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# Statutes -- Determination of Moment at Which Newly Enacted Statute Attains Force of Law

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> exotic in American soil, where government is not prescribed to the people by a superior power, but is merely the organ of their own sovereignty and the creation of laws enacted by themselves, and which derive all their obligatory force from the mutual consent of those who are to render them obedience.
>
> "The right of a citizen to sue a state, then is not derogatory to common right, or subversive of the true principles of the common law, but is clearly in harmony with both. . . ."

North Carolina has consistently recognized that claims against the state not only will be made,[33] but that they should be compensated.[34] In saying that the State Tort Claims Act should be strictly construed, it is submitted that the supreme court is following an out of date doctrine of governmental immunity, and is refusing to recognize the apparent legislative intent in passing such an act.

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**Statutes—Determination of Moment at Which Newly Enacted Statute Attains Force of Law**

The Supreme Court of Pennsylvania recently refused to apply to a tax statute the general rule that a day is regarded in the law as an indivisible unit of time which begins with its first moment, and thus, a statute is ordinarily deemed to take effect from the beginning of the day on which it is enacted.[1] Decedent died at 11:55 a.m. on the morning of 21 December, 1951. On the same day, the governor signed a bill which increased the collateral inheritance tax rate from 10 per cent to 15 per cent, and which was to become effective immediately upon its final enactment. There was no evidence as to the exact time of day when the governor signed the bill, but the Commonwealth, relying on the general rule, assumed the statute to have been operative from the first moment of the day of its enactment, and therefore in effect at decedent's death. The court held that the Commonwealth had failed to prove that the new law was actually in effect at the time of decedent's death, and that the lower court's verdict for a 10 per cent taxation was proper. It added that the general rule relied on by the Commonwealth was a legal fiction, and would be disregarded whenever its application would unjustly impair personal or property rights. In such cases, the court said that it would take cognizance of the actual hour or time of the passage of the statute.

[33] N. C. CONST. Art. IV, § 9: "The Supreme Court shall have original jurisdiction to hear claims against the State. . . ."

[34] Rotan v. State, 195 N. C. 291, 141 S. E. 733 (1928).

[1] *In re* Grant's Estate, 377 Pa. 264, 105 A.2d 80 (1954).

This line of reasoning, however, has not been followed in all cases in the past.[2] In fact, the general rule was advocated by many of the earlier decisions, whch held that where no exact time is named as the effective date of a statute, it will take effect from the date of its approval, and when computation is to be made from an act done (*e.g.*, the approval of the statute), the day on which the act was done should be included;[3] and since the law does not recognize fractions of a day,[4] the statute must be deemed to have been in effect from the first moment of the day of its approval.[5]

However, this general rule is by no means universal in its application.[6] A clear exception is in the field of criminal law. In *Moree v. State*,[7] defendant was convicted of having a distillery in his possession, which was discovered on the same day an act was passed which made the possession of such an apparatus illegal. The court, in reversing the conviction, refused to hold the statute effective from the first moment of the day of its passage. To consider the act in effect before it was actually signed by the governor would make it an ex post facto law.

Even in those areas of the law in which the general rule of non-divisibility of a day has been held applicable,[8] courts have at times seemed reluctant to apply it. In *Arrowsmith v. Hamering*,[9] plaintiff filed a petition in error without permission from the court on the same day that an act was passed which repealed the law allowing such petitions without permission. Since no evidence was offered as to the exact time of the passage of the repealing act or of plaintiff's filing of his petition, the court presumed that the repealing act took effect from the first moment of the day of its enactment, thereby antedating plainiff's petition. Even

[2] Leidigh Carriage Co. v. Stengel, 95 Fed. 637 (6th Cir. 1899); *In re* Welman, 20 Vt. 653, 29 Fed. Cas. 681, No. 17,407 (D. Vt. 1844).

[3] Arnold v. U. S., 9 Cranch 104, 120 (U. S. 1815); Mallory & Co. v. Hiles, 61 Ky. (4 Metcalfe) 53 (1861).

[4] Turnipseed v. Jones, 101 Ala. 593, 14 So. 377 (1893); 86 C. J. S., *Time* § 16 at p. 900 (1954).

[5] U. S. v. Norton, 97 U. S. 164 (1877); Lapeyre v. U. S., 17 Wall. 191 (U. S. 1872).

[6] Leavenworth Coal Co. v. Barber, 47 Kan. 29, 27 Pac. 114 (1891); 82 C.J.S., *Statutes* § 406 at p. 976 (1953); 50 AM. JUR., *Statutes* § 510 at p. 523 (1944); 36 CYC. 1198 (1910): "As a general rule, the law does not take notice of fractions of a day, and therefore a statute which takes effect from its passage, or approval, relates back and becomes effective from the first moment of the day on which it is passed, or approved, but this doctrine of relation is only a legal fiction, and whenever its application would cause injustice, the act will be given effect only from the moment of its approval."

[7] 130 Miss. 391, 94 So. 226 (1922).

[8] *In re* Boyce, 25 Wash. 612, 66 Pac. 54 (1901); *In re* Welman, 20 Vt. 653, 655, 29 Fed. Cas. 681, 682, No. 17,407 (D. Vt. 1844), where the court said: "But though divisions of a day are allowed to make priorities in questions concerning private acts and transactions, they are never allowed to make priorities in questions concerning public acts, such as legislative acts, or public laws, or such judicial proceedings as are matters of record."

[9] 39 Ohio St. 573 (1883).

so, the court indicates that had plaintiff sustained the burden of proving that the filing of his petition actually preceded the passage of the repealing act, the decision might have been in his favor.[10] The Supreme Court of North Carolina has said that in the absence of evidence or means of proof of the exact time of enactment, a statute would be considered in effect from the first moment of the day of its passage, but added that the court would hear evidence and determine the precise hour at which a statute was enacted whenever it became necessary in order to prevent wrong or to assert a meritorious right.[11] It should be noted that the act in question was to take effect "from and after its ratification." Where no such time is set forth in the act, however, the time of its taking effect is governed by statute in North Carolina.[12]

In many instances, as we have seen, courts have refused to apply the general rule, and instead, have received evidence as to the exact time of the passage of the act in question, and held it effective as of that time.[13] It has been said that the general rule will not be followed in cases where its application would defeat a vested right or otherwise work

[10] *Id.* at 577. The court said that "Whenever a question arises in a court of law as to the time when a statute takes effect, appropriate proof may be resorted to, to determine when the act took effect, that is, the exact time in the day. "No such proof was offered in the case at bar. If the plaintiff in error relies on the fact that his action was pending on the 18th before the actual time of the passage of the statute in question, he must, in order to defeat the presumption that it went into effect the first moment of that day, show that his petition was first filed. This he has not done, and we are left to the presumption that arises from the date of the act."

See Fabien v. Grabow, 134 Mo. App. 193, 114 S. W. 80 (1908). Here, the court says that the burden of proof rests on the party who asserts that an act or event occurred prior to some other act, which happened on the same day, to establish what he alleges.

[11] Lloyd v. N. C. Railroad Co., 151 N. C. 536, 66 S. E. 604 (1909). Apparently no such evidence was presented in this case, since the court held the statute in question to have been in effect from the beginning of the day of its passage. *Accord,* Croveno v. Atlantic Ave. Ry. Co., 150 N. Y. 225, 44 N. E. 968 (1896).

[12] N. C. GEN. STAT. § 120-20 (1952) provides, "Acts of the General Assembly shall be in force only from and after thirty days after the adjournment of the session in which they shall have been passed, unless the commencement of the operation thereof be expressly otherwise directed." In determining when acts to which this type of statute would apply should be considered in effect, the weight of authority is that the time is computed by excluding the day of the event from which time is to be computed (i.e., the day of adjournment) and including the last day of the number constituting the specific period. In other words, if the legislature adjourned on the first day of the month, then assuming the period to be thirty days, the act would take effect on the thirty-first. It is generally held that the act becomes effective as of the first moment of the last day in the period. A case so holding, and in which the applicable laws were similar to our own N. C. GEN. STAT. §§ 120-20 (1952) and 1-593 (1953), was Clingsmith v. Jackson Dairy Co., 202 Iowa 773, 211 N. W. 413 (1921). *Accord,* Garcia v. J. C. Penney Co., 52 N. M. 410, 200 P. 2d 372 (1948), citing SUTHERLAND ON STATUTORY CONSTRUCTION § 111.

[13] *In re* Wynne, 30 Fed. Cas. No. 18,177 at 760 (C. C. D. Va. 1868); Kennedy v. Palmer, 72 Mass. (6 Gray) 316 (1855); People *ex rel.* Campbell v. Clark, 1 Cal. 406 (1851).

injuriously,[14] or when public justice demands inquiry as to the time of day an act was passed.[15] Adherents to this school of thought hold that the time of the approval of a statute by the executive is a fact which can be ascertained and proved, and that in all cases where the rights of the parties are in any way affected by the time of such approval, the exact time of day at which the act of approval occurred may be shown.[16] This eliminates the often undesirable retroactive aspect necessarily involved whenever the presumption that a statute in question took effect from the first moment of the day of its passage is adopted.[17] Such retroactivity can easily bring about unjust results when applied in situations similar to that in the principal case.

The view that a statute should be considered in effect from the moment of its passage was criticized in *Parkinson v. Brandenburg*[18] for the reason that, while sound in theory, it is difficult to apply, since there is frequently no satisfactory means of ascertaining the exact moment at which an executive approves a given statute. In the *Parkinson* case, the court held that the law in question would take effect at the beginning of the day following its approval. The statute stated that it would take effect "from and after its passage."

As to the solutions mentioned here and their respective merits, it can easily be seen that all have their shortcomings. The general rule and the *Parkinson* rule adopt presumptions as to the time when the statute took effect which admittedly are not correct, technically speaking. They do, however, provide measuring points which can be ascertained easily and positively, arbitrary though they be. The measuring point which the court professes to use in the principal case, while technically correct, is, as noted above, often impossible to determine exactly. Nevertheless, the court in the principal case shows a commendable willingness to receive any available evidence as to the actual time of the passage

[14] Arrowsmith v. Hamering, 39 Ohio St. 573 (1883).

[15] People *ex rel.* Campbell v. Clark, 1 Cal. 406 (1851).

[16] *Ibid.; cf.* Township of Louisville v. Portsmouth Savings Bank, 104 U. S. 469 (1881), where the time of adoption of a constitutional provision by the voters was decided to be the hour at which the polls closed.

[17] Moree v. State, 130 Miss. 341, 94 So. 226 (1922); *cf.* West v. State, 120 Tex. Crim. Rep. 280, 47 S. W. 2d 324 (1932); Monroe Loan Society of N. H. v. Nute, 88 N. H. 13, 183 Atl. 703 (1932). *Cf.* Burgess v. Salmon, 97 U. S. 381 (1878), where the Court refused to hold that an act which increased the tax on tobacco sold was applicable during the entire day of its passage when it was admitted that plaintiff sold his tobacco before the statute was approved. The Court said that since a criminal punishment (fine or imprisonment) was provided for failure to pay the tax, it would, in effect, be subjecting plaintiff to the operation of an ex post facto law if it held this law in effect from the first moment of the day of its passage.

[18] 35 Minn. 294, 28 N. W. 919 (1886); *accord,* O'Connor v. City of Fond du Lac, 109 Wis. 253, 85 N. W. 327 (1901); Mushel v. Bd. of Comm'rs, 152 Minn. 226, 188 N. W. 555 (1922). However, in the Mushel case, the court said that the Parkinson rule was against the weight of authority.

of the act in question, when circumstances warrant the receiving of such evidence. Although this may never be established to the last second, such hair-splitting is not always necessary in order to do justice. Frequently, a showing that an act was approved in the morning or afternoon, or before or after a certain hour, may be sufficient to establish the actual priority of the events in question,[19] and thus lead to a verdict based upon fact rather than presumption.

Finally, it is submitted that this was a proper case for the disregarding of the general rule; that since the court properly placed upon the Commonwealth the burden of proving that the statute was actually in effect at the time of decedent's death, the court acted correctly in refusing to apply the presumption of the general rule in the absence of any evidence from the Commonwealth that the statute had been passed before decedent's death.

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**Constitutional Law—Validity of Penalties Imposed by States on Interstate Carriers for Violation of Weight and Size Regulations**

Extensive use of the public highways by intrastate and interstate trucking has caused states to resort to regulation of weights and sizes of trucks.[1] With the enactment of such legislation, both before and after Congress acted on the subject, courts have been faced with two problems: (1) whether a state in the exercise of its police power can regulate interstate carriers, and (2) what penalties a state may impose on an interstate carrier for violation of the state regulation.

In 1924, Mr. Justice Brandeis, in *Buck v. Kuykendall*,[2] declared that

[19] *In re* Dreyfous, 28 Abb. N. Cas. 27, 18 N. Y. Supp. 767 (1892), is quite similar to the principal case. A proceeding was brought to impose a tax of 1 per cent on property bequeathed to the wife of deceased. The act under which the tax was levied was approved on 20 April, 1891, after 8 o'clock. The decedent died before 8 o'clock. It was held that the tax did not apply, since decedent's death occurred before the passage of the act.

[1] ALA. CODE tit. 36 §§ 89-94 (1940); IOWA CODE ANN. c. 321, §§ 321.452-321.481 (1949); N. C. GEN. STAT. §§ 20-116, 20-118 (1953); N. Y. VEHICLE AND TRAFFIC LAW § 14; OHIO. REV. CODE c. 4513 (1954). Every state has enacted either similar legislation or legislation accomplishing the same result.

[2] 267 U. S. 307, 315-316 (1924). Plaintiff desired to operate an auto stage line exclusively in interstate commerce, from a city in one state to a city in another. Oregon granted him a license, but Washington refused, saying the territory had been filled. In an action to enjoin enforcement of the applicable Washington law, the Court declared the state action unconstitutional, saying, "Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines, not the manner of use, but the persons by whom the highways may be used. . . . Its effect upon such commerce is not merely to burden, but to obstruct it. Such action is forbidden by the Commerce Clause." (It should be noted that this was before any federal legislation on the subject of carriers in interstate commerce.) This has been precedent for all subsequent cases where there has been the possibility of discriminating against interstate commerce. See also: George W. Bush & Sons Co.