparent ease with which the majority rejected the interpretative rules invoked by the dissent and adopted another set of determinative principles effectively demonstrates that constitutional interpretation is not a mechanical process to be achieved by the mere invocation of rules or doctrines. The principles themselves are but means to ends—ends which the court in the process of decision has concluded are to be achieved in preference to others. And in the making of this preference of ends the court is influenced to a large degree by political, social and economic considerations—an influence which may or may not find expression in the court's opinion.

In the instant case we do find the court giving expression

in its opinion to the consideration of these factors where, in discussing the effect of a contrary decision, it is said:

> "If such be the correct interpretation of those provisions the appropriation by the 1948 Legislature from the State Public School Fund to carry into effect the minimum Teachers Salary Schedule provided in Act No. 155 of 1948 (unless apportioned and distributed on the ¾th-¼th basis) is, of course, unconstitutional and illegal. Likewise stricken with nullity are those other appropriations of 1948, as well as many made during preceding years, for such items as teachers' retirement, education for crippled children, vocational rehabilitation, and salary and expenses of State Superintendent of Education, because the appropriation for each of those has been from the State Public School Fund without apportionment and distribution to the parish school boards on a per educable and equalization basis."[9]

Having thus obviously made a policy judgment in the case, the majority opinion then proceeds to marshal support for its conclusion in the manner previously indicated. The critical language of the constitutional provision in question is first found to be ambiguous when viewed in the light of its historical setting and frequent amendment. It is observed that the provision when originally adopted in 1921 called for distribution entirely on a per educable basis but imposed no duty on the legislature to augment the fund by additional appropriation. By amendment in 1930 it became incumbent upon the legislature, if necessary, to supplement the school fund by appropriation in an amount sufficient to provide a minimum of twelve dollars per educable child, two dollars of which was to be apportioned on an equalization basis. The legislature was authorized although not required to make additional appropriations and no provision was made concerning the manner in which such additional appropriations, if made, were to be allocated. In 1934, by further amendment, it was provided that the legislature must provide a minimum of $10,000,000 for the fund and at the same time the controversial ¾-¼ formula was inserted with the proviso that until the fund amounted to $10,000,000 the ¾-¼ formula should be replaced by a 5/6-1/6 formula and a further proviso "that in no case shall the state support for any parish exceed ninety (90%) per centum of the cost of the minimum state educational program in that parish." From the language of this amendment the court discerns "a primary

9. 41 So.(2d) 509, 515 (La. 1949).

purpose" on the part of its framers "to create and maintain a definite fund in the treasury, dedicated to the support of public common schools and distributable on the ¾-¼ basis, sufficient to defray no more than 90% of the cost of the minimum state educational program in every parish of the state. . . ."[10] At the same time it points out, however, that "the Legislature was not required by the 1934 amendment to maintain a surplus (in excess of $10,000,000.00) in the State Public School Fund to be apportioned on the ¾th-¼th basis; hence, it could regulate its appropriations and the proceeds of tax levies . . . so as to restrict that fund to the directed minimum."[11]

The 1947 amendment which cast the provision in its present form, eliminated the 90% maximum disbursement provision of the 1934 amendment to enable the legislature, as the court observed, "to disburse a surplus, which had accumulated in the State Public School Fund, without regard to the cost of the minimum state educational program."[12] It was this amendment which also inserted the language, heavily relied upon by the plaintiff that "all such funds [from the Public School Fund], including any appropriation from the general fund, shall be apportioned and distributed [on the ¾-¼ formula basis]." Rejecting so literal an interpretation of the amendment's provisions, however, and in light of the section's history, the court concluded that it "did not militate against the discussed primary purpose seemingly indicated by the provisions of the 1934 amendment" and adhered to the view that the ¾-¼ formula was applicable only to the minimum sum of $10,000,000 required to be provided by the legislature. Since it had already appropriated in excess of $37,000,000 for each year of the biennium to be so distributed, the legislature had fulfilled its obligation.

By having thus discovered ambiguity in what otherwise appeared to be an unequivocal provision, the court was enabled to resort to an interpretation which saved rather than destroyed the statute. At the same time, the defeat of the proposed amendment became inconsequential as a reflection of the will of the people, since the result was within the legislature's power without amendment. Insofar as legislative doubts were reflected by the mere proposal of the amendment, the court added, "These, undoubtedly, were in the nature of precautionary measures taken

10. Id. at 516.
11. Id. at 517.
12. Ibid.

by reason of the ambiguity attending the constitutional provisions under consideration."[13]

Viewed in its practical aspects, the decision unquestionably made possible the administration of the teachers minimum salary act in a fashion which was desired by the great majority of all persons concerned. A contrary decision in the case would have brought about the very result that the people of the state through their elected representatives had so obviously sought to prevent by the enactment of the minimum salary act. A court, under such circumstances, which is able to promote rather than obstruct the accomplishment of an objective sought by the great majority of the people, demonstrates its acknowledgment of a duty as one of three coordinate branches of government to serve the needs of its citizens. This is not to say that legislative enactments, however popular, are not to be declared invalid in proper cases. The presumption of validity must, of course, fall when non-conformance with constitutional requirements is clearly demonstrated. But, as in the instant case, courts should be exceedingly cautious to make a conclusion of clear non-conformance without considering all other relevant factors in the case.

Due Process of Law

In its decisions in *In re Bryant*[14] and *State v. Ricks*[15] the court sustained the power of the legislature to make provision for the taking of a person's liberty and property, respectively, without giving the affected party any notice of the intended deprivation or opportunity to be heard in opposition to the measures proposed. In both cases the statutory enactments and the action of appropriate officials in pursuance thereof were attacked as denials of due process of law guaranteed by both state and federal constitutional provisions.[16] Each case clearly demonstrates that the requirements of notice and hearing as elements of due process of law are not absolute, but may properly be denied or qualified by the legislature in the appropriate exercise of its police power designed to protect the public health, safety or morals. In both cases it is pointed out that the injured party did have an appropriate remedy available to him in the event his interests had been illegally or erroneously infringed.

In the *Bryant* case the plaintiff sought the annulment of a

13. Ibid.
14. 214 La. 573, 38 So.(2d) 245 (1948).
15. 41 So.(2d) 232 (La. 1949).
16. La. Const. of 1921, Art. I, § 2; U.S. Const. Amend. 14, § 1.

judgment which had been entered in the course of proceedings under the Mental Health Act of 1944,[17] a comprehensive piece of legislation providing for the discovery and treatment of mental disorders. Sections 11, 12, 13 and 17 of that act make provision for the commitment of mentally ill persons without notice and hearing being afforded the interested party. Section 13, under which the proceedings leading up to the judgment here involved were had, expressly states that the district court, before whom the proceedings are conducted "may or may not request the presence of the mental patient" before committing him when "upon the application of any responsible person, accompained by a certificate from the coroner and one other qualified physician" the judge shall be of the "opinion [that] the welfare of the individual and the community is served best by his commitment."

When the proceedings leading up to the judgment involved in the instant case were initiated, Bryant was in fact served with a warrant on December 14, 1945, ordering him to be present at a hearing on the coroner's application on December 20. As a matter of fact, however, the court proceeded to hear the application along with a number of others on December 17, 1945, three days prior to that designated in the notice, and entered a judgment adjudging Bryant insane and ordering his commitment which was effected on December 20, 1945. Some time later, apparently in the month of January 1946,[18] Bryant was discharged from the hospital "as being 'without psychosis', meaning not insane,"[19] and soon thereafter filed the present action to annul the judgment of December 17, 1945, on the ground that having been entered in a proceeding of which he had no notice and in which he had no opportunity to be heard, it was without due process and hence a nullity. His request was denied on two grounds, first, because "commitment to an insane asylum under a statute such as Act No. 303 of 1944 is merely a matter of police regulation, purposing to protect both the patient and the general public; it produces none of the effects of a formal interdiction,"[20] and, second, because opportunity for a full hearing and the appointment of a commission by the provisions of Sections 14-16 of the act in all cases involving summary commitment orders under Sections 11-13 and 17 *if he requests it.*

17. La. Act 303 of 1944 [Dart's Stats. (Supp. 1949) § 3938.1 et seq.].
18. The opinion states that the "date is not definitely shown by the record." 214 La. 573, 578, 38 So.(2d) 245, 247.
19. Ibid.
20. 214 La. 578, 584, 38 So.(2d) 247, 249.

The nature of the competing interests is at once apparent in this type of case—that of society to protect itself against the possible harm which might be inflicted by the mentally deranged person without risking the delays attendant upon the giving of notice and hearing, and that of the individual to protect himself against deprivation of his liberty through being "railroaded" to an institution upon trumped-up charges of mental derangement without having notice of the proceedings and opportunity to present evidence of his sanity.[21] While there might be some doubt whether the first ground advanced by the court, standing alone, would sustain the act in question, the presence of the provision entitling the party to a hearing at his own request seems unquestionably to satisfy the demands of due process of law as interpreted by the Supreme Court of the United States, namely, that it be appropriate to the nature of the proceedings and the parties involved and that they have an opportunity at some stage of the proceedings before action against them shall become final and binding to present evidence against the right asserted.[22]

In *State v. Ricks*[23] the court had occasion to consider Act 231 of 1928 which simply provides:

> "That all officers of the State of Louisiana are hereby authorized and empowered, and it is made mandatory and compulsory on their part, to confiscate and immediately destroy all gambling devices known as slot machines that may come to their attention, or that they may find in operation."

The defendants had been convicted of the crime of gambling as defined by Article 90 of the Louisiana Criminal Code. One of them owned the slot machines involved and the other had permitted them to be used on his premises, the two men dividing the money deposited therein. Following conviction the trial court had entered an order directing the destruction of the machine pursuant to the provisions of the statutes quoted above. On appeal, in addition to urging reversal of the conviction, defendants also challenged the constitutionality of the act of 1928 on the ground that it authorized summary confiscation and destruction

21. For a detailed treatment of the subject in both its medical as well as legal aspects, see Weihofen and Overholser, Commitment of the Mentally Ill (1946) 24 Texas L. Rev. 307, 340; Weihofen, Commitment of Mental Patients—Proposals to Eliminate some Unhappy Features of our Legal Procedure (1941) 13 Rocky Mt. L. Rev. 99; Comment (1942) 36 Ill. L. Rev. 747 (1942).

22. Hagar v. Reclamation District, 111 U.S. 701, 4 S.Ct. 663, 28 L. Ed. 569 (1884); Opp Cotton Mills, Inc. v. Admr, 312 U.S. 126, 61 S.Ct. 524, 85 L.Ed. 624 (1941).

23. 41 So.(2d) 232 (La. 1949).

without notice or hearing thereby effecting a taking of property without due process of law. As the court observed, "It is, of course, obvious that appellants have had due process of law in this case as the destruction of the machine was not ordered until after a full hearing and determination of the Court that it was a gambling device,"[24] but nevertheless their constitutional objection was considered and rejected. Citing the leading federal case of *Lawton v. Steele*,[25] and quoting from its own earlier decision in *State v. Jackson*[26] which arose under the state prohibition law, the court approved the present statute as a proper exercise of the police power to condemn such property "as has become a public nuisance, or has an unlawful existence or is obnoxious to the public health, public morals or public safety, without compensation and without judicial inquiry."[27] In response to the claim, frequently advanced in such cases, that the broad reach of the statute would permit the destruction of slot machines not intended for gambling, the court pointed out that in the first place, the type of machine authorized to be destroyed was clearly defined in the act, and, in the second place, that if any officer should destroy a non-offending device, he would become civilly liable to the owner, thus providing a remedy for the victim.

The principle upon which the case is founded seems too firmly embedded in our jurisprudence, state and national, to hope for modification. And, indeed, in the instant case the defendants did in fact have a hearing prior to being deprived of their property. There seems to be no sound reason for requiring the conduct of such a hearing in all such cases where the nature of the property itself is not such as to pose an immediate and dangerous threat to the public health, safety or morals. Cases involving the summary destruction of diseased food,[28] uninspected milk which may be a disease carrier,[29] or buildings which constitute fire hazards or otherwise threaten the safety of persons or property in the immediate vicinity, certainly are to be regarded as public nuisances and their summary abatement should not await the delays of notice and hearing. On the other hand, however, where the property is harmless in and of itself, and summary seizure will remove it from dangerous use which threatens the public interest,

24. 41 So.(2d) 232, 233.
25. 152 U.S. 133, 14 S.Ct. 499, 38 L.Ed. 385 (1894).
26. 152 La. 656, 94 So. 150 (1922).
27. 41 So.(2d) 232, 234 (La. 1949), quoting from State v. Jackson, 152 La. 656, 94 So. 150 (1922).
28. North American Cold Storage Co. v. Chicago, 211 U.S. 306, 29 S.Ct. 101, 53 L.Ed. 195 (1908).
29. Adams v. Milwaukee, 228 U.S. 572, 33 S.Ct. 610, 57 L.Ed. 971 (1913).

there would seem to be no great harm done to anyone to compel the seizing officer to hold the property in his custody until a hearing can be held to determine the ultimate disposition to be made of it.

Miscellaneous

A group of three other cases touched only incidentally upon constitutional provisions. In *Nassar v. Board of Commissioners for Pontchartrain Levee District*,[30] the plaintiff, challenging the validity of a bond issue which the board was preparing to offer pursuant to authorization contained in a constitutional amendment,[31] alleged "that all of the property within the district is sought to be burdened with a debt that is being incurred for the exclusive benefit of the improvements being located in the lower portion of the district, in violation of the 14th Amendment to the Constitution of the United States. . . ."[32] The court refused to consider the claim saying "The plaintiff having neither alleged nor shown in what respect he is being deprived of his property without due process, these allegations constitute nothing more than the conclusion of the pleader and need no further comment."[33] Another issue which was raised in the case was whether the plaintiff had filed his suit within the thirty-day period prescribed for such action by the provisions of Article XVI, Section 8, of the state constitution. The suit was filed before the bonds had been sold (possibly even before they had been printed, signed and prepared for sale) but more than thirty days after the board had adopted its resolution authorizing their issuance and sale. On this point the court held that the suit was not barred by prescription, construing the constitutional provision ("within 30 days of issuance of said bonds") to contemplate the printing and signing of the bonds before the period begins to run. In *Harrel v. Winn Parish School Board*[34] a similar issue was likewise raised by the plaintiff-taxpayer under other provisions of the constitution. There the defendant school board, by a resolution adopted on May 2, 1947, enlarged its district with the result that the bonded indebtedness of the enlarged district exceeded "ten percentum of the assessed valuation of the taxable property" situated therein contrary to the provisions of Article XIV, Section 14 (f) of the constitution. Thereafter, on May 18, 1948, the taxpayers

30. 214 La. 214, 36 So.(2d) 761 (1948).
31. La. Act 398 of 1946, amending La. Const. of 1921, Art. XVI, § 8.
32. 214 La. 214, 218, 36 So.(2d) 761, 762.
33. Ibid.
34. 214 La. 1095, 39 So.(2d) 743 (1949).

voted a bond issue to finance the affairs of the school district, and the returns of that election were promulgated on May 22, 1948. On February 11, 1949, plaintiff filed his suit to restrain the issuance of the bonds for the reason indicated. His suit was dismissed on the authority of Article XIV, Section 14 (o), which permits such elections to be challenged within sixty days following the promulgation of results, but also provides that:

> "If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters."

State ex rel. Kemp, Attorney General v. Board of Liquidation of State Debt[35] was an injunction proceeding in which the attorney general sought to restrain the board and its individual members from issuing and selling bonds, the proceeds of which were to be used in paying bonuses to veterans of World War II or their dependents under the terms of the constitutional amendment[36] proposed by Act 530 of 1948. Although the amendment providing for the issuance of the bonds simply authorized the board to secure their payment from the proceeds of the tax on beer which was levied by Act 8 of 1948, the board in issuing them had provided that they should be general obligations of the state secured by its full faith and credit. It was to this feature that the attorney general directed his objection, contending that the bonds should have been secured solely by the proceeds of the beer tax. The court denied the injunction, and, after holding that by virtue of Article IV, Section 1 (a), of the constitution the board "is a department of state government and not [an] entity distinct from the state . . . [and that] any indebtedness which the board lawfully incurs is therefore the indebtedness of the state and not the obligation of the board itself,"[37] proceeded to declare on principles of statutory construction that, in the absence of any portion in the act proposing the amendment which expressly limited the security of the bonds to the proceeds of the beer tax, they were properly made general obligations of the state. The conclusion is amply supported by authorities which are cited by the court.

35. 214 La. 890, 39 So.(2d) 333 (1949).
36. La. Const. of 1921, Art. XVIII, § 10.
37. 214 La. 890, 895, 39 So.(2d) 333, 334.

In *McCall v. Regan*,[38] the court had occasion to rely upon the terms of constitutional provision to enable it to resolve a question of statutory construction, choosing one interpretation in preference to another when it appeared that the rejected construction would create a conflict between the constitution and the statute resulting in the latter's invalidation. The suit was an election contest involving the office of Judge of the Court of Appeal for the Parish of Orleans. Plaintiff, having been declared the unsuccessful candidate, filed his suit against his opponent and others in the District Court for the Parish of East Baton Rouge, proceeding upon the theory that the office for which election was sought was that of a "State officer" within the meaning of Section 86 of Act 46 of 1940, designating that court as the proper forum in such cases. In support of his plea to the jurisdiction of the court ratione personae, defendant urged that the office involved in the contest was a "district office" within the meaning of the statute in question, requiring that suit be filed in the "District Court of the parish in which the contestee resides." In the course of the opinion the court acknowledged that the issue was not wholly free from doubt, but concluded that "when the act is read as a whole, and particularly those provisions that are pertinent here, it unmistakably shows that the office of judge of the Court of Appeal for the Parish of Orleans is a district office, as distinguished from a state office within the meaning of the act."[39] Added support for the conclusion was found in the language of Article VIII, Section 12, of the state constitution which reads:

> "The Legislature shall provide by law for the trial and determination of contested elections of all public officers whether state, district, judicial, parochial, municipal or ward (except Governor and Lieutenant Governor) which trials shall be by courts of law, and at the domicile of the party defendant."

Under the language of this section, the statute if construed to permit the trial of the action in any parish other than Orleans (the domicile of the defendant) would obviously offend the constitution and be invalid. The case is, of course, properly decided, but questions are raised concerning the validity of that portion of the statute which apparently permits the trial of contested elections involving the enumerated state offices ("Governor, Lieutenant Governor, Attorney General, Secretary of State,

38. 214 La. 254, 36 So.(2d) 830 (1948).
39. 214 La. 254, 257, 36 So.(2d) 830, 831.

State Treasurer, Auditor of Public Accounts, Superintendent of Public Education [before] the Judge of the District Court of the Parish in which the capitol of the State is situated"[40]) in cases where that parish is not the domicile of the defendant.

TAXATION

*Charles A. Reynard**

Income Tax

In *W. Horace Williams Company, Incorporated v. Cocreham*[1] the court decided the fifth case that has come before it under the provisions of the fifteen year old state income tax act.[2] In 1931, three years prior to the enactment of the statute, the plaintiff had realized a capital gain in excess of $450,000 from the sale of a portion of its property, accepting bonds secured by a mortgage in payment on the sale. Under the circumstances the plaintiff was permitted, and, in fact, did elect to avail itself of the optional provisions of Section 44(b) of the Internal Revenue Code[3] to report the profit on the transaction on an installment sale basis for federal income tax purposes. Beginning with 1936 and continuously thereafter until 1941 the plaintiff, in reporting its net income for state law purposes, took deductions for federal taxes, pursuant to Section 9 of the state act, including the portions thereof attributable to the profit on the installment sale. In 1941, by apparent inadvertence, the deduction was not taken and thereafter plaintiff filed a claim for a refund. To its very probable chagrin, the claim was not only denied, but led to a re-audit of its prior returns and a determination of deficiency for those earlier years on the theory that the item in question never was properly deductible in computing net income. The collector's action was based upon the ground that while Section 9 specifically authorizes the deduction of taxes in computing net income, nevertheless, Section 10(a)(5), broadly limiting deductions in general, rendered this item non deductible by providing that "no deduction shall in any case be allowed in respect of . . . any amount otherwise allowable as a deduction which is allocable to

40. La. Act 46 of 1940, § 86 [Dart's Stats. (Supp. 1949) § 2862.90].

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1. 214 La. 520, 38 So. (2d) 157 (1948).

2. La. Act 21 of 1934, as amended [Dart's Stats. (Supp. 1949) § 8587.1 et seq.]. The four previous cases are A. Wilbert's Sons Lumber & Shingle Co. v. Collector of Revenue, 196 La. 591, 199 So. 652 (1941); Rathborne v. Collector of Revenue, 196 La. 795, 200 So. 149 (1941); Bentley's Estate v. Director of Revenue, 199 La. 609, 6 So. (2d) 705 (1942); Standard Oil Co. of New Jersey v. Collector of Revenue, 210 La. 428, 27 So. (2d) 268 (1946).

3. 26 U.S.C.A. 44 (b).