

REVISED STATUTES, 1937

The adoption by the New Jersey legislature of the "Revised Statutes," on December 20, 1937,¹ marked the end of a number of difficulties necessarily involved in searching through three successive compilations and supplements and seven annual pamphlet laws to determine the existing legislative will on a particular subject. Welcome though this was, the change also brought with it a number of new and unfamiliar problems. Aside from the necessity for familiarization with an entirely new system of topics and classifications,² it appears that the Law Revision Commission not only had collected all existing laws which were in *pari materia* under a number of general headings, but had also, in some instances, made actual changes in the phraseology of those laws.

To attempt an examination of the Revised Statutes for the purpose of locating all the instances where such change has been made would be foolhardy; and to essay, further, to determine the effect of the changes and the new meaning, if any, of the laws so changed, would be presumptuous. It is useful, however, to survey the rules which are applicable to the situation in general, and to which the courts themselves must turn for assistance in adjudicating the effect in a given statute.

The first and most general rule is the familiar guide of legislative intent.³ The preparation of a statutory revision by a commission created for that purpose is not an act of legislation,⁴

1. P. L. 1937, ch. 188.

2. To many, almost all the law can be found in Titles 2 and 40 of the revision.

3. *Mendles v. Danish*, 74 N.J.L. 333, 65 Atl. 888 (Sup. Ct. 1907); *Jensen v. Woolworth*, 92 N.J.L. 529, 106 Atl. 808 (E. & A. 1919).

4. *Mathis v. State*, 31 Fla. 291, 12 So. 681; *In re School Law Manual*, 63 N.H. 574, 4 Atl. 878; *Vinsant v. Knox*, 27 Ark. 266.

for the legislature cannot delegate its powers.⁵ It is the enactment of the revision by the legislature that makes it law, and the intent is the legislature's alone. The rule might appear to be of little use—we are trying to determine the meaning of a law and are told that the law means what the legislature intended; and that the intent of the legislature is to be obtained from the act itself.⁶ The fault, however, lies with the profession, which is all too prone, in dealing with this type problem, to scramble for "rules" of construction, the magical open sesame which will remove all barriers. The spectacle of one lawyer asserting an act to be in derogation of the common law, and hence to be strictly construed, while his opponent points out just as logically that the act is remedial in nature and must be liberally construed is all too familiar. The true approach is carefully to read the statutes involved and to determine, with relation to the particular issues of the case, the common and generally accepted meaning of the words used and the effect thereof.⁷ If this be impossible, through uncertainty or doubt, then resort to artificial rules of construction is justifiable.

The general rule is expressed, that a mere change in the wording, or punctuation of a statute in a revision does not have the effect of altering the act, unless a legislative intent to modify the existing law appears clearly and unmistakably.⁸ That this

5. *Delmar v. Bergen County*, 117 N.J.L. 377, 189 Atl. 75 (E. & A. 1936).

6. *Mendles v. Danish*, 74 N.J.L. 333, 65 Atl. 888 (Sup. Ct. 1907).

7. "In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language. . . R. S. 1:1-1. See also *Mendles v. Danish*, 74 N.J.L. 333, 65 Atl. 888 (Sup. Ct. 1907); *Morris Canal Banking Co. v. State*, 24 N.J.L. 62 (Sup. Ct. 1853); *Proprietors of Morris Aqueduct v. Jones*, 36 N.J.L. 206 (Sup. Ct. 1873).

8. *U. S. v. Cress*, 243 U. S. 316, 61 L. Ed. 746 (Sup. Ct. 1916); *McDonald v. Hovey*, 110 U. S. 619, 28 L. Ed. 269 (Sup. Ct. 1884); *King v. Smith*, 91

is sound is hardly questionable, for, essentially, a revision is only to simplify, organize and collate the *existing* law, and the revisionary aspect is generally understood to refer to form rather than to substance.⁹ If any change in phraseology or punctuation has been made, it is to be regarded as an attempt to clarify an awkward method of expression, or the like, but preserving intact its established meaning and effect.¹⁰ The rule is one of necessity, for to adhere to any other would be to create numerous cases of doubt as to the state of the law, since it is not possible for any construction to be reliable unless made by a tribunal of competent jurisdiction, in connection with a matter actually in issue.

Of course, where the provisions of the previous law are in direct conflict with those of the revision, the intent actually to alter is apparent, for the legislature is presumed to be conversant with the existing law.¹¹ But the rule ordinarily applied,

N.J.L. 648, 103 Atl. 191 (E. & A. 1917); *Newark v. Tunis*, 81 N.J.L. 45, 78 Atl. 1066 (Sup. Ct. 1911), *aff'd* 82 N.J.L. 461, 81 Atl. 722 (E. & A. 1911); *Trenton v. Standard Fire Ins. Co.*, 77 N.J.L. 757, 73 Atl. 606 (E. & A. 1909); *State v. Anderson*, 40 N.J.L. 224 (Sup. Ct. 1878); *In re Murphy*, 23 N.J.L. 180 (Sup. Ct. 1851); *Leonard v. Leonia Heights Land Co.*, 81 N.J.Eq. 489, 87 Atl. 645 (E. & A. 1913).

"But our view of legislation of this character is that it was not the legislative design to impress upon it the character of an original fundamental enactment; but to constitute the act a substitutionary vehicle for correcting or re-editing in various particulars, not at all destructive of the main features of existing legislation, some of its incidents, with a view to producing a cohesive, consistent and comprehensive compendium of the subject matter, and without making any substantial change in the fundamental scheme of legislation under review." *King v. Smith*, *supra*.

9. "The classification and arrangement of the several sections of the Revised Statutes have been made for the purpose of convenience, reference, and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom." R. S. 1:1-5.

10. "The provisions of the Revised Statutes, not inconsistent with those of prior laws, shall be construed as a continuation of such laws." R. S. 1:1-4.

11. Application of Passaic City Clerk, 94 N.J.L. 384, 116 Atl. 695 (Sup. Ct. 1920).

that where, in a subsequent statute on the same subject as a former one, the legislature uses different language in the same connection, the courts must presume that a change in the law was intended,¹² is not to be applied where the subsequent statute is a revision, not of a particular act, but of the entire law of a state. If the revision were of a particular law, as, for example, if the Corporation Act should be revised, changes are to be expected, and will be presumed where the language is different. But that is not the situation involved. Here, the legislature has adopted a revision of the entire statute law of the state, for the primary purpose of making it more accessible, and not for the purpose of changing and modernizing its content. We still have with us all the provisions of the Vice and Immorality Act, including that which permits railroads to run one train per day in each direction on Sunday.

This rule is embodied directly in the Revised Statutes, where it is provided that "The provisions of the Revised Statutes, not inconsistent with those of prior laws, shall be construed as a continuation of such laws".¹³ It is apparent, then, that where a change has been made in language, phraseology or punctuation, it shall not be considered as having effected a change in the content or effect if the new language can, reasonably, be construed to have the same meaning as the previous language. It is well to note that the Commission was, by the very act which set it up, enjoined from changing the wording or distribution of any act which had been the subject of judicial construction¹⁴ so as to impair or affect the meaning as established by the decision.

Doubtful questions also may arise by the placing in sequence of acts which once were separate, especially where a

12. *Idem.*

13. R. S. 1:1-4.

14. P. L. 1925, ch. 73, § 2.

section refers to matters arising under "this act". The question was considered in New Jersey in the case of *In the Matter of Thomas Murphy*.¹⁵ The problem there was created by the fact that the various sections of the act for the maintenance of bastard children had been copied from independent English statutes.¹⁶ Section one provided for orders of filiation and maintenance, with imprisonment the penalty for non-compliance, and was the section applicable in most cases. To secure the presence of a defendant on an expected charge, section two permitted imprisonment on complaint of the woman, before the birth of the child, and, lest this be abused, and a defendant imprisoned but no charge ever brought, section four (originally part of the same act as section two), provided that "any person who shall be committed . . . by virtue of *this act* (italics added) . . . may be discharged" if no order of filiation and maintenance be made within six weeks from the child's birth. In the *Murphy* case, the defendant's imprisonment was for failure to comply with an order of filiation and maintenance under section one, made more than six weeks after the child's birth, and he claimed a right to be discharged under section four. The court reviewed the legislation's history and denied the plea since the words "this act" in section four obviously referred to section two and not to section one. The rule was expressed that

"Where two or more statutes, whose meaning is plain,

15. 23 N.J.L. 180 (Sup. Ct. 1851).

16. Section one of the act was copied from 18 Eliz. c. 3, which provided for the making of an order of filiation and maintenance and for imprisonment for failure to obey such order.

Section two was copied from 6 Geo. 2, c. 31, which provided for imprisonment or posting of bond or recognizance merely upon the charge of the woman.

Section four, which was relied on by *Murphy*, was passed with reference to 6 Geo. 2, c. 31, and was intended to prevent hardship where a defendant was imprisoned on the charge of the woman only, by permitting discharge if the matter were not pressed within six weeks from the birth of the child.

or whose construction has been long settled, are consolidated into one, without any change of phraseology, the same construction ought to be put upon the consolidated act as was given to the original statutes."¹⁷

There is an interesting pair of rules which attempt to distinguish the legal effect of a compilation from that of a revision. According to one rule, a statute is not to be deemed repealed by reason of a failure to include it in a *compilation*.¹⁸ The other holds an act repealed if it is omitted from a revision, if it clearly appears that the legislature intended such revision to cover the entire subject.¹⁹ The distinction is not at once apparent since the words are sometimes used interchangeably.²⁰ The true meaning of the rules, however, would seem to be that where the law has been revised, in the sense that the legislature has examined and rewritten it, with the intention that it shall constitute the entire law on the subject, then an omitted statute will be deemed repealed.²¹ A compilation, by definition, is merely a collection of existing laws, with or without re-classification, but without any attempt to rephrase, alter or modify.²² It is well to note that in

17. 23 N.J.L. 180, at 192. This rule has been adopted in the Revised Statutes, 1:1-5, which provides that, "The classification and arrangement of the several sections of the Revised Statutes have been made for the purpose of convenience, reference and orderly arrangement, and, therefore, no implication or presumption of a legislative construction is to be drawn therefrom."

18. *Craig v. Smith*, 84 N.J.Eq. 593, 95 Atl. 194 (Ch. 1915); *Umbach v. Umbach*, 82 N.J.Eq. 427, 89 Atl. 514 (Ch. 1914).

19. *Stead v. Curtis*, 191 Fed. 529 (1911); *Morris v. Indianapolis*, 177 Ind. 369, 94 N.E. 705; *In re Southworth*, 5 Hun (N.Y.) 55.

20. "Revised Statutes" is described in BLACK'S LAW DICTIONARY, (2nd Ed.), as being the "legal title of the collections of *compiled* laws of several of the states, and also of the United States." (Italics added.)

21. ENDLICH, INTERPRETATION OF STATUTES, § 202.

22. "Compilation; (2) that which is compiled; especially a book or docu-

the case of the New Jersey Revised Statutes the law on some subjects has been merely compiled, and in others, revised.²³ It would appear necessary, therefore, to determine in each case whether the law has been compiled or revised; but at the same time it must be remembered that the Revised Statutes of 1937 purport to be the *entire* statute law of New Jersey which is of a general and permanent nature, and were enacted as such.²⁴ Just which rule will control if the question should ever arise it is impossible to hazard, especially in the absence of a definite factual situation.

Particular care should be taken not to rely upon any outline, analysis, recross-reference, cross-reference note, headnote or source note in attempting to determine the meaning of any act.²⁵ Although the Revised Statutes are the entire statute law

ment composed of materials gathered from other books or documents." WEBSTER'S INT. DICT. (2nd Ed.).

"Revision; act of revising; reexamination or careful reading over for correction or improvement; as the *revision* of a book or of statutes." *Idem*.

23. "Some of the acts, notably those with respect to cities, have been compiled, rather than revised and consolidated, because of the impossibility of revision and consolidation under the limited powers of the present Commission."

Letter of Transmittal of Report of Pension Commission, Dec. 20, 1937, R. S. p. xi.

24. Paragraph one of P. L. 1937, ch. 188, which enacts the Revised Statutes, provides: "The revision, consolidation and compilation prepared under the direction of the Legislature by the Revision Commission appointed under chapter seventy-three of the laws of one thousand nine hundred and twenty-five, presented to the Legislature by the Commission upon the twentieth day of December, one thousand nine hundred and thirty-seven, be and the same is hereby adopted as all the public statute law of the State of New Jersey of a general nature." R. S. Title I, p. 1.

25. R. S. 1:1-6. "In the construction of the Revised Statutes, or any part thereof, no outline or analysis of the contents of any title, subtitle, chapter, article, or part thereof, no cross reference or cross reference note and no headnote or source note to any section of the Revised Statutes shall be deemed to be a part of the Revised Statutes."

of the state, as of the date of their adoption,²⁶ it is yet and will remain, necessary to consult the annual pamphlet laws to determine many matters, such as whether the object of an act is expressed in its title,²⁷ or the effect of a preamble upon the meaning of some doubtful provision.²⁸ Although there is no authority on the point, it would seem true that an act which is unconstitutional because its object is not expressed in the title is not touched with life by reason of its inclusion in the Revised Statutes, where its original title is not disclosed. Thus, for example, an act dealing with the law of annulment, but passed as a criminal statute providing for punishment for a misdemeanor, and hence invalid²⁹ would not be given effect by including the portion dealing with misdemeanors under the title "Administration of Civil and Criminal Justice," and the portion dealing with annulment along with the law of annulment and divorce.³⁰

It will appear, from the general rules discussed, that the decision as to whether the law is changed by the Revised Statutes, or not, is not as difficult as it might seem. It is to be hoped, however, that the occasion for the use of those rules, will seldom arise.

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26. P. L. 1937 ch. 188. "The Revised Statutes as hereinbefore defined, and as hereinafter enacted, shall take effect immediately."

27. N. J. Constitution, Art. IV, Sec. 4, Par. 4.

28. Where the body of an act is uncertain, resort may be had to the preamble, if any, in order to ascertain the true meaning, whether it expands, limits, or restricts the act, provided such interpretation is not inconsistent with the language used. See *Brown v. Erie R.R.*, 87 N.J.L. 487, 91 Atl. 1023 (E. & A. 1915).

29. P. L. 1921, p. 43, involved in *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. 1934).

30. R. S. 1:1-5.