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PROCEDURAL LIMITATIONS ON THE LEGISLATIVE PROCESS IN THE NEW JERSEY CONSTITUTION

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FOREWORD

This monograph consists of extracts from a thorough and scholarly 362-page unpublished doctoral thesis written by Dr. Thornton Sinclair in 1934. Dr. Sinclair is a member of the New Jersey Bar, with a Ph.D from Harvard and an L.L.B. from Columbia University. For more than ten years he was a professor of government at the University of Newark. In explaining the title of the thesis, Dr. Sinclair referred to Professor Ernst Freund's well-known book, "Standards of American Legislation" (University of Chicago Press, Chicago, 1917), pointing out that while Professor Freund divides formal restraints on legislation into procedural and style requirements, he had decided to use the term procedural to include all formal restraints.

This monograph, therefore, deals with the history, judicial interpretation and effect of the provisions in the New Jersey Constitution concerning the title and object of acts; revival, amendment and incorporation by reference; three readings and the vote required for passage of bills; the origination of revenue bills, and the veto and repassage of bills. Although this thesis was written in 1934 and therefore brings the judicial history of these provisions only down to that date, it is believed that no significant modification of the conclusions would result from a review of more recent experience.

The circumstances under which this thesis was prepared guarantee its objectivity. Although Dr. Sinclair presents a number of rather definite conclusions, not in every case favorable to the provision in question, he weighs both sides carefully in arriving at such conclusions.

It is believed that this monograph will throw light on a number of rather important matters likely to receive some attention in any consideration of constitutional revision. Among such matters are:

(1) The possibility of eliminating or modifying some of the limitations, or of stating that they shall be directory only, not subject to judicial enforcement, or of putting some limitation on the time or method of securing judicial review of acts affected by them;

(2) The possibility of additional provisions designed to require greater care and deliberation in the drafting and adoption of legislation.

(3) The desirability of extending the time during which the Governor may consider acts of the Legislature.

These extracts are presented with the permission of the author. I have attempted to include enough material to illuminate the principal problems raised by each provision and to explain and support the principal conclusions arrived at. No textual changes have been made except for smooth transition from one sentence or paragraph to another where intervening material has been omitted. The first section is a short summary of the whole thesis. This is followed by a series of sections dealing with each of the constitutional provisions. These are followed by the concluding chapter of the monograph which pulls the various parts of the subject together and points up all of the major conclusions.

There are some repetitions involved in this treatment but it is believed that they will be found helpful.

This monograph includes proportionately less detail from Dr. Sinclair's thesis on the provision concerning titles of acts (Art. IV, Sec. VII, Par. 4) than on the other provisions considered. There are two reasons for this. One is that litigation on the title clause has been so extensive that it would be utterly impossible to review even the leading cases within reasonable space limits. The second is that Dr. Sinclair presented a condensed version of this part of his thesis, with citations of all acts and cases, in an article entitled "Operation of a Constitutional Restraint On Bill-Styling" in 2 University of Newark Law Review 25, Spring 1937. This article is more readily available than the original thesis. It includes references to more or less similar constitutional provisions in 39 other states and quotes several of them.

In that article, written three years after the original thesis, Dr. Sinclair reported that a review of leading cases in other states indicates that the title provision has generally not worked more satisfactorily elsewhere than it has in New Jersey. He concludes, "Clearly the title limitation should be cut out of the New Jersey Constitution."

- John E. Bebout,
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Summary

This monograph deals with style requirements and also with those touching upon the treatment of a bill after it has been drafted.

Materials inspected included reports on constitutional reform made previous to the Constitutional Convention of 1844, the published Journal of that Convention, and its debates as reported in the newspapers. Other materials were the Proceedings of the Commission which met in 1873 to revise the Constitution, and the newspaper reports of the debates in that Commission and of the legislative debates on the amendments proposed. These materials yielded very little information. As a result, this monograph deals almost entirely with a large group of cases and with the statutes construed in many of them.

The method used here is historical and analytical. The material was analyzed to ascertain the present state of the law, the value of the constitutional limitations, and possible trends in the future.

By far the major part of the material deals with the first sentence of Article IV, Section VII, Paragraph 4 which reads:

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title."

This limitation was taken from the royal instructions given in 1702 to Lord Cornbury, Governor of New Jersey. Incorporated into the Constitution in 1844, it first received judicial consideration in 1854. No act was held unconstitutional under it until 1877. Some 268 cases have considered the limitation (this excludes inconsequential treatment), and in 49 the courts thought different acts or different parts of acts unconstitutional as conflicting

with this limitation. These findings of invalidity are fairly well spread over the period from the first case until 1922. Considering only unconstitutional statutes enacted after 1879, when the Court of Errors and Appeals affirmed the first decision of invalidity, an average time of nearly five years elapsed between their enactment and the first declaration that they were unconstitutional. In the rare instances when separate sections of the same act were declared invalid at different times, each section has been treated as a separate act for the purpose of this computation.

The decisions have been fairly well reconciled by breaking them down into a large number of categories. This accentuates the fact that a complex body of case law had grown up and that the cases themselves do not present workable rules for use in future litigation. Throughout the period considered the courts, consciously or unconsciously, established new categories with ensuing separate lines of decisions. As late as 1911 a new sort of situation was first clearly recognized.

It is usually stated that this limitation had for its purpose the prevention of logrolling, or the giving of notice of the contents of the bill, or both. These purposes were not accomplished. No title was declared to contravene the Constitution because of breadth or vagueness. Thus, ample room was left for logrolling and notice became practically unimportant. Titles were invalid mainly because they were too narrow or deceptive within the definition of a narrow line of cases.

It is concluded that New Jersey would be better off without this provision. This conclusion is based upon its failure to produce appreciable beneficial results, and upon the large amount of litigation involved, resulting in numerous instances of invalidity and in a complicated field of case law where,

upon the basis of actual danger to those affected by the acts involved, some of the cases seem unjustifiable and in conflict.

The other two limitations as to style were adopted in 1875. They appear in Article IV, Section VII, Paragraph 4 also. The first of these reads:

> "No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length."

The object of this provision was to avoid the confusion resulting from referring in one act to a section in another act by number, or altering or repealing words or lines in that section through such reference. This practice is no longer found to exist. In addition, there are few cases and they are fairly consistent. The provision seems beneficial.

The second limitation reads:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

This prohibition may have prevented positively fraudulent legislation, but it did not avoid the confusion resulting from extending the effect of a law by reference in a second law. The body of case law is not very large but it is confused. It affords an especially good example of the tendency of the courts to decide cases on the basis of the presence of the same type of fact situation, rather than upon logic. The provision seems to be of slight value.

The usual type of procedural limitations concerning readings, votes, referendums and vetos have been construed very little. They have been circumvented in a good many instances. Only five cases arose under the act of 1873 permitting direct attack where indirect attack is not possible, as is true with some of these provisions.

It is concluded that when there are many cases construing a constitutional limitation, the law on the subject becomes complex and confused. Such a

provision is actually harmful. Allowing attack on statutes for a limited time only as, for example, one year, might end some of the difficulties of uncertainty under the present system. It is concluded that a better result could be accomplished by having a bill drafting commission pass upon the style of all acts before they reach the Legislature. The veto power could also be used to correct any defects of style or incorrect procedure which occur. The Governor could be given sufficient time for a thorough examination of bills. Examinations for defects of style, and advice on incorrect procedure, could come from non-partisan legislative experts who would make their findings public. The limitations might be retained in the Constitution as directory only.

Object and Title of Acts

Most of the cases on procedural limitations in New Jersey deal with the first sentence of Article IV, Section VII, Paragraph 4:

> "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

This section, according to Professor Freund, in so far as it joined with the title requirement that of unity of subject matter, first appeared in state constitutional law when it took its place in the New Jersey Constitution of 1844.[1] The limitation regarding title alone was not new, however. Very little has been made of the requirement of unity of subject matter; the cases on this section of the Constitution deal primarily with the expression of the object of an act in its title.

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1. Ernst Freund, Standards of American Legislation, 1917, at pp. 154-155. However, a provision similar to that on the subject of title in Article IV, Section VII, Paragraph 4 of the New Jersey Constitution is found in about two-thirds of the states, according to Professor Freund.

The constitutional restriction as to title can be traced back to 1702, where it appears in the instructions to Lord Cornbury, the first Governor to act as executive for both East and West Jersey.[2] Among the instructions was one bearing a surprising similarity to the first sentence of Article IV, Section VII, Paragraph 4. It read:

> "You are also as much as possible to observe in the passing of all Laws, that whatever may be requisite upon each different matter, be accordingly provided for by a different Law, without intermixing in one and the same Act, Such Things as have no proper Relation to each other; and you are especially to take care that no Clause or Clauses be inserted in, or annexed to any Act which shall be foreign to what the Title of such respective Act imports."[3]

This section is recognized as the source by Justice Van Syckel in Paul v. Gloucester, 50 N. J. Law 585. It is interesting to note that no such provision appears in the Constitution of 1776.

An examination of the cases furnishes us with an abundance of material. We have titles of almost every conceivable sort. There are long and short ones, narrow and broad ones, clear and confusing and even erroneous ones. In this mass of material it is but natural for us to find some confusion and inconsistency. The courts begin by saying they will treat titles with great liberality, and yet in some cases they are very technical. In some cases they say that when subjects have formerly been treated separately, to combine them under a title which would, but for this earlier separation, be sufficiently descriptive, is misleading and unconstitutional.[4] In another case the question of combination is left as a matter of legislative policy.[5]

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2. Learning and Spicer. Grants and Concessions of New Jersey, 1758, p.619
3. Ibid, p. 623
4. Atlantic City & S.R.R. Co. v. State, 88 N.J. Law 219
5. Strait v. Wood, 87 N.J. Law 677

In some of the cases in which titles were held to be too narrow, the court, although technically correct, seems to have been unnecessarily strict. Would any real harm result from permitting a condemnation clause under the word "purchase," or regulations against unhealthy conditions for cows under a title forbidding adulteration of milk?[6] Or was there real harm where an area in which the sale of liquors was prohibited was smaller in the body of the act than that described in the title?[7]

One purpose of Section 4 was to give notice. This purpose, however, may be for different groups -- sometimes for both the public and the Legislature, sometimes for the latter alone, and sometimes for a part of the former only. Another purpose often stated is to prevent logrolling.

In construing the cases, the courts have made it clear that it is only necessary to mention the central object of the legislation, and nothing more. This is demonstrated time and again when we find the broadest and vaguest titles upheld. Only where such titles are deceptive are they bad. The element of deception enters, however, only when enough definiteness has been imported into the title to make it mislead rather than simply not inform the reader, as in the broad and vague titles.

From what has been said, it is clear that the frequently recited notice requirement is unimportant in fact. The most usual stumbling block is too great narrowness in the titles. There is generally no way of getting around this defect. Other failures of notice are passed over. The courts will sometimes excuse actual mistakes in the title and often disregard the superfluous matter it contains. Statutes are also construed in the light of their history, which may have either a narrowing or a broadening influence.

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6. Griffith v. Trenton, 76 N.J. Law 23; Shivers v. Newton, 45 N.J. Law 469

7. Ryne v. State, 58 N.J. Law 238

Several potential danger points have been disclosed. One is the theory that a statute which has been reenacted several times is always limited by its first title. Another has to do with the amendment of title -- here the danger is of importing an amendment into the act itself at the time when the title is amended, the change being expressed only by reciting in the title the purpose of amending the title. Nothing is said about altering the body of the act. This tendency is dangerous in view of the general rules against too narrow titles, because it is out of line with such rules.

Finally, we find that the requirement of singleness of object has been rendered practically meaningless, so that the sole test is one of expression in the title of what is contained in the body of the act.

Taking the results of a study of the section as a whole, certainly the picture is not a very satisfactory one. The cases are often not so much contradictory as they are confusing. We do not have a line across the whole field, marking off good titles from bad. Rather, there are a number of special rules which are needed to explain why some titles are good when they actually look worse than invalid ones, and vice versa. This divides the field into sections, in some of which more liberality prevails than others.

The picture one usually gets of the effect of the title provision is that there is some confusion, that some cases have been declared bad, but nothing more. It does not worry us much. When we gather the cases together for a statistical study, the results are shocking indeed.

An examination of the cases will show that there were 268 cases in which titles were considered in at least some small way. This total excludes cases where treatment was so inconsequential as not to furnish material enough for a digest. These cases cover a period of 90 years. Quite a few of the titles

were obviously good and the court dismissed the contention that they were bad with a few sentences. Yet out of this number, in 49 cases, or over 18% of the total, statutes or parts of statutes were declared unconstitutional. Further, in three more cases the court expressed doubt as to the validity of statutes, which doubt was never cleared up. In 27 cases out of the total, the court gave or refused to give a certain construction to a statute because of the constitutional limitation placed upon it by its title.

These 27 cases are not particularly significant, but at least they should be placed in a separate category. It seems that without any constitutional limitation, the title would be taken by the courts as expressing legislative intent as to what the body is to contain. The effect of the Constitution has often been the weakening of such a rule, because bill drafters have resorted to vague and very general titles which give little or no guidance as to intent. Probably too, the constitutional significance of titles has, in quite a few instances where true expression of the object is attempted, led to putting more in the title than would normally go there, and thus in some instances made such a rule of construction operate with greater severity.

It should be stated that the above effects upon bill drafters are not the only ones. Questions regarding title are often heard in discussionsconcerning proposed statutes. Sometimes legislation on a major subject may be dealt with in a number of separate bills to avoid any possible title difficulty.

It is true that some of the acts declared bad were of little importance. It is also true that we have no way of telling how important most of the legislation may have been and how serious the effect of the decisions. Certainly, however, holding the New Jersey estate tax invalid was a blow at a major piece of legislation. The sections of the District Court Act, adversely

affected, also seem important.

The number of cases of invalidity alone, however, is extraordinary. According to Evans in his case book on constitutional law, only 53 acts of Congress were declared invalid by the Supreme Court in 135 years.[8] Yet we have a number not far short for one section of the New Jersey Constitution in 90 years.

Another unfortunate fact appears. After 1879, when the Court of Errors and Appeals declared the first law unconstitutional, the average period between the enactment of an invalid act and the first decision as to its invalidity has been just a little short of five years. This includes only acts passed by the Legislature since that decision, the first having been passed in 1881. The average would be much higher for all acts held invalid. Such a period of delay must necessarily result in a good many people relying on more important legislation to their detriment, or at least embarrassment.

This statistical evidence puts a heavy burden of proof upon the defender of this procedural limitation. This is doubly true when we recall that the purpose often stated for the section -- that of giving notice -- has not been accomplished, but has become merely a rule against using the title as a means of fooling some or all of the readers.

All of this leads, not so much to a criticism of the quality of the court's work, as to the question of whether we would not be better off had the work never been attempted. Had the courts taken the other road when they reflected on the question of whether the provision was only directory, we would probably be better off. Certainly, it is difficult to see how our position could be worse.

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8. Evans, Leading Cases on American Constitutional Law, 2nd ed., p. 262. This covers the period to 1924.

Trying to classify and reconcile the cases is a pleasant form of mental gymnastics for one who has time, patience and a legal turn of mind. But too often the thrill of that process keeps us from asking the rather embarrassing question, whether there is any reason for it all? Our tests of constitutionality are apt to bring us into a new period of formalism in the law, where we are more interested in form than in substance. We have gotten rid of rules of pleading in which form was so important that their purpose -- helping the litigants -- was forgotten. So here, we have little to show in the way of benefit but a long string of cases and a long list of acts, declared unconstitutional, to explain.

We shall consider this matter further in our general conslusion on procedural limitations. There are a few matters which the history of this section shows which may throw some light on the future, however.

The first great period of activity under the section was in the years 1899, 1900 and 1901, when out of 25 laws tested, 10 were declared bad. From 1910 to 1915, inclusive, in every year at least eight cases were decided, but only five of the 55 cases for those years were bad. From 1915 on there was only one year when there were eight cases, but in the period 1916-1922 one or more laws were declared bad every year. Since that time only one law has been declared bad, and that was in 1928. There has recently been some indication of considerable liberality on the part of the courts. The spread of time between the enactment of the statute and its being declared invalid has become less in more recent years.

History seems to indicate that it would be a mistake to conclude that the problem is settled and that we shall not encounter the section much in the future. A study will show periods of great and small activity. We must

remember, too, how the courts and the Legislature have managed to develop new variations as time went on. They brought in such matters as history, early title and deceptive title at different stages of development, and the whole question of amendment of title is comparatively recent. There are plenty of uncertainties left, and a good many snags provided by the old decisions.

Reference Limitations - Origin

Thus far, we have considered but one sentence of Article IV, Section VII, Paragraph 4. In 1875 there was added to this an amendment which gives us two more constitutional tests that have been interpreted, and one more that has not been invoked. The amendment reads:

> "No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No general law shall embrace any provision of a private, special or local character. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

These provisions are similar in character to the requirement concerning title, in that they deal with the technique of bill drafting. They have not, however, been as serious a limitation upon the Legislature, having resulted in comparatively few cases as compared with the litigation over titles, and an extremely few cases of invalidity. Here, even more than with the first sentence of Article IV, Section VII, Paragraph 4, consideration is usually very slight and seldom the central point of a case. An examination of Corpus Juris[9] or Cooley's Constitutional Limitations[10] will show that similar provisions exist

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9. 59 Corpus Juris 863, et. seq.

10. 8th ed., Vol. I, p. 313

in other states. Cooley says that a similar provision concerning amendment is found in 15 states.

On January 14, 1873, Joel Parker delivered his annual message as Governor and in it he called for a revision of the New Jersey Constitution to deal with the legislative process. He said:

> "It will be admitted by all reflecting persons that there should be such radical reform in our system of legislation as cannot be secured under the present constitution...So important are the interests affected by legislation that in view of the decision of our Supreme Court on the subject, we owe it to the public and to the fair fame of the State that such constitutional checks should be provided as will prevent the possibility of fraud or interpolation." 11

The Governor was interested particularly in private, special and local laws which were provided for in another amendment.[12] Such acts had been the source of the scandals concerning railroad legislation and the local government of Jersey City. He did, however, remark:

> "There are other evils besides that of hasty legislation that might be cured by an amended constitution.... In acts to amend existing laws the section or sections to be amended should be required to be inserted." [13]

The amendments were worked out by a Commission, but the minutes are not instructive.[14] The sections in which we are presently interested were introduced in something similar to their present form. The prohibition against including a private, special or local provision in a general law has not been construed. This is not surprising because there are more convenient provisions under which, in numerous instances, private, special and local laws have been declared invalid. We find very many such cases,

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11. Newark Daily Journal, Tuesday, January 14, 1873.

12. Art. IV, Sec. VII, Par. 11

13. Newark Daily Journal, supra

14. Minutes of the Commissioners to Revise and Amend the Constitution, 1873 (Office of Secretary of State of New Jersey - in manuscript.)

but they are not within the scope of this discussion. That leaves two of the 1875 provisions for consideration.

Revival and Amendment by Reference

Let us consider first the final sentence in Article IV, Section VII, Paragraph 4, which reads: "No law shall be revived or amended by reference to its title only, but the act to be revived, or the section or sections amended, shall be inserted at length." There is a particularly good statement of the specific evils at which the sentence under consideration was aimed:

> "The evils at which this class of constitutional provisions was aimed are well known. Acts repealing a sentence or part of a sentence of an existing statute, or amending it by inserting a sentence which, standing alone, either conveyed no meaning or inadequately expressed the purpose it was intended to accomplish, and the acts extending the provisions of statutes to a new class of subjects or persons by a simple reference to the title or to the numbers of the sections, were sometimes passed. Much vicious and unjust legislation was obtained in this way by covert means...."[15]

We notice that the evil to be remedied is a narrow one. It has only to do with the drafting of an amending or reviving act in such manner that one has no idea what the act is really attempting to do. To say, for example, strike out certain words on a stated line and page of a previous act, or add other words, presents the typical situation.

It is obvious, then, that there is no prohibition against repealing an act by title only. That was stated in the first case dealing with the provision.[16] An inspection of recent volumes of the Pamphlet Laws will often show hundreds of acts being repealed by their titles in one general repealer.

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15. Evernham v. Hulit, 45 N.J. Law 53, at pp. 57-58.

16. State, ex rel. Van Riper v. Parsons, 40 N.J. Law 123.

Since the clause deals with form, it is equally clear that it does not prohibit revival of an act by operation of law.[17] In other words, it does not apply at all to the repealer which revives a pre-existing act by repealing the act which in turn repealed it.

Similarly, an amendment by implication is not within the purview of the constitution.[18] Numerous laws may be modified or altered by an act which does not, in express terms, amend any. This is not the sort of legislation which will result in fraud, but rather the usual situation. Although it might be desirable to know just what other legislation is being affected, only a review of the whole statutory law on the subject could tell us that. The price is too great and the situation is not that aimed at.

The practical effect of extending the Constitution to such acts is well stated in Evernham v. Hulit,

> "A construction of this constitutional provision which would sustain the contention of the plaintiff in certiorari would lead to the most embarrassing results. It would be equivalent to holding that the legislature can pass no act changing any part of the statute law in force in this state without reenacting at length every section in the whole body of existing statutes that might be affected by the new legislation..." [19]

The prohibition does not extend to supplementary legislation.[20] Although the term supplement has been used loosely in New Jersey, the cases do not indicate that a true amendment could be disguised under this name and escape the constitutional prohibition. They rather point out that the supplements involved in them are not amendments and do not change the existing legislation

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17. Ibid; Wallace v. Bradshaw, 54 N.J. Law 175; Hartshorne v. Avon-by-the-Sea, 75 N.J. Law 407

18. Evernham v. Hulit, 45 N.J. Law 43; Board of Education of Newark v. Civil Service Commission, 98 N.J. Law 417, affd. 99 N.J. Law 106; Hutchinson v. State, ex rel. Board of Health of City of Trenton, 39 N.J. Law 569; State, ex rel. Board of Health v. Trenton, 53 N.J. Law 566; State, ex rel. Van Riper v. Parsons, 40 N.J. Law 123

19. 45 N.J. Law 43, at p. 56

20. Bradley & Currier Co. v. Loving, 54 N.J. Law 227; A. Fishman Hat Co. v. Rosen, 6 N.J. Misc. Rep. 667, affd. 106 N.J. Law 567; State v. Hancock, 54 N.J. Law 393

except as every supplement does by adding to and thus improving it.

What the Constitution does require, then, is exactly what it says, that when an act which is in terms an amendment is passed it must not simply refer to the title of the act amended.[21] Remembering that "the object of the constitutional requirement was to show the law-maker the true reading of a proposed enactment without the necessity of resorting to the old one" and that, "The mischiefs of the former practice were, that it required the labor of reference and comparison of statutes by legislators, to enable them to understand the effect of acts amended by reference to titles, and bills were often passed which would not have received legislative support if they had been understood,"[22] what should be done is clear. It is not necessary to set out the old law as it stood, but to reenact the full section of the old act, as changed, so that the old section no longer has any force, and one can find the present state of the law by reading the section as set out in the new act.[23] This is all that is required. Thus, under this last prohibition in Article IV, Section VII, Paragraph 4, we find the court holding the limitation down to narrow and sensible limits.

Incorporation by Reference

The section of the 1875 amendment concerning legislation by reference which has received most consideration in the case reads:

> "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

We do not have to wait long for cases construing this provision, because

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21. Haring v. State, 51 N.J. Law 386, affd. 53 N.J. Law 664

22. Colwell v. Chamberlain, 43 N.J. Law 387, at p. 388.

23. State, ex rel. Van Riper v. Parsons, 40 N.J. Law 123; Colwell v. Chamberlain supra; State v. American Forcite Powder Mfg. Co., 50 N.J. Law 75

in 1883 it received its first consideration in Campbell v. Board of Pharmacy.[24] In that case the court, with the instant section primarily in mind, said:

> "The constitutional provision in question, and that which forbids the revival or amendment of a law by reference to its title only, were designed for the suppression of deceptive and fraudulent legislation, the purpose and meaning of which could not be discovered either by the legislature or the public without an examination of and a comparison with other statutes. Neither of these provisions was intended to obstruct or embarrass legislation. Both were intended only as a means to secure a fair and intelligent exercise of the law-making power." [25]

In this statement we find a frank recognition of the fact that the legislative process had been abused by putting through acts calculated to deceive the legislator unless he happened to be both wary and industrious.[26] We are also informed that there was no desire to hamper legislative freedom of action beyond the point of ensuring this honesty. This we must remember, because otherwise an application of the words of the Constitution at their face value would carry us far beyond the decided cases. In fact, the court has been quite careful to point out the embarrassing result which such construction would entail.

Thus, an act which extended the civil service laws to school districts[27] was attacked as unconstitutional because it did not set out those laws at length. The practical answer was:

> "If this constitutional provision has made it necessary to the validity of a new statute on the subject that every prior statute on the same sub-

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24. 45 N.J. Law 241, affd. 47 N.J. Law 347

25. 45 N.J. Law 241, at pp. 245-246

26. See also State v. Hancock, 54 N.J. Law 393; Christie v. Bayonne, 48 N.J. Law 407; Bradley & Currier Co. v. Loving, 54 N.J. Law 227; State, Smith v. Willetts, 81 N.J. Law 370

27. P. L. 1911, p. 727

> ject which may be altered or modified should be inserted in it at length, it would be quite impossible to legislate at all on the subjects mentioned, or on kindred subjects." [28]

There is no ground for complaint as far as a rule for the ordinary cases is concerned. This rule was best stated in Campbell v. Board of Pharmacy, which really elaborates on a test for the other provision of the 1875 amendment set up in Evernham v. Hulit, supra. In the Campbell case, the court stated:

> "An act of the legislature which is complete and perfect in itself - the purpose, meaning and full scope of which are apparent on its face - is valid , notwithstanding these constitutional provisions, although it may operate to amend a prior act by the repeal of the latter, pro tanto, by implication, or may provide for actions or the means of carrying its provisions into effect by a reference to a source of procedure established by other acts of the legislature." [29]

Let us turn now to the decisions. There are not a great number of them. Of these, three decided an act was unconstitutional and in another we have a construction to avoid an interpretation which would have rendered an act invalid. Only one of these acts seems positively vicious. It attempted to legislate on race horse betting by an extremely intricate process.

We shall consider the cases of validity first. They can best be classified on the basis of fact situations. The first group deals with adopting a procedure by reference.

Again we come back to Campbell v. Board of Pharmacy, which established a longer line of cases than any other decision. In that case, the statute under consideration provided that the penalty should be recovered, "In the

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28. Board of Education of Newark v. Civil Service Commission, 98 N.J. Law 417, at p. 420. See also In re Haynes, 54 N.J. Law 6

29. 45 N.J. Law, at p. 245. See also State, DeCamp v. Hibernia Railroad Co., 47 N.J. Law 43; Bradley & Currier Co. v. Loving, 54 N.J. Law 227

same manner provided by the statutes of this state for recovery of penalties in other qui tam actions." [30] This was found unobjectionable since the court contended the reference to statutes on qui tam actions did not enlarge the scope of the act since they related only to the practice and procedure by which the penalties were to be governed. By the very use of the words qui tam, as with the use of the words assumpsit, debt or distress, all of the statutes governing that form of action in the State came into play without their being mentioned. There was no necessity to refer to them, the name was enough. Thus the act was complete and perfect without such reference.

Since that case the courts have had a definite formula that matters of procedure in other acts may be referred to. Consequently a reference to a method of condemnation provided for in another act, the general act concerning condemnations, was unobjectionable.[31]

We turn next to a group of cases dealing with powers. If the Legislature provided for a new district court, it might say such court should exercise the same powers as other district courts and, in fact, it would not be necessary to say anything. The same thing would be true with the incorporation of a new municipality of a type already in existence. This line of cases on powers indicates that the Legislature can go pretty far in transferring them.

The remaining cases are miscellaneous in character. In Allen v. Wyckoff[32] an act was upheld which made it an offense subject to a penalty for non-residents to violate the by-laws of the game protective societies. The court thought this was like providing that one who violated a municipal ordinance or rode on a railroad train contrary to the regulations of the company should be subject

30. Rev. of 1877, p. 816

31. Rutches v. Hohokus, 82 N.J. Law 140

32. 48 N.J. Law 90

to a penalty. The question was treated as an easy one. The court pointed out that these by-laws were not "existing laws" in the sense of the Constitution at all. They took the word "law" to mean an enactment of the Legislature and not every rule of civil conduct. This seems correct.

The last case of a valid act we have to consider dealt with a law which provided that if the laws in another jurisdiction imposed greater taxes, fines, penalties, licenses, fees, or other obligations or requirements upon the corporations of this State doing business there than does New Jersey on corporations doing business in this State, then the same taxes, etc., shall be imposed by this State upon corporations from that jurisdiction. The court held there was no constitutional difficulty with our clause taking effect upon a contingency.[33] The fact that the taxes and other impositions were to be found in the laws of different states did not command a single word in that opinion. That does seem to raise a serious question. The court, however, was moved by the fact that this was comity legislation, which type of legislation had been held valid in many states. Perhaps that is the best explanation of the case. We have here a type of legislation which is desirable for state protection, which does not involve the fraud or deception aimed at by the Constitution. Thus it must not have been intended that comity legislation be made impossible.

On the side of invalidity[34] we have State v. Larson which decided the State Aviation Act was invalid.[35] It provided for a commission which should establish standards of air-worthiness for aircraft to accord with the federal act. The court applied the test of State v. Hancock, 54 N.J. Law 393, as to striking out improper references, and found the result would be fatal:

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33. State, Texas Co. v. Dickinson, 79 N.J. Law 292

34. See also Christie v. Bayonne, 48 N.J. Law 407, and Haring v. State, 51 N.J. Law 386

35. 10 N.J. Misc. Rep. 584

> "Applying this rule, if we strike out from the State Aviation Act its reference to the federal act, we at once find ourselves with an attempted delegation of power to an administrative body, but without any standard of guidance, whatsoever fixed for that administrative body, by the legislature."

This review of the cases indicates that there is no clear-cut distinction between them, but that there are some real differences of degree. That the courts have taken a liberal attitude in accord with the purpose expressed seems clear. That the test of whether an act is complete and perfect in itself will be used has been demonstrated. Just when an act is so complete and perfect is not an easy question to answer. There are cases where the reference is perfectly useless, but others which go the same way where the reference is important or even essential to the operation of the act. For example, what is the distinction in principle between State v. Larson, above, and the comity act which might at any time invoke the laws of another state or foreign nation to apply to a corporation from that state doing business in New Jersey? There is a real difference here as far as convenience and clarity are concerned. It would have been impossible to incorporate all of these laws and amend the act every time one of them changed, even if other constitutional hurdles could have been cleared.

Christie v. Bayonne and State v. Haring,[36] also held invalid, are clear enough cases. Particularly in the latter case was there an attempt at deception. In both cases one would be sent hunting through the statute books to find the meaning of the reference and, as stressed in Christie v. Bayonne, not into statutes which are related as original act and supplement, nor into independent acts as, let us say, different acts concerning boroughs, but

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36. See note 34

rather into totally unrelated fields.

State v. Larson referred to a similar act, but a federal act, and relied on it for a standard without which the statute would be unconstitutional for delegation of law-making power to a commission. It was the very life of the act. The federal provisions could have been incorporated. The comity act (State v. Dickenson) affected only those aware of the laws referred to because they were laws of their own jurisdiction. It could not have been passed otherwise at all, and is a special and well known type of legislation which the court may very well have felt was not intended to be prohibited.

Sections Subject to Direct Attack

Some sections of the Constitution cannot be used as instruments of collateral attack. These sections deal with the passage of ordinary laws and joint resolutions. It would be appalling indeed to find that a statute upon which substantial rights were based was, in fact, passed by less than the required majority in the Legislature, or was not, in fact, approved by the Governor, if such circumstances would render it unconstitutional. The hazards involved would make it necessary that the one relying upon the act should go into each step in the process of legislation where the Constitution is involved and somehow or other find that it was complied with, or, at least, that there is no possible way of proving it was not complied with.

This argument would lead us to the point of saying that such provisions should be only directory in character. However, legislative experience has shown that there are real dangers of imposition and fraud. Naturally, enforcing these safeguards would appear to be one way of avoiding those evils.

The early case of Pangborn v. Young[37] decided against collateral attack based on such constitutional limitations. The defendants tried to show by the journals of the houses of the Legislature that the act in dispute had not been signed by the Governor in the same form in which it passed the Legislature. Against this evidence was set up the fact that the bill had been endorsed and filed as properly passed.

37. 32 N.J. Law 29

The court first discussed legislative practice in this regard:

> "From the earliest times, so far as I have been able to ascertain, it has been the invariable course of legislative practice in this state for the speaker of each house to sign the bill as finally engrossed and passed. It is likewise certified by endorsement by the clerk of the house in which it originated. With these attestations of authenticity upon it, it is then filed in the office of the Secretary of State. This has been the course of proceeding from certainly a very remote period to the present time; under our present constitution the written approval of the governor is requisite." [38]

The court then decided against the defense in sweeping terms, saying its conclusion was

> "that upon the grounds of public policy and upon the ancient and well-settled rules of law, the copy of a bill attested in the manner above mentioned, and filed in the office of the Secretary of State, is the conclusive proof of the enactment and contents of a statute of this state, and that such attested copy cannot be contradicted by the legislative journals, or in any other mode." [39]

The Pangborn case has established that a statute is not to be collaterally attacked because of some defect in its enactment as long as it is properly enrolled as a law. [40]

In view of this decision, a statute was passed in 1873 allowing direct attack upon acts in certain cases. [41] The statute has been used only five times, [42] however, although in one instance an action was brought under the Uniform Declaratory Judgment Act, P.L. 1924, p.313. The court was very doubtful if a statute could be subjected to direct attack under the 1924 act, but passed by the matter of procedure because of the immediate importance of the case.[43]

38. Ibid, at p.33
39. Ibid, at p.44
40. Bloomfield v Board, 74 N.J. Law 261
41. P.L. 1873 p.27; C.S. 1910, p.4978, et seq.
42. In re Ross, 86 N.J. Law 387; In re Jaegle, 83 N.J. Law 313; In re Petition of Attorney General, 98 N.J. Law 586; In re Low, 88 N.J. Law 28; In re Public Utility Board, 83 N.J. Law 303.
43. In re Freeholders of Hudson County, 105 N.J. Law 57

The 1873 statute provided for direct attack within one year after "any law or joint resolution shall have been filed by the Secretary of State." The test was to be by the Attorney General at the instance of the Governor, or by two or more citizens. The basis of the attack must be on the ground that "such law or joint resolution was not duly passed by both houses of the legislature, or duly approved, as required by the constitution." If the attack is successful, the law is to be proclaimed null and void by the Governor.

Three Readings and Majority Required for Passage

The first paragraph which presents itself is Article IV, section IV, Paragraph 6, which provides:

> "All bills and joint resolutions shall be read three times in each house, before the final passage thereof; and no bill or joint resolution shall pass unless there be a majority of all the members of each body personally present and agreeing thereto; and the yeas and nays of the members voting on such final passage shall be entered on the journal."

This paragraph dates from 1844. There were, however, proposals adopted by the Commission in 1873 to change it and the direction of those changes is interesting. Coming after the provision was embodied in the Constitution, they do not carry weight in interpretation, but they do show what a group of distinguished jurists probably thought the paragraph did not cover.

Mr. Ten Eyck presented to the Commission the following:

> "Amend article IV, section 4, paragraph 1 (sic) in line 20 after the word 'times' insert 'twice section by section in full,' and after the word 'thereof' of line 21 insert 'and no two readings, section by section as aforesaid, shall be on the same day,' and at the end of the same section insert the following 'no private, special or local bill shall be introduced after ten days from the commencement of the session.'" 44

The newspaper report of the matter when it came to the Senate follows:

> "Mr. Taylor moved to strike out article 4, section 4 'read three times' and insert in lieu thereof the following 'Printed before they are received or considered and shall be read throughout, section by section, on three several days'; also, after the word 'therof,' insert a clause providing 'must be read entire,printed and distributed among the members at least one day before the vote is taken.'" 45

This was adopted by the Senate but never became a part of the Constitution.

In view of these attempts to secure deliberation, an example of what can and does sometimes happen, as told in the Newark Evening News, is rather interesting.

> "An indication of the hasty action on legislation, shortly before final adjournment is shown by the fact that House 443, a police bill, was drafted and passed both Houses early today in forty minutes. The bill was rushed through because the validity of a bill passed previously was questioned.
>
> "The measure was a supplement to the Home Rule Act. It was sponsored by the State Patrolman's Benevolent Association and changed the limitations for appointment of police officers from twenty-one to fifty years to twenty-one to forty years.....
>
> "Assemblyman Muir of Union introduced the bill under a new number, had the House rules suspended and passed it in five minutes. It was rushed to the Senate and Senator Pierson guided it through without opposition." 46

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44. Minutes of the Commissioners to Revise and Amend the Constitution, 1873 (Office of Secretary of State of New Jersey-in manuscript.)
45. Newark Daily Journal, January 29, 1874
46. Newark Evening News, April 23, 1931; Bebout, Documents and Readings in New Jersey Government, 1931, p. 123

The courts have not alluded to this section often. There was a rather interesting dictum concerning the matter of whether the readings had to be at length or could be by title only. The court said:

> "It has always been considered by both houses of the legislature that a reading of a bill or resolution by the title thereof, for at least one of the three readings was a compliance with the constitutional mandate. An examination of the senate journal and the minutes of the assembly will disclose that this is the inveterate practice in both the upper and lower houses." [47]

The dictum goes no further than saying that one reading may be by title only. Looking, however, at the legislative practice of virtually never reading bills, and at the earlier quotations, it does seem that there is no practical argument that the other two readings must be at length. These facts indicate the universal belief that no reading in extenso is necessary for the constitutionality of legislative procedure.

In regard to the majority requirement, the court has pointed out in a dictum that there must be a majority of all the members voting in the affirmative to pass a bill. [48] That is to say, 31 of the 60 members of the Assembly are necessary, and 11 of the 21 Senators. This

47. State, Anderson v Camden, 58 N.J. Law 515, at p. 519
48. State, Schermerhorn v Jersey City, 53 N.J. Law 112

seems obvious enough from the language of the Constitution.[49]

A more difficult inquiry is how we are to prove that less than a majority voted for a bill. In the one case on this subject, a reporter for the Newark Evening News charged that the necessary majority had not voted, he having checked the names as the roll was called on the particular bill. The court heard his testimony but, since some of the members he said were not present swore they were there and voted, this ground of attack was rejected. Perhaps we can work out from this some leaning toward great liberality in the type of evidence that will be considered. Certainly that would accord with the spirit of a statute which is trying to get at fraud in the passage of acts and which safeguards private rights by limiting attack to a year. Since the time is short, the latitude to accomplish the object intended should be great.

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49. The Schermerhorn case involved the meaning of the three-fourths vote required by law for the Board of Alderman of Jersey City to pass a redistricting ordinance. The judge, in deciding that three-fourths of all the members of the full Board were required, cited what he said was the established meaning of the constitutional requirement that a majority of all the members of a house of the New Jersey Legislature, i.e., 31 Assemblymen or 11 Senators, are required to pass a bill. As Dr. Sinclair says, this has seemed "obvious enough" to most people who have had to do with the matter. That it is not quite so obvious as it has seemed, however, is evident from the following episode:

Prior to 1947, five bills to call a constitutional convention had been declared passed by the Assembly. One of these was declared passed in 1885. Due to a vacancy the Assembly at that time consisted of only 59 members. Speaker Armstrong declared the bill passed with 30 votes, rendering a written decision which included the following sentence:

"The particular language in Art. 4, Sec. 6 of the Constitution, means that no matter how small the number may be composing a House for the time being, a majority of that number is all that is required to pass any bill or joint resolution."

Mr. Armstrong stated that he had informally consulted with a number of members of the state's highest court and that they agreed with his decision.

No other such case is known. Since the bill did not pass the Senate, there was no occasion for judicial review. Presumably, the usage cited in the Schermerhorn case would be accepted by the courts today as having established the meaning of the provision in question. It is to be observed, however, that the dictum in the Schermerhorn case was by one Supreme Court justice only. In view of the frequency with which vacancies occur, especially in the Senate, it might be well to state the majority required in language which would not permit of two interpretations.-J.E.B.

Revenue Bills

Article IV, Section VI, Paragraph 1 provides:

> "All bills for raising revenue shall originate in the House of Assembly, but the Senate may propose or concur with amendments as on other bills."

This is the usual type of limitation and one which grew upon the English model. The growth of the power in England, as also in the Colony of New Jersey, is traced by the courts. The part concerning New Jersey gives a good background for an understanding of the section. The court said:

> "The right of the popular branch of the government to originate and adopt measures for providing revenue for public purposes was asserted by the colonial assembly as early as 1748. Acts had been passed granting money for the use of the colony, to give effect to which an act was necessary to settle the quotas of the respective counties. Such an act was passed by the house of assembly and sent to the council. The council made amendments to the bill. The house of assembly rejected the amendments, and sent a message to the council unanimously refusing to confer, with a resolution that the council had no right to amend any money bill whatever,...This controversy continued, leaving the government without adequate support for nearly four years, until the session of February 11, 1752, when the council passed the bill sent up by the house of assembly. N.J. Archives (1st Series) Vol. 16, pp. 22, 201, 218, 256, 352, 357. The privilege thus asserted by the house of assembly was conceded during the colonial period, and was embodied in section 6 of the constitution of 1776 in these words: 'That the council shall also have power to prepare bills to pass into laws, and have other like powers as the assembly, and in all respects to be a free and independent branch of the legislature of this colony, save only that they shall not prepare or alter any money bills, which shall be the privilege of the assembly.' Const. 1776, S. 6. This provision stands in our present constitution in a modified form, as follows: 'All bills for raising revenue shall originate in the house of assembly, but the senate may propose or concur with amendments as on other bills,' which is substantially the same as section 7, art. 1, of the constitution of the United states."[50]

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50. Township of Bernards v Allen, 61 N.J. Law 228, at pp. 234, 235

Thus we notice that the right to amend, which formerly did not exist in the Council, became a prerogative of the Senate. In only one case has this section been interpreted in New Jersey. In In re Ross,[51] the Senate passed what was clearly a revenue bill and transmitted it to the House. The House of Assembly advanced it as far as second reading, after which it was recommitted. The House committee then reported it out again as "Assembly Committee Substitute for Senate Bill No. 176." It was given three readings by the Assembly as an original bill, and sent to the Senate, which passed it as a bill originating in the Assembly. Under the circumstances, the court treated this as a revenue bill originating in the Assembly and therefore valid. It did recognize that if it had originated in the Senate, it would have been unconstitutional, and the court would have declared it so under the act of 1873.

Veto and Repassage of Bills [52]

The power of the Governor to participate in the legislative process through the veto and through signing bills has given rise to several rather interesting cases under the law of 1873.

Where evidence was brought in to show that the Governor had approved a bill 60 days after the Legislature had adjourned, the evidence was rejected because the matter was raised on collateral attack. The doctrine of Pangborn v. Young was quite naturally applied, since the act of 1873 made only direct attack possible. [53]

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51. 86 N.J. Law 387
52. See the special monograph in this series by Goldmann and Bland on the Governor's veto power
53. Bloomfield v. Freeholders 74 N.J. Law 261

In an earlier case, the court found it unnecessary even to resort to Pangborn v. Young to uphold an act when counsel stipulated that the bill had been signed by the Governor after sine die adjournment. The court would not accept such a fact upon stipulation of counsel alone. [54]

Both cases aimed at a practice which had apparently grown up under Governor Abbett. That was to have bills held until the end of the sessions for passage or to be sent to the Governor, or both. The Governor's veto power, which can be overridden by a simple majority, thus became absolute. The Governor took his time about signing acts; in fact an act of 1880 [55] provided that:

> "No bill or joint resolution passed by the Legislature of this State, which shall remain in the hands of the Governor, not approved by him, on the final adjournment of any session of said Legislature, or shall be presented to him for his approval after said adjournment shall become a law, unless he shall deliver the same with or without his approval to the Secretary of State of this State, within thirty days after said adjournment."

This statue was strenuously disapproved by several local writers as an attempt to change the constitutional limitation for signature by the governor [56] and it has since been repealed. [57]

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54. Morris v. Newark, 73 N.J. Law 268
55. P.L. 1880, P. 259
56. A.Q. Keasbey, "Executive Control Over Legislation," 15 N.J.L.J. 116; and "Adjournment and The Veto Power," 35 N.J.L.J. 358
57. P.L. 1895, p. 817

The practice of Governors is described by Mr. A. Q. Keasbey in the first of these articles (1892):

> "From 1845 to 1884 it was the almost unbroken custom to approve all bills during the session. A very small number, only about 40 out of more than 10,000, were approved after the adjournment, but none of them more than five days afterwards. In 1883, 90 were approved on the last day and none afterwards. The act of 1880 did not change the practice. But in 1884, the first year of the present Governor's former term, 66 bills out of 225 were approved after the adjournment, and only 9 of them within five days. In 1885, out of 250 general public laws, 86 were approved afterwards and only 13 within five days. In 1886 there was an adjorned session in June, and only 5 were approved after the last day. In 1887, out of 182 general public acts, 77 were approved after the close, and only 23 within five days. In 1888 the number was 97 out of 337, and 29 within five days. In 1890, 82 out of 311, and 3 within five days; and in 1891, 159 out of 285, more than half, were approved after adjournment, and only 5 within five days." [58]

A note of caution should be added, because the article states there was a rumor that earlier Governors took their time and then dated the bills so that they appeared to be signed in five days after receipt. The writer depended on the dates of approval given in the statute books.

The second of these articles, published in 1912, deals with In re Public Utility Board [59] where the Legislature recessed for 12 days shortly before final adjournment. The article states that the purpose was to break up the practice of governors of retaining bills for a long period of time after sine die adjournment. Thus it seems the practice continued. The case which we shall now consider cast serious doubt upon that practice, to say the least.

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58. 15 N.J.L.J., at p. 124
59. 83 N.J. Law 303

As had been suggested in the first article in 1892, a test was finally made under the act of 1873 on the following facts. The Legislature had passed a bill which it sent to the Governor. It then adjourned for 12 days, at the end of which time the Governor returned the bill to the house of its origin without his signature. It was passed by that house, but not by the other. Nevertheless, the bill was sent to the Secretary of State with directions that it be filed. The Governor instructed the Attorney-General to bring suit to have the bill declared void.

The court agreed that the act was bad because the Legislature, by its adjournment, had made the return of the bill impossible. The Governor could not return it to the Secretary of State or some officer of the house of origin because the Constitution says it must be returned to the house in which it originated. This means "It must be returned to the house of origin while that body is sitting, and if it is not put in the possession of that house by the governor, while duly assembled, within five days after he has received it the constitutional provision is not complied with."[60]

The foregoing applies to an ordinary adjournment as well as one sine die because the purpose of the Constitution was to keep the Legislature from hindering the Governor in the exercise of the veto power.

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60. 83 N.J. Law, at p. 312

The court concluded that:

> "by force of the constitutional provision under consideration, the adjournment of the house in which a bill originates, after such bill has been presented to the governor, subsequent to final passage, for his approval or disapproval, if it continues for more than five days after the bill shall have been presented to the governor, prevents the return of the bill by the executive to the house of its origin within that period, and that the effect of such prevention is to absolutely destroy the validity of the bill; for the concluding portion of the constitutional provision recited declares that when the legislature by their adjournment have prevented the return of such bill by the governor within five days it shall not be a law. This being so, not only is the governor under no obligation when the house of origin reconvenes after the five-day limit to return the bill to that body with his objections, but should he do so, his action is entirely nugatory, for no matter what course that house, or the other house of the legislature, might hereafter take upon that bill, vitality could not be restored to it." [61]

This case does not conclude us on the instance when the Governor does sign. The language that upon prevention of return the bill becomes absolutely void, could be taken to mean no signature after a sine die adjournment is good. In its context it may only deal with the pocket veto, but certainly the attitude displayed is one against any life remaining in the bill after five days of adjournment. We have no further light on the subject in New Jersey. Perhaps the recent federal cases will show the way. [62]

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61. 83 N.J. Law, at pp. 312, 313
62. Edwards v. United States, 286 U.S. 482, 52 S.C. 627; The Pocket Veto Case, 49 S.C. 463

Conclusion

As we have proceeded, each section has contained conclusions as to the state of law on the particular subject treated, together with criticisms thereof. There still remains the important matter of looking at these procedural limitations as an entire scheme of things and of comparing them.

Perhaps it is wrong to speak of them as an entire scheme of things. They were, as we know, introduced at different times. The limitations of 1875 were incorporated, it is true, to get at the same type of abuses as those at which some of the earlier provisions were aimed. It is a matter of opinion whether, in the main, they are supplementary or strike out on independent lines.

We do find two distinct aims running through and sometimes uniting in one constitutional requirement. These are the desire to prevent fraud and to force deliberation. Probably the first is predominant, and certainly it is so in those provisions which have contributed most to the volume of litigation. They do not find counterparts in the Federal Constitution.

If we look first at the requirements regarding style, as Professor Freund has termed one division of what we have called procedural limitations, we find our most interesting subject. In the provisions concerning title, incorporation by reference, and amendment, we encounter most of the cases. Perhaps the best approach to these limitations is to compare our conclusions in New Jersey with the general conclusions of Professor Freund. He said:

> "The requirements regarding title and subject-matter undoubtedly inculcate a sound legislative practice, and in the great majority of cases amendment by re-enacting a section is preferable to the amending of words or passages torn from their context."[63]

63. Freund, op. cit., p. 155

It is undoubtedly true in New Jersey that at least the possibility of an undesirable legislative practice has been avoided by the secions on admendment and incorporation. Only another long research problem would show the former extent and danger of the practice which the court says existed. At least these provisions ensure us against mixing up legislation by specifically amending or incorporating parts or acts. These provisions, as we pointed out, received a restricted and commonsense construction. Few statutes have been declared invalid under them, and no tenuous or technical rules of construction, smacking of formalism, have grown up. The courts have kept the purposes of these provisions fairly well before them. All of this is much more true of the amendment than the incorporation clause, where the cases are not quite as satisfactory. They are distinguishable and not numerous enough to be especially involved. A few acts were declared invalid where no great harm would have resulted from a contrary decision.

The same concurrence is not possible in regard to the title requirement. Here legislative practice was so well established before the courts started to work that no beneficial changes from what probably would have been the normal course of legislative action and development seem to have occurred. The courts do not allude to a practice which is being broken up, but rather to one too firmly rooted to budge.

Generally there has been a liberal construction of the title provision. The early cases are the most liberal, giving to the Constitution a very slight limiting effect in this regard. They have been modified in some instances, but hardly to the extent of supplying great protection against possible fraud.

The other side of the picture respecting title is extremely important, as Professor Freund notes in the continuation of the above quotation:

> "Conceding that these requirements have had on the whole a beneficial effect upon legislative practice and the clearness of statutes, they have a reverse side which must not be ignored. They have given rise to an enormous amount of litigation; they have led to the mullification of beneficial statutes; they embarrass draftsmen, and through an excess of caution they induce undesirable practices, especially in the prolixity of titles, the latter again multiplying the risks of defect. While the courts lean to a liberal construction, they have, in a minority of cases, been indefensibly and even preposterously technical, and it is that minority which produces doubt, litigation, and undesirable cumbrousness to avoid doubt and litigation." 64

The reading of the cases will give illustrations of everything to which Professor Freund has referred. The title section is the only one which has operated as a really serious limitation on ordinary legislation, and is therefore the only one concerning which these objections can be strongly urged.

A survey showing that tested statutes ran into the hundreds makes one hesitate before giving any praise for beneficial effects. This is especially true when we remember that there were 49 cases of unconstitutionality in 90 years. So much litigation needs very strong justification, and yet it is found that the beneficial effects, so far as they could be guaged, were extremely slight. Their only good may have been in striking down a very few obviously bad statutes. To counterbalance this, we find a flood of cases, taking the time of courts and lawyers and the money of clients.

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64. Ibid, pp. 155-156

Certainty is a highly desirable thing in the law, yet here uncertainty results unless the draftsman is very careful of something which is not really of the essence of the legislation. There may be no objection to forcing care upon the legislators if that result is really accomplished, but such a result does not seem to follow.

The careless draftsman has been with us throughout our constitutional history, the cases show. True, sometimes his work has been more apparent than at others, but statutes have been found invalid all the way through. Without a censor in the form of a good legislative drafting bureau, this seems inevitable. Interested parties draft bills, as often do lawyers with slight legislative experience and even a slighter idea of constitutional law. Every once in a while one of these bills may be jammed through, and then no one knows what its force is until it has been the subject of judicial review.

It may be a number of years before the act is invalidated. Individuals want to rely on them but are not in a position to bring the case before the courts. The usual lawyer will not be very conscious of this constitutional problem because constitutional law is out of the realm of his usual activity. When he looks up a law he usually reads it in the Revised Statutes without even noticing its title. Nearly always that is safe, but it seems unfortunate that he and his client should be subjected to this slight, but possibly fatal, risk unless it is very necessary.

In this connection, Professor Freund suggests that statutes should be subject to attack only for a limited period. Our provision for direct attack with a limitation of one year is of this type, but, as noted, very restricted in application.

It seems difficult to meet the argument that a short time is long enough to uncover the results of fraud or haste, and that if it is not uncovered within that time, certainty is more valuable than the privilege of attack. The press can be counted on to get wind of the worst cases, as a reading of the Newark Evening News over a period of years will show. What good newspapermen and a few other persons who keep up on the Legislature do not find would not be considerable, it seems.

The one obvious difficulty is that no one may be willing to go to the trouble of attacking the law, even if it is the result of fraud. It was many years before direct attack was used as an instrument for breaking up the practice of Governors in signing bills long after the Legislature had adjourned. Most of the cases of direct attack have been commenced at the instance of the Governor. A very good reason is that he is the only one who can do it without cost if unsuccessful.

There have been only five cases of direct attack. The provocation may have been lacking, except in a few instances after the statute began to be used. It does seem that the Governor should discover the effects of fraud or haste before he signs a bill, and exercise his veto power. Giving him a second chance of bringing down poorly styled bills seems unnecessary. Pressure of time is hardly an excuse, since the work of reading bills for defects could easily be delegated to competent assistants. No question of policy requiring the personal attention of an elected executive is involved. Giving the Governor more time to exercise his veto would answer any remaining objection as to pressure of time.

That leaves us, as a justification for the statute, one other chance of attack:the interest of some client in a matter affected by this legislation which results in litigation during the first year, let us say, after the passage of the act. Perhaps that is enough, because if no one is adversely affected at once no more harm may be done than if the vicious subject matter were enacted into law by a perfectly constitutional method. It is up to the indexers and compilers to keep the subject matter from remaining obscure. The most obvious violations, it may be hoped, would be vetoed on the ground of unconstitutionality.

It seems that there is not much justification, then, for opening statutes to attack for even a year. We are left to rely on private initiative, which does not operate uniformly but rather only where there is a financially powerful private right involved. If indirect attack were permitted within a year, the number of attacks would increase. It must be remembered that these cases often take a couple of years before they are finally decided by the Court of Errors and Appeals, so that we might have over three years of uncertainty under this device. Such uncertainty and this rather spotty manner of checking up on the Legislature would not be necessary if the Governor went on the advice of experts and vetoed bills for procedural defects. Fear that the Governor would not follow such advice for political reasons would be pretty well eliminated by using as his advisers non-partisan experts who would make public their findings.

Professor Freund also complains in the above quotation that an excess of caution forced upon drafters results in undesirable practices, especially prolixity of title. This should be considerably qualified in New Jersey.

Prolixity we find, to be sure, but often such titles furnish the courts with their hardest problems. The poor draftsman tries to make an index out of the title, but leaves out something or so narrows down his title by specific matter that the body of the act is too broad.

The skillful draftsman in New Jersey resorts to a very general title which, barring deceit as worked out in a narrow line of cases, is valid in every instance. The effect, of course, is to sap the vitality of the provision of Article IV, Section VII, Paragraph 4 which had for its purpose requiring that the title give notice. It makes the provision stand alone as a guard to protect one who relies on a too narrow, and in a very few instances, a deceptive title. If that is all the limitation amounts to, it would be better not to permit persons to rely on it when such reliance entails uncertainty as to the validity of the act and has resulted in so many statutes being declared unconstitutional.

The quotation from Freund attacks a minority of the cases as indefensibly technical. This applies with considerable force to a minority of the New Jersey cases.

Where, as in the subject of title, there are a number of cases, a considerable amount of uncertainty results. The idea advanced in many cases that titles are to keep the public informed fades into oblivion. Technical language and rules of construction, as in many other places in the law, put real understanding of a title beyond the ability of fairly intelligent people. As the field of the law of title has grown it has divided out into a number of special branches, as, for example, the questions of validating title amendment and deceptive titles. These branches usually end in uncertainty.

State judges are not often well trained in constitutional law and are too busy to give up for the occasional constitutional problem the time necessary to really make a study of the cases. It has been found that in the course of a fair number of decisions a judge is apt to throw in some language, or even decide a case in such a way, as to cast doubt on the true state of the law. Cases involving the same branch of the subject do not come often enough to straighten this out quickly. Furthermore, other cautious judges are not likely to go out of their way to set matters right when they have not had time to review all the law.

What has been said concerning special lines of cases is equally true concerning the great body of law on title. The writer has attempted to classify and reconcile all of the cases, but only after a more intensive study than they have ever been subjected to before. The process may not leave the reader completely satisfied, but he will find that the opinions themselves do not supply him with very much help by dealing with the cases in such a way as to fit them into some pattern of law. That should bring us to the point of agreeing that this main body of cases, as dealt with by judges and lawyers, is the subject of a good deal of doubt.

Even with subjects where there have been comparatively few cases, the courts often begin early in the history of their construction to express doubt if the cases can be reconciled. We cannot expect more of the title provisions.

The idea, for example, that when a section of a statute was formerly enacted under a different title, that early title still acts as a limit within the Constitution seems hopelessly technical. It is the sort of thing which adds needlessly to the complexity of the law and helps no one. Its possibilities for the future are good enough to make us wonder what a technical court might do with it.

Procedural limitations other than those as to style have a better record. We find that they have caused little confusion; in fact, have given rise to very little litigation.

Along with such provisions we have called attention to, there are the usual ones about readings, votes and vetos. These, in so far as they are not evaded, would probably be exercised in much the same way even if they were not mentioned in the Constitution. They set out what is a normal legislative procedure. The veto would, of course, have to be provided for by Constitution.

We started out to look at all of these limitations together. Some difficulties in generalizing have appeared. We have seen that several of the limitations have proved beneficial, others harmless, and others entail harmful results which must be weighted against any beneficial effects they have had.

The last group consists of the title limitations, and thus most of the litigations. We often hear the argument that greater responsibility will improve the character of our state legislators. This leads to the inquiry whether those limitations should be removed to afford such responsibility. This line of argument can be strengthened by pointing out that the Constitution has not prevented logrolling and political maneuvering of the sort usually frowned upon. A few bad practices have been prevented, but for the most part the limitations do not seem to have improved legislative behavior.

New Jersey's statutory law has been classified by a law revision commission into intelligible divisions. A permanent body to draft bills and, after they are passed, to fit them into the proper sections of the revision could, if well supported, do more good than any number of constitutional provisions.

To expect such a plan to work perfectly is to hope for too much. The Legislature now violates its own rules when political expediency or the results of carelessness require. It might not always treat a bill drafting bureau with great respect. If such a bureau were given a real chance or even half-hearted cooperation, we might well argue that the situation would be considerably better and that certainly it could not change appreciably for the worse.