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Suspension of Laws by Concurrent Resolution of the Legislature

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the two conflict,[18] and in the absence of such a conflict the rights of the parties should be governed by the contract. Therefore, as to a particular tract, if the user of the servitude is accomplished according to the intentions of the parties, the interruption of prescription should not be limited by a unit. In the instant case the user was found to be consistent with the intentions even though no drilling occurred on the tract. There was an actual drainage of minerals from the extremities of the tract; therefore, the production was as effective as any which the servitude owner could have accomplished even had he been allowed to drill to the unitized zone. In this sense the user was in keeping with the contemplation of the parties and the servitude was properly maintained to all depths by drainage from the single horizon. The mention that the parties could have contractually limited the servitude is noteworthy. The implication is that if the contract had limited the servitude horizontally, the effect of the unitization would have been so restricted.

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SUSPENSION OF LAWS BY CONCURRENT RESOLUTION OF THE LEGISLATURE

In each of the last two sessions of the Louisiana Legislature concurrent resolutions have been passed which purport to suspend the operation or enforcement of regularly enacted statutes.[1] This procedure presents two problems: first, the legal effectiveness of a concurrent resolution to suspend a statute; and, second, the desirability of allowing this practice, if legal, to continue.

The only case in which a Louisiana court has ruled on the effectiveness of a concurrent resolution to suspend the operation of a law is *State* ex rel. *Porterie v. Grosjean.*[2] In 1934 the Legislature had placed an occupational tax of five cents per barrel on petroleum refiners,[3] but before the first payment of the tax

18. Arkansas Louisiana Gas Co. v. Southwest Natural Production Co., 221 La. 608, 60 So.2d 9 (1952).

1. La. H. Con. Res. 4, 5, 6 (E.S. 1955), all relative to the suspension of LA. R.S. 32:341 (1950), as amended, La. Acts 1954, No. 501, p. 922. La. H. Con. Res. 4 (E.S. 1955), also relative to the partial suspension of LA. R.S. 48:345 (1950), as amended, La. Acts 1954, No. 501, p. 922. La. H. Con. Res. 43, 19th Reg. Sess. (1956), suspending LA. R.S. 32:281(D), 32:282 (1950).

2. 182 La. 298, 161 So. 871 (1935).

3. La. Acts 1934 (3 E.S.), No. 15, p. 304.

was due, a special session of the Legislature passed a House Concurrent Resolution which purported to authorize the Governor to suspend that part of the tax in excess of one cent per barrel.[4] The day following the adoption of this resolution the Governor issued a proclamation suspending the tax for a period of eight months.[5] Later in the same session the Legislature again authorized the Governor to suspend the tax, but this authorization was in the form of a regularly enacted law.[6] In sustaining the suspension of the tax the Supreme Court quoted Article XIX, Section 5, of the Constitution, which provides: "No power of suspending laws of this State shall be exercised unless by the Legislature, or by its authority."[7] The court reasoned that as the Legislature of a state, unlike Congress, may do anything which the Constitution does not prohibit and since the Constitution provides no regulations concerning the method by which laws are to be suspended, the suspension in the case at bar under the authority of a concurrent resolution was valid.[8] The court also noted that on two recent occasions the Attorney General, the plaintiff in the case, had ruled that suspensions of taxes by concurrent resolutions were valid.[9] In adopting the judgment of the lower court the Supreme Court specifically declared *both* the concurrent resolution and the act confirming it "to be valid and constitutional."[10] Some support for the *Grosjean* case may be found in the similar interpretations given the words "the Legislature" when used elsewhere in the Constitution. In the cases of *Lewis v. State*[11] and *Jefferson Lake Sulphur Co. v. State*,[12] both decided after the *Grosjean* case, the Supreme Court held that the action by "the Legislature" required by Article III, Section 35,[13] did not need to be approved by the Governor, and could in fact be validly exercised by resolution.[14] Likewise,

4. La. H. Con. Res. 1 (1 E.S. 1935).
5. State *ex rel.* Porterie v. Grosjean, 182 La. 298, 303, 161 So. 871, 872 (1935).
6. La. Acts 1935, (1 E.S. 1935), p. 450.
7. LA. CONST. art. XIX, § 5.
8. State *ex rel.* Porterie v. Grosjean, 182 La. 298, 316-17, 161 So. 871, 877 (1935).
9. *Id.* at 316, 161 So. at 876-77; La. Op. Atty. Gen. 1932-34, p. 956; La. Op. Atty. Gen. 1934-36, p. 1332.
10. State *ex rel.* Porterie v. Grosjean, 182 La. 298, 317-18, 161 So. 871, 877 (1935).
11. 207 La. 194, 20 So.2d 917 (1945).
12. 213 La. 1, 34 So.2d 331 (1947), 9 LOUISIANA LAW REVIEW 289 (1949).
13. "Whenever the Legislature shall authorize suit to be filed against the state . . ."
14. The holding of the *Lewis* and *Jefferson Lake Sulphur Co.* cases was followed by the Second Circuit Court of Appeal in Preuett v. State, 62 So.2d 686 (La. App. 1953).

in *State* ex rel. *Morris v. Mason*[15] the court held that since the Constitution requires only action by "the Legislature" in proposing constitutional amendments,[16] a gubernatorial veto of a proposed amendment is ineffective. In view of the holding of the *Grosjean* case and the similar position taken in the *Lewis, Jefferson Lake Sulphur Co.,* and *Mason* cases, the writer submits that the Supreme Court would probably uphold the power of the Legislature to suspend laws by concurrent resolution if the question were again presented for decision.

There are, however, cogent reasons militating in favor of a reappraisal of Louisiana's position in allowing the suspension of laws by concurrent resolution of the Legislature. First, it appears from reading Section 5 of Article XIX[17] that the section was included in the Constitution in order to preclude anyone other than the Legislature from suspending laws and not with any intention of granting the Legislature the power to suspend them without complying with the constitutional legislative procedure. This is borne out by the placement of the section in the article containing general provisions and not in the article defining the powers of the Legislature. This placement has continued from the state's first constitution in 1812 through seven constitutions until the present time.[18] In this connection it is interesting to note that while twenty other states have similar constitutional provisions,[19] no cases have been found in which it was even suggested to any but a Louisiana court that these provisions granted the Legislature the power to suspend laws by mere resolution. Second, the indefinite suspension of a law by concurrent resolution amounts to an effective repeal of that law but without the safeguards written into the normal legislative process by the Constitution. In order to pass an ordinary repealing act the Legislature must follow the procedure set out in the Constitution, which provides such safeguards against

15. 43 La. Ann. 589, 9 So. 776 (1891).

16. "Propositions for amending the Constitution may be made by the Legislature at any session . . . ." LA. CONST. art. XXI, § 1.

17. "No power of suspending laws of this State shall be exercised unless by the Legislature, or by its authority." LA. CONST. art. XIX, § 5.

18. LA. CONST. art. 168 (1913); LA. CONST. art. 168 (1898); LA. CONST. art. 157 (1879); LA. CONST. art. 104 (1864); LA. CONST. art. 102 (1852); LA. CONST. art. 106 (1845); LA. CONST. art. VI, § 17 (1812).

19. These states are: Alabama, Arkansas, Delaware, Indiana, Kentucky, Maine, Maryland, Massachusetts, Mississippi (by implication), New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas (by implication), Vermont, and Virginia. See also 2 LOUISIANA STATE LAW INSTITUTE, PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA 181 (1954).

hasty and ill-considered legislation as the requirements that the *Journals* show the concurrence of a majority of each House in the bill as finally adopted,[20] that every act be read on three different days in each House,[21] and that every act be reported by a committee of each House and the legislative bureau.[22] However, since the rules of each House govern the procedure to be used in passing concurrent resolutions, and these rules may be suspended at any time, existing laws may be effectively repealed within a twenty-four hour period by suspension under a concurrent resolution, thus circumventing the protective devices provided by the Constitution. This power to avoid the constitutional delays involved in passing ordinary legislation is particularly dangerous when the result is the effective repeal of existing laws. This is because it offers the great possibility of final action without giving notice or an opportunity to be heard to those outside the Legislature, who are often the ones most vitally affected. There is no real justification for this procedure because in emergency situations it is possible to enact suspending or repealing *legislation* within the brief period of three or four days under the usual legislative process.[23] Third, the law should be easily ascertainable, but since concurrent resolutions are not printed as statutes and those prior to 1954 are not included in the commercial services,[24] the only way to determine whether a statute passed prior to 1954 has been suspended is to search the legislative *Journals*, which are not available to most lawyers and are not indexed.

The writer submits that the practice of allowing the Legislature to suspend laws by concurrent resolution is extremely unwise and serves no useful or practical purpose. The present undesirable situation should be remedied by amending Section 5 of Article XIX. Perhaps the following language would be appropriate: "No power of suspending laws of this State shall be

20. LA. CONST. art. III, §§ 24, 25.
21. *Id.* § 24.
22. *Id.* §§ 24, 31. For a more complete discussion of the constitutional provisions dealing with the legislative process, see Note, 17 LOUISIANA LAW REVIEW 236 (1956).
23. This may be accomplished by simultaneous introduction of identical bills in each house.
24. Starting in the 1957 pocket parts to the Louisiana Statutes Annotated, the West Publishing Company is including a reproduction of the full text of concurrent resolutions which suspend any part of the Revised Statutes or the Civil Code in the supplemental annotation to the section or article which is suspended.

exercised unless by an Act of the Legislature or by the authority of such Act in the particular cases expressly provided by it."

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TAXATION — MISTAKE OF FACT AS A BASIS FOR REFUNDS OF LOUISIANA TAXES

In most states a person may obtain a refund of a tax paid under compulsion,[1] but he may not recover a tax which is "voluntarily" paid,[2] as that term is understood in the contemplation of law. A payment made through mistake or ignorance of law is considered as "voluntary" and no refund is permitted.[3] When payment is made under a mistake of fact, however, the payment is said not to be "voluntary" and recovery is allowed unless the mistake is predicated on the taxpayer's own neglect.[4] Although this appears to be a rather artifical division of non-compulsory payments into those which are "voluntary" and those which are not, it accomplishes a just result in allowing recovery of taxes erroneously paid under a mistake of fact.

The Louisiana Constitution of 1921 provides that the Legislature shall make available "a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him."[5] Acting under this provision, the Legislature passed an act in 1940 which authorized the refund of taxes erroneously paid under either mistake of fact or mistake of law.[6] This broad authorization was contained in Section 17 of that act. Sections 15 and 16 dealt with the procedures for making claims for refunds and for processing those claims. In 1942, the act was amended so as to incorporate into Sections 15 and 16 all provisions pertaining to refunds and to utilize Section

1. 3 COOLEY, THE LAW OF TAXATION 2550, § 1276 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 13 (1924).
2. 3 COOLEY, THE LAW OF TAXATION 2561, § 1282 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 14 (1924).
3. 3 COOLEY, THE LAW OF TAXATION 2579, § 1294 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 33 (1924).
4. 3 COOLEY, THE LAW OF TAXATION 2582, § 1295 (4th ed. 1924). See also cases collected in 64 A.L.R. 10, 35 (1924).
5. LA. CONST. art. X, § 18: "The Legislature shall provide against the issuance of process to restrain the collection of any tax and for a complete and adequate remedy for the prompt recovery by every taxpayer of any illegal tax paid by him."
6. La. Acts 1940, No. 265, § 17, now LA. R.S. 47:1625 (1950).