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of persons previously engaged in the traffic at the time of the adoption of the ordinance. The *Smythe* case and its contemporary jurisprudence is discussed in an annotation in 6 L.R.A. (N.S.) 722 (1907).

LEGISLATION

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Six of the cases decided by the court at last term involved significant applications of rules governing enactment and interpretation of legislation.[1] These cases fell into two groups: the first, consisting of two cases, posed the problem of the Legislature's disregard for its own rules of procedure, while the second group, consisting of four cases, presented the always troublesome question of the latest expression of legislative will.

State v. Lawrence[2] and *State v. Gray*[3] were criminal prosecutions in which the defendants were charged with violating the provisions of the state's Uniform Narcotics Drug Law[4] as amended by Act 30, First Extra Session of 1951. In both cases the defendants contended that the amendatory act was invalid for non-compliance by the Senate with the state constitutional requirement that "no bill shall be considered for final passage unless it . . . has been reported on by a committee."[5] The undisputed facts showed, however, that the bill subsequently emerging as the act in question had been favorably reported by the Senate's Committee on Finance and that would seem to have foreclosed the defense which was urged. But the defendants in both cases argued that the constitutional require-

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1. There were, of course, numerous other cases involving settled principles of statutory construction arising in substantive fields of the law. Many of these cases are dealt with elsewhere in this Symposium. See, e.g., Mataya v. Delta Life Insurance Company, 222 La. 509, 62 So. 2d 817 (1953) which is discussed under the Insurance title, infra p. 167.

In the case of State v. Wilson, 221 La. 990, 60 So. 2d 897 (1952) the court held that the savings clause of an act repealing a local option statute served to continue in existence and effect any ordinance adopted prior to local option laws. This subject is discussed in symposium, The Work of the Supreme Court for the 1950-1951 Term, 12 LOUISIANA LAW REVIEW 125-127 (1952).

2. 221 La. 861, 60 So. 2d 464 (1952).

3. 221 La. 868, 60 So. 2d 466 (1952).

4. La. R.S. 1950, 40:961 et seq.

5. La. Const. of 1921, Art. III, § 24.

ment contemplated a properly created committee, and that under the circumstances of this case the Senate Committee on Finance (to which the bill was referred) was improperly constituted, having been created on the same day on which it was proposed, contrary to the provisions of the Senate Rules which declare that one day's previous written notice must be given for the creation of new committees.[6] No such notice had been given and the committee so created to which the bill was referred was in fact a new committee, thereby lending at least superficial support to the contentions of the defendants. The court rejected the claim, however, pointing out that the Senate had voted 32 to 6 to create the committee and that, in effect, this was an alteration of rather than a violation of the existing rule requiring one day's notice for changes therein. Since the State Constitution expressly authorizes each house to ". . . determine the rules of its procedure, . . ."[7] it is submitted that this is a wholly reasonable conclusion—at least in the setting of these cases. There is a conceivably valid basis for courts to interfere in cases of this nature at the suit of a member of the legislative body itself, for whose protection the rules are adopted, but to sustain attacks upon legislative enactments at the instance of third parties is a different matter. Mutual respect for the right of each department of government to control its own procedures is an inherent attribute of the doctrine of the separation of the powers of government, and judicial supervision of the legislative process would lead to resentment and possibly to resort to subterfuge if a different conclusion were reached in these kinds of cases.

Three of the four cases involving the principle of the latest expression of legislative will were proceedings filed by plaintiffs claiming to be the properly designated judges of three different city courts.[8] In each case the plaintiff had been appointed to the office by the Governor with confirmation by the Senate, and in each case, the unexpired terms for which the plaintiffs were appointed had more than one year to run. In each case the plaintiffs invoked the provisions of a legislative act of 1934[9] in support of the Governor's authority to make

6. Rule No. 65 of the Senate then in session.
7. La. Const. of 1921, Art. III, § 10.
8. Chappuis v. Reggie, 222 La. 35, 62 So. 2d 92 (1952); Babineaux v. Lacobie, 222 La. 45, 62 So. 2d 95 (1952); State ex rel. Fudickar v. Heard, 223 La. 127, 65 So. 2d 112 (1953).
9. La. Act 21 of 1934, § 1 (2 E.S.).

the appointment; and in each case the defendants invoked the language of a legislative enactment of 1912[10] as a bar to the claim. The provision of both acts had been carried into the Louisiana Revised Statutes of 1950 as Sections 371 and 373 of Title 42. It is to be noted, therefore, that while these two acts were originally adopted in 1912 and 1934, they were both re-enacted simultaneously, as a part of the Revised Statutes of 1950.

The provision of the 1934 act read as follows:

> "Except as is otherwise required by the constitution and laws of the United States and the constitution of the State of Louisiana, and except in other cases where the law already provides for vacancies in office to be filled by appointment by the governor, whenever a vacancy occurs in any state, district, parish, ward, or municipal office, by reason of death, resignation or otherwise, the said vacancy shall be filled by appointment of the governor, by and with the advice and consent of the senate, until the next regular election shall be held, according to law."

The provision of the 1912 act read as follows:

> "When a vacancy is caused by death, resignation, or removal, or otherwise of any officer of the State of Louisiana, of any parish, district or any sub-division of the state, it shall be filled by election, provided that the said office is, by law, made elective by the people, and further provided that the unexpired term is for a longer period than one year. The election to fill the vacancy shall be ordered by proper legal authority within the least possible delay under the general election laws of the state."

A literal minded court might easily have taken the 1934 expression of the Legislature to have repealed, by implication, the provisions of the 1912 enactment, as it (the 1934 act) leaves no room for the operation of *laws* of the State of Louisiana, and seemingly covers all cases of vacancies in office, regardless of the length of the unexpired term. Rejecting a literal approach, however, Chief Justice Fournet, for a unanimous court, made the following observations:

> "The uniform jurisprudence is to the effect that all statutory provisions are to be given effect whenever possible. (citing Article 17 of the Civil Code of Louisiana and cases)

10. La. Act 112 of 1912, § 1.

> If acts can be reconciled by a fair and reasonable interpretation, it must be done, since the repeal of a statute by implication is not favored and will not be indulged if there is any other reasonable construction. (citing cases) Moreover, where two acts relating to the same subject are passed at the same legislative session, there is a strong presumption against implied repeal, and they are to be construed together, if possible, so as to reconcile them, giving effect to each."[11]

Upon the basis of the principle thus so clearly expounded, the court proceeded to sustain both acts, by reading the 1912 enactment as a qualification upon the 1934 statute, limiting the power of the Governor to fill vacancies by appointment only in those instances where the unexpired term was for a period of less than one year. It is submitted that the result is sound, in keeping with reasonable precedent, and most probably accords with legislative intent.

In the face of the result reached in the three cases just discussed, it is most difficult to explain the decision in the fourth case of this group, *State v. St. Julian*,[12] and it is submitted that it represents a departure from the principles announced in those three opinions. The *St. Julian* case is noted in the previous volume of this REVIEW[13] and accordingly no extended discussion is presented here. The salient facts were that the Legislature in 1952 adopted two acts, both amending the provisions of Sections 179 and 180 of Title 15 of the Revised Statutes of 1950 relating to juries. Act 158 amended the sections so as to permit the calling of a larger list of jurors. Act 303 authorized the preparation of jury lists in typewritten form. In all other respects each act tracked the language of the pre-existing sections. Hence a literal conflict resulted when it was sought to determine the resultant state of the law. In arriving at its conclusion the court disregarded what to this writer seems to have been the obvious intention of the Legislature, that is to amend the pre-existing sections in both respects, and held that because of literal conflict, the act which was passed and signed first in point of time was repealed and superseded by that which was last. As is more forcefully indicated in the note just referred to, this is to make more of clerical happenstance than of legis-

11. Chappuis v. Reggie, 222 La. 35, 43, 62 So. 2d 92, 95 (1952).
12. 221 La. 1018, 61 So. 2d 464 (1952).
13. Note, 13 LOUISIANA LAW REVIEW 606 (1953).

lative intention, particularly in Louisiana where all except emergency legislation becomes effective at the same date and hour. It is submitted that by the use of the same realistic doctrines which it invoked in the cases of the disappointed city judges, the court could have saved both acts and achieved what was most obviously the Legislature's true intent.

LOCAL GOVERNMENT LAW

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EXTENSION OF MUNICIPAL LIMITS

Two grounds of the invalidity of an annexation ordinance were relied upon in *Doise v. Town of Elton.*[1] The principal question presented was with respect to the reasonableness of the annexation, an issue which the trial judge had resolved in favor of the municipality. The intermediate appellate court, after a review of the evidence, had concluded that the annexation was unreasonable, as it found that the additional area was not needed for the normal growth of the community and that annexation would not provide the residents thereof with additional sewerage facilities, nor added flood, police, or fire protection.[2] Under a writ of review, the Supreme Court reversed this decision of the court of appeal. The fact that the former municipal limits included areas not yet developed was held inconclusive in a determination of the need for the area sought to be annexed. The unsuitability of these undeveloped areas within the corporate limits for the construction of new homes, the population increase within the municipality of more than fifty per cent within the past decade, and the recent building of a number of new residences within the area sought to be annexed, all were held to support the reasonableness of the annexation ordinance.

The second question was presented by the adoption of the annexation ordinance at a meeting of the governing body of the town which twice had been continued by unanimous consent of the aldermen. The argument of the annexation opponents that the applicable statute prohibited more than a single continu-

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1. 222 La. 973, 64 So. 2d 238 (1953).
2. 56 So. 2d 604 (La. App. 1952).