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Statutes - Presumptions as to Enactment - Entrinsic Evidence Admitted to Defeat an Enrolled Bill

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RECENT CASES

STATUTES — PRESUMPTIONS AS TO ENACTMENT — EXTRINSIC EVIDENCE ADMITTED TO DEFEAT AN ENROLLED BILL — Relators were indicted for violating the Sunday closing law, as amended by the 1963 session of the West Virginia General Assembly They brought an original proceeding in prohibition to restrain their prosecution, alleging the unconstitutionality of the act on the ground that it had been passed by the House of Delegates after the expiration of the sixty-day session by mandatory provision of the state constitution. The Supreme Court of Appeals of West Virginia *held* that the journal of the House was sufficiently ambiguous on its face to warrant the introduction of extrinsic evidence to show that the House had "stopped the clock" and had passed the act in question after the constitutional limit of the regular session had expired. *State ex rel. Heck's Discount Centers v Winters*, 132 S.E.2d 374 (West Virginia 1963)

From the earliest times the enrolled bill has held the position of being the documentary basis of statutory law, and courts have been circumspect in questioning its legitimacy In England an Act of Parliament speaks conclusive fact, binding upon the judiciary [1] Some American courts follow the common law lead to hold the parchment as final proof of regular enactment; not even the legislative journals may defeat the act.[2] The policy behind this strict rule is that courts should not discredit the workings of a branch equal in power to their own.[3] When other courts look behind the enrolled bill, they go no further than taking judicial notice of the journals, and then only if it affirmatively appears that the constitutional requirements have not been met.[4] Many jurisdictions give the act a *prima facie* presumption of validity but admit the journals in evidence to defeat it when the

1. Richards v. McBride, 8 Q.B.D. 119 (1881).

2. State *ex rel.* Cline v. Shriker, 228 Ind. 41, 88 N.E.2d 746 (1950) Jackson v. Walker, 121 Tex. 303, 49 S.W.2d 693 (1932) State v. Martin, 38 Wash. 2d 834, 232 P.2d 833 (1951).

3. Roehl v. Public Util. Dist. No. 1 of Chelan County, 43 Wash. 2d 214, 261 P.2d 92 (1953), in which the "enrolled bill" rule is exhaustively examined and reaffirmed.

4. Young v. Galloway, 177 Ore. 617, 164 P.2d 427 (1945) Fuqua v. Davidson County, 189 Tenn. 645, 227 S.W.2d 12 (1950).

regularity of its passage has been put in issue.[5] And where the fundamental law demands that the journal show the conditions of enactment, the failure to record these essentials is a bar to enforcement.[6] The rationale of this equally strict but opposite rule is that the judiciary lacks legislative power and may not recognize laws improperly enacted.[7]

One of these constitutional mandates found in seventeen states is that the bill must be passed within the time limit of the session;[8] for when it runs out, the body becomes *functus officio* and its acts are in theory without effect.[9] It is a common practice, however, for legislatures to stop the clock on the last day of the session and not to start it again until business is finished. When this happens, neither the enrolled bill nor the journal shows the stoppage nor reveals whether the body has exceeded its authority And since the almost universal rule formerly excluded parol evidence to impeach the enrolled bill,[10] the constitutional limitation rested for its effectiveness upon the good behavior of the legislature itself.[11] But in the principal case the West Virginia Court admitted affidavits from the Clerk and Members of the House to determine that the act in question was not regularly passed. It justified this extraordinary departure by examining the impossibility of discovering the exact time of adjournment from the ambiguous and conflicting statements in the journal,[12] and the illogic of enforcing a bill which never became law

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5. People *ex rel.* Manville v. Leddy, 53 Colo. 109, 123 Pac. 824 (1912), Ridgely v. Mayor, etc., of Baltimore, 119 Md. 567, 87 Atl. 909 (1913) State v. Adams, 323 Mo. 729, 19 S.W.2d 671 (1929) Barnsdall Ref. Corp. v. Welsh, 64 S.D. 647, 269 N.W 853 (1936).

6. McClellan v. Stein, 229 Mich. 203, 201 N.W 209 (1924) Intergration of Bar Case, 244 Wis. 8, 11 N.W.2d 604 (1943), in which all phases of this rule are examined.

7. People v. Leddy, *supra,* note 5.

8. CAL. CONST. art. 4 § 2 DEL. CONST. art 2 § 4 FLA. CONST. art. 3 § 2 GA. CONST. art. 2 § 1603 HAWAII ORG. ACT. § 43 MD. CONST. art. III § 15 MINN. CONST. art. 4 § 1 MO. CONST. art. III § 20a, MONT. CONST. art. V § 6 N. M. CONST. art. IV § 5, N. D. CONST. art. 56, TEX. CONST. art. 3 § 5 UTAH CONST. art. VI § 16 VA. CONST. art. 46 WASH. CONST. art. 2 § 12, W VA. CONST. art. VI § 22, WYO. CONST. art. 3 § 6.

9. See State *ex rel.* Cunningham v. Davis, 123 Fla. 121, 166 So. 289 (1936), and State *ex rel.* Landis v. Thompson, 121 Fla. 561, 164 So. 192 (1935) for a discussion of the evidentiary value of the records of a "rump" session.

10. See, *e.g.,* People v. Leddy, *supra,* note 5, and Ridgely v. Mayor, etc., of Baltimore, *supra,* note 5. *Contra,* Franklin Nat. Bank of Long Island v. Clark, 26 Misc. 2d 724, 212 N.Y.S.2d 942 (1961).

11. *But cf.* White v. Hinton, 3 Wyo. 753, 30 Pac. 953 (1892), "If on rare occasions validity should be given to legislation not strictly regular in its enactment, the evil would be less than the unsettling of the evidentiary foundation of all statutory law."

12. The ambiguity was part of a concerted effort by the opponents of the bill.

An early Dakota case held the same way [13] But more recent analogous decisions indicate a shift toward the presumption of validity unless the contrary affirmatively appears in the journals.[14]

The practice and problem of stopping the clock would vanish without the limit on the length of sessions. As the volume of business grows with every year, there remains little reason to deny the legislature the full time to perform its duties which the executive and judicial branches have always had.[15]

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EMINENT DOMAIN — REGULATIONS RELATING TO HIGHWAYS AND STREETS — COMPENSATION FOR LOSS OF ACCESS — In a condemnation proceeding by the New Mexico Highway Commission the District Court entered a judgment which compensated an abutting property owner for the depreciation in market value of undeveloped property caused by the loss of direct access to a highway, which was the result of being placed upon a frontage road of a limited access highway On appeal, the State Supreme Court *held*, one justice dissenting, that owners of land abutting a highway did not sustain a compensable loss by action of the State in removing their direct access and in providing a frontage road. *State v Danfelser*, 348 P.2d 241 (N.M. 1963)

As early as the second half of the 19th century, New York decisions clearly established a compensable interest in the right of access of abutting property owners.[1] It is now generally recognized that abutting owners have a right of access to and from public roads which may not be cut off or interferred with unless justly compensated for [2]

13. Treadway v Schnauber, 1 Dak. 227, 46 N.W 464 (1875).
14. State *ex rel.* Sorlie v. Steen, 55 N.D. 239, 212 N.W 843 (1927) State v. Schultz, 44 N.D. 269, 174 N.W 81 (1919) Woolfolk v. Albrecht, 22 N.D. 36, 133 N.W 310 (1911) Power v. Kitching, 10 N.D. 254, 86 N.W 737 (1901).
15. Orfield, *Improving State Legislative Procedure and Processes*, 31 MINN. L. REV. 161 (1946). See also Lloyd, *Judicial Control of Legislative Procedure*, 4 SYRACUSE L. REV. 6 (1952).

1. Kane v. Metropolitan El. Ry. Co., 125 N.Y. 164, 26 N.E. 278 (1891) Lohr v. Metropolitan El. Ry. Co., 104 N.Y. 268, 10 N.E. 528 (1887) State v. New York El. R.R., 90 N.Y. 122 (1882).
2. *E.g.*, People v. Lipari, 28 Cal. Rptr. 808 (1963) State v. Ensley, 240 Ind.