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ing such trial. Adopting a *dictum* contained in the case of *State* ex rel. *Charles v. Board of Commissioners of Port of New Orleans*,[12] the court quoted with approval the rule that "if, on trial, it is shown that [the employee] has not merited discharge, then his suspension is a mere enforced vacation for which the board must pay him as if he had never been suspended." One Justice concurred separately on the ground that the rule adopted impinges on the discretion of the City Civil Service Commission to reinstate "under the conditions which it deems proper."[13] Such impingement is at least arguable, however, since the commission had in this instance ordered reinstatement with full pay and the decision can be construed as affirming this commission decision.

The court did not discuss the departmental charges against the officer on which no hearing was ever held; in effect they were treated as quashed by the acquittal on the criminal charge. The hard case, which the court was not called upon to decide here, would arise where such charges had been filed, a hearing held and removal based on findings ordered, followed some years later by acquittal. Should the removal stand, despite the later favorable court action? Avoidance of the impasse, where as here departmental charges are based on the same conduct which has given rise to criminal charges, would appear to lie in the procedure which was followed in this case; departmental charges held in abeyance pending a determination on the criminal charge with such determination to be res judicata as to the departmental charges. The rule adopted posits a "speedy trial" under these circumstances; it will be incumbent upon the city to see that it is obtained in order to protect its treasury.

CONSTITUTIONAL LAW

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Significant principles of constitutional law were involved in a small number of cases decided at the term. Several of these decisions are discussed under appropriate substantive headings in other portions of this symposium issue. *Douglas Public Service Corp. v. Gaspard*,[1] declaring the state anti-injunction

12. 159 La. 69, 77, 105 So. 228, 230 (1925).
13. LA. R.S. 33:2424 (1950).

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1. 74 So.2d 182 (La. 1954).

labor legislation invalid as an infringement of due process of law, is treated in the section on Labor Law. *Chapman v. Shreveport*,[2] sustaining a city ordinance providing for the flouridation of the municipal water supply against attack on the grounds of due process and equal protection of the law, is discussed in the section on Local Government and is likewise the subject of a student note in this issue of the Review.

Constitutional issues of due process and equal protection were raised, but decision on the points was avoided in *State v. Penniman*,[3] a criminal prosecution of the operator of a self-service grocery store for violations of the state's Sunday law, originally enacted in 1886.[4] The statute prohibits Sunday sales by a broadly defined class of businesses, but sets forth exemptions in favor of designated businesses, including "public and private markets."[5] The defendant offered three principal defenses: (1) that his store was a "private market" within the intendment of the exemption, and in the alternative (2) that the statute was void for vagueness, more particularly for failure to define the term "private market," and (3) that the classifications created by the exemptions (if not applicable to him) were unreasonable and denied him equal protection of the law.

The court acknowledged the substantial body of its jurisprudence which demands reasonable certainty in legislative definition of crime as a constituent of due process of law, and suggested that the act in question approached the borderline for failure to define the term "private market." However, by resorting to statutory construction, and invoking the few extrinsic aids available, the court was able to conclude that the defendant's business was included within the term "private market." By this process the court found it unnecessary to pass upon the constitutional issues, and in so doing disposed of the case in accordance with the well-settled maxim of constitutional law, that where a case offers a means of decision on non-constitutional grounds, the consideration of constitutional issues is to be avoided. The constitutional issues tendered here were of considerable difficulty as the court itself acknowledged on the due process point. The equal protection issue had been decided ad-

2. 74 So.2d 142 (La. 1954).
3. 224 La. 95, 68 So.2d 770 (1953).
4. La. Acts 1886, No. 18, p. 28; LA. R.S. 51:191 *et seq.* (1950).
5. *Id.* § 192.

versely to the defendant's contention in the 1947-1948 term in a case of somewhat similar circumstances.[6]

A troublesome aspect of the privilege against incrimination was presented incidentally in *State v. Gray*[7] where the court was confronted with a more dominating question of substantive criminal law.[8] This was a criminal case in which a witness was called and gave his name but added, "I refuse to testify in this trial. I am afraid I might say something to incriminate myself." Thereafter, on prodding from the court he did give his address, but declined to answer the question "Were you shot?" As a consequence he was adjudged guilty of contempt and sentenced by the court. The issue presented by these facts is simply whether the incriminating character of the testimony is to be determined by the witness or the court. In his opinion for a unanimous court on this issue, Justice LeBlanc stated that "The judge before whom he is testifying is the one to determine whether any testimony he would be called on to give might prove to be of an incriminating nature."[9] Despite occasional statements to the contrary to be found in the cases in some jurisdictions, this is regarded as the well-settled rule on the subject.[10] Admittedly, however, the rule is to be applied in the light of the nature of the question, the surrounding circumstances and the nature of the case. On this point of the case the court found the question itself to be innocuous and in the absence of other circumstances tending to establish its incriminating character, affirmed the conviction. Imaginative counsel might have disagreed, but in such a case it would be his duty to make the record show the circumstances upon which he was relying to demonstrate potential incrimination.

6. State v. Trahan, 214 La. 100, 36 So.2d 652 (1948), discussed in *The Work of the Louisiana Supreme Court for the 1947-1948 Term—Constitutional Law*, 9 LOUISIANA LAW REVIEW 161, 168 (1949).

7. 225 La. 38, 72 So.2d 3 (1954).

8. *I.e.*, whether a witness called in a criminal proceeding and refusing to answer a question propounded to him for which he is sentenced for contempt, may thereafter be called in the same proceeding (twice on the same day) and be further punished for successive refusals to answer the same question. On this question the court's answer was in the negative.

9. 72 So.2d 3, 5 (La. 1954).

10. See Hoffman v. United States, 341 U.S. 479 (1951), and annotation in 95 L.Ed. 1126 (1951).