Constitutional Law--Amendment of Subdivision of Statute

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there is any plausible defense of this power in the legislature it must rest on the fact that the courts have for a long time acquiesced in such legislation, but this seems a doubtful ground.

That the rules made by the supreme court to govern the practice and procedure of itself and lower courts are constitutional, seems to be irrefutable, but it is submitted that this should rest upon the ground not that the legislature is delegating a function, which belongs to itself, but rather that the supreme court is merely exercising its proper judicial power. It is within the judicial function of the supreme court to make rules for the lower courts. Dean Pound has pointed out 4 that such was the nature of the English judicial organization at the time our constitutions were adopted.

—Charles E. Carpenter.

CONSTITUTIONAL LAW—AMENDMENT OF SUBDIVISION OF STATUTE—Sec. 22, art. IV, constitution of Oregon, provides that “No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length.” If an act be divided into sections and subsections, can a subsequent act amend a subsection without setting out the entire section? This question has never been before the Oregon court, but has recently been passed upon by the Appellate Court of Indiana, sec. 22, art. IV of the constitution of Oregon being identical with sec. 21, art. IV of the constitution of Indiana. 1 In the case of In re Industrial Board 2 it was held that the entire section must be set out in the amendatory act, although only one subsection was sought to be amended. 3

The case involved sec. 76 of the Workmen’s Compensation Act. 4 The original act was passed in 1915 and sec. 76 was divided into four subsections, each being a definition of a term used in the act. In 1919 the legislature amended several sections of the act, sec. 76 being among them. The act of 1919 was in two sections; sec. 1, setting out the sections of the old act as amended, and sec. 2 repealing all conflicting laws. In 1923 the legislature passed the act in question, 5 containing two sections: sec. 1 amended the act of 1919 by adding a new section numbered sec. 3 to the act of 1919, and sec. 2 repealed paragraph B of sec. 76 of sec. 1 of the act of 1919. Sec. 76 B was a definition of the word “employee.” Sec. 1 of the act of 1923, which would

4 The Regulation of Judicial Procedure by Rules of Court (1915) 10 ILL. L. REV. 163, 172.
1 Sec. 124, BURNS ANN. IND. STAT. 1926.
2 79 Ind. App. 669, 139 N. E. 387 (1923).
3 There is a serious question as to whether or not the decision is really a precedent. The Appellate Court in Indiana is an intermediate court of appeals. It has held a number of times that it has no jurisdiction to decide a constitutional question. The reason is that the Supreme Court of the state has been invested with the jurisdiction to decide appeals involving constitutional questions. See Marmon Motor Car Co. v. Sparks (Ind. App.), 161 N. E. 647 (1928), and cases there cited. The decision in question arose on a certified question from the Industrial Board. The question of the authority of the Appellate Court of Indiana to answer certified questions from the Industrial Board has been raised but not decided (Martz v. Grosselli Chemical Co., 162 N. E. 737, 1928), although there would seem to be little doubt about the validity of the procedure. See 2 R. C. L. 301-304, Sections 256-258.
4 Sec. 9521, BURNS ANN. IND. STAT. 1926.
5 Chap. 76, p. 244.
be added to the act of 1919, was a new definition of ‘employee,’ and was an attempt to bring within the Workmen’s Compensation Act all employees although illegally employed (the latter had been expressly excepted from the prior acts). It also made provision for double compensation if the employee were an illegally employed minor, and made provision for the payment of the additional compensation by the employer rather than by the insurance carrier.

In the case of *Langdon v. Applegate*, it was held that under the Indiana constitution any act which amended or revised a previous act had to set out in full the act which was intended to be amended or revised, and also set out the act in full as amended and revised. This case, however, was overruled in the case of *Greencastle Southern Turnpike Co. v. State*, where the doctrine was announced that all that was necessary was that the act be set out in full, as amended, and that it was not necessary to set out the first act. It was there said that the evil aimed at by the constitution was the amending of an act by reference to its title only. It has been held repeatedly in subsequent cases in Indiana that all that is necessary to comply with the constitution is that the act or section sought to be amended must be identified by reference to its title in full and the new act or section be set out in full.

The court in the instant case says that the new act is insufficient because (1) several subsections of sec. 1 of the act of 1919 would be materially modified by the added section of the act of 1923, and (2) sec. 2 of the act of 1923 purports to repeal clause (b) of sec. 76 of sec. 1 of the act of 1919 without setting out sec. 1 as amended.

The act of 1923 attempted to amend the Workmen’s Compensation Act by bringing within its provisions all persons legally or illegally employed by adding a section to the act of 1919 and repealing the conflicting clause in the old law. The repeal and the amendment took effect simultaneously, and the new section was in effect a supplemental act, because it did not amend any provision of the act after the repeal of the conflicting clause. Subsection 76 (b) was a definition of the word ‘employee,’ and upon its repeal the Workmen’s Compensation Act was still complete and workable (though subject to judicial interpretation on that word). The new act then certainly was to all intents and purposes a supplemental act, and was, therefore, valid on that ground. The court, however, without argument denies this, and the applicability of *McCleary v. Babcock*.

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*5 Ind. 327 (1854). In Murphy v. Salem, 49 Or. 54, 87 Pac. 532 (1906), the act complied with the rule in this case, and it was held good.

† 29 Ind. 382 (1867). The Supreme Court of Oregon had previously refused to follow *Langdon v. Applegate*, supra, and had established the rule in this state on the principles announced in the last case. See *City of Portland v. Stock*, 2 Or. 69 (1866); *Delay v. Chapman*, 2 Or. 242 (1877); *Doland v. Barnard*, 5 Or. 390 (1875); *The Barrowdale*, 39 Fed. 376 (1889); *Northern Pac. Exp. Co. v. Metschan*, 90 Fed. 80 (1898); *Brunswick-Balke-Collender Co. v. Evans*, 228 Fed. 991 (1916). *Cf. Gaston v. Thompson*, 89 Or. 413, 174 Pac. 717 (1918).

* Lingquist v. State, 153 Ind. 542, 55 N. E. 426 (1899), and cases there cited.

9 169 Ind. 228, 82 N. E. 453 (1907). In *Elliott v. Tillamook Co.*, 86 Or. 427, 165 Pac. 77 (1917), there is a dictum to the effect that under the *Oregon Constitution* it is impossible to amend an act by adding a section. In *The Glaramara*, 10 Fed. 678 (1882), it was held that an act which purports to
If the act is not a supplemental act still the argument of the court to the effect that the Workmen’s Compensation Act would be modified by the provision of the new act would most certainly seem to be without weight. The constitution specifically allows the amendment of a section of an act, by setting out the section as amended in full in the new act. It would be unusual if the amendment did not affect other portions of the act or repeal them by implication, but that is a question of modification and repeal and not amendment. The authority cited by the Indiana court as authority for its conclusion, is directly contrary. The Supreme Court of Indiana held in that case that an act which amended a section of the criminal code by reference to its complete title and by setting out the new section in full was sufficient without regard to its effect on existing law.

The serious question is on the court’s last proposition. Can a subsection of an act be amended without setting out the entire section in the new act? No previous decision in Oregon or Indiana seems to have turned on this point. The constitution says that ‘the act or section amended shall be set forth and published at full length.’ There is presented a question of the proper interpretation of the constitution. The constitutional provision in question was given its present interpretation on the ground that the evil aimed at was the amending of statutes by mere reference to the title, so that in looking up the law one would not be forced to look at two or three acts to get the full language of the act or section. The division of a section into subsections is quite arbitrary; each subsection could well be a separate section (at least in the present case). The same reason would seem to apply, and ‘the reason being the same, the rule is the same.’ One gets a complete definition of ‘employee’ in the new act without reference to the old.

It is submitted that the act was in reality a supplemental act, and good on that theory, or that this constitutional provision should be construed to allow the amendment of a subsection which is complete in itself, by setting out merely the subsection as amended, and not the entire section.

—Bernard C. Gavit.

amend a prior act, and does amend it by adding a section is invalid, if the added section is not solely supplemental, i. e., if it in fact changes any of the provisions of the first act. In Brown v. Silverton, 97 Or. 441, 190 Pac. 971 (1920), an act which added new sections was upheld. An act which is really supplemental has been held good in the following cases: David v. Portland Water Committee, 14 Or. 98, 12 Pac. 174 (1886); Sheridan v. City of Salem, 14 Or. 328, 12 Pac. 925 (1886); State v. Rogers, 22 Or. 348, 30 Pac. 74 (1892).

It has been uniformly held in Oregon that an act which impliedly repeals or amends a prior act is valid under the constitutional provision in question. See City of Portland v. Stock, 2 Or. 69 (1863); Delay v. Chapman, 2 Or. 242 (1867); Bird v. County of Wasco, 3 Or. 282 (1871); Fleischner v. Chadwick, 5 Or. 152 (1874); Grant County v. Sels, 5 Or. 243 (1874); Dolan v. Barnard, 5 Or. 390 (1875); Stingle v. Nevel, 9 Or. 62 (1880); Warren v. Crosby, 24 Or. 558, 34 Pac. 661 (1899); Northern Counties Trust v. Sears, 30 Or. 386, 41 Pac. 931 (1895); Murphy v. Salem, 49 Or. 54, 87 Pac. 532 (1906); Patton v. Withycombe, 81 Or. 210, 159 Pac. 78 (1916). Cf. Gaston v. Thompson, 89 Or. 413, 174 Pac. 717 (1918). If it expressly repeals the prior act it is likewise valid. Nolan v. Costello, 2 Or. 571 (1863).

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11 Lingquist v. State, 153 Ind. 542, 55 N. E. 426 (1899).

12 Greencastle Southern Turnpike Co. v. State, 28 Ind. 382 (1867); City of Portland v. Stock, 2 Or. 69 (1863).