

Legislation - Construction of Statutes

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voluntary and prompted by a recognition of the unforeseen hardship involved in the performance of the original contract.¹¹ Where the facts of a case are such that the court feels that the parties have in good faith adjusted their differences, it is very likely to make use of the argument that the new agreement is valid for the reason that there had been a rescission of the former contract.¹² It is believed that in most cases of this kind there is lacking a solid factual basis for finding mutual cancellation and that to rest a decision upon a rescission is to rest it upon a fiction. Louisiana courts could, by applying Article 1901 of the Code, which specifically provides that obligations must be performed in good faith, refuse to give validity to a promise of additional compensation except in cases where the plaintiff's conduct is not morally blameworthy and where the new promise was given because of some unforeseen hardship.

The language of the instant case is, however, in line with past decisions regarding the performance of pre-existing legal duties. The opinion of the court indicates that if necessary it would not have hesitated to resort to the use of the common law concept of consideration in rendering the judgment. As the jurisprudence stands at present, a pre-existing obligation will be held enforceable if the promise can be supported as a "compromise of differences and not a gratuitous undertaking." If the facts of the case will not lend themselves to a compromise situation, the obligation will be held invalid for lack of common law consideration.

Geraldine E. Bullock

LEGISLATION—CONSTRUCTION OF STATUTES

In *State v. St. Julian*¹ the Supreme Court dealt with the question as to which of two acts passed at the same session of the Legislature purporting to amend the same section of the Revised Statutes should be given effect. This problem is one which the Supreme Court will be called upon to decide again in the near future, because there are several other instances in

11. *Linz v. Schuck*, 106 Md. 220, 67 Atl. 286 (1907); *Munroe v. Perkins*, 26 Mass. 298, 20 Am. Dec. 475 (1930); *Schwartzreich v. Bauman-Basch, Inc.*, 231 N.Y. 196, 131 N.E. 887 (1921).

12. *Martiniello v. Bamel*, 255 Mass. 25, 150 N.E. 838 (1926); *Munroe v. Perkins*, 26 Mass. 298, 20 Am. Dec. 475 (1830); *Schwartzreich v. Bauman-Basch, Inc.*, 231 N.Y. 196, 131 N.E. 887 (1921).

1. 221 La. 1018, 61 So. 2d 464 (1952).

which the Legislature of 1952 enacted seemingly conflicting statutes amending other provisions of the Revised Statutes.²

Act 303 of 1952 purported to amend Sections 179 and 180 of Title 15 of the Revised Statutes so as to permit the clerk to employ the services of a deputy clerk or stenographer in the preparation of these lists and further to provide that such lists may be typewritten. The act did not change the number of persons to be named in the general venire and grand jury lists.

Act 158, on the other hand, purported to amend Sections 179 and 180 of Title 15 of the Revised Statutes so as to provide for the selection of not more than six hundred persons for the general venire and for the selection of from fifty to seventy-five grand jurors. This act also amended Sections 181 and 182 so as to provide for the selection of not more than one hundred names to serve as petit jurors for each week.³

While admitting its duty to harmonize and reconcile two acts where possible, the court held that Act 158 was in conflict with Act 303. In reaching this decision, the court applied the arbitrary rule borrowed from the common law that the last act in point of time should prevail⁴ and held that consequently Act 158 had been impliedly repealed by Act 303.

The fact that such a rule has never before been applied by a Louisiana court to two acts passed at the same session of the Legislature raises a doubt as to the justification of its application in the instant case. Prior Louisiana courts have always reconciled acts passed during the same session of the Legislature. The reasoning behind reconciliation was based on a cognizance of judicial duty to harmonize law when possible and to carry out the intent of the Legislature.⁵ There is a strong presumption against implied repeal, especially in such a case as the present,

2. La. Acts 389 and 272 of 1952, amending La. R.S. 1950, 3:453; La. Acts 272 and 425 of 1952, amending La. R.S. 1950, 3:2091; La. Acts 17, 211, and 383 of 1952, amending La. R.S. 1950, 13:692; La. Acts 269 and 542 of 1952, amending La. R.S. 1950, 18:6; La. Acts 127 and 264 of 1952, amending La. R.S. 1950, 42:261; La. Acts 326 and 364 of 1952, amending La. R.S. 1950, 42:571.

3. Prior to the purported amendments of 1952, the Revised Statutes 15:179-181 provided for the selection of three hundred persons for the general venire, for the selection of twenty grand jurors, and for the selection of thirty petit jurors for each week.

4. La. Act 158 of 1952 was passed on June 23, 1952, and approved by the Governor on June 29. La. Act 303 of 1952 was passed on July 2, 1952, and approved on July 9.

5. *Chappuis v. Reggie*, 62 So. 2d 92 (La. 1952); *New Orleans v. Board of Supervisors of Elections for Parish of Orleans*, 216 La. 116, 43 So. 2d 237 (1949); *State v. Shushan*, 206 La. 415, 19 So. 2d 185 (1944).

"since it is not presumed that the same body of men would pass conflicting and incongruous acts."⁶

Perhaps the most important consideration in dealing with questions of statutory construction is the legislative intent,⁷ and it is particularly necessary in the instant case. Act 158 of 1952 was enacted for the purpose of fixing a minimum and a maximum number for both the preparation of the lists and for the drawing of grand juror names. The provisions of Act 303 on this subject are identical with those found in Sections 179 and 180 prior to the 1952 legislation. It is submitted that the only changes which were intended by Act 303 were to permit the clerk to employ the services of a deputy clerk or stenographer in the preparation of the lists and to provide that all names, lists, et cetera, might be typewritten. In view of these purposes or intendments of the Legislature in enacting these two acts, it is submitted that they are entirely different in scope and do not conflict.⁸

6. *City of New Orleans v. Board of Supervisors of Elections for Parish of Orleans*, 216 La. 116, 144, 43 So. 2d 237, 247 (1949).

7. Art. 18, La. Civil Code of 1870: "The universal and most effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the Legislature to enact it."

State v. Crescent Cigar and Tobacco Co., 7 La. App. 659 (1928); *Galloway v. Wyatt Metal and Boiler Works*, 189 La. 837, 181 So. 187 (1938).

8. In the opinion of the writer, effect could be given to both acts without conflict, and they could be combined as indicated in the following (the text in capital letters constitutes the amendment effected by Act 158 of 1952, and the text in italics constitutes the amendment effected by Act 303 of 1952):

Section 179. "At the time ordered by the district judge, the jury commission shall meet at the office of the clerk of the district court and, in the presence of two or more witnesses, shall select from the persons qualified to serve as jurors for their respective parishes, three hundred persons, OR SUCH NUMBER OF PERSONS NOT TO EXCEED SIX HUNDRED AS THE DISTRICT JUDGE MAY DIRECT, a list of whom shall be made under the supervision of the commission, and said witnesses. *In the preparation of this list, the slips for use in the general venire box, the proces verbal of the meeting, and in all proceedings of the jury commission, the clerk of court and said commission, may avail itself of the services of a deputy clerk, or of a stenographer, and all names, lists, slips, etc., may be typewritten.* This list shall be the general venire list and shall be kept complete and supplemented from time to time as hereinafter enacted. Each of the names on said list shall be written on a separate slip of paper, together with the number of the word or place of residence of such persons, and the slips of paper containing the names selected, except those containing the names of the persons chosen to serve as grand jurors as hereinafter provided, shall be placed in a box which shall be labelled: 'General Venire Box.'"

Section 180. "Immediately after completing the general venire list, the commission shall select therefrom the names of NOT LESS THAN FIFTY CITIZENS AND NOT MORE THAN SEVENTY-FIVE, possessing the qualifications of grand jurors, to be taken from different portions of the parish as far as practicable, who shall be subject to duty as grand jurors during the term of six months after the grand jury is empaneled and until a succeeding grand jury shall have been impaneled.

"The names of the persons so selected shall be written *or typewritten* on

Even if the statutes had been in conflict in the instant case, it is believed that the court's ruling would be hard to justify. While it is true that a majority of the states resort to the rule that the last expression of legislative will prevails when two statutes passed at the same session of the Legislature are in irreconcilable conflict, there are strong reasons which negative its application to Louisiana legislation. The first and most logical argument is that Louisiana legislation passed at the same session becomes law at the same time: "at twelve o'clock noon, on the twentieth day after the Legislature shall have adjourned."⁹ In most other states, statutes become the law when signed by the Governor of the state,¹⁰ thus making it possible for two legislative acts passed during the same session to become law on different dates. Aside from the above fact, even in other states, the Governor does not necessarily sign the acts in the order in which they are passed, nor does the Secretary of State necessarily number them according to the time of their passage. The bills are signed by the Governor and numbered by the Secretary of State at random. In many cases a later act is signed first because it was the last to be placed on the stack of statutes awaiting the Governor's signature.

Another argument against the practicality of applying the rule that the last act prevails when two acts on the same subject are passed at the same session of the Legislature is that the last act may be one which was hastily proposed by an anxious legislator wishing only to establish some evidence of his participation in the session, while the earlier act may be one proposed for a broad purpose or one intended to fulfill some important need of the state. Observation and investigation have disclosed that in many cases the bills sponsored by the administration, the Louisiana Law Institute, and those drawn up by conscientious or experienced legislators are passed at an earlier date. It is believed that such an act should not be arbitrarily set aside merely because of an unintended conflict with a less important bill passed at a later time. The situation, it is submitted, should be solved by investigation deeper than the mere reckoning of the date that the act was signed by the Governor.

Legislative intent should be sought in the language, history,

slips of paper in the presence of the commissioners and they shall place the slips in an envelope, seal the same and endorse thereon the words 'List of Grand Jurors.'

9. La. Const. of 1921, Art. III, § 27.

10. 50 Am. Jur., Statutes, § 588.

and purpose of each statute. But if there is a direct conflict between two acts which are to take effect simultaneously, then it would seem that the court should declare both acts inoperative and void, unless some reason may be found to show that the Legislature intended one to prevail over the other.

Helen Marie Wimmer

MINERAL RIGHTS—AFTER-ACQUIRED TITLE DOCTRINE—
REVERSIONARY INTEREST

In *Long-Bell Lumber Company v. Granger*, 63 So. 2d 420 (La. 1953), the Louisiana Supreme Court, speaking through Justice Hamiter, held that the sale of a second mineral servitude to the owner of an existing mineral servitude on the same tract of land was void since one may not validly purchase that which he already owns.

This case involves a very complicated factual situation relating to a number of conveyances among various entities of the Long-Bell interests, "the good faith separate existence of which [was] . . . not challenged by the defendants."¹ A brief statement of the material facts are as follows:

In 1931 the Long-Bell Lumber Sales Corporation conveyed to the Long-Bell Minerals Corporation a mineral servitude on the lands in dispute. In 1936 the Long-Bell Farm Land Corporation, a sub-vendee of the Long-Bell Lumber Sales Corporation, purported to convey a mineral servitude on the same tract of land to the Long-Bell Petroleum Company, which had previously merged with the Long-Bell Minerals Corporation. In 1943 Long-Bell Farm Land Corporation sold the land to the defendants' authors in title and reserved the mineral rights to the Long-Bell Petroleum Corporation. The defendants, Miller and Granger, acquired the lands by separate transactions in 1944 and 1946.

The plaintiffs brought these consolidated petitory actions against the defendants after receiving adverse decisions in previous jactitation suits.

The defendants' claim to the mineral interests in question depended upon the effect of the 1936 deed. They contended that

1. *Long-Bell Lumber Co. v. Granger*, 63 So. 2d 420 (La. 1953).