

# Louisiana Law Review

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Volume 16 | Number 4  
*A Symposium on Legislation*  
June 1956

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## General and Special Laws in Louisiana

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### Repository Citation

Huntington Odom, *General and Special Laws in Louisiana*, 16 La. L. Rev. (1956)  
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# LOUISIANA LAW REVIEW

LOUISIANA STATE UNIVERSITY LAW SCHOOL  
BATON ROUGE 3, LOUISIANA

Subscription per year \$5.00 (Foreign \$5.50)

Single copy \$1.25

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VOLUME XVI

JUNE, 1956

NUMBER 4

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## COMMENTS

### General and Special Laws in Louisiana

The need for restrictions on the use of legislative influence to obtain special privileges for private interest groups and individuals and the necessity for uniform instead of variegated local legislation have led many states to enact statutory and constitutional provisions prohibiting special or local legislation under certain circumstances.<sup>1</sup> While the New England states have imposed no restrictions whatsoever,<sup>2</sup> twenty-eight states<sup>3</sup>

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1. 2 PROJÉT OF A CONSTITUTION FOR THE STATE OF LOUISIANA 391, comment (1954).

2. Connecticut, Delaware, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Ohio.

3. Arizona, Arkansas, California, Colorado, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wyoming; for reference to the particular constitutional provision in each state, see 2 SUTHERLAND, STATUTORY CONSTRUCTION § 2101, n. 3 (3d ed. 1943).

prohibit special legislation where a general law is applicable, and five states<sup>4</sup> prohibit special or local laws where there is a general law on the subject. Many states have prohibited special laws under any circumstances in certain enumerated fields;<sup>5</sup> a few of these states, however, provide certain requirements for notice by publication in those instances where a special law is not specifically prohibited.<sup>6</sup> Louisiana's prohibitory provisions fall into the two latter categories.

Article IV, section 4, of the Louisiana Constitution specifically enumerates twenty-one fields wherein special or local laws are prohibited,<sup>7</sup> and article IV, section 6, provides that notice

4. ALA. CONST. art. I, § 4(1); GA. CONST. art. I, § 4(1); KY. CONST. § 60; MD. CONST. art. III, § 33; PA. CONST. art. III, § 7.

5. ALA. CONST. art. IV, § 104; ARIZ. CONST. art. IV, § 19; ARK. CONST. art. V, §§ 24, 25; CAL. CONST. art. IV, § 25; COLO. CONST. art. V, § 25; FLA. CONST. art. III, § 20; IDAHO CONST. art. III, § 19; ILL. CONST. art. IV, § 22; IND. CONST. art. IV, § 22; IOWA CONST. art. III, § 30; KY. CONST. § 60; LA. CONST. art. IV, § 4; MD. CONST. art. III, § 33; MINN. CONST. art. IV, § 33; MISS. CONST. art. IV, § 87; MO. CONST. art. IV, § 53; MONT. CONST. art. V, § 26; NEB. CONST. art. IV, § 20; N.J. CONST. art. IV, §§ 7, 24; N.Y. CONST. art. III, § 18; N.C. CONST. art. II, §§ 10, 11; N.D. CONST. art. II, § 69; ORE. CONST. art. IV, § 23; PA. CONST. art. III, § 7; S. C. CONST. art. III, § 34; S. D. CONST. art. III, § 23; TENN. CONST. art. XI, §§ 4, 6, 7, 8; TEX. CONST. art. III, § 56; UTAH CONST. art. VI, § 26; VA. CONST. § 53; WASH. CONST. art. II, § 28; W. VA. CONST. art. VI, § 39; WIS. CONST. art. IV, § 31; WYO. CONST. art. III, § 27.

6. ALA. CONST. art. IV, § 106; LA. CONST. art. IV, § 6; MO. CONST. art. IV, § 54; N.J. CONST. art. IV, § 7(9); PA. CONST. art. III, § 8; TEX. CONST. art. III, § 57.

7. LA. CONST. art. IV, § 4:

"The Legislature shall not pass any local or special law on the following specified subjects:

"(1) For the holding and conducting of elections, or fixing or changing the place of voting.

"(2) Changing the names of persons.

"(3) Changing the venue in civil or criminal cases.

"(4) Authorizing the laying out, opening, closing, altering or maintaining roads, highways, streets or alleys, or relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges covering streams which form boundaries between this and any other State.

"(5) Authorizing the adoption of legitimation of children or the emancipating of minors.

"(6) Granting divorces.

"(7) Changing the law of descent or succession.

"(8) Affecting the estates of minors or persons under disabilities.

"(9) Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.

"(10) Authorizing the constructing of street passenger railroads in an incorporated town or city.

"(11) Regulating labor, trade, manufacturing or agriculture.

"(12) Creating corporations, or amending, renewing, extending or explaining the charters thereof; provided, this shall not apply to municipal corporations having a population of not less than twenty-five hundred inhabitants, or to the organization of levee districts and parishes, river improvements districts, harbor improvement districts, and navigation districts.

"(13) Granting to any corporation, association, or individual any special or

must be given by publication thirty days prior to the passage of any special or local act not specifically enumerated in section 4.<sup>8</sup> The purpose of this Comment is to examine these constitutional mandates in the light of the Louisiana jurisprudence.

A statute is special if it operates upon and affects only a fraction of the persons or a portion of the property encompassed by such a classification. Such a statute grants privileges to some and denies them to others, though there is no "natural" distinction between the two groups. A statute is local if it operates only in a particular locality without the possibility of extending its coverage to other areas should the requisite criteria exist there.<sup>9</sup> It should be pointed out that the Louisiana jurisprudence

exclusive right, privilege or immunity.

"(14) Extending the time for the assessment or collection of taxes, or for the relief of any assessor or collector of taxes from the performance of his official duties, or of his sureties from liability; nor shall any such law or ordinance be passed by any political corporation of this State.

"(15) Regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before the courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales.

"(16) Exempting property from taxation.

"(17) Fixing the rate of interest.

"(18) Concerning any civil or criminal actions.

"(19) Giving effect to infirmal or invalid wills or deeds, or to any illegal disposition of property.

"(20) Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes, except as otherwise provided in this Constitution.

"(21) Legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any parish or municipality thereof."

The following corresponding articles are found in earlier Louisiana Constitutions: LA. CONST. art. 48, as amended Acts 1916, No. 115 (1913) corresponds to LA. CONST. art. IV, § 4 (1921); LA. CONST. art. 50 (1913) corresponds to LA. CONST. art. IV, § 6. LA. CONST. art. 48 (1898) corresponds to LA. CONST. art. IV, § 4 (1921); LA. CONST. art. 50 (1898) corresponds to LA. CONST. art. IV, § 6; LA. CONST. art. 46 (1879) corresponds to LA. CONST. art. IV, § 4 (1921); LA. CONST. art. 48 (1879) corresponds to LA. CONST. art. IV, § 6 (1921). All references in this Comment to the Louisiana Constitution refer to the Constitution of 1921, unless otherwise indicated.

8. LA. CONST. art. IV, § 6: "No local or special law shall be passed . . . unless notice of the intention to apply therefor shall have been published, without cost to the State, in the locality where the matter or things to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill, and in the same manner provided by law for the advertisement of judicial sales. The evidence of such notice having been published shall be exhibited in the Legislature before such act shall be passed, and every such act shall contain a recital that such notice has been given."

9. "A local or special law is one which, because of its restrictions, can operate upon or affect only a portion of the citizens, a fraction of the property embraced within the classification created." *State v. Clement*, 188 La. 923, 936, 178 So. 493, 497 (1938).

"The test of whether a law is special or local is whether it operates only on a certain number of persons, within a class, but does not affect all persons within that class. . . ." *Kotch v. Board of River Port Pilot Com'rs*, 209 La. 737, 761,

does not sufficiently distinguish between special and local legislation; the terms are used interchangeably and the question in each case is whether an act is special or general with little or no emphasis on whether it is local.<sup>10</sup>

A typical case where a statute was held to be invalid as a special act is *State v. Clement*,<sup>11</sup> where the court held that a statute which prohibited trapping in marsh lands within a certain proximity of the Gulf of Mexico was a local or special law and invalid for want of publication as required in section 6 of article IV.<sup>12</sup> The classification created was marsh lands within 150 miles of the Gulf. In declaring the act to be special because of the unreasonable classification, the court took notice of the fact that there were numerous swamp areas without this arbitrary perimeter and stated that there was no rational justification for the latter's exclusion. If the statute had been applicable to all marsh lands in the state, it would have been upheld as a general law.

A general law is one which applies to all persons, places, or things throughout the state or to all persons, places, or things brought within the classification created. An act will be considered general even if the classification is highly restrictive<sup>13</sup> and even though the conditions under which the statute can operate prevail only in a certain locality, provided there is a reasonable basis for the creation of the classification.<sup>14</sup>

The court will look to the inherent nature and purpose of the statute in determining its validity; the form of the enactment

25 So.2d 527, 534 (1946).

"The words 'local' or 'special' law . . . have been declared in numerous cases to refer to such laws wherein private individuals are seeking private advantage or advancement for the benefit of private persons or property within a certain locality." *State ex rel. Grosch v. New Orleans*, 211 La. 241, 253, 29 So.2d 778, 783 (1947).

"The real distinction between public or general laws is, that the former affect the community as a whole, whether throughout the State or one of its subdivisions; and the latter affect private persons, private property, private or local interests." *State v. Dalon*, 35 La. Ann. 1141, 1144 (1883).

10. The practical effect of such a confusion of the terms is the same as if they had been distinguished since both are prohibited in the same instance in LA. CONST. art. IV, § 4.

11. 188 La. 923, 178 So. 493 (1938).

12. See note 8 *supra*.

13. See 2 SUTHERLAND, STATUTORY CONSTRUCTION § 2102 (3d ed. 1943).

14. *Knapp v. Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So.2d 774 (1953); *State ex rel. Grosch v. New Orleans*, 211 La. 241, 29 So.2d 778 (1947); *Kotch v. Board of River Port Pilot Commissioners for Port of New Orleans*, 209 La. 737, 25 So.2d 527 (1946); *State v. Clement*, 188 La. 923, 178 So. 493 (1938); *Benedict v. New Orleans*, 115 La. 645, 39 So. 792 (1905); *State v. Dolan*, 35 La. Ann. 1141 (1883).

will not serve as a controlling criterion in any case. An act that is general in form but special in effect — that is, one that grants special privileges without a reasonable basis therefor — will be treated as a special act. For example, a statute which provides that all cities in the state between 500,000 and 501,000 population shall be subject to three percent state sales tax annually would be declared a special law,<sup>15</sup> because it clearly establishes an unreasonable classification and is arbitrarily restrictive in application.

However, general statutes with special provisos or exceptions have been upheld on the theory that they are basically general in nature. For example, in *Peck v. New Orleans*,<sup>16</sup> a 1940 statute<sup>17</sup> authorized the use of voting machines in sixty-three parishes of the state, but made their use in Orleans Parish mandatory. The court, in holding the act general despite its special mandatory application in Orleans Parish, ignored the inherent purpose and effect of the statute. The effect of such a decision is to give judicial cognizance of a device whereby the Legislature can effectuate special legislation by inserting a special exception in an otherwise general law.<sup>18</sup>

At times the Legislature does not resort to such a subterfuge to conceal its special or local acts. In the recent case of *Knapp v. Jefferson-Plaquemines Drainage District*,<sup>19</sup> the court upheld two curative acts of the Legislature that ratified the title of the drainage district to certain property illegally purchased by it fifteen years previously at a tax sale. The court rejected, in effect, the argument that the acts were special laws which "legalized the unauthorized or invalid acts"<sup>20</sup> of parish officers, by holding the acts general<sup>21</sup> and thus not susceptible to the enu-

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15. Actually it is a local law.

16. 199 La. 76, 5 So.2d 508 (1941).

17. La. Acts 1940, No. 84, p. 406, now LA. R.S. 18:1161-87 (1950).

18. The court has also upheld a statute as general which increased the number of police jurors in East Baton Rouge Parish, stating that the act was valid because the jurors held an office created by the Legislature and because the act provides the election procedure and appointment of police jurors throughout the state. *State v. Smith*, 184 La. 263, 166 So. 72 (1936).

19. 224 La. 105, 68 So.2d 774 (1953).

20. LA. CONST. art. IV, § 21: "The Legislature shall not pass any local or special law on the following specified subjects:

" . . . .  
 "Legalizing the unauthorized or invalid acts of any officer, servant, or agent of the State, or of any parish or municipality thereof."

21. It should be noted that the acts here were special in form and even contained a statement that the publication requirements of art. IV, § 6, had been complied with. The court ignored the form, however, holding them to be general in effect.

merated prohibitions governing special acts.<sup>22</sup> It seems quite evident that this was a local law and should have been invalid as a violation of the prohibition against validating invalid acts of public officers.<sup>23</sup> It is true, as the court pointed out, that all those within the created class were treated equally, but the classification created was so limited in scope as to lack reasonableness. It is doubtful whether the segregation of this district from others in the state was justifiable. This case shows the recent tendency of the court to uphold a statute as general whenever possible, so as to avoid the specific prohibitions of section 4 or the publication requirements of section 6. In comparison with the *Clement* case discussed above, it would seem that this statute provided a much more limited class than marsh lands within 150 miles of the Gulf. The inconsistency of the cases seems apparent, explainable only by saying that the *Knapp* case represents an indication of the court's growing reluctance to apply the constitutional provisions literally.

Perhaps the type of statute most frequently considered by the court is the population classification statute. Most of these statutes extend only to those areas where the population exceeds a stated minimum, for example, "all cities over 25,000 population." Such statutes are usually upheld as general laws because the courts consider the population differential as a reasonable basis for the creation of a separate class; it is felt that a difference in population creates the need for varying types of governmental services for those within the class that might not be needed by those excluded. Thus, in order for the court to hold an act valid as a general law, it follows that the numerical differences in population between cities must reflect an actual basis for differentiation between those cities segregated for special treatment and those unaffected.<sup>24</sup> For example, an act was treated as general which granted workmen and materialmen certain rights

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22. The court concluded that the statutes in question are applicable to all whose lands were sold to the district at tax sale. ". . . [The statutes] do not operate on a certain individual or person within a class but do affect all persons within that class, that is, those whose property was acquired by the drainage district at tax sale. It cannot be said that these statutes were enacted for the benefit of private persons or property within a certain locality. . . ." 224 La. 115, 116, 68 So.2d 774, 778 (1953).

23. LA. CONST. art. IV, § 4(21), quoted note 20 *supra*.

24. It should be noted that many of the cases involve the question of whether the population classification is reasonable only incidentally. Often the main issue is whether the Legislature was justified in providing for amendment of the city's charter, an act specifically prohibited by LA. CONST. art. IV, § 4(12), except where the population of the city exceeds 2,500.

against the owner in contracts exceeding \$1,000, despite the fact that it was applicable only to cities of 10,000 or more.<sup>25</sup> An act which provided for different rates for taxing of amusements in cities over 25,000 population and those of lesser numbers has likewise been held general.<sup>26</sup> The fact that an act is applicable at present to only one city in the state does not render it a special law per se; as long as the criteria for entrance into the class do not prohibit the entrance of other cities upon their numerical qualification at a subsequent census, the act will be held general.<sup>27</sup>

Where a statute affects the charter of a particular city of over 2,500 population, it is a local law. However, it will be upheld under the jurisprudence, despite the want of prior publication required by the Constitution for local laws. In *State v. Capdevielle*<sup>28</sup> the court stated that the publication requirement<sup>29</sup> applied only to "any subject not enumerated in the list of prohibitions of Article 48"<sup>30</sup> and that since municipal corporations having a population of 2,500 or more were specifically enumerated, they are excepted from the publications requirement. The holding of the *Capdevielle* case has been affirmed in numerous subsequent cases.<sup>31</sup> The net result of this consistent jurisprudence is that article IV, section 4, of the Constitution contains twenty-one instances in which special or local laws are prohibited and one instance in which they are permitted without prior publication. When the present Constitution was drafted, the same language was used in the publication section;<sup>32</sup> therefore, the court's interpretation of this section was impliedly codified in the revised Constitution.<sup>33</sup> Even though this exception to the

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25. *McKeon v. Sumner Building & Supply Co.*, 51 La. Ann. 1961, 26 So. 430 (1899).

26. *State v. O'Hara*, 36 La. Ann. 93 (1884).

27. *State v. Housing Authority of New Orleans*, 190 La. 710, 182 So. 725 (1938).

28. 104 La. 561, 29 So. 215 (1901).

29. LA. CONST. art. 50 (1898), now LA. CONST. art. IV, § 6 (1921).

30. LA. CONST. art. 48 (1898), now LA. CONST. art. IV, § 4 (1921).

31. *State v. Cusimano*, 187 La. 269, 174 So. 352 (1937); *Federal Land Bank v. John D. Nix, Jr., Enterprises, Inc.*, 166 La. 566, 117 So. 720 (1928); *Mulhaupt v. Shreveport*, 126 La. 780, 52 So. 1023 (1910).

32. LA. CONST. art. IV, § 6.

33. Chief Justice O'Niell, who had dissented in the *Nix* case from the holding that publication was not necessary, concurred in the later case of *State v. Cusimano*, 187 La. 269, 174 So. 352 (1937). He stated that the rule of the *Capdevielle* case should be adopted. His reason was that the framers of the Constitution of 1921, with full knowledge of this exception created by the jurisprudence, had chosen to leave the provision unchanged and thus, in effect, had adopted the court's interpretation as the proper one.

publication requirement is well settled and no valid argument of statutory interpretation can be leveled against it, nevertheless, it is submitted that the result is undesirable as a matter of policy. It would seem that prior publication of notice of pending statutes which propose to amend city charters is necessary to prevent encroachment on home rule and to prevent the granting of special privileges without prior notice to the public and to the Legislature.<sup>34</sup> It might be observed that, since most population classification statutes are applicable to a number of areas throughout the state, they are held to be general laws and the publication requirements are not at issue.<sup>35</sup>

In addition to population classification, any other type of classification will be upheld if it is reasonable, that is, if the classification is based on a substantial difference between the class created and the subjects excluded. Sutherland suggests that a valid classification must include all who "naturally" belong within a particular class — "[those] who possess a common disability, attribute, or classification, and there must be some natural and substantial differentiation between those included in the class and those it leaves untouched."<sup>36</sup> A "natural class," it is observed by Sutherland, is but an artificial classification which seems logical and valid to both the courts and the Legislature.

It should be noted that the fact that a court finds an act to be special (or local) is not necessarily fatal, unless it falls within one of the specifically prohibited areas enumerated in section 4 of article IV. If not absolutely prohibited, the act is valid provided the publication requirements of section 6 are complied with. However, the jurisprudence has recognized certain exceptions to these requirements. As stated above, the courts have written out the notice requirements in regard to acts affecting charters of cities over 2,500 population. It has also been held that the notice requirement does not apply to acts enacted at a *special* session of the Legislature because of the impracticability of giving sufficient notice to the public in the interim between the call for the session and its convening.<sup>37</sup> A less logical excep-

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34. For proposed amendments, see PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA art. IV, §§ 14, 15; art. X, § 1 (1954).

35. Lake Charles v. Roy, 115 La. 939, 40 So. 362 (1906).

36. SUTHERLAND, STATUTORY CONSTRUCTION § 2106 (3d ed. 1943).

37. State v. Smith, 184 La. 263, 166 So. 72 (1936).

tion was formulated in the *Nix Enterprises* case,<sup>38</sup> wherein a statute, applicable only to cities over 100,000 population (which included only New Orleans at that time), authorized said municipalities to enact certain ordinances relative to the construction of buildings.<sup>39</sup> The court found that the statute was, in substance, a local law but stated that "the act may be regarded as operating, in effect, as an amendment to the charter of New Orleans."<sup>40</sup> Since the court had held the statute to be an amendment to the corporate charter of a city [with] over 2,500 population, the prior jurisprudence was followed upholding such an act despite the want of publication.<sup>41</sup>

Section 6 of article IV states specifically that there must be "recital that such [publication] notice has been given" in the act. It has been held that this recital of compliance with the notice requirement is not rebuttable except in case of fraud.<sup>42</sup> On the other hand, if there is no recital that notice has been given, there is a presumption that there was no notice given.<sup>43</sup> It should be noted that compliance with the notice requirements of section 6 does not, of itself, render an act special that is general in effect.<sup>44</sup>

Among the prohibitions of section 4 that have been most litigated is the one "granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity."<sup>45</sup> The court will, however, uphold the grant of a special or exclusive privilege if it feels the public interest is best served by doing so. The grant of exclusive franchises for toll bridges,<sup>46</sup> furnishing a city with gas,<sup>47</sup> and maintaining wharves

38. *Federal Land Bank v. John D. Nix, Jr., Enterprises, Inc.*, 166 La. 566, 117 So. 720 (1928).

39. "[T]he city council, or other governing body, in municipalities of over 100,000 inhabitants is hereby authorized and empowered, to adopt ordinances . . . providing for or relating to the construction, equipment, alteration . . . of buildings. . . ." La. Acts 1910, No. 76, p. 122, now LA. R.S. 33:4751 (1950).

40. 166 La. 566, 573, 117 So. 720, 722 (1928).

41. See note 31 *supra*.

42. *State v. Murray*, 47 La. Ann. 1424, 17 So. 832 (1895).

43. *Federal Land Bank v. John D. Nix, Jr., Enterprises, Inc.*, 166 La. 566, 117 So. 720 (1928).

44. *Knapp v. Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So.2d 774 (1953).

45. LA. CONST. art. IV, § 4(13) (1921).

46. *Talbot v. Louisiana Highway Commission*, 159 La. 909, 106 So. 377 (1925); *Orr v. Louisiana Highway Commission*, 159 La. 930, 106 So. 384 (1925); *Louisiana Public Service Commission v. Louisiana Highway Commission*, 159 La. 932, 106 So. 385 (1925).

47. *Crescent City Gaslight Co. v. New Orleans Gaslight Co.*, 27 La. Ann. 138 (1875).

along the banks of navigable rivers<sup>48</sup> have been upheld as reasonable and in the public interest.<sup>49</sup>

Another prohibition that has been subject to exception is the one prohibiting the passage of a special law "regulating the practice or jurisdiction of any court. . . ."<sup>50</sup> An act changing the rules of procedure and evidence in only a certain class of cases has been held not violative of this provision.<sup>51</sup>

In referring to the prohibition against special laws "fixing the rate of interest,"<sup>52</sup> the court held that the provision does not apply to the regulation of interest on license taxes imposed by a city ordinance.<sup>53</sup> In referring to the provision, the court said, "We regard [the prohibition] as clearly and exclusively applicable to contracts between individuals and especially those appertaining to matters of indebtedness. . . ."<sup>54</sup>

In regard to the prohibition against the passage of special or local laws "concerning any civil or criminal action,"<sup>55</sup> the court has held that this section "means merely that the Legislature shall not pass a local or special law affecting any particular lawsuit or regulating the trial of lawsuits, civil or criminal, in any particular locality."<sup>56</sup>

48. *New Orleans v. New Orleans, M. & C.R.R.*, 27 La. Ann. 414 (1875).

49. An act exempting certain classes from the requirements imposed upon medical practitioners to obtain a certificate from the State Medical Board before practicing medicine was upheld as reasonable. The exempted classes were farmers treating their tenants or families, opticians, and persons practicing their religious convictions. *Louisiana State Board of Medical Examiners v. Charpentier*, 140 La. 405, 73 So. 248 (1916); *Louisiana State Board of Medical Examiners v. Vincent*, 140 La. 411, 73 So. 250 (1916). See also *American Homestead Co. v. Karstendiek*, 111 La. 884, 35 So. 964 (1903), where the court upheld an act granting special vendor's privileges to homestead associations, stating that any one meeting the requirements could avail himself of these benefits by organizing a homestead company and joining this class.

50. "The Legislature shall not pass any local or special law on the following specified subjects:

"(15) Regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before the courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effects of judicial sales." LA. CONST. art. IV, § 4.

51. *Learned & Koontz v. Texas & P. Ry.*, 128 La. 430, 54 So. 931 (1911); court upheld La. Acts 1870, No. 70, now LA. R.S. 45:504 (1950)—which provided that in suits against railroads for killing or injuring of stock, the owner need only prove the death or injury to place the burden on the railroad to show lack of negligence.

52. LA. CONST. art. IV, § 4(17).

53. *New Orleans v. Firemen's Ins. Co.*, 41 La. Ann. 1142, 7 So. 82 (1889).

54. *Id.* at 114, 7 So. at 83.

55. LA. CONST. art. IV, § 4(18).

56. *State v. McCue*, 141 La. 417, 421, 75 So. 100, 101 (1917), where the court upheld as a general law an act making it unlawful to keep or sell liquor

It is virtually impossible to state an acceptable rule as to what criteria the court will use in ascertaining whether an act is a special (or local) or general law. The following guides might be helpful, though it is not suggested that they are all-inclusive. First, determine the scope of the classification created by the statute; then ascertain whether it is a reasonable classification; that is, whether there is a prudent basis for segregation of the particular class for separate treatment. If the classification is found to be reasonable and if all encompassed by it are treated equally, then the act is general and valid. If there is not equal treatment of all embraced by the class created, then the act is special or local. If the statute provides for unequal treatment within the class, then reference must be made to the enumerated instances of article IV, section 4, to ascertain whether a special or local law in that particular field is prohibited. It should be noted that these specially enumerated prohibitions merely constitute a constitutional declaration of whether a particular subject matter is of such a general nature as to prohibit unequal or special treatment by the Legislature.<sup>57</sup> If it be found that the special treatment of the subject matter is not prohibited, then it must be determined whether the publication requirements have been complied with.<sup>58</sup> If the law is general in application, or special and not of the type specifically prohibited, then it is valid.

It is significant that the Louisiana State Law Institute, in its 1954 *Projet* of a Constitution for the State of Louisiana, saw fit to retain most of the enumerated prohibitions against special laws found in section 4 of article IV of the present Constitution.<sup>59</sup> However, municipal corporations are not mentioned in the list of prohibited special acts in the *projet*; the latter section refers

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in "dry" parishes. In *State v. Nejin*, 140 La. 793, 74 So. 103 (1917), the court held that an act prohibiting the keeping of a "blind tiger" (a still) was a general law though it was applicable only in the dry parishes and not throughout the state.

57. The fourteenth amendment's equal protection clause prohibits classification based on unreasonable grounds. Only when the classification is without any reasonable basis and does not apply alike to all in the same situation are statutes declared invalid under this clause. LA. CONST. art. IV, § 4, is merely the state's declaration of policy that class legislation in certain enumerated areas is prohibited as a denial of equal protection of the laws because those named areas are not susceptible of anything but broad general regulation by the Legislature. The fourteenth amendment is seldom pleaded as a bar to special legislation in this state, but only because of these state constitutional safeguards.

58. LA. CONST. art. IV, § 6, quoted note 8 *supra*.

59. See *PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA* art. IV, § 15 (1954).

only to "private corporations."<sup>60</sup> Municipal corporations are protected against special legislation by *Projet* article X, section 1,<sup>61</sup> wherein it is provided that the Legislature shall not amend, modify, or repeal the charter of *any* municipality by local or special law<sup>62</sup> unless the municipality continues to operate under special legislative charter.<sup>63</sup> Under this latter exception, if local or special laws are passed, notice must be given pursuant to *Projet* article IV, section 14.<sup>64</sup> The notice or publication section of the *projet* repudiates the rule of the jurisprudence that notice is not necessary in regard to special laws amending corporate charters of cities over 2,500 population; under the *projet's* publication section,<sup>65</sup> notice is required before the passage of *any* special or local law. The reference to "enumerated subjects" is omitted; this eliminates the loophole developed by the jurisprudence,<sup>66</sup> and would make a most important change designed to protect "home rule." As to other changes to the list of limitations on local and special laws, the attitude of the Institute is well reflected in the statement of its Reporter: "The Institute considered that the limitations in the present constitution represented attempts to correct abuses that had actually occurred in Louisiana and, therefore, considered it wise to retain them."<sup>67</sup>

Whether these changes if adopted would deter the courts from declaring an act general when it is, in effect, local or special is of course conjectural, but in light of the past juris-

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60. "The legislature shall not pass any law or special laws. . .

"(14) Creating private corporations or amending, renewing, extending, or explaining the charters thereof." PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA art. IV, § 15 (14) (1954).

61. "The legislature shall provide for the incorporation and government of the cities, towns, and villages of the state by general law only, and it shall not amend, modify, or repeal the charter of any municipality by local or special law, except that a special legislative charter now in effect may be amended, modified, or repealed by special or local law as long as the municipality continues to operate under such charter." PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA art. X, § 1 (1954).

62. For an enumeration of the considerations which prompted adoption of the prohibition, see 3 PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA 248 (1954).

63. For a list of the thirty-three municipalities operating under special charters in 1950, see *id.* Table X-7, "Louisiana Municipalities, 1954," at 342.

64. Article IV, § 14 states, in part: "No local or special law shall be passed unless notice of the intention to apply therefor has been published without cost to the state in the locality where the matter or things to be affected may be situated. . . ."

65. PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA art. IV, § 14 (1954), quoted in part note 64 *supra*.

66. See discussion p. 772, *supra*.

67. 2 PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA 392 (1954).

prudence it seems doubtful. Nevertheless, the adoption of the changes would at least prevent the Legislature from amending city charters (not under special legislative charter) without the consent of the municipality concerned, and that would be a definite improvement over the present status of the law.

*Huntington Odom*

### **Prejudicial Remarks of the Trial Judge as Grounds for Reversal in Louisiana Criminal Cases**

The basic law in Louisiana on the province of judge and jury in criminal cases is set out in article XIX, section 9, of the Louisiana Constitution, which provides:

“. . . The jury in all criminal cases shall be the judges of the law and of the facts on the question of guilt or innocence, having been charged as to the law applicable to the case by the presiding judge.”

The constitutional provision is further amplified by article 384 of the Louisiana Code of Criminal Procedure of 1928, which states:

“It belongs to the jury alone to determine the weight and credibility of the evidence, but the judge shall have the right to instruct the jury on the law but not upon the facts of the case. The judge shall not state or recapitulate the evidence, repeat the testimony of any witness, nor give any opinion as to what facts have been proved or refuted.”

These provisions make clear that, as a rule, issues of fact are within the exclusive province of the jury, while issues of law are to be decided by the judge. However, not every issue of fact in a criminal case is decided by the jury. The Louisiana Supreme Court has indicated that questions of fact are to be decided by the jury only when they have a direct bearing upon the guilt or innocence of the accused, and that procedural issues of fact are to be decided by the judge. For example, although the question of venue is one of fact, it is a procedural matter for the judge to decide.<sup>1</sup>

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1. *State v. Paternostro*, 224 La. 87, 68 So.2d 767 (1953).