"CONSTITUTIONAL" LIMITATIONS ON AMENDMENTS IN INDIANA

An amendment to a legislative act is, in every state, treated as a part of the original statute. Repeated portions of the original act are continued in force from the date of origin. The altered portions are a part of the original act but are effective only from the date of the amendment's adoption. Segments of the original statute which are omitted by the amendment are repealed thereby.[1]

In every state but Indiana, these amendatory rules comprise the entire theory of amendment, which has been characterized as the "original act theory" because it preserves the original act as the competent reference for subsequent amendment or judicial interpretation.[2] The early Indiana Supreme Court created two additional rules which are wholly repugnant to the "original act theory." The first holds that a section of an act, once amended, cannot be amended again;[3] the

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that relief be given in the area where § 42 caused income to be bunched in a decedent's final return; (2) he recommended that the inequities caused by § 113(a)(5) be removed—". . . a large part of the capital gains inherent in the increased value of property thus escapes income tax as the assets are handed down from one generation to the other. . . ." The arguments appear at *Hearing before Committee on Ways and Means on Revenue Revision of 1942,* 77th Cong., 2d Sess. 89 (1942).

Two major organizations responded with contrary arguments. The American Bar Association suggested eliminating the *Enright* construction of § 42 but evidently without a provision being made for subsequent taxation of those amounts. ". . . [T]he purpose of our recommendation would be to eliminate and exclude from such accruals these uncertain, indefinite and undetermined amounts for incompleted personal services. . . . Mr. Paul, while reaching a somewhat different conclusion, recognized this inequity. . . ." *Id.* at 167.

The Chamber of Commerce of the United States replied to Mr. Paul's suggestion concerning the modification of the effects of § 113(a)(5). Logically stated, their argument was: Payment of estate tax necessitates conversion of bequests; (under Mr. Paul's suggestion) conversion of bequests necessitates payment of income tax; therefore, (under Mr. Paul's suggestion) payment of estate tax necessitates payment of income tax. *Hearing before Committee on Revenue Revision of 1942,* 77th Cong., 2d Sess. 1719, 1725 (1942).

These were the arguments before the respective committees. The American Bar Association's implication was rejected *haec verba.* It is doubtful that the interests represented by the Chamber of Commerce fared any better. While it is true that § 113(a)(5) was not amended directly, discretion probably forbid that. But Congress did succeed in using language in such a way that it avoided the pressures of special interests and yet gave the courts a statute precise enough to allow the elimination of an anachronism in our system of progressive taxation.

1. *In re* Assessment of Yakima Amusement Co., 192 Wash. 174, 73 P.2d 519 (1937); Worthington v. District Court, 37 Nev. 212, 142 Pac. 230 (1914); Village of Melrose Park v. Dunnebecke, 210 Ill. 422, 71 N.E. 431 (1904); 3 SUTHERLAND, STATUTORY CONSTRUCTION § 1910 (3rd ed., Horack, 1943).

2. 3 SUTHERLAND, STATUTORY CONSTRUCTION § 1910 (3rd ed., Horack, 1943).

3. The distinction between amending a section of an act and amending the act itself is one of language only. It is obvious that the only way that an act can be amended is to amend one or more sections of that act. However, under the Indiana

second requires that the amendatory act's title include the complete title of the statute to be amended.

These Indiana rules are called "constitutional rules." But they cannot logically be so classified since all other states having identical or similar constitutional provisions[4] have not found that their constitutions impose such requirements. Indiana's divergence from the "original act theory" lies not in its constitution but in the interpretation given it by a few early decisions.

Section 21, Article IV of the Indiana constitution deals exclusively with amendatory acts and 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.

This section and its counterparts in other states were adopted to prevent "blind" amendments which identify the act to be amended and then merely provide for the addition or deletion of certain words or figures without setting forth the text of the act or section as amended.[5] It is obvious that such a practice would effectively conceal

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rule, when one section of an act is amended it is considered to be replaced by the amendatory act. Thus, an act is substituted for a section, and confusion is introduced into the language of the decisions of the Court. A subsequent amendment to the first amendment will render it incapable of further amendment just as the first amendment rendered the original section incapable of further amendment. Thus, an act has been rendered incapable of further amendment. Common sense prevents the amendment of one section of a multiple section act from rendering the other sections of that act incapable of amendment. But the Court has never expressly affirmed this position. Indeed, the implication of the decisions is that the amendment of any one section of an original act makes it necessary to proceed through that amendment in order to amend any of the other sections of the original act. This ludicrous implication indicates the confusion wrought by the Indiana rule.

4. "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." Wash. Const. Art. II, § 37; ". . . no law shall be revived or amended by reference to its title only, but the law revived or section amended, shall be inserted at length in the new act." Ill. Const. Art. IV, § 13; ". . . no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be re-enacted and published at length." Nev. Const. Art. IV, § 17; Ariz. Const. Art. IV, Part 2, § 14; Ark. Const. Art. IV, § 23; Calif. Const. Art. IV, § 24; Colo. Const. Art. V, § 25; Fla. Const. Art. III, § 16; Ga. Const. Art. III, § 2-1916; Idaho Const. Art. III, § 7, Part XVI; Kan. Const. Art. II, § 16; Ky. Const. Art. Legis. Dept., § 51; La. Const. Art. III, § 17; Md. Const. Art. III, § 29; Mich. Const. Art. V, § 21; Miss. Const. Art. IV, § 16; Mo. Const. Art. III, § 28; Neb. Const. Art. III, § 14; N.J. Const. Art. IV, § 7(5); N. M. Const. Art. IV, § 18; Okla. Const. Art. V, § 57; Oregon Const. Art. IV. § 22; Penn. Const. Art. III, § 6; Wyo. Const. Art. III, § 26; Va. Const. Art. IV, § 52; Utah Const. Art. VI, § 22; Texas Const. Art. III, § 36; Tenn. Const. Art. II, § 17.

5. The body of a "blind" amendment would read:

"BE IT ENACTED . . .

Section 1) That section 26 of the above entitled act be and it hereby is amended

the purpose and operation of the amendment; the propriety of its prohibition has never been questioned.

All other states have confined the requirement of this constitutional provision to setting forth the amended act or section in its amended form. Unfortunately, an early Indiana court was so opposed to "blind" amendments that it read into the constitutional provision a requirement that is not there. Thus, in *Langdon v. Applegate*,[6] it held that the constitution required that the act, both in its original form and as amended, must be set forth at full length.

The *Langdon* rationale was that the evils of "blind" amendments could be avoided only by placing the language of the original act or section alongside its amended form so that the two could be compared by legislators and jurists. Logically, the next step of this line of reasoning would be to require a second amendment to set out the first amendment in its entirety for purposes of comparison. The original act or section would thus be rendered incapable of being directly amended more than once, since each subsequent amendment would have to set out the language of its preceding amendment. Therefore, a subsequent amendment would be an amendment to an amendment rather than an amendment to the original act. If the *Langdon* rule had been a proper interpretation of the constitution it would seem to supply a constitutional basis for holding that an act or section can be validly amended only once and that any further attempt to do so is void.

The *Langdon* rule, which represents Indiana's initial divergence from the "original act theory," met with immediate opposition and, although followed for thirteen years, it was the center of much controversy.[7] By 1867, resistance to the *Langdon* rule had become so strong that its reversal seemed inevitable. The legislature, fearing that such a reversal would revive amendments previously held unconstitutional,[8] enacted a statute repealing "all laws not in conformity with

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by inserting after the word "within" the words "neither brothers and sisters nor their descendents."

See Bush v. Indianapolis, 120 Ind. 476, 480, 22 N.E. 422, 423 (1889); Greencastle Southern Turnpike v. State, 28 Ind. 382, 386 (1867).

6. 5 Ind. 327 (1854).

7. "Though I did not then, nor can I now, concur with the Court in that opinion, [*Langdon v. Applegate*] yet it stands as the law till overruled." Wilkins v. Miller, 9 Ind. 100, 102 (1857); "Were this an original question I would not so decide." Littler v. Smiley, 9 Ind. 116, 118 (1857); Kennon v. Shull, 9 Ind. 155, 156 (1857); Alexander v. State, 9 Ind. 337, 339 (1857).

8. Mr. Bennett, speaking on the floor of the Senate said that ". . . if the present Supreme Court should reverse that decision—Langdon v. Applegate—it would revive all such laws; and as decisions of the Courts and Legislature has proceeded upon that

Langdon v. Applegate."[9] Shortly thereafter, in *Greencastle Southern Turnpike v. State,*[10] the Court overruled *Langdon* by holding that setting forth the original act as amended is the sole constitutional requirement. This interpretation of the constitution, eliminating the necessity of repeating the language of the original act or section or previous amendment, leaves no basis whatever upon which the original act or section could be held incapable of further amendment. Each amendment is considered a part of the original act and it would therefore be immaterial whether a subsequent amendment purported to amend the original act or a previous amendment to that act.

The membership of the Supreme Court changed in the three years following the *Greencastle* case and the new court, unfortunately, did not understand the full implications of the *Greencastle* rule. This fact is strikingly obvious, for in the *Greencastle* case the court referred to a fact situation which it felt would cause much embarrassment under the *Langdon* rule and implied that by overruling the *Langdon* case, the difficulty would be solved.[11] That very fact situation was before the court in *Draper v. Falley.*[12] It involved an act passed in 1859. A section of that act was amended in attempted conformity with the *Langdon* rule in the regular session of 1861, but certain technical

idea, it is important that this bill should pass." 9 BRIEVER, LEGISLATIVE REPORTS 177 (1867). Mr. Peele, speaking on the floor of the House, expressed a more basic purpose when he urged that ". . . the repeal of these statutes is necessary to preserve titles acquired under the Langdon and Applegate decision." *Id.* at 440.

9. "AN ACT for the repeal of statutes not in conformity with the ruling of the Supreme Court in the case of Langdon against Applegate and others, and limiting actions arising out of same, or for violations thereof." Ind. Acts 1867, c. 106, p. 204.

10. 28 Ind. 382 (1867).

11. "The evils growing out of the previous rulings of this Court are not confined to the inconvenience of legislation, but frequently grow out of mistakes in copying the old law. A striking instance of this has lately been presented for our consideration. The legislature, in March, 1859, passed an act fixing the times of holding the terms of several common pleas courts of this state. In March, 1861, they undertook to amend the fifteenth section of that act, and in setting out the section amended, the words 'as long as' are used for the word 'while'. In May, of the same year, at the special session, they passed another act, purporting to amend the original section, as it stood in the law of 1859, in which the original, and not the section as amended by the act of March 1861, was set forth. In *several* of the counties affected by the change, the courts have acted under the law of March, 1861, *holding that the last act was void, under the ruling in Langdon v. Applegate, supra, for not setting forth at full length the section amended.* If we should adhere to the ruling in *Langdon v. Applegate,* it would now be a very embarrassing matter to determine the effect of the mistake in the recital of the original section in the act of March, 1861." Greencastle Southern Turnpike v. State, 28 Ind. 382, 388 (1867). (emphasis added)

In overruling *Langdon v. Applegate* the Court removed any grounds for holding that the last amendment was *unconstitutional.* Observe, however, that the Court expressed no opinion as to the effect of the 1867 act, which repealed all laws not in conformity with *Langdon v. Applegate,* upon either amendment.

12. 33 Ind. 465 (1870).

errors were made in setting forth the original section. That same section was amended a second time in a special session in 1861, and this time it was properly set forth.

Since the two amendments were incompatible, the problem in *Draper v. Falley* was to determine which one was in force. The Court reviewed the reasoning of both the *Langdon* and the *Greencastle* cases and, in a very confused and confusing decision, paid lip service to the *Greencastle* rule,[13] but decided the case by the overruled *Langdon* decision. The Court's apparent inconsistency was probably due to its preoccupation with the 1867 statute which repealed all amendments not made in conformity with the *Langdon* rule.[14]

The Court held that the first amendment was in conformity with the *Langdon* rule in spite of the technical errors made in setting forth the original act. It would seem that the second amendment would, nevertheless, take precedence over the first since it was the last expres-

13. "We are greatly embarrassed by these conflicting and irreconcilable decisions. If it was an open and undetermined question, we would feel less hesitation in giving an interpretation and construction of this section. If the late decision had not been made, we would not probably feel inclined to disturb the former ruling." Draper v. Falley, 33 Ind. 465, 472 (1870).

"After mature and thoughtful consideration, we have come to the conclusion that if the interpretation and construction placed upon the section in question by our immediate predecessors in office, and the uniform interpretation and construction that has been placed upon the other sections of our constitution above quoted and referred to, are rigidly adhered to and carried out in good faith by the legislative department of the government, the aims and purpose intended by the framers of our constitution can be attained and secured, and our laws made plain, certain, intelligible, uniform and stable. We therefore approve of the ruling of this court in the case of Greencastle etc. Turnpike Co. v. State ex rel Malot, 28 Ind. 382." *Id.* at 475.

14. This is best illustrated by a line of cases involving the law of descent and an amendment thereto which had not been made in conformity with *Langdon v. Applegate.* Three cases in that line arose before the *Draper v. Falley* decision and in each of them the repeal of the amendment was held to reinstate the original law. Sullivan v. McGowen, 33 Ind. 171 (1870); Nebecker v. Rhoads, 30 Ind. 330 (1868); Leard v. Leard, 30 Ind. 171 (1868). Cases of this line arising after *Draper v. Falley* explained this conclusion by holding that the amendment was an implied repeal of the original act and that repeal of the amendment revived the original act. Burns v. Cope, 182 Ind. 291, 105 N.E. 472 (1914); Waugh v. Riley, 68 Ind. 482 (1879); Niblack v. Goodman, 67 Ind. 175 (1879); Lieb v. Wilson, 51 Ind. 553 (1875); Hoffman v. Bacon, 50 Ind. 379 (1875); Longlois v. Longlois, 48 Ind. 60 (1874); Lindsay v. Lindsay, 47 Ind. 286 (1874); Pierce v. Pierce, 46 Ind. 286 (1874). These cases came very close to making all amendments into repeals for judicial expediency, but this result was prevented by restricting the line of cases to its peculiar facts. See Longlois v. Longlois, 48 Ind. 60, 63 (1874). Due to the effects of the 1867 repealing act and the decision in *Draper v. Falley,* it was impossible for the court to sustain any amendments made to the law of descent in the thirteen years from the *Langdon* case to the *Greencastle* case. If an amendment had been made to the first amendment it would have been repealed with the first amendment in 1867; and if a second amendment had been made to the original act, it would have been invalid under the rule in *Draper v. Falley.* Adding to this dilemma the complex array of individual rights and interests ever present in the law of descent, one can understand the early Court's confusion in the field of constitutional and statutory construction during this period.

sion of legislative intent in point of time.[15] But the Court held otherwise, and followed the discredited line of reasoning of the *Langdon* case by ruling that the second amendment was an "unconstitutional" attempt to amend a "section that had no existence" and was thus "invalid." No authority was cited to support this conclusion, nor did the Court resort to logic or reason.[16] It is impossible to find any basis in the constitution for the Court's decision, since under the *Greencastle* rule, repetition of the amended section's original form is not *constitutionally* required. It is probable, however, that the result reached in this case is correct, though the reasoning is not. If the court had said that the second amendment was repealed by the act repealing all laws not in conformity to *Langdon v. Applegate,* its decision would have been unimpeachable.[17]

Although the rule advanced in *Draper v. Falley* is constitutionally unjustified, it would have had no harmful effect without the second anomaly propounded by *Feibleman v. State,*[18] *i.e.,* that the title of an amendment must set forth in full the title of the act it amends. This rule also emanates from a strained interpretation of the constitution rather than from the constitution itself. This error of interpretation is exceeded only by that of *Draper v. Falley.*

Section 19, Article IV of the Indiana constitution concerns statutory titles and directs:

> Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in the act which shall not be expressed in the title; such act shall be void only as to so much thereof as shall not be expressed in the title.

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15. See Metsker v. Whitesell, 181 Ind. 140, 103 N.E. 1083 (1914), in which a section of an original act was validly amended on two successive days in the legislature. The second amendment contained an emergency clause whereas the first did not. In upholding the validity of the second amendment the court pointed out that the second amendment would go into effect first due to the operation of the emergency clause, but went on to say: "Had there been no emergency clause to the act of March 15, [the second amendment] nevertheless it would have superceded the act of March 14." See also Spencer v. State, 51 Ind. 41 (1854). *Cf.* Milk Control Board v. Purisifull, 219 Ind. 49, 36 N.E.2d 850 (1941), where the court allowed the amendment of a statute after it had lapsed; 17 IND. L.J. 450 (1941).

16. "The act of May 31st, 1861, is unconstitutional and invalid under both decisions. It attempted to amend a section that had no existence. It is not, therefore, valid as an amendatory act. Nor can it be sustained as an independent original act." Draper v. Falley, 33 Ind. 465, 475 (1870).

17. There is little doubt that the members of the court which decided *Draper v. Falley* astonished their immediate predecessors in office by finding that the first amendment was in conformity with *Langdon v. Applegate.* See note 11 *supra.*

18. 98 Ind. 516 (1884).

In *Feibleman v. State,* the Court interpreted this constitutional provision to apply to amendatory titles in a manner which no member of the Constitutional Convention envisioned.[19] The *Feibleman* case involved an act passed in 1852. A section of that act was validly amended in 1867. In 1883, a second amendment was made to the same section of the original act, but in the title of the second amendment the title of the original act was set forth and the section to be amended was identified as "section 1418 of the revised statutes," which citation was to the codification of the first amendment. Under the "original act theory," in which the amendment is always a part of the original act, this amendatory title would be sufficient. The subject to which the amendment pertained was clearly presented by the title of the original act and proper reference was made to the exact language which the legislators wished to amend.

But the Indiana Court, citing the rule in *Draper v. Falley,* held that the previously amended section of the original act was no longer capable of amendment and that the reference to the first amendment in the revised statutes was of no avail. The court's reasoning on this point must be examined to understand its misinterpretation of the constitution.[20]

The Court decided that Section 21 of the constitution consisted of two clauses. First: "No act shall ever be revised or amended by mere reference to its title; . . . ." This, the Court held, requires that the amendatory title refer to the title of the act to be amended and that the title referred to must be that required by Section 19 of Article IV. Second: ". . . but the act revised or section amended shall be set forth and published at full length." This, of course, requires the act or section as amended to be set forth under the *Greencastle* rule.

By its interpretation of the first clause of Section 21 the Court obviously defeated the applicability of Section 19 to amendatory titles. Section 19 requires that the subject matter of every act be disclosed in its title. The most Section 21 can reasonably be interpreted to mean, and the most its counterparts in other states have ever been interpreted to mean, is that mere reference to the chapter and year of the original act in the title of an amendatory act is not sufficient disclosure of subject matter and that the body of the amendment must set forth the act or section as amended in full. But the *Feibleman* decision interprets Section 21 as affirmatively requiring reference to the title of the act

19. See 2 IND. CONST. CONVENTION, DEBATES AND PROCEEDINGS, 1085-1088, 1113-1125 (1851).

20. See Feibleman v. State, 98 Ind. 516, 521 (1884).

to be amended. Cases relying upon *Feibleman* have concluded that "reference to title" can be made only by setting it out in full.[21]

The *Feibleman* decision has destroyed the very purpose for which Section 19 was included in the constitution.[22] That purpose is to require such clear expression of an act's subject matter in the title that anyone can, by reading it, know whether it contains matter of interest to him.[23]

The rule in *Draper v. Falley* makes every amendment after the first an amendment to an amendment and the *Feibleman* rule requires that the title of the act to be amended be set forth in full. Thus, the titles of amendatory acts in Indiana necessarily increase in such proportions that they are virtually impossible to understand,[24] thereby nullifying the spirit of Section 19 of the constitution.

Only a comparison of Indiana amendatory titles with those permitted under similar provisions in other states will adequately disclose the folly and futility of the Indiana practice. Based on the title to Chapter 23, Indiana Acts of 1949, three hypothetical amendatory titles are set forth to illustrate the impracticability of the Indiana rules.

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21. "The title of the act to be amended must be referred to by setting it out. . . ." Lingquist v. State, 153 Ind. 542, 543, 55 N.E. 426, 426 (1899); ". . . the title of the act amended must be set out in full." Hendershot v. State, 162 Ind. 69, 71, 69 N.E. 679, 679 (1903). In direct opposition to the above cases, it is submitted that "mere reference to title" as used in Section 21 of Article IV is in the nature of a word of art. Its true meaning is the setting forth of the chapter and year of the act. The members of the Constitutional Convention undoubtably used "mere reference to title" in its technical sense. This seems especially true in the light of the vigorous opposition to any attempt to make the title of an act more important than the act itself in determining its constitutionality. See IND. CONST. CONVENTION, DEBATES AND PROCEEDINGS 1120, 1122 (1851).

22. The weakness of the *Feibleman* interpretation of the constitution is clearly pointed out in a case which arose in 1901. In holding valid an amendatory title which read: "AN ACT entitled an act amending an act concerning the education of children, approved March 8, 1897, and declaring an emergency," the court said, "The grammatical construction of the title is awkward, and inaccurate, but it indicates with sufficient precision that the act of 1899 is an amendment to . . . the act of March 8, 1897. The rule in such cases is that an act of the legislature is not to be held void because of trivial and unimportant defects in its title. If any reference to the title of the act amended was necessary . . . as was held in Feibleman v. State, 98 Ind. 516 . . . this requirement was sufficiently complied with in the title of the amendatory act of 1897." State v. Bailey, 157 Ind. 324, 329, 61 N.E. 730, 731 (1901).

23. 2 IND. CONST. CONVENTION, DEBATES AND PROCEEDINGS 1120 (1851).

24. Indiana amendatory titles have been called: ". . . hideous collections of titles heaped on titles." SUTHERLAND, STATUTORY CONSTRUCTION § 1910 (3rd ed., Horack, 1943). ". . . [W]ilderness of waste words." Note, 43 HARV. L. REV. 482 (1930). ". . . [U]seless mass of words complicated by section numbers piled one upon the other in utter confusion." (Citing the title of the Primary Election Act, Ind. Acts 1929, c. 68, as a typical example.) N.Y. Times, Jan. 17, 1930, p. 22, col. 3.

TITLE OF ORIGINAL ACT

AN ACT concerning the taxation of production credit associations.[25] Approved February 26, 1949

TITLE OF THE FIRST AMENDMENT

Chapter 40, Acts 1951

IN INDIANA	*IN THE OTHER 47 STATES*
AN ACT to amend sections 2, 3, 4, 5, 6 and 7 of an act entitled, "AN ACT concerning the taxation of production credit associations. Approved February 26, 1949."[26]	AN ACT to amend sections 2, 3, 4, 5, 6 and 7 of Chapter 23, Acts of 1949 concerning taxation of production credit associations.[27]

TITLE OF SECOND AMENDMENT

Chapter 73, Acts 1953

AN ACT to amend sections 1, 2 and 3[28] of an act entitled, "AN ACT to amend sections 2, 3, 4, 5, 6 and 7 of an act entitled, 'AN ACT concerning the taxation of production credit associations. Approved February 26, 1949.' Approved February 9, 1951."	AN ACT to amend sections 2, 3 and 4 of Chapter 23, Acts of 1949, concerning taxation of production credit associations. (as amended[29] by Chapter 40, Acts of 1951.)[30]

25. This act was selected because it has a remarkably short title. The titles of all original acts could be equally as concise, but unfortunately they are not. Notice that if the title of the original act were increased one word the title of the third Indiana amendatory title would be increased three words. Notice also that under the practice of the other 47 states the title of the original act may be paraphrased in the amendatory title so long as proper subject expression is made.

26. The approval date of the original act is usually included under the Indiana rule although it has been held that it is not absolutely necessary. Shoemaker, Aud. v. Smith, 37 Ind. 122, 131 (1871).

27. Notice that this title gives the legislator or layman a direct citation to the act amended as well as a complete expression of subject matter. Under the Indiana rule it is necessary to resort to the subject matter index of the bound volumes of Indiana acts in order to find the statute amended.

28. Sections 1, 2 and 3 of the first amendment are actually sections 2, 3 and 4 of the original act. Here we see the beginning of the confusion of section numbers which is one of the blessings of the Indiana rule. It has been held that it is not necessary that the section of the act amended be specified in the title. Weatherhogg v. Board, 158 Ind. 14, 24, 62 N.E. 477, 481 (1901). This would only serve to complicate matters under the Indiana rule since it would seem that, if one section of a multiple section act were amended without designating that section in the title, the entire act would become incapable of further amendment except through the first amendment.

29. It seems advisable to use the words "as amended" in the title of an amendatory act to give the legislators added notice that the original act has been previously amended. However, it is not essential to the "original act theory."

30. It does not seem advisable to give a citation to the previous amendments in the title of the amendatory act. That information will appear in the purview of the

TITLE OF THIRD AMENDMENT

Chapter 110, Acts 1955

AN ACT to amend section 2 of an act entitled, "AN ACT to amend sections 1, 2, and 3 of an act entitled, "AN ACT to amend sections 2, 3, 4, 5, 6 and 7 of an act entitled, 'AN ACT concerning the taxation of production credit associations. Approved February 26, 1949.' Approved February 9, 1951." Approved February 2, 1953." And to amend section 5 of an act entitled "AN ACT to amend sections 2, 3, 4, 5, 6 and 7 of an act entitled, 'AN ACT concerning the taxation of production credit associations. Approved February 26, 1949.' Approved February 26, 1951." And to amend section 12 of an act entitled, "AN ACT concerning the taxation of production credit associations. Approved February 26, 1949."[31]

AN ACT to amend sections 3, 6 and 12 of Chapter 23, Acts of 1949 concerning taxation of production credit associations. (as amended by Chapter 40, Acts of 1951; Chapter 73, Acts of 1953.)[32]

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amendment. This also is not essential to the "original act theory," but would provide all the imaginary safeguards of the Indiana rule with none of its disadvantages.

31. This amendatory title gives no notice at all because it is virtually impossible to comprehend. Such amendatory titles are fully as difficult to draft as they are to understand. This fact is indicated by the number of acts which have been held unconstitutional for failure to comply with sections 19 and 21 of the Constitution. Section 19 ranks second as a cause of unconstitutionality and section 21 ranks third. See Field, *Unconstitutional Legislation in Indiana,* 17 IND. L.J. 101, 106 (1941).

It is significant to note that violation of these provisions has been decreasing in recent years. It is submitted that the reason for the decrease is the increasing use of supplemental acts and acts which amend by implication. This is an inaccurate and undesirable system of amendment at best, but it has been given support by the Court in the past through their relaxation of the rules against amendment and repeal by implication. See Wilson v. Strahl, 220 Ind. 672, 46 N.E.2d 204 (1943); Northern Indiana Power Co. v. West, 218 Ind. 329, 32 N.E.2d 953 (1941); Wilkens v. Leeds, 216 Ind. 511, 25 N.E.2d 443 (1940); Woods v. Chicago and Erie R. R. Co., 214 Ind. 307, 14 N.E.2d 725 (1938); Pike County Coal Corp. v. Industrial Board, 205 Ind. 702, 188 N.E. 204 (1933); Price v. State, 204 Ind. 362, 184 N.E. 178 (1933); Wayne Twp. v. Brown, 205 Ind. 453, 186 N.E. 841 (1933); State v. Board of County Commissioners, 203 Ind. 34, 178 N.E. 563 (1931). *Cf.* Gavit, *Workman's Compensation Act: Effect of an Advisory Opinion of Appellate Court Declaring an Act Unconstitutional,* 4 IND. L.J. 130 (1928).

The mere cost of printing these useless titles is adequate reason for doing away with the Indiana rule. The original draft of this note was to include the title of Chapter 243, Acts of 1949, as a horrible example of an Indiana amendatory title. But it was discovered that it would cost $52.60 to print that title in this journal. The title

It is clear from an examination of the titles which have been set forth that in every state except Indiana an amendment is always considered a part of the original act. In cases testing the validity of an amendatory title in Indiana, however, an amendment replaces the original act, and thus becomes the only law capable of further amendment.[33] But in all other situations, the Indiana Court has long adhered to the generally accepted rule that an amendment is not a repeal of the act or section amended.[34] Language of the original act or section which is repeated is not repealed and re-enacted, but "continued in force,"[35] and the amendment enters into and becomes a part of the original act.[36] If the repeated language has been construed by the court prior to its repetition in the amendment, the judicial construction is also continued in force.[37] It is only the omission of language by an

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covers almost three pages in the Acts of 1949 whereas the act itself covers only a little over three pages in larger type. The 156 amendatory titles in the Acts of 1949 take up 238 inches of print or 31.74 pages of that volume. At the rate this Journal is charged for printing it would cost $499.75 to print those titles as opposed to the $81.90 which it is estimated that it would cost to print the same titles according to the "original act theory." Thus, the Indiana rule is expensive as well as senseless.

32. This title will never be any longer regardless of the number of amendments which are subsequently made, whereas the Indiana title has only begun to grow. Compare also the beginning of each section in the purview of the third amendment under the two rules:

IN INDIANA	*IN THE OTHER 47 STATES*
BE IT ENACTED . . .	BE IT ENACTED . . .
Sec. 1) That sec. 2 of the first above entitled act be amended to read as follows: Sec. 2) That sec. 2 of the second above entitled act be amended to read as follows: Sec. 2) That sec. 3 of the third above entitled act be amended to read as follows: Sec. 3) . . .	Sec. 1) That sec. 3 of the above act, being sec. 2 of Chapter 73, Acts of 1953, be amended to read as follows: Sec. 3) . . .

33. 3 SUTHERLAND, STATUTORY CONSTRUCTION § 1910 (3rd ed., Horack, 1943).

34. Alexander v. State, 9 Ind. 337 (1857); Cheezem v. State, 2 Ind. 149 (1850).

35. Huff v. Fetch, 194 Ind. 570, 143 N.E. 705 (1923); Thompson v. Mossburg, 193 Ind. 566, 139 N.E. 307 (1923); Heath v. State, 173 Ind. 296, 90 N.E. 310 (1909); Sage v. State, 127 Ind. 15, 26 N.E. 667 (1890); Wayne v. Board of Commissioners, 123 Ind. 132, 25 N.E. 80 (1889); Gorley v. Sewell, 77 Ind. 319 (1881); *Cf.* Robinson v. Rippy, 111 Ind. 112, 12 N.E. 141 (1887).

36. Hamilton County Council v. State, 227 Ind. 608, 87 N.E.2d 810 (1949); State v. Bowman, 199 Ind. 446, 156 N.E. 394 (1927); Stiers v. Munday, 174 Ind. 651, 92 N.E. 374 (1910); State v. Adams Express Co., 171 Ind. 138, 85 N.E. 337 (1908); Cain v. Allen, 168 Ind. 8, 79 N.E. 896 (1906); State v. Board, 166 Ind. 162, 76 N.E. 986 (1905); Russell v. State, 161 Ind. 481, 66 N.E. 1019 (1903); Given v. State, 160 Ind. 552, 66 N.E. 750 (1902); State v. Mount, 151 Ind. 679, 51 N.E. 417 (1898); Pomeroy v. Beach, 149 Ind. 511, 49 N.E. 370 (1897); Leger v. Paine, 147 Ind. 181, 45 N.E. 604 (1895); Walsh v. State, 142 Ind. 357, 41 N.E. 65 (1895). *Cf.* Chambers v. Kyle, 67 Ind. 210 (1879).

37. Thompson v. Mossburg, 193 Ind. 566, 574, 575, 139 N.E. 307, 310 (1923).

amendment which operates as a repeal of any part of the original act or section.[38]

Since an amendment "enters into and becomes a part of the original act" for purposes of statutory interpretation even though a prior amendment exists,[39] it would seem that for constitutional purposes also, an amendment to the original act which has been previously amended should be valid if: It makes reference to the original act; discloses its own subject matter; and sets forth in its purview the language of the original act or section as amended.

There is reason to believe that the Indiana Supreme Court is close to affirming this position. Judge Draper, in the recent case of *Sutton v. State*,[40] held that repeal of the original act after it had been amended was also a repeal of the amendment even though the amendment was not mentioned in the title of the repealing act, and he properly observed that an original act, once amended, is not thereby "abrogated for all purposes."[41] The original act and the amendment[42] each consisted of one section and were identical except for the addition of a few words in the amendment. But the Court held that the title of the repealing act referring only to the original act was sufficient and, since the amendment depended upon the original act for its existence,[43] a repeal of the original act repealed the amendment.

If the repeal of an original act repeals a prior amendment, then a subsequent amendment to an original act should amend a prior amendment.[44] This position seems logical, and any attempt to cir-

38. Smith v. State, 194 Ind. 688, 144 N.E. 471 (1924).

39. "The effect of an amendment of a section of the law is not to sever it from its relation to other sections of the law, but to give it operation in its new form as if it had been so drawn originally, treating the whole act as a harmonious entity, with its several sections and parts mutually acting on each other." State v. Board, 166 Ind. 162, 189, 76 N.E. 986, 994 (1905).

40. 101 N.E.2d 636 (Ind. 1951).

41. Judge Draper did not have to decide the purposes for which an amendment does abrogate the original act. But it is a fair implication from his language that he was opposed to the original act being abrogated for any purpose. He inferred that the original act was still in existence after amendment, saying that: ". . . [B]y the repeal of the original statute, the provisions thereof which are continued in force by the second, or amendatory statute, are repealed." Sutton v. State, 101 N.E.2d 636, 638 (Ind. 1951). This reasoning shows the fallacy of the concept that a statute or section once amended has "no existence." See note 16 *supra*.

42. Ind. Acts 1935, c. 169, p. 830; Ind. Acts 1937, c. 152, p. 821; Ind. Acts 1939, c. 112, p. 559.

43. The proposition that an amendment cannot be an independent act is supported by the great majority of cases in Indiana. *See, e.g.*, Blakemore v. Dolan, 50 Ind. 194 (1875).

44. Indeed, if the omission of parts of an act or section amended is a repeal of those omitted portions, it would seem that Indiana has already accepted this position. The only situation in which the *Draper v. Falley* rule could now be upheld is the situation in which portions are added to the original act.

cumvent it through Section 21 of Article IV, must be rejected as unsound. In fact, Section 21 guarantees that in the amendment situation the legislator and layman will receive greater protection and more complete information than in the case of repeal, since the body of an amendment must set forth the entire text of the amendment, whereas a repealing act need only identify the subject of the repeal.[45]

An amendment's title as well as the title of a repeal must comply with Section 19 by disclosing the subject matter of the act; thus the requirement of Section 21, that the title of an amendment do more than make "mere reference" is automatically fulfilled. The validity of an amendment to an original act which has been previously amended should be tested by Judge Draper's reasoning in *Sutton v. State.*

The decision in that case seems to indicate that the Court is aware that this is the next logical step. The Court is certainly cognizant of the monstrous titles that the early decisions require—titles that defeat the very purpose of the constitutional requirements. After multiple amendment, no amendatory title can be drafted that is not subject to constitutional doubt. Such titles provide no notice and little information for they are virtually incapable of comprehension.

If the Court is finally pointing the way to a resolution of this century-old problem, it is hoped that Indiana's legislators will accept its guidance and draft the simple and more informative titles permitted under the original act theory in all other states.

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45. A most striking example of the failure of a repeal to give any notice or protection to the legislator or layman is the 1867 repealing act. Section one of that act reads: "BE IT ENACTED . . .

Section 1.) That all laws heretofore passed not in conformity with the ruling of the Supreme Court of this State in the case of Langdon against Applegate and others, reported in the 5th volume of the Indiana reports, on page 327, are hereby repealed." Ind. Acts 1867, c. 106, p. 204.

This identification of the acts to be repealed is so indefinite that it was necessary for the courts to decide which acts fell within its operation. Also a wide variance of opinion in the courts was present in determining how to give effect to the repeal. See notes 11 and 17 *supra.*