

THE OPERATION OF A CONSTITUTIONAL RESTRAINT ON BILL-STYLING

During the years of the Roosevelt administration, and particularly in the campaigns of 1934 and 1936, a great resurgence of popular interest in constitutional law has taken place. This public interest has centered, in the main, around certain widely publicized decisions of the United States Supreme Court. This interest too seldom extends to the steady day-to-day effect of constitutional law beyond, of course, the vague feeling that somehow the constitution and the courts stand ready to protect private rights against all who would destroy them. The public relegates the less sensational state constitutional problems to the background, where they remain unnoticed. Those who must deal with constitutional problems have shared in the recently quickened public interest, but some parts of the state constitutions still receive scant attention from students of state government and even from lawyers themselves.

Probably, however, no field of law receives more attention in the law reviews than that which deals with the United States constitution. Intensive studies of small sections of that law furnish a basis, not only for analysis of particular problems, but also for measuring the ultimate desirability of the power of judicial review of federal legislation. Conclusions as to federal judicial review often determine conclusions as to the desirability of judicial review of state legislation by state courts. This tendency is accompanied by a second tendency, that of determining, on the basis of how the courts have used some constitutional restraints, the value of other restraints of a different type. The purpose of this study is to illuminate the actual working of judicial review of state legislation in a part of a relatively neglected field where analogies from more conspicuous fields are of little value.

Altogether, the work of the highest courts in our states on constitutional questions is too greatly neglected; yet with

forty-eight of these courts in operation there is, of necessity, a tremendous mass of decisions which the lawyer and the student of working government must be able to understand, evaluate, and interpret.

Attention is deflected from state decisions because in state interpretation of the federal constitution, or of state constitutional provisions analogous to those in our federal constitution, the Supreme Court of the United States acts as an impressive leader, overshadowing any independent efforts of the less important state courts. These analogous provisions of the state constitutions are those which have attracted the greatest attention. We must not overlook the fact, however, that state constitutions contain a considerable number of provisions which find no federal counterparts, nor even good federal analogies. We should also remember that some of these provisions occur in similar form in the constitutions of most of the states of the union and have resulted in a very considerable amount of litigation. These sections of state constitutions, therefore, deserve some share in the increased interest in our constitutional problems.

A conspicuous example of this type of provision is the bill-styling requirement that every law shall have but one object and that this object shall be expressed in the title. Forty states so stipulate, the non-conformists being primarily in New England.¹ Some of these constitutions do not extend the require-

¹ The following states have such a provision: Alabama, Art. IV, sec. 45; Arizona, Art. IV, sec. 13; California, Art. IV, sec. 24; Colorado, Art. V, sec. 21; Delaware, Art. II, sec. 16; Florida, Art. III, sec. 16; Georgia, Art. III, sec. 7, par. 8; Idaho, Art. III, sec. 16; Illinois, Art. IV, sec. 13; Indiana, Art. IV, sec. 19; Iowa, Art. III, sec. 29; Kansas, Art. II, sec. 16; Kentucky, sec. 51; Louisiana, Art. III, sec. 16; Maryland, Art. III, sec. 29; Michigan, Art. V, sec. 21; Minnesota, Art. IV, sec. 27; Mississippi, Art. IV, sec. 71; Missouri, Art. IV, sec. 28; Montana, Art. V, sec. 23; Nebraska, Art. III, sec. 14; Nevada, Art. IV, sec. 17; New Jersey, Art. IV, sec. 7, par. 4; New Mexico, Art. IV, sec. 16; New York, Art. III, sec. 16; North Dakota, Art. II, sec. 61; Ohio, Art. II, sec. 16; Oklahoma, Art. V, sec. 57; Oregon, Art. IV, sec. 20;

ment to all laws, excepting from its operation such things as appropriation bills, revenue bills, or bills for revision or codification of statutes.² In New York and Wisconsin the operation of the title limitation is confined more closely, applying to private and local laws only.³ Sometimes the penalty which the courts may impose for violation of it is limited to striking down those matters which are not contained in the title.⁴ Instead of requiring a single object, some limit the scope of the bill to a single object and matters properly connected therewith.⁵ The Mississippi provision is unique.⁶ With these relatively minor

Pennsylvania, Art. III, sec. 3; South Carolina, Art. III, sec. 21; South Dakota, Art. III, sec. 21; Tennessee, Art. II, sec. 17; Texas, Art. III, sec. 35; Utah, Art. VI, sec. 23; Virginia, Art. IV, sec. 52; Washington, Art. II, sec. 19; West Virginia, Art. VI, sec. 30; Wisconsin, Art. IV, sec. 18; Wyoming, Art. III, sec. 24.

See COOLEY, *CONSTITUTIONAL LIMITATIONS* (8th Ed. Boston 1927) Vol. I, pp. 292-293 footnote, where a number of these constitutional requirements are quoted and compared.

²The Alabama constitution provides, for example: "Each law shall contain but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes." (Art. IV, sec. 45.) See the constitutional provisions in footnote 1 for the following states also: Colorado, Delaware, Missouri, Montana, New Mexico, Oklahoma, Texas, Utah, Wyoming.

³Both states have the same requirement: "No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title." (New York, Art. III, sec. 16; Wisconsin, Art. IV, sec. 18).

⁴For example, the constitution of Illinois provides: "No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed." (Art. IV, sec. 13). See the constitutional provisions in footnote 1 for the following states also: Arizona, California, Colorado, Indiana, Iowa, Montana, New Mexico, Oklahoma, Oregon, Texas, West Virginia, Wyoming.

⁵Nevada, for example, provides: "Each law enacted by the legislature shall embrace but one subject, and matters properly connected therewith, which subject shall be briefly expressed in the title." (Art. IV, sec. 17). See the constitutional provisions in footnote 1 for the following states also: Arizona, Indiana, Iowa, Oregon.

⁶"Every bill introduced into the legislature shall have a title, and the title ought to indicate clearly the subject-matter or matters of the proposed legisla-

variations, however, all of the forty state limitations contain the same fundamental requirements, (1) that there shall be a single object in every law and (2) that it shall be expressed in the title.

What has been the actual effect of these constitutional provisions? The long columns of cases in Shepard's Citations, for state after state, show that these title clauses have been particularly marked for judicial consideration. The digests tell the same story. We can find general answers to our question, but they have been based upon studies of leading cases only and are therefore limited in value. Such answers are a help in the realm of comparative constitutional law, but still so general that they do not give us a full and true picture of the actual operation of this provision in any one state. A study of leading cases is, of course, valuable both from the standpoint of predicting future decisions and from that of gauging the ultimate desirability of this limitation. It may also indicate whether some states are out of line. Such a study, however, often leaves a great deal unsaid. Its conclusions are much more valuable when tested against exhaustive research in one state. One such study gives those interested a definite standard for comparison with their own states; and in this connection it affords statistical data as a part of a complete picture of the case law, in making which the many otherwise unimportant cases assume a real cumulative significance.

Professor Freund in his *Standards of American Legislation* reached some very interesting general conclusions on constitutional provisions as to title. We shall compare these conclusions later with our more detailed findings in a restricted

tion. Each committee to which a bill may be referred shall express, in writing, its judgment of the sufficiency of the title of the bill, and this, too, whether the recommendation be that the bill do pass or do not pass." Mississippi, sec. 71 in Art. IV.

sphere.⁷ Professor Freund says, "The requirements regarding title and subject-matter undoubtedly inculcate a sound legislative practice . . .

"Conceding that these requirements of style 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 nullification 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."

"The requirements were introduced to protect legislatures from fraud or surprise and to stop the practice of logrolling. The experience of those states which have not adopted the provisions would probably show that they are less necessary now than seventy-five years ago, that better practices have been compelled by public opinion, and that the benefits of the improvement may be enjoyed without the attendant risks and evils."⁸

New Jersey has been selected as the state for detailed consideration in this study. Article IV, section 7, paragraph 4 of the New Jersey constitution 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."

Since this is a part of the constitution of 1844, it has had a

⁷ FREUND, *STANDARDS OF AMERICAN LEGISLATION* (Chicago 1917).

⁸ FREUND, *op. cit. supra*, pp. 155, 156.

comparatively long history. It did not appear in the New Jersey constitution of 1776, which had few limitations of any sort, but rather it has been traced by the courts to the instructions given to Edward Lord Cornbury in 1702, which 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."⁹

This 'title clause' became a part of the constitution of 1844, apparently without debate. The constitutional convention itself kept no record of debates, but simply of motions and votes. In the Newark Daily Advertiser, which kept a reporter regularly at the convention and which reported the debates with surprising fullness, the only reference to the adoption of this provision is the words, "section 26 agreed to".¹⁰

The inconspicuousness of its beginning was the characteristic of its early history. Its first recognition came after ten years, with a short reference in a case decided in 1854. In 1867, after twenty-three years, the third judicial reference to the title clause resulted in an expression of doubt as to whether it was more than directory and the assertion that whether it was, still remained an open question.¹¹ It was not until 1877 that a law was declared unconstitutional for violating it.¹² After operating for thirty-three years practically unrestrained, the legislature was finally called to account. This period was marked by slight

⁹ LEAMING & SPICER, GRANTS AND CONCESSIONS OF NEW JERSEY (Philadelphia 1758) p. 619; *Paul v. Gloucester*, 50 N.J.L. 585, 15 Atl. 272 (E.&A. 1888).

¹⁰ Newark Daily Advertiser, June 13, 1844.

¹¹ *State, Curry v. Elvins*, 32 N.J.L. 362 (Sup. Ct. 1867).

¹² *Rader v. Township of Union*, 39 N.J.L. 509 (Sup. Ct. 1877).

consideration of the constitutional limitation as to title in the few causes which referred to it at all. Necessarily, held back by lack of interest and uncertainty as to the effect and meaning of the restriction, the courts were quite liberal. Thereafter the cases increased, reaching a numerical high point at the turn of the century and again in the years from 1910 to 1915. More of the instances of invalidity occurred before 1900 than after, but the court was especially active in declaring laws invalid in the years around 1910 and to a still greater extent around 1920. Recently there has been a falling off in both cases and instances of invalidity, especially in the latter.¹⁸ Considering only laws

¹⁸ Cases dealing with title sufficiently to present a legal question. The first column indicates the year in which the cases were decided; the second column, the number of cases decided in that year; and the third column, the number of the cases in column two which declared a law unconstitutional for the first time because of its title.

<i>Col. I</i>	<i>Col. II</i>	<i>Col. III</i>	<i>Col. I</i>	<i>Col. II</i>	<i>Col. III</i>	<i>Col. I</i>	<i>Col. II</i>	<i>Col. III</i>
1854	1		1894	4	2	1914	9	
1864	1		1895	5	2	1915	10	
1867	1		1896	3	1	1916	4	1
1869	1		1897	5	1	1917	5	1
1870	1		1898	7	2	1918	8	
1872	1		1899	10	3	1919	5	1
1877	1	1	1900	8	3	1920	6	3
1880	2		1901	7	3	1921	3	1
1881	3		1902	7	1	1922	6	2
1882	6	1	1903	2	1	1923	6	
1883	5	3	1904	2		1924	7	
1884	1		1905	6		1925	5	
1885	5	2	1906	2		1926	4	
1886	2	1	1907	6		1927	2	
1887	5	1	1908	7	1	1928	7	1
1888	4		1909	5	1	1929	1	
1890	5		1910	10	1	1930	3	
1891	3	1	1911	10	3	1931	7	
1892	4	1	1912	8	1	1932	5	
1893	4		1913	8		1933	5	
						1934	1	
						1935	3	
						1936		
						to Nov. 7	1	

enacted after 1879, when the Court of Errors and Appeals affirmed the first decision declaring a law invalid as violating the title provision, the average length of time which has elapsed between the passage of acts with defective titles and the declaration of their invalidity has been just a little short of five years; and if we include acts passed before 1879, the average is still higher.¹⁴

During the period since 1844 there have been about two hundred and ninety cases in which the title question was treated sufficiently to furnish us with intelligible information. Usually the central point of the cases was something other than

¹⁴ This footnote indicates the lapse of time between the passage of a law and its first being declared unconstitutional. The first column contains the date of the law; the second the date of the case; and the third column the lapse of time in years. In 1879 the first case declaring an act unconstitutional, because of its title, was affirmed by the Court of Errors and Appeals.

<i>Col. I</i>	<i>Col. II</i>	<i>Col. III</i>	<i>Col. I</i>	<i>Col. II</i>	<i>Col. III</i>
1857	1885	28	1894	1901	7
1869	1897	28	1895	1901	6
1871	1886	15	1897	1903	6
1871	1877	6	1897	1898	1
1871	1887	16	1898	1920	22
1874	1895	21	1899	1900	1
1875	1885	10	1901	1902	1
1878	1882	4	1902	1912	10
1879	1900	21	1903	1908	5
1881	1883	2	1904	1910	6
1882	1883	1	1904	1911	7
1882	1883	1	1906	1911	5
1883	1896	13	1906	1909	3
1885	1899	14	1910	1911	1
1887	1891	4	1913	1916	3
1889	1900	11	1913	1921	8
1890	1892	2	1915	1917	2
1890	1898	8	1918	1919	1
1891	1899	8	1919	1920	1
1891	1894	3	1920	1920	0
1892	1901	9	1920	1922	2
1892	1895	3	1921	1922	1
1893	1899	6	1922	1928	6
1893	1894	1			

title. Still in forty-seven of these, different laws or parts of laws were found to be unconstitutional.¹⁵ Such a mortality rate raises a pretty strong presumption against any constitutional provi-

¹⁵ P. L. 1857, p. 40—*State, ex rel. Daubman v. Smith*, 47 N.J.L. 200 (Sup. Ct. 1885).

P. L. 1869, p. 409—*Mack v. State*, 60 N.J.L. 28, 36 Atl. 1088 (Sup. Ct. 1897).

P. L. 1871, p. 116—*Lane v. State*, 49 N.J.L. 673, 10 Atl. 360 (E.&A. 1887).

P. L. 1871, p. 671—*Camden & Atlantic Railroad Co. v. May's Landing Railroad Co.*, 48 N.J.L. 530, 7 Atl. 523 (E.&A. 1886).

P. L. 1871, p. 1034—*Rader v. Union Tp.*, 39 N.J.L. 509 (Sup. Ct. 1877) *aff'd*, 41 N.J.L. 617 (E.&A. 1879).

P. L. 1874, p. 199—*Ryno v. State*, 58 N.J.L. 238, 33 Atl. 219 (Sup. Ct. 1895).

P. L. 1875, p. 633—*Jersey City v. Elmendorf*, 47 N.J.L. 283 (E.&A. 1885).

P. L. 1878, p. 145—*Courtieri v. New Brunswick*, 44 N.J.L. 58 (Sup. Ct. 1882).

P. L. 1879, p. 115—*Hayes v. Storms*, 64 N.J.L. 514, 45 Atl. 809 (Sup. Ct. 1900).

P. L. 1881, p. 270—*Grover v. Trustees*, 45 N.J.L. 399 (Sup. Ct. 1883).

P. L. 1882, p. 97—*Shivers v. Newton*, 45 N.J.L. 469 (Sup. Ct. 1883).

P. L. 1882, p. 137—*Evernham v. Hulit*, 45 N.J.L. 53 (Sup. Ct. 1883).

P. L. 1883, p. 57—*The Golden Star Fraternity v. Martin*, 59 N.J.L. 207, 35 Atl. 908 (E.&A. 1896).

P. L. 1885, p. 54—*Walling v. Deckertown*, 64 N.J.L. 203, 44 Atl. 864 (Sup. Ct. 1899).

P. L. 1887, p. 226—*N. Y. etc. R. R. Co. v. Montclair*, 47 N.J.Eq. 591, 21 Atl. 493 (E.&A. 1891).

P. L. 1889, p. 230—*Grey v. Newark Plank Road Co.*, 65 N.J.L. 51, 46 Atl. 606 (Sup. Ct. 1900). *Reversed* on other grounds, 65 N.J.L. 603, 48 Atl. 557 (E.&A. 1900).

P. L. 1890, p. 33—*Falkner v. Dorland*, 54 N.J.L. 409, 24 Atl. 403 (Sup. Ct. 1892).

P. L. 1890, p. 149—*Plainfield v. Hall*, 61 N.J.L. 437, 39 Atl. 711 (Sup. Ct. 1898); followed in *Minochian v. Paterson*, 105 N.J.L. 73, 143 Atl. 825 (Sup. Ct. 1928); *aff'd*, 106 N.J.L. 436, 149 Atl. 61 (E.&A. 1930).

P. L. 1891, p. 417—*Sneath v. Mager*, 64 N.J.L. 94, 44 Atl. 983 (Sup. Ct. 1899).

P. L. 1891, p. 480—*Beverly v. Wain*, 57 N.J.L. 143, 30 Atl. 545 (E.&A. 1894).

P. L. 1892, p. 29—*Jones v. Morristown*, 66 N.J.L. 488, 49 Atl. 440 (Sup. Ct. 1901).

P. L. 1892, p. 206—*Grossman v. Hancock*, 58 N.J.L. 139, 32 Atl. 689 (Sup. Ct. 1895).

P. L. 1893, p. 157—*Morris and Cummings Dredg. Co. v. Jersey City*, 64 N.J.L. 142, 45 Atl. 917 (Sup. Ct. 1899).

P. L. 1893, p. 367—*Van Riper v. Heppenheimer*, 17 N.J.L.J. 49 (Orph. Ct. 1894). *Grossman v. Hancock*, 58 N.J.L. 139, 32 Atl. 689 (Sup. Ct. 1895).

- P. L. 1894, p. 429—*State v. Steelman*, 66 N.J.L. 518, 49 Atl. 978 (Sup. Ct. 1901).
- P. L. 1895, p. 671—*Burnet v. Dean*, 63 N.J.Eq. 253, 49 Atl. 503 (E.&A. 1901).
- P. L. 1896, p. 177—*In re Elmer*, 60 N.J.Eq. 343, 46 Atl. 206 (Prerog. Ct. 1900). Title questionable.
- P. L. 1897, p. 109—*State, Hawkins, Informer v. Extraction Co.*, 69 N.J.L. 126, 54 Atl. 523 (Sup. Ct. 1903).
- P. L. 1897, p. 142—*State, Hardy v. Orange*, 61 N.J.L. 620, 42 Atl. 581 (E.&A. 1899).
- P. L. 1898, p. 556—*Van Vlaanderen Machine Co. v. Fox*, 95 N.J.L. 40, 111 Atl. 687 (Sup. Ct. 1920).
- P. L. 1899, p. 534—*Cooper v. Springer*, 65 N.J.L. 161, 46 Atl. 589 (Sup. Ct. 1900); *reversed* and title held constitutional in part by a restricted construction, 65 N.J.L. 594, 48 Atl. 605 (E.&A. 1901).
- P. L. 1901, p. 68—*Jones Glass Co. v. Ross*, 69 N.J.L. 157, 53 Atl. 675 (Sup. Ct. 1902).
- P. L. 1902, p. 65—*State, Paterson v. Close*, 82 N.J.L. 160, 83 Atl. 233 (Sup. Ct. 1912). *Reversed* because invalidity was cured by amendment of the title, 84 N.J.L. 319, 86 Atl. 430 (E.&A. 1913).
- P. L. 1903, p. 736—*Griffith v. Trenton*, 76 N.J.L. 23, 69 Atl. 29 (Sup. Ct. 1908).
- P. L. 1904, p. 24—*Cox v. American Dredging Co.*, 80 N.J.L. 645, 77 Atl. 1025 (Sup. Ct. 1910).
- P. L. 1904, p. 53—*Wilson v. Smith*, 81 N.J.L. 132, 79 Atl. 272 (Sup. Ct. 1911).
- P. L. 1906, p. 432—*Dixon v. Russell*, 79 N.J.L. 490, 76 Atl. 982 (E.&A. 1910).
- P. L. 1906, p. 553—*Hutches v. Hohokus*, 82 N.J.L. 140, 81 Atl. 658 (Sup. Ct. 1911).
- P. L. 1913, p. 174—*Stackhouse v. Camden*, 96 N.J.L. 533, 115 Atl. 537 (E.&A. 1921).
- P. L. 1910, p. 466—*Bolles v. Newark*, 81 N.J.L. 184, 80 Atl. 97 (Sup. Ct. 1911).
- P. L. 1913, p. 448—*Atlantic City & S. R.R. Co. v. State Board of Assessors*, 88 N.J.L. 219, 96 Atl. 568 (E.&A. 1916).
- P. L. 1915, p. 61—*Reese v. Stires*, 87 N.J.Eq. 32, 103 Atl. 679 (Ch. 1918).
- P. L. 1918, p. 739—*Hedden v. Hand*, 90 N.J.Eq. 583, 107 Atl. 285 (E.&A. 1919).
- P. L. 1919, p. 290—*Davison v. Paterson*, 94 N.J.L. 338, 110 Atl. 827 (Sup. Ct. 1920).
- P. L. 1920, p. 333—*Murray v. County of Hudson*, 97 N.J.L. 74, 117 Atl. 254 (Sup. Ct. 1922).
- P. L. 1920, p. 605—*Zweig v. Tiffany*, 95 N.J.L. 45, 111 Atl. 263 (Sup. Ct. 1920).
- P. L. 1921, p. 43—*Robbins v. Lanning*, 93 N.J.Eq. 262, 116 Atl. 773 (Ch. 1922).
- P. L. 1922, p. 299—*Fautz v. Juvenile Court*, 6 N.J.Misc. 586, 142 Atl. 350

sion, especially one dealing, not with fundamental rights, but only with bill style. We must find strong evidence of beneficial results to rebut this presumption.

As time went on, new interpretations of Article IV, section 7, paragraph 4, and special distinctions were brought in to decide new cases. The weight of time alone, with the almost certainly varying points of view of different members of the court, was apt to result in inconsistency. The continued argument of cases before the court, presenting new situations, was almost certain to build up an increasingly complex segment in a field of law. We encounter both of these unfortunate results here.

Turning now to the decisions themselves, we find the courts pointing out that the purpose of this constitutional provision is that contained in its introductory phrases, that is, "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." Although this statement of purpose is unique, there is no reason to believe that the purposes found for the provision differ from those found in other states. The purposes are, more specifically, to prevent logrolling and to give information or notice as to the content of the act.¹⁶ Sometimes this notice is to be given to legislators, sometimes to the general public; and sometimes to only a part of it. The variations as to notice are due partially to an inconsistency in the cases stating

(Sup. Ct. 1928).

¹⁶ *Rader v. Union*, 39 N.J.L. 509 (Sup. Ct. 1887); *State, ex rel. Walter v. Union*, 33 N.J.L. 350 (Sup. Ct. 1869); *Stockton v. Railroad Co.*, 50 N.J.Eq. 52, 24 Atl. 964, 17 L.R.A. 97 (Ch. 1892); *Hulme v. Board of Commissioners of Trenton*, 95 N.J.L. 30, 111 Atl. 541 (Sup. Ct. 1920); *Grover v. Trustees*, 45 N.J.L. 399 (Sup. Ct. 1883); *Bumsted v. Govern*, 47 N.J.L. 368, 1 Atl. 835 (Sup. Ct. 1885); *Curtis & Hill Gravel & Sand Co. v. State Highway Commission*, 91 N.J.Eq. 421, 111 Atl. 16 (Ch. 1920); *Falkner v. Dorland*, 54 N.J.L. 409, 24 Atl. 403 (Sup. Ct. 1892); *Freilitsch v. Board of Education*, 7 N.J.Misc. 7, 143 Atl. 822 (Sup. Ct. 1928); *Ryno v. State*, 58 N.J.L. 238, 33 Atl. 219 (Sup. Ct. 1895); *Schmalz v. Woolley*, 57 N.J.Eq. 303, 41 Atl. 939 (E.&A. 1898); *Stackhouse v. Camden*, 96 N.J.L. 533, 115 Atl. 537 (E.&A. 1921); *Walling v.*

what the purpose is and partially to the rule in some cases that the provision need only give notice to those persons to whom it is addressed, or to those who are conversant with the existing state of the law.¹⁷ The rules which the courts set down to guide themselves vary in their strictness, but indicate that the courts think they are being liberal. This so-called liberality they find necessary because of a long legislative practice of employing very general titles, a practice which existed unhampered in those early years before the court went about enforcing the provision. In 1870 the fifth case on title said, "The legislative practice sought to be broken in upon has been too long established, and too often sanctioned by every department of the government, to be now condemned."¹⁸ The opportunity for a narrowly restrictive construction was gone. The cases upheld liberality on the ground of general policy as well as that of continued legislative practice.¹⁹

Deckertown, 64 N.J.L. 203, 44 Atl. 864 (Sup. Ct. 1899).

¹⁷ See cases in footnote 16. *Stagway v. Riker*, 84 N.J.L. 201, 86 Atl. 440 (Sup. Ct. 1913); *Onderdonk v. Plainfield*, 42 N.J.L. 480 (Sup. Ct. 1880); *Atlantic City & S. R. Co. v. State Board*, 88 N.J.L. 219, 96 Atl. 568 (E.&A. 1916); *Gillard v. Manufacturers Casualty Insurance Co.*, 92 N.J.L. 141, 104 Atl. 707 (Sup. Ct. 1918); *Griffith v. Trenton*, 76 N.J.L. 23, 69 Atl. 29 (Sup. Ct. 1908); *Van Riper v. Heppenheimer*, 17 N.J.L.J. 49 (Orph. Ct. 1894); *Sawter v. Shoenthal*, 83 N.J.L. 499, 83 Atl. 1004 (E.&A. 1912); *Maloney v. Maloney*, 12 N.J.Misc. 397, 174 Atl. 28 (Ch. 1934).

¹⁸ *State, ex rel. Doyle v. Newark*, 34 N.J.L. 236, at 239 (Sup. Ct. 1870). "Now, while a more specific statement of the object of the act might be desirable, and more closely in accord with the constitutional provision, yet the practice in this state of employing general titles in public laws regulating municipal government has come to be so established that we ought not, on this ground, to hold the act invalid." *Randolph v. Wood*, 49 N.J.L. 85 at p. 91, 7 Atl. 286 (Sup. Ct. 1886).

State, ex rel. Walter v. Union, 33 N.J.L. 350 (Sup. Ct. 1869); *Newark v. Orange*, 55 N.J.L. 514, 26 Atl. 799 (Sup. Ct. 1893); *Quigley v. Lehigh Valley R. Co.*, 80 N.J.L. 486, 79 Atl. 458 (Sup. Ct. 1910).

¹⁹ *State, Bergen County Savings Bank v. Township of Union*, 44 N.J.L. 599 (Sup. Ct. 1882); *In re Commissioners of Adjustment of Jersey City*, 31 N.J.L.J. 302; *Montclair v. Ramsdell*, 107 U.S. 147, 2 Sup. Ct. 391, 27 L.Ed. 431 (1882); *Kirkpatrick v. New Brunswick*, 40 N.J.Eq. 46 (Ch. 1885); *Newark v. Orange*, 55 N.J.L. 514, 26 Atl. 799 (Sup. Ct. 1893).

Judicial interpretation has furnished us with elaborations upon the text of the constitution. There is no difference between the subject and the object of an act.²⁰ The title must not only embrace the object, it must express it.²¹ Only the main or leading object must be expressed; none of the details need be, since the title is a label and not an index. The details may be diverse in character as long as they find a unity in the single object, the main object of the act, which must be expressed in the title.²²

²⁰ *State Board of Health v. Phillipsburg*, 83 N.J.Eq. 402, 91 Atl. 901 (Ch. 1914), *aff'd*, 85 N.J.Eq. 161, 96 Atl. 62 (E.&A. 1915); *Crucible Steel Co. v. Polack*, 92 N.J.L. 221, 104 Atl. 324 (E.&A. 1918); *Sawter v. Shoenenthal*, 83 N.J.L. 499, 83 Atl. 1004 (E.&A. 1912).

²¹ *Griffith v. Trenton*, 76 N.J.L. 23, 69 Atl. 29 (Sup. Ct. 1908); *Jersey City v. Speer*, 78 N.J.L. 34, 72 Atl. 448 (Sup. Ct. 1909); *Rader v. Union*, 39 N.J.L. 509 (Sup. Ct. 1877); *State v. Twining*, 73 N.J.L. 683, 64 Atl. 1073, 1135 (E.&A. 1906); *Curtis & Hill Gravel & Sand Co. v. State Highway Commission*, 91 N.J.Eq. 421, 111 Atl. 16 (Ch. 1920); *Stackhouse v. Camden*, 96 N.J.L. 533, 115 Atl. 537 (E.&A. 1921).

²² *Rader v. Township of Union*, 39 N.J.L. 509 (Sup. Ct. 1877); *Moore v. Burdett*, 62 N.J.L. 163, 40 Atl. 631 (Sup. Ct. 1898); *Bloomfield v. Board of Chosen Freeholders of Middlesex County*, 74 N.J.L. 261, 65 Atl. 890 (Sup. Ct. 1907); *Hayes v. Hoboken*, 93 N.J.L. 432, 108 Atl. 868 (E.&A. 1919); *State, Smith v. Willets*, 81 N.J.L. 370, 79 Atl. 1038 (Sup. Ct. 1911); *Van Riper v. North Plainfield Tp.*, 43 N.J.L. 349 (Sup. Ct. 1881); *Stagway v. Riker*, 84 N.J.L. 201, 86 Atl. 440 (Sup. Ct. 1913); *Quigley v. Lehigh Valley R. Co.*, 80 N.J.L. 486, 79 Atl. 458 (Sup. Ct. 1910); *Gottuso v. Baker*, 80 N.J.L. 520, 77 Atl. 1038 (Sup. Ct. 1910); *In re Commissioners of Adjustment of Jersey City*, 31 N.J.L.J. 302; *Manufacturers Land and Improvement Co. v. Camden*, 81 N.J.L. 413, 79 Atl. 286 (E.&A. 1910); *Murphy v. Brown & Co.*, 91 N.J.L. 412, 103 Atl. 28 (Sup. Ct. 1918); *Boniewsky v. Polish Home of Lodi*, 103 N.J.L. 323, 136 Atl. 741 (E.&A. 1926); *Wallack v. Stein*, 103 N.J.L. 470, 136 Atl. 209 (E.&A. 1926); *City of Burlington v. Pennsylvania R. Co.*, 104 N.J.L. 649, 142 Atl. 23 (E.&A. 1928); *Massie v. Court of Common Pleas of Monmouth*, 8 N.J.Misc. 600, 151 Atl. 205 (Sup. Ct. 1930); *Montclair v. Ramsdell*, 107 U.S. 147, 2 Sup. Ct. 391, 27 L. Ed. 431 (1882); *State Board of Health v. Phillipsburg*, 83 N.J.Eq. 402, 91 Atl. 901 (Ch. 1914), *aff'd*, 85 N.J.Eq. 161, 96 Atl. 62 (E.&A. 1915); *Crucible Steel Co. v. Polack*, 92 N.J.L. 221, 104 Atl. 324 (E.&A. 1918); *Sawter v. Shoenenthal*, 83 N.J.L. 499, 83 Atl. 1004 (E.&A. 1912); *Rahway Sav. Inst. v. Mayor etc. of City of Rahway*, 53 N.J.L. 48, 20 Atl. 756 (Sup. Ct. 1890); *State, ex rel. Bumsted v. Govern*, 47 N.J.L. 368, 1 Atl. 835 (Sup. Ct. 1885); *Fishblatt v. Atlantic City*, 78 N.J.L. 134, 73 Atl. 125 (Sup. Ct. 1909); *Easton & Amboy Railroad Co. v. Central Railroad Co. of New Jersey*, 52 N.J.L. 267, 19

Although the requirement that there must be some mention of the subject-matter, together with a succinct indication of the legislation respecting it, goes further than the rules just mentioned, still it was set forth in a frequently cited case and never disapproved.²⁸

These rules do not explain the holdings in the cases. They are convenient for the courts after they have reached their decisions. They may be applied strictly or with liberality to support the result, or a stricter or more liberal rule may be used as the decision requires. Knowledge of them does not help much in solving future problems.

For purposes of a real explanation and trustworthy prediction, it is necessary to break the case law down into a number of categories. Some of them are recognized by the courts, but the classification is partly that of the writer.

Any title can be separated into two distinct parts: (a) the subject-matter to be dealt with, (b) the treatment of that subject-matter. In order to avoid the terminology of the constitution we might designate the first as the noun part of the title, and the second as the verb part, understanding by this latter designation not simply the verb itself but all of (b) above.

1. With this distinction in mind, the first category of cases is that in which the title presented has neither a noun nor a verb part of restrictive character. "An act concerning cities" is an example. The noun is generic in character and the verb part leaves us completely in the dark as to what the statute does about that broad noun part. After all the courts have said

Atl. 722 (Sup. Ct. 1890); *State, Patterson v. Close*, 82 N.J.L. 160, 83 Atl. 233 (Sup. Ct. 1912); *State, ex rel. Walter v. Town of Union*, 33 N.J.L. 350 (Sup. Ct. 1869); *Kirkpatrick v. New Brunswick*, 40 N.J.Eq. 46 (Ch. 1885); *Clark Thread Co. v. Freeholders*, 54 N.J.L. 265, 23 Atl. 820 (Sup. Ct. 1892); *State, Johnson v. Asbury Park*, 60 N.J.L. 427, 39 Atl. 693 (E.&A. 1897).

²⁸ *Mortland v. Christian*, 52 N.J.L. 521, 20 Atl. 673 (E.&A. 1891); *Moore v. Burdett*, 62 N.J.L. 163, 40 Atl. 631 (Sup. Ct. 1898); *Calvo v. Westcott*, 55 N.J.L. 78, 25 Atl. 269 (Sup. Ct. 1892).

about titles as notices, it may surprise us to find that not only are such titles as this approved by the court, but that, in fact, they are the most successful and safest type. Barring the narrow line of cases on deceptive titles, which we shall refer to later, such titles are always upheld.²⁴ "A Further Supplement to an act entitled 'An act concerning taxes'" changed the time of meeting of the commissioners of tax appeal.²⁵ "A Supplement to

²⁴ "An Act concerning cities", P. L. 1895, p. 646, State, *Anderson v. Camden*, 58 N.J.L. 515, 33 Atl. 846 (Sup. Ct. 1896); "A Supplement to an act entitled 'An Act concerning municipalities'", P. L. 1920, p. 182, *Bridgeton v. Zellers*, 100 N.J.L. 33, 124 Atl. 520 (Sup. Ct. 1924); "An Act concerning cities of the third class", P. L. 1883, p. 31, *Randolph v. Wood*, 49 N.J.L. 85, 7 Atl. 286 (Sup. Ct. 1886); *off'd*, 50 N.J.L. 175, 15 Atl. 271 (E.&A. 1887); "A Further Supplement to an act entitled 'An act concerning townships and township officers'", P. L. 1886, p. 133, State, *French v. East Orange*, 49 N.J.L. 401, 8 Atl. 107 (Sup. Ct. 1887); "A Further Supplement to an act entitled 'A general act relating to boroughs (Revision of 1897)'" , P. L. 1915, p. 31, *Donnelly v. Longport*, 88 N.J.L. 68, 95 Atl. 740 (Sup. Ct. 1915); "An Act relating to local boards of health", P. L. 1881, p. 160, *Hutchinson v. State, ex rel. Board of Health of City of Trenton*, 39 N.J.Eq. 569 (E.&A. 1885); "An Act relative to Statutes", Rev. Stat. 1874, p. 832, *State v. Crusius*, 57 N.J.L. 279, 31 Atl. 235 (Sup. Ct. 1894). For the proposition that this title was used to repeal six hundred and forty-six distinct acts. *Moore v. Burdett*, 62 N.J.L. 163, 40 Atl. 631 (Sup. Ct. 1898). "An Act to amend an act entitled 'An act concerning railroads (Revision of 1903)'" (P. L. 1915, p. 98), apparently authorized municipalities to enter into contracts with railroads for elimination of grade crossings. *Whittingham v. Milburn Township*, 90 N.J.L. 344, 100 Atl. 854 (E.&A. 1916). Another amendment (P. L. 1912, p. 265) provided for a limitation of actions against railroads for injuries caused by fire and for a statutory presumption of negligence arising from the communication of fire. *Grabert v. Central R.R. Co.*, 91 N.J.L. 604, 103 Atl. 212 (E.&A. 1917). "A Supplement to an act entitled 'An act concerning corporations (Revision 1896)'" , (P. L. 1919, p. 455) provided that judgments recovered against an insolvent corporation within four months of filing a bill upon which insolvency is entered are nullified. *Hoffman v. Eagle Cement Corporation*, 121 Atl. 723 (Ch. 1923). "A Supplement to an act entitled 'An act concerning evidence'" , (P. L. 1896, p. 344) authorized the court in personal injury cases to have a physical examination made of the plaintiff by a physician. *McGovern v. Hope*, 63 N.J.L. 76, 42 Atl. 830 (Sup. Ct. 1899).

²⁵ P. L. 1875, p. 384. *Kirkpatrick v. New Brunswick*, 40 N.J.Eq. 46 (Ch. 1885), *off'd*, *Tax Payers' Protective Ass'n. v. Kirkpatrick*, 41 N.J.Eq. 347, 7 Atl. 625 (E.&A. 1886).

an act entitled 'An act concerning public utilities, to create a board of Public Utility Commissioners and to prescribe its powers and duties' " required transportation companies to permit uniformed public officers and certain detectives to ride free of charge while engaged in the performance of their duties.²⁶ This same title served later to permit the transportation companies to deduct fares for such officers from their city taxes.²⁷

Still another example which shows how little this sort of title informs one concerning the body of an act is found in "An act to amend an act entitled 'An act concerning counties.' "²⁸ Under the authority of this act a city levied a property assessment for public improvements undertaken by the county in which it was located. The assessment was for the portion of the cost assumed by the city. The argument used by the Court of Errors and Appeals in upholding this portion of the act is particularly instructive as to the judicial attitude concerning these broad titles. "The constitutional requirement is complied with when the title fairly indicates the general object of the statute, although it does not declare the means or methods of attaining that object . . . And it is this principle which has led our courts to hold in many cases that statutes having titles similar to that under consideration (for instance, 'An act concerning cities'; 'An act concerning boroughs,' and the like) do not violate the inhibition of article 4, section 7, paragraph 4 of the constitution. The title 'An act concerning counties,' indicates a purpose to clothe the boards of chosen freeholders, who have charge of the affairs of our counties, with governmental powers, to vest in them, among other such powers, the supervision of and control over the public roads as occasion may require, the providing for the expense of such repairs and improvements, and, as cognate to this latter power, authority to

²⁶ P. L. 1912, p. 235; *State v. Sutton*, 87 N.J.L. 192, 94 Atl. 788 (E.&A. 1914).

²⁷ P. L. 1929, p. 740; *Newark v. Public Service Coordinated Transport*, 9 N.J.Misc. 722 (Sup. Ct. 1931), *aff'd*, 109 N.J.L. 270, 160 Atl. 654 (E.&A. 1932).

²⁸ P. L. 1920, p. 71.

contract with municipalities lying within the borders of our counties for the distribution of the cost of such improvements when made within the territorial limits of such municipalities. These objects being embraced in the title, it seems to us clear that, where such a contract is made, a provision in the statute looking to the ultimate payment of the cost thereof by the owners of properties specially benefited by such improvement is fairly indicated thereby, including the providing of the machinery for the collection of such cost by assessment upon those properties to the extent of the special benefits actually received."²⁹

2. In the second category the verb parts remain broad and uninformative. The noun parts, however, are narrower and thus restrictive in character. The reader of the title, consequently, is not left so much room for speculation as to the contents of the act as in category 1. The legislature, not being allowed as great leeway here as to what may be included, has violated the constitution fairly often.³⁰ In "A Supplement to

²⁹ *Ringer v. Paterson*, 98 N.J.L. 455, at 457, 120 Atl. 24 (E & A. 1922).

³⁰ Cases of this type have led to a very large amount of litigation. "An act concerning district courts," (P. L. 1898, p. 556; P. L. 1901, p. 68, and others) could not include regulations altering the rights of landlord and tenant, *Van Vlaanderen Machine Co. v. Fox*, 95 N.J.L. 40, 111 Atl. 687 (Sup. Ct. 1920), as by authorizing removal of a tenant for non-payment of rent by an easier procedure than that set out in the landlord and tenant act, *Jonas Glass Co. v. Ross*, 69 N.J.L. 157, 53 Atl. 675 (Sup. Ct. 1902), or by extending the requirements of three months notice to quit required in indefinite terms to monthly lettings, *Zweig v. Tiffany*, 95 N.J.L. 45, 111 Atl. 263 (Sup. Ct. 1920); *Dedo v. Kuser*, 103 N.J.L. 223, 136 Atl. 594 (Sup. Ct. 1926), or by giving a right summarily to dispossess for breach of any covenant not formerly giving rise to such right, *Manahan v. City of Englewood*, 108 N.J.L. 249, 157 Atl. 241 (Sup. Ct. 1931).

Suit by a board of health in the name of a city was not germane to government of cities. P. L. 1897, p. 46; *Board of Health v. New York etc. R.R. Co.*, 77 N.J.L. 15, 71 Atl. 259 (Sup. Ct. 1908). "An act to establish an excise department in the cities of the state" could not be extended to both towns and cities. P. L. 1892, p. 29, *State, ex rel. Hann v. Bedell*, 67 N.J.L. 148, 50 Atl. 364 (Sup. Ct. 1901); *Jones v. Morristown*, 66 N.J.L. 488, 49 Atl. 440 (Sup. Ct. 1901). Cities, towns, townships and other municipalities in this state, was

the act entitled 'An act respecting writs of error,' the legislature tried to permit review of mixed questions of law and fact. This was not a writ of error in the technical sense of that technical term, the court decided, since a writ of error is a device

too narrow a noun part to include the State Highway Commission. P. L. 1918, p. 1041, *Curtis & Hill Gravel & Sand Co. v. State Highway Commission*, 91 N.J.Eq. 421, 111 Atl. 16 (Ch. 1920). An act directing the descent of real property could not abolish dower and curtesy because those estates do not vest by descent and because dower and curtesy have always been treated by themselves. P. L. 1915, p. 61, *Reese v. Stires*, 87 N.J.Eq. 32, 103 Atl. 679 (Ch. 1917); *Barry v. Rosenblatt*, 90 N.J.Eq. 1, 105 Atl. 609 (Ch. 1918). An act regulating the terms of office of certain officers could not prescribe the manner in which they were to be elected because this had no relationship to terms of office. P. L. 1904, p. 53, *Wilson v. Smith*, 81 N.J.L. 132, 79 Atl. 272 (Sup. Ct. 1911). The noun part, the Public Service of New Jersey, does not extend to the public service of cities, counties, towns or villages of the state. P. L. 1897, p. 142, *State, Hardy v. Orange*, 61 N.J.L. 620, 42 Atl. 581 (E.&A. 1898); *Kreigh v. Freeholders of Hudson County*, 62 N.J.L. 178, 40 Atl. 625 (Sup. Ct. 1898). An act to provide for the purchase of armory sites and making appropriations therefor is limited by the word "appropriations" which excludes the possibility of issuing bonds. P. L. 1913, p. 502, *State, Doremus v. Freeholders of Passaic*, 86 N.J.L. 108, 90 Atl. 1020 (Sup. Ct. 1914). Adulteration means debasing by adding foreign substances and not producing something unwholesome, as producing milk unwholesome due to living conditions of the cows and their feed. P. L. 1882, p. 97, *Shivers v. Newton*, 45 N.J.L. 469 (Sup. Ct. 1883). "An act to tax intestates' estates, gifts, legacies and collateral inheritance in certain cases," (P. L. 1892, p. 206), can cover a legacy duty but not a transfer tax, *Dixon v. Russell*, 79 N.J.L. 490, 76 Atl. 982 (E.&A. 1910), reversing 78 N.J.L. 296, 73 Atl. 51 (Sup. Ct. 1909), and dealing with the supplement P. L. 1906, p. 432; see also, *Carr v. Edwards*, 84 N.J.L. 667, 87 Atl. 132 (E.&A. 1913), nor does it extend to devises of land. *Grossman v. Hancock*, 58 N.J.L. 139, 32 Atl. 689 (Sup. Ct. 1895); *Van Riper v. Heppenheimer*, 17 N.J.L.J. 49.

See also *Katz v. Elridge*, 96 N.J.L. 382, 118 Atl. 242 (Sup. Ct. 1921), 97 N.J.L. 123, 117 Atl. 841 (E.&A. 1921), 98 N.J.L. 125 (E.&A. 1922); *State, ex rel. Daubman*, 47 N.J.L. 200 (Sup. Ct. 1885); *Walling v. Deckertown*, 64 N.J.L. 203, 44 Atl. 864 (Sup. Ct. 1899); *Bowlby v. Freeholders of Morris County*, 83 N.J.L. 346, 85 Atl. 229 (Sup. Ct. 1912); *Bowlby v. Dover*, dissenting opinion, 68 N.J.L. 416, 53 Atl. 707 (Sup. Ct. 1902); *Allen v. Commissioners of Taxation for Bernards Tp.*, 57 N.J.L. 303, 31 Atl. 219 (Sup. Ct. 1894); *Plainfield v. Hall*, 61 N.J.L. 437, 39 Atl. 711 (Sup. Ct. 1898); *Wright v. Wright*, 70 N.J.Eq. 407, 62 Atl. 487 (Ch. 1905); *Mack v. State*, 60 N.J.L. 28, 36 Atl. 1088 (Sup. Ct. 1897); *Church of Holy Com'n v. Paterson etc. R. Co.*, 63 N.J.L. 470, 43 Atl. 696 (Sup. Ct. 1899); *Hickman v. State*, 62 N.J.L. 499, 41 Atl. 942

for review of questions of law only.⁸¹ Under the title, "An act to provide a uniform procedure for the enforcement of all laws relating to fish, game and birds, and for the recovery of penalties for violation thereof," a section for a double penalty for certain offenses was enacted. This was invalid since the noun part extended only to procedure for recovery of penalties.⁸²

In "An Act respecting proceedings in certain criminal cases of cities of the second class of this state having a population over 50,000," restriction in the noun part was carried to the extreme, and it is not surprising that an attempt to increase the salary of recorders under this title was unconstitutional.⁸³ Here the legislation had to deal with criminal cases, and then only in cities of the second class, with the third limitation that only the section of these cities over 50,000 were to be covered. This was fair draftsmanship from the standpoint of giving information, but extremely poor from the standpoint of affording the legislature constitutional leeway. The title might have been much more instructive if part of this effort for particularity had been turned upon the verb part. It remained completely unindicative, leaving the reader no better informed as to this part of the title than he was in the titles in category 1.

3. Verb parts work as serious limitations in fewer cases,

(Sup. Ct. 1898); *Rader v. Union Tp.*, 39 N.J.L. 509 (Sup. Ct. 1877); *Newark v. Orange*, 55 N.J.L. 514, 26 Atl. 799 (Sup. Ct. 1893); *Hendrickson v. Fries*, 45 N.J.L. 555 (Sup. Ct. 1883); *Scerbo v. Bayonne*, 43 N.J.L.J. 19; *A. Fishman Hat Co. v. Rosen*, 6 N.J.Misc. 667 (Sup. Ct. 1928); *The Golden Star Fraternity v. Martin*, 59 N.J.L. 207, 35 Atl. 908 (E.&A. 1896); *Schnyder v. McGovern*, 2 N.J.Misc. 249 (Sup. Ct. 1924); *Loertscher v. Jersey City*, 84 N.J.L. 537, 87 Atl. 68 (Sup. Ct. 1918).

⁸¹ P. L. 1890, p. 33, *Falkner v. Dorland*, 54 N.J.L. 409, 24 Atl. 403 (Sup. Ct. 1892); see also *Flannigan v. Gugenheim Smelting Co.*, 63 N.J.L. 647, 44 Atl. 762 (E.&A. 1899).

⁸² P. L. 1897, p. 109, *State, Hawkins, Informer v. American Copper Extraction Co.*, 69 N.J.L. 126, 54 Atl. 523 (Sup. Ct. 1903).

⁸³ P. L. 1913, p. 174, *Stackhouse v. Camden*, 96 N.J.L. 533, 115 Atl. 537 (E.&A. 1921).

but still in a considerable number.⁸⁴ They range from such verbs as "concerning" or "relating to" which have no restrictive effect at all, to such verbs as to "incorporate" or "create,"⁸⁵ which exercise a slight limiting effect, and on to the more restrictive verb parts to which we must now turn our attention.

The verb "regulate" does not cover the power to tax a business,⁸⁶ but it does extend to granting tax exemption to a cemetery.⁸⁷ Power to regulate the sale of liquor is not the power to prohibit, but it is the power to prohibit sale by small measure.⁸⁸

⁸⁴ An act for the punishment of crime could not provide for annulment of a divorce, even though one party to it was guilty of a misdemeanor, because annulment was not necessarily punishment. P. L. 1921, p. 43, *Robbins v. Lanning*, 93 N.J.Eq. 262, 116 Atl. 773 (Ch. 1922); *Niland v. Niland*, 96 N.J.Eq. 438, 126 Atl. 530 (Ch. 1924). An act to enable the owner of tide swamps to improve the same, and owners of meadows already banked in and held by several persons to keep the same in good repair, could not extend to relieving persons of the duty of repairing. P. L. 1904, p. 24, *Cox v. American Dredging Co.*, 80 N.J.L. 645, 77 Atl. 1025 (Sup. Ct. 1910). An act to license pawnbrokers and regulate their business could not change the common law so as to increase pawnbrokers lien rights. P. L. 1931, p. 728, *Tappin v. Rosner*, 111 N.J.L. 301, 168 Atl. 676 (E.&A. 1933). "An act to provide for the regulation and incorporation of insurance companies and to regulate the transactions of insurance business in this state," (P. L. 1902, p. 407) validly provided for an exemption on the husband's insurance in favor of the wife and against his creditors, *G. P. Farmer Coal Co. v. Albright*, 90 N.J.Eq. 132, 106 Atl. 545 (Ch. 1919). "An act for the better protecting of garage keepers and automobile repairmen," (P. L. 1915, p. 556), provided for the retaking of automobiles or parts thereof in order to assert a repairman's lien, *Crucible Steel Co. v. Pollack Tyre and Rubber Co.*, 92 N.J.L. 221, 104 Atl. 324 (E.&A. 1918). "An Act for the prevention of cruelty to animals" (P. L. 1883, p. 159) validly provided for a charge against the owner for care of his animal if he was not present when it was taken into custody because of an act of cruelty. *Goeller Iron Works v. Carey*, 80 N.J.L. 106, 77 Atl. 527 (Sup. Ct. 1910).

⁸⁵ *Murphy v. Brown & Co.*, 91 N.J.L. 412, 103 Atl. 28 (Sup. Ct. 1918).

⁸⁶ P. L. 1910, p. 466, *Bolles v. Newark*, 81 N.J.L. 184, 80 Atl. 97 (Sup. Ct. 1911). See also *Dunn v. Hoboken*, 85 N.J.L. 79, 88 Atl. 1053 (Sup. Ct. 1913), sustaining the amended title P. L. 1912, p. 808.

⁸⁷ P. L. 1868, p. 832, *Newark v. Cemetery Co.*, 58 N.J.L. 168, 33 Atl. 396 (E.&A. 1895).

⁸⁸ *Paul v. Gloucester County*, 50 N.J.L. 585, 15 Atl. 272, 1 L.R.A. 86 (E.&A. 1888).

An act to reorganize a local government has sometimes carried with it the power to pay claims against that government, and sometimes it has been held not to extend so far.³⁹

It is obvious from the foregoing illustrations that in some of the cases both the noun and the verb parts of the titles act as serious limitations. In some instances an act may violate both of these restrictions if the title is drawn in narrow terms. A good example of this is "An Act to increase the jurisdiction of justices of the peace"⁴⁰ which made it a penal offense for a justice of the peace to issue a summons on behalf of a person for whom he was agent. This, as the court pointed out, increased nothing and thus did not come within the verb part, and in addition did not concern jurisdiction, thus falling without the noun part as well.⁴¹

4. The preceding three subdivisions deal with the fundamental distinctions in the great bulk of the cases. We now have to consider many miscellaneous circumstances that may affect the results which we should arrive at by using the above information alone.

(a) The first of these is legislative history, which may broaden or narrow the scope of the title. The courts have said, without contradiction, that one must be conversant with the existing state of the law before he can complain that a title does not give him sufficient information. This requirement of a background of understanding has been set forth in cases where legislative history is important. It was stated in a review of the

³⁹ *Jersey City v. Elmendorf*, 47 N.J.L. 283 (E.&A. 1885). *Contra*, *State, ex rel. Walter v. Union*, 33 N.J.L. 350 (Sup. Ct. 1819). See also *Snipe v. Schriener*, 44 N.J.L. 206 (E.&A. 1882); *State, ex rel. Doyle v. Newark*, 34 N.J.L. 236 (Sup. Ct. 1870) where "A Further Supplement to 'An Act to revise and amend the charter of the city of Newark'" (P. L. 1868, p. 1002) validly provided for a new assessment of benefits by the city for improvements, the old assessment having been set aside for want of proper formalities.

⁴⁰ P. L. 1879, p. 115.

⁴¹ *Hayes v. Storms*, 64 N.J.L. 514, 45 Atl. 809 (Sup. Ct. 1900).

title "A Further Supplement to 'An act to ascertain the rights of the state and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state.'"⁴² Under this title power was given to riparian commissioners to make grants of such land. The justification for including this subject-matter under a title which dealt only with the ascertaining of rights was found in custom and usage.⁴³ Legislative practices, such as putting tax exemption clauses in railroad charters, are valid because a person acquainted with legislative history would expect such clauses.⁴⁴ In addition, some terms have received a special meaning in legislative practice, a meaning which naturally, must go into the notice which the title gives.⁴⁵

The limiting effect which legislative history may impose upon a title was graphically illustrated by one result of a long-standing custom of legislating concerning street railroads and steam railroads in separate acts. Thus, under a title which clearly seemed adequate, the legislature could not provide for the taxation of a steam street railway.⁴⁶ The title read, "A Supplement to an act entitled, 'An act for the taxation of the property and franchises of street railroad corporations using or

⁴² P. L. 1903, p. 387.

⁴³ *Seaside Realty & Improvement Co. v. Atlantic City*, 74 N.J.L. 178, 64 Atl. 1081 (Sup. Ct. 1906); *aff'd*, 76 N.J.L. 819, 71 Atl. 912 (E.&A. 1908); *Sawter v. Shoenthal*, 83 N.J.L. 499, 83 Atl. 1004 (E.&A. 1912).

⁴⁴ *Pennsylvania R. R. Co. v. Jersey City*, 49 N.J.L. 540, 9 Atl. 782 (Sup. Ct. 1887).

⁴⁵ *Paterson Ry. Co. v. Grundy*, 51 N.J.Eq. 213, 26 Atl. 788 (Ch. 1893), where "horse railroad track" was recognized as synonymous in legislative terminology with "street surface railway". See also *State v. Twining*, 73 N.J.L. 683, 64 Atl. 1073 (E.&A. 1906); *Heath v. Rotherham*, 79 N.J.L. 22, 77 Atl. 520 (Sup. Ct. 1909); *LeDuc v. Williams*, 7 N.J.Misc. 342, 145 Atl. 325 (Sup. Ct. 1928); *aff'd*, 106 N.J.L. 247, 148 Atl. 919 (E.&A. 1930).

⁴⁶ *Atlantic City Seaside Railroad Co. v. State Board of Assessors*, 88 N.J.L. 219, 96 Atl. 568 (E.&A. 1916). See also *Lane v. State*, 49 N.J.L. 673, 10 Atl. 360 (E.&A. 1887); *Everham v. Hullitt*, 45 N.J.L. 53 (Sup. Ct. 1883), where statutes were declared invalid for failure to recognize the long-established distinction between justices of the peace as judges of the courts for the trial of small causes and as conservators of the peace.

occupying public streets, highways, roads, lanes or other public places in this State,' approved May twenty-third, one thousand nine hundred and six and by such supplement providing for the assessment and collection of a franchise tax in cases where street railway systems are operated by steam railroad companies, or operated over and upon the tracks of steam railroad companies."⁴⁷ The legislative practice of keeping different matters separate has not, however, always had a restrictive influence.⁴⁸ There are cases looking both ways.

(b) There is an interesting rule that when a statutory provision has appeared under one title and subsequently has been reenacted under a different title, the first title still continues as a limitation.⁴⁹ No law has been declared unconstitutional under this rule; but in one instance it was invoked and the court rejected counsel's argument because of counsel's error regarding essential facts rather than for any error regarding the contention as a valid principle of law.⁵⁰ If such a rule were used to declare a law invalid the resulting decision would be evidence of a hopelessly technical approach. By not repudiating such an argument completely, the court has left a fringe of doubt.

(c) The incorporation of superfluous matter into a title does not render it invalid.⁵¹ Thus a title might read, "A Supple-

⁴⁷ P. L. 1913, p. 448.

⁴⁸ *Strait v. Wood*, 87 N.J.L. 677, 94 Atl. 785 (E.&A. 1915), where matter concerning the termination of a tenancy by demand and notice together with procedure for ejecting the tenant was dealt with under, "An Act regulating lettings in cases where no definite term is fixed" (P. L. 1884, p. 178), although such matter had always before appeared in separate legislation. Separation or union was a matter of legislative policy, the court said.

⁴⁹ *Hendrickson v. Fries*, 45 N.J.L. 555 (E.&A. 1883); *Bryant v. Skillman Hdw. Co.*, 76 N.J.L. 45, 69 Atl. 23 (Sup. Ct. 1908); *State, ex rel. O'Hara v. National Biscuit Co.*, 69 N.J.L. 198, 54 Atl. 241 (Sup. Ct. 1903); *Martin v. Dyer-Kane Co.*, 113 N.J.Eq. 88, 166 Atl. 227 (E.&A. 1933).

⁵⁰ *Fidelity Union Trust Co. v. Galm*, 109 N.J.L. 111, 160 Atl. 645 (E.&A. 1932).

⁵¹ *In re Haynes, Mayor*, 54 N.J.L. 6, 22 Atl. 923 (Sup. Ct. 1891); *State*.

ment to an act entitled 'An act to prevent the pollution of the waters of this State by the establishment of a State Sewerage Commission, and authorizing the creation of sewerage districts and district sewerage boards, and prescribing, defining and regulating the powers and duties of such commission and such boards.'"⁵² The only part of this title really necessary was "An Act to prevent the pollution of the waters of this State." All of the rest was superfluous. Usually the effect of superfluous matter is to make the title clearer, telling more accurately what is contained in the body of the act by going into further detail. Naturally that is no ground for reproach unless on the ground that the title grows longer as a result. In the case, however, the court stood by its liberality in regard to superfluous matter, even though it was positively misleading. This supplement, instead of dealing with the establishment of a state sewerage commission, took all of the powers from that commission and gave them to the state board of health.⁵³

(d) Actual mistakes in some parts of the titles are not fatal unless they are misleading.⁵⁴ Thus "An act to amend an act entitled 'A further supplement to an act entitled 'An act to

ex rel. Thompson v. Bader, 101 N.J.L. 289, 128 Atl. 178 (Sup. Ct. 1925); *aff'd*, 102 N.J.L. 227, 131 Atl. 902 (E.&A. 1925); State, Curry v. Elvins, 32 N.J.L. 362 (Sup. Ct. 1867).

⁵² P. L. 1908, p. 605.

⁵³ State Board of Health v. Town of Phillipsburg, 83 N.J.Eq. 402, 91 Atl. 901 (Ch. 1914), *aff'd*, 85 N.J.Eq. 161, 96 Atl. 62 (E.&A. 1915).

⁵⁴ Mistake in geographical location, State, Curry v. Elvins, 32 N.J.L. 362 (Sup. Ct. 1867). Compare Ryno v. State, 58 N.J.L. 238, 33 Atl. 219 (Sup. Ct. 1895). Misrecital or omission of date, American Surety Co. v. The Great White Spirit Co., 58 N.J.Eq. 526, 43 Atl. 579 (E.&A. 1899); Orpen v. Watson, 87 N.J.L. 69, 93 Atl. 853 (Sup. Ct. 1915), *aff'd*, 88 N.J.L. 379, 96 Atl. 43 (E.&A. 1915); Nathanson v. Dooley, 39 N.J.L.J. 156; Moore v. Burdett, 62 N.J.L. 163, 40 Atl. 631 (Sup. Ct. 1898); New York etc. R. Co. v. Montclair, 47 N.J.Eq. 591, 21 Atl. 493 (E.&A. 1890). Misrecital of act, amended or supplemented, Van Vane v. Centre Township, 67 N.J.L. 587, 52 Atl. 359 (E.&A. 1902); *In re* Elmer, 60 N.J.Eq. 343, 46 Atl. 206 (Prerog. Ct. 1900). Grammatical error, Grover v. Trustees, 45 N.J.L. 399 (Sup. Ct. 1883).

protect trademarks and labels,' approved March twenty-third, eighteen hundred and ninety-two' " was not invalid, even though there was no act to protect trademarks and labels to be supplemented. The act carried in its own title, quite independently, the declared object to render such protection.⁵⁵ Naturally, the question of what is misleading gives the court considerable freedom.

5. We have next to consider the special line of cases on so-called deceptive titles. Although titles may be very broad without violating the rule laid down in the constitution, it sometimes happens that this very breadth may lead to deception and therefore to invalidity. Just as a narrow title deceives the reader when the body of the act contains matter going beyond it, so a broad title followed by a narrow body at times may be equally misleading. This has led to the growth of the narrow line of cases which we must now consider. Under the title which the court quoted as reading, "An Act relating to the cost of improving sidewalks in the cities of this State," although in fact it read "in cities" and not "in the cities," legislation was enacted which applied to cities of the third class only.⁵⁶ The decision declaring this act unconstitutional was explained in later cases on the theory that the reader would be deceived into thinking that all cities were covered by the legislation.⁵⁷ Thus an especially good way of avoiding any chance of deception would be to say in the title "certain cities" instead of "the cities" as the court thought the title read.⁵⁸

Some of the cases under this heading can be explained easily enough, as, for example, obvious attempts to deceive and

⁵⁵ P. L. 1895, p. 270, *Schmaltz v. Wooley*, 57 N.J.Eq. 303, 41 Atl. 939, 43 L.R.A. 86, 73 A.S.R. 637 (E.&A. 1898).

⁵⁶ P. L. 1891, p. 480.

⁵⁷ *Beverly v. Waln*, 57 N.J.L. 143, 30 Atl. 545 (E.&A. 1894). *Johnson v. Asbury Park*, 60 N.J.L. 427, 39 Atl. 693 (E.&A. 1897).

⁵⁸ *Quigley v. Lehigh Valley Ry. Co.*, 80 N.J.L. 486, 79 Atl. 458 (Sup. Ct. 1910).

instances where clearly distinguishable characteristics exist.⁵⁹ Thus "An Act concerning companies empowered to construct horse railroads" was invalid because the body of the act limited its operation to companies having three special characteristics. Since only one company had them all, the legislation was obviously intended for that company.⁶⁰

There remains a considerable proportion of the cases where the distinction is not so clear. Some are designated as deceptive and others not. The court states its conclusion in particular cases, but does not give us any rule for determining what is deceptive. If we line the cases up, however, we find the single difference in the use of the article "the." Thus, to use the illustration above, if we say "in the cities of this State" our title is deceptive unless all cities are legislated for; while if we say "in cities of this State," we may legislate for only certain classes of cities if we wish to.⁶¹

⁵⁹ *Coutieri v. New Brunswick*, 44 N.J.L. 58 (Sup. Ct. 1882); *State, ex rel. Bumstead v. Govern*, 47 N.J.L. 368, 1 Atl. 835 (Sup. Ct. 1885). *Ryno v. State* 58 N.J.L. 238, 33 Atl. 219 (Sup. Ct. 1895). *Burnet v. Dean*, 63 N.J.Eq. 253, 49 Atl. 503 (E.&A. 1901).

⁶⁰ P. L. 1889, p. 230, *Grey v. Road Co.*, 65 N.J.L. 51, 46 Atl. 606 (Sup. Ct. 1900).

⁶¹ The following cases can be reconciled only in this manner. In this first group of cases the titles were valid: (1) "An Act for the protection of pigeons and other fowl, and constituting the violation of its provisions a misdemeanor," P. L. 1904, p. 515. The body exempted the "shooting of game." The court did not decide that game were fowl but thought the title good even if they were included and yet not protected by the act, *State v. Davis*, 72 N.J.L. 345, 61 Atl. 2 (Sup. Ct. 1905); *State v. Harned*, 72 N.J.L. 353, 61 Atl. 5 (Sup. Ct. 1905), *aff'd*, 73 N.J.L. 681 (E.&A. 1905). (2) "An Act concerning the appointment of municipal officers and boards in cities" (P. L. 1893, p. 224) applied only to cities of the first class, *Brinkerhoff v. Jersey City*, 64 N.J.L. 225, 46 Atl. 170 (E.&A. 1899). (3) "An Act concerning the publication of ordinances, financial statements and other public notices" (P. L. 1881, p. 295) applied only to cities, *Lewis v. Newark*, 74 N.J.L. 308, 65 Atl. 1039 (Sup. Ct. 1907). (4) "An Act to amend an act entitled 'An act to reduce the number of members of boards of chosen freeholders in counties of this State, and to fix the salaries and provide for the election of members of said boards', approved March twenty-sixth, one thousand nine hundred and two" (P. L. 1908, p. 269) by a proviso in the body

A dictum in one of these cases goes to the extreme of condemning a title which recited, among other things, that its purpose was "to amend the provisions" of an earlier act. This was said to deceive the reader because "Its title is palpably deceptive and misleading. It gives notice that its object is to amend the title and provisions of an act, etc. It is silent in what respect the title is to be amended and leaves it open to belief that all the provisions of the act of 1916 are to be amended. The original act contains fourteen sections, of which five were amended."⁶² Such a dictum by the Court of Errors and Appeals in one of the latest cases in this string of decisions on deceptive titles certainly indicates that the cases on deceptive title are not clear in the mind of the court. A case which, if it needed to deal with the subject at all, should have tried to straighten out the muddle left by the old decisions, not only failed to do that but turned out a preposterously technical dictum. Such is the progress of the court in keeping in order a narrow line of cases really

was made to apply to first and third class counties only, Attorney General, *ex rel.* Pierson v. Cady, 84 N.J.L. 54, 86 Atl. 167 (Sup. Ct. 1913). (5) "A Further Supplement to an act entitled 'An act concerning elections (Revision of 1893)' approved April fourth, one thousand eight hundred and ninety-eight" (P. L. 1923, p. 26), applied only to first class counties, McDonald v. Hudson County, 98 N.J.L. 386, 121 Atl. 297 (Sup. Ct. 1922).

In the following cases the titles were invalid: (1) "An Act to protect the planting and cultivating of oysters in the tide-waters of this state" (P. L. 1894, p. 429), contains a proviso declaring that the act shall not apply to the waters or bottoms of Delaware Bay and Maurice River Cove, State v. Steelman, 66 N.J.L. 518, 49 Atl. 978 (Sup. Ct. 1901). (2) "An Act relating to the salaries of the guards and keepers of the jails, penitentiaries and workhouses of counties of the first class" (P. L. 1920, p. 333), contained provisions in regard only to male guards and keepers, although there were both men and women in such positions, Murray v. Hudson County, 97 N.J.L. 74, 117 Atl. 254 (Sup. Ct. 1921). (3) "An Act to amend the title of and the provisions of an act entitled 'An act declaring all buildings or places wherein or upon which acts of lewdness, assignation, or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery', approved March seventeenth, one thousand nine hundred and sixteen", P. L. 1918, p. 739. For dictum as to invalidity see the following paragraph in the text.

⁶² Hedden v. Hand, 90 N.J.Eq. 583 at p. 585, 107 Atl. 285 (E.&A. 1919).

quite restricted in number.

6. Attempts to repair acts invalid because of their titles have led to a few cases on the subject of amendment of titles. Thus our field of law grows more complex. Not only do we have the question of when a title accords with the constitutional limitation, but now we have the further problem of whether attempts to repair an invalid title have resulted in valid legislation.

Let us start with the proposition that the title has rendered an act unconstitutional. Can that title be amended in a subsequent act so as to revive the original law? The answer to this question was easy enough in New Jersey because of the doctrine there that an unconstitutional act is not void but simply unenforceable.⁶³ The court was not squarely presented with the problem, however, until about 1910, when it had to deal with "An Act to change and amend the title of an act entitled 'An act to tax intestates' estates, gifts, legacies, devises and collateral inheritance, in certain cases,' approved May fifteenth, one thousand eight hundred and ninety-four."⁶⁴ The first section of this act then proceeded to broaden the title of the original act. The lower court rejected this legislative device, saying that the above title gave no more information than the original title except for indicating that a change had been made. What the change was no one could tell.⁶⁵ In reversing the decision, the Court of Errors and Appeals stated that notice need be given only to those conversant with the existing state of the law; and that anyone with this information would know that doubt had been cast upon the constitutionality of the original act because of its title, and that this new legislation must be aimed at remedying that constitutional defect.⁶⁶ Thus a new device had been approved.

⁶³ *Allison v. Corker*, 67 N.J.L. 596, 52 Atl. 362, 60 L.R.A. 564 (E.&A. 1902).

⁶⁴ P. L. 1909, p. 304.

⁶⁵ *Sawter v. Shoenthal*, 81 N.J.L. 197, 80 Atl. 101 (Sup. Ct. 1911).

⁶⁶ *Sawter v. Shoenthal*, 83 N.J.L. 499, 83 Atl. 1004 (E.&A. 1912).

Before long, however, the legislature overreached itself in amending titles. The new act read, "An Act to amend the title of and the provisions of an act entitled 'An act declaring all buildings or places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery,' approved March seventeenth, one thousand nine hundred and sixteen."⁶⁷ The body of the act extended the title and the body of the amendment to cover "the habitual sale of intoxicating liquors in violation of law." The court felt that a person, whether conversant with the existing state of the law or not, would have no notice that this new subject-matter was to be included.⁶⁸ It did not spring out of any previous constitutional difficulty but added a new subject-matter, a subject-matter new to both the body and title. Here it was perfectly valid to argue that all the word "amend" did was to stamp upon the act the word "change" and not to show the direction which the change took.

Out of this last case grew a regular rule that a new subject-matter cannot be imported into an act by amendment, a rule which resulted in the invalidity of several acts.⁶⁹ In one of the most recent cases, however, the court did approve the amending of a valid statute to bring in something not contained in the original act.⁷⁰ The original act applied to sales of securities "within" the state, while the amendment extended to sales "from within" the state. The court said that this amendment extended the subject-matter of the original act, but did not introduce a subject foreign to the original title. The case is easily distinguishable from the preceding one on its facts and

⁶⁷ P. L. 1918, p. 739.

⁶⁸ *Hedden v. Hand*, 90 N.J.Eq. 583, 107 Atl. 285, 5 A.L.R. 1463 (E.&A. 1919).

⁶⁹ *Davison v. Patterson*, 94 N.J.L. 338, 110 Atl. 827 (Sup. Ct. 1920); *Cole v. Corio*, 105 N.J.L. 511, 146 Atl. 428 (Sup. Ct. 1929).

⁷⁰ *Stevens, Attorney General v. Home Brewery Inc. et al*, 112 N.J.Eq. 513, 164 Atl. 903 (Ch. 1933).

should be commended for its liberality. It does, however, present the same evil of importing something new into an act which one conversant with the state of the law would not surmise to be the subject of the amendment when he learned that the original act had been changed. These last cases are far apart, leaving a broad field of uncertainty for the legislature when it exercises this new device.

Since the legislature does not seem to hesitate sometimes at the most prolix titles, it is surprising that it has not stated the nature of the change to be made in the title itself. We find one example of this sort of practice preceding any of the cases which we have discussed in this section. There the title read, "An Act to amend the title of an act entitled 'An act for the relief of creditors against absent and absconding debtors (Revision of 1901),' approved March twentieth, one thousand nine hundred and one, and extending the same so as to include debtors guilty of fraud."⁷¹ This sort of title shows an easy way out of the realm of uncertainty left by the decision, if the legislature feels that it must amend titles.

Thus far we have been dealing with the requirement that the object of every law shall be expressed in its title. The constitutional provisions also regularly require that the object shall be single. This second requirement has been left out of account until this point because it is practically unimportant. It is true that in many instances counsel attacks a title as violating both of these requisites and the courts condemn titles in one sweep as contravening both of the requirements. The fundamental one, however, is that of expression. There are few matters which are so wholly unrelated that they cannot be brought under one title if it is sufficiently broad in character. The real difficulty is the failure to express the true object of the legislation, rather than any duality. Even riders are not apt to be so unrelated that they cannot come under a broad title. No instances of

⁷¹ P. L. 1903, p. 70.

invalidity due to the impossibility of associating a rider with the body of the act exist. In fact, there is really no case of invalidity in which the true fault cannot be laid at the door of the expression requirement.

We have already seen titles which appear to contain many objects. In one of the phrases of these titles, however, was contained all that was necessary to express the full content of the body; and the courts upheld these acts on the ground that all else expressed in the titles was superfluous. Suppose, however, that there are a number of things mentioned in the title, no one of which is broad enough to cover the whole subject-matter of the act. Here it might seem at first that we have a case of invalidity. There are many objects, and thus it seems we violate the rules of singleness. If it is answered that all of these matters are simply part of one greater object, the reply seems to be that that object is not really expressed. It must be deduced from the minor objects which are, in fact, set out in the title. Thus to uphold such an act we must say that expression can be indirect.

Let us look at some illustrations. "An Act to validate and make lawful any bridge heretofore erected over navigable waters by any board of chosen freeholders, and contracts for the erection of the same which have been performed by the contractors, and also payments made or to be made thereon, and bonds issued to provide means of payment for any such bridge"⁷² contains no duality. The legislature intended to validate corporate action in regard to the bridge and not the bridge itself. The argument of the court was that this "figurative language" about validating any bridge (which, in fact, means validating corporate action concerning any bridge) was sufficient to cover the whole body of the act and, therefore, no duality existed.⁷³

Such an explanation was not given in the other title we

⁷² P. L. 1906, p. 685.

⁷³ *Bloomfield v. Board of Chosen Freeholders*, 74 N.J.L. 261, 65 Atl. 890 (Sup. Ct. 1907).

must look at, which read: "An Act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amounts of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations."⁷⁴ Here we have a number of stated objects, no one of which covers the entire body of the act. Thus the rule of superfluity cannot apply. Still the arguments of duality did not prevail. The court answered the argument shortly, saying, "The title of the act of 1921 contains, as part of its title, this language: 'Prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations.' It is quite apparent that the body of the act is well within the title when it prescribes the process to apprehend, the tribunal to hear the case and the punishment to be imposed upon offenders. These are clearly expressed in the words quoted. Nor do the act or its title embrace more than one object. The whole scheme of the legislation is to provide for the safe use of an instrument of transportation which, without regulation, would become a dangerous menace to persons and property. All of the provisions of the act are directed to the attainment of the one object, and all are properly incident and appropriate thereto. Paragraph 4 of article 4, section 7 of the constitution, clearly indicates the scope of the prohibited legislation, when it declares its purpose to be 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.' It certainly cannot be said that any part of the act is extraneous or foreign to its general object."⁷⁵

⁷⁴ P. L. 1921, p. 643.

⁷⁵ Caruso v. Porter, 102 N.J.L. 71, at p. 72, 130 Atl. 805 (Sup. Ct. 1925). See Shivers v. Newton, 45 N.J.L. 469 (Sup. Ct. 1883). In "An Act to prevent

The object "to provide for the safe use of an instrument of transportation" is not, however, stated in the title. Any impression we might have received that the court was trying to rely upon the phrase "fixing rules regulating the use and speed of motor vehicles" is negated by the general tenor of the argument, and particularly by the reliance put upon a part which would be superfluous if the phrase above covered the whole body of the act. Certainly a part of the title which is superfluous can have no constitutional effect. The scheme must be deduced from what is stated and by this means, an important piece of legislation was upheld.

Let us look at the requirement more closely. It is that every law—that is, the body of every law—shall contain but one object. Fundamentally, then, one should go to the body of the act to determine singleness. Next the constitution requires that that single object be expressed in the title. This lightens the burden of inspecting the body for such a single object, because, since it must be expressed, we can look at the title first and then at the body to see whether something in it goes beyond the scope of the title. Any duality which may exist will appear upon an inspection of the title. It does appear clear, however, that the mention of several matters, none of which is all-inclusive, is not the mark of duality. As long as these diverse matters can be united into one unstated single object, singleness need worry us no longer. The remaining test is: has the legislature, by stating the parts or some of the parts of this general object, failed to cover one of the parts contained in the body? The use of the conjunctive is no clue to duality. The serious problem is

the adulteration, and to regulate the sale of milk" (P. L. 1882, p. 97) the court by looking at the body of the act found its object was single. It was unconstitutional because the two things mentioned in the title did not cover all of the single object legislated upon in the body of the act.

For recent attacks on the motor vehicle act see *Kluczeck v. State*, 115 N.J.L. 105, 178 Atl. 632 (Sup. Ct. 1935); *State v. Rowe*, 116 N.J.L. 48, 181 Atl. 706 (Sup. Ct. 1935).

that of the expression of the general object itself or the parts of the general object being legislated on. All of the cases of invalidity are due, not to duality, but to failure of expression, direct or indirect.

We might argue the question of whether statement of some or all of the parts of a general object is expression of that object. Practically the only harm which might result from the practice is that of adding to the length of titles. Perhaps uncertainty might be caused in some instances, but usually the result will be just the opposite. Specific enumeration gives the reader a clearer picture of what the body of the act really contains than does the statement of the broad general object. It does not increase opportunities for logrolling, a practice which we recall the title requirement was intended to stop.

Our review of the cases now being complete, let us return to Professor Freund's general conclusions to test them in the light of New Jersey experience. His first conclusion was that such requirements as that concerning title inculcate a sound legislative practice. This does not seem to be true in New Jersey. Although we may hesitate to state dogmatically what the custom was before the amendment was adopted, we do know that the earliest cases embark upon a lenient construction because of long-established legislative practice. They indicate that the court is greatly limited in applying the title provision. It must be remembered that the first one of these cases even to mention the constitutional requirements did not appear for ten years, and that it was thirty-three years before an act was declared unconstitutional. Here was a long period when the title clause seems to have had little or no limiting effect and in which there is no reason to believe legislative practice was changed from that before the constitution was adopted. Although long debates occurred on other subjects in the constitutional convention, none is reported denouncing a previous dangerous legislative practice in regard to titles. Several positively

bad laws have been declared invalid, but it seems that the legislature's general behavior, which went unchecked in this respect at the beginning, was too firmly established to be materially altered when the courts did finally become very active in this regard. Legislative practices seem to be the result of something other than this constitutional limitation. Thus Professor Freund's first conclusion is not justified as to the title requirement in New Jersey.

His first unfavorable conclusion was that such requirements have given rise to an enormous amount of litigation. We have already indicated that there are some two hundred and ninety New Jersey cases in which sufficient attention is given to the title requirement to present a problem. We cannot, however, lay these cases completely at the door of the constitutional provision. In many of them the constitutional question is quite incidental to some more important argument. Often it seems that the contention of unconstitutionality because of title was thrown in as just one more argument, which would do the litigant no harm and might possibly succeed. The heavy toll of invalidity, however, shows that in some cases the title provision was the central issue. Thus some of these cases may have arisen because of the constitutional limitation and all of them were complicated by it.

Professor Freund's next conclusion was that title requirements have led to the nullification of beneficial statutes. This seems to be true at least in the cases of inheritance tax legislation and landlord and tenant acts previously noted.

Next it is said that such provisions embarrass draftsmen and produce undesirable practices, especially in the proximity of titles. This is partially true. Those who are embarrassed, however, are not the skilled draftsmen. The unskilled try to put everything in the title, thus causing proximity, but in so doing they often leave something out with consequent invalidity. The abler draftsman knows that the thing to do is to resort to

broad generalities saying practically nothing in the title, and thus to avoid any constitutional question.

As to the indictment that the minority of the cases have been indefensibly and even preposterously technical, there seems to be some support but perhaps not enough to cause us to level a serious charge at the courts. We have, however, shown a few tendencies in that direction.

These specific indictments, as well as the complete picture of the case law in New Jersey, lead to a more fundamental question. That question is whether, supposing the court is capable, and does its best for such a constitutional requirement, the limitation should exist. We expect the worst from our legislatures and usually get it in spite of attempts to make them good by constitutional restraint. Legislators do not seem to be the easiest persons to make good by law. We expect the best from our courts and usually do not get it. Assuming the complete integrity of our judges, still they are subject to many limitations in dealing with matters such as this. Their main interest and most of their time is absorbed in legal matters quite unrelated to constitutional law. Cases involving titles are relatively infrequent and being inconspicuous do not always receive a clear-cut analysis. Soon there is a realm of doubt which the judges do not have the time or interest to clear up. The very weight of the number of cases, added to by different men with different temperaments and different manners of expression, results in an ever more complicated field of case law which no one feels obligated to arrange. Then there are the imponderables which throw cases out of line. For example, in an inconspicuous field, it is easier for a hard case to make bad law. Furthermore, political bias cannot be completely absent when we remember that the judges are political appointees who usually desire re-appointment, and who have often had active political careers which in some instances have attached them emotionally to a particular political faith. This is especially true since a consid-

erable number of the cases concern municipal government and other subjects which carry a large amount of political dynamite.

Thus a body of case law gradually grows until at some point we must ask ourselves whether it is really all worth while. The requirement does not seem to have done any particular good. Its purpose was to prevent logrolling and to give notice. Nevertheless, plenty of room is still left to the legislature for political manipulation. Furthermore, the most uninformative titles are technically the best. Thus the idea that information must be given has been supplanted by the requirement that a title shall not be misleading in character, that is, that a person relying on its broad provisions shall not actually be deceived. This supplants the original purpose: that he shall be informed.

This sort of safeguard is not worth a great price. It may be better not to rely upon it at all. Most lawyers read laws in the compiled statutes, supplements and statute services, where titles do not force themselves upon the reader's attention. It would be interesting to know how much reliance is actually placed on titles. Very little, we may well suspect. Those bill drafters who do not care, for some reason, to use these broad titles may run into many pitfalls of their own making, but those pitfalls have little to do with any requirement that they give intelligent information as to what is contained in the act.

Thus, although no good is accomplished, a large body of case law has been built up, the conflicting tendencies of which can only be explained by the preceding analysis of it. The courts themselves have not gone very far toward such an explanation. Around the fringes of this body of law, when explained, we still find uncertainty and in some few instances stilted technicality.

When we add the toll of judicial displeasure, what seems to be insignificant comes to the astounding total of forty-seven instances of unconstitutionality. This unconstitutionality, we must note, is not due to infringing some fundamental right or

conflicting with some great economic interest, but arises simply from a violation of a rule that bills be drafted in conformity with a particular style, a style which has no utility. Furthermore, an average period of nearly five years has elapsed between the passage of the bills by a legislature which knew the court was declaring acts unconstitutional because of title, and the first declaration by the court of the invalidity of each act. Thus we have more uncertainty with no compensating utility.

We may well wonder on whose motion these acts happen to be declared invalid. Certainly the legislators do not question acts because they have been misinformed, and not given the notice due them under the constitution. Is it by persons who have relied upon the acts because of their titles and found themselves misled? Or are they contested by persons who do not like the restraint of the substantive provision of a piece of legislation which could easily have been passed in constitutional form, by persons who are merely finding a way out through one of the law's technicalities? Is not the provision simply a loophole which their lawyers happen upon? We may suspect that this is often the case. Such a feeling cannot add to our respect for the title provision.

In the few states which somehow or other have withstood the urge for title clauses, is there some dangerous legislative practice which the others avoid? Professor Freund thought there was not. Have the other states a better case to present for the title provisions? Professor Freund thought not. A review of leading cases would indicate that he was correct. Certainly it is high time for states to begin unburdening themselves of useless or worse than useless constitutional provisions. But this cannot be done intelligently by simply responding to the protests of those who say our state constitutions are too long; a study of the actual operation of such provisions is necessary to show the way intelligently. This article is offered as a first step in such a study. Clearly the title limitation should be cut out

of the New Jersey constitution. It would be interesting to know how many other constitutional provisions in New Jersey and elsewhere should share its fate.

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