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an option of interest on his investment or profits attributable to his interest retained in the firm.[12] As obvious as this solution seems, still it is quite a unique interpretation of the Act.

It is suggested that the majority of courts have chosen to ignore the trap set by the U. P. A. and the interrelation between section 38 (2b) and section 42. If a partner who has interrupted the business venture by his wrongful act which constitutes a dissolution is allowed the favors of both of these sections of the U. P. A. he will be in a better position than the continuing partners. In the event that the continuing partners are unable to buy his interest, he will be entitled to have his interest secured by bond immunizing it from business failure as provided by section 38 (2b). Still, by section 42, he will be allowed to share in the profits made by the continuing partners who risk their own, but idemnify the wrongful partner's capital. Section 41 (8)[13] attempts to resolve this inequity by making creditor's claims against the continuing partnership superior to the wrongful partner's. However, this section falls short of keeping the wrongful partner from a better position than the others because, regardless of creditors claims against the partnership assets, the interest of the wrongful partner is secured by bond.

CARL M. WILLIAMS

STOPPING THE CLOCK IN THE WYOMING LEGISLATURE

It was reported in various Wyoming newspapers and over the Cowboy Broadcasting Network that the thirty-third Legislature of the State of Wyoming adjourned at 2:10 a.m. on Sunday, February 20th, 1955. Article 3, section 6 of the Wyoming Constitution provides inter alia that "No session of the legislature, after the first, which may be sixty days, shall exceed forty days." The fortieth day of the 1955 session expired at midnight of February 19. It was also reported, however, that the clocks in the legislative chambers had been stopped at or before 12 p.m. midnight on February 19th; the object being, of course, to make subsequent legislative enactments valid. This practice of "stopping the clock" is frequent in states like our own in which the length of the legislative session is constitutionally limited.

Is legislation passed after the clock is stopped valid?

The point of beginning is the inquiry as to whether the constitutional provision limiting the session to forty days is mandatory or merely directory. If directory only, failure to comply with it does not affect the constitutionality of legislation passed after the clock is stopped.[1] But if the provision

12. Vangel v. Vangel, 116 Cal.App. 615, 254 P.2d 919 (1953); aff'd, 282 P.2d 967 (1955).
13. U.L.A., vol. 7, Partnership, § 41 (8); Wyo. Comp. Stat. § 61-613 (8) (1945).

1. Commonwealth v. Griest, 196 Pa. 396, 46 Atl. 505, 50 L.R.A. 568 (1900).

is mandatory, the subsequent legislation is unconstitutional.[2] The courts that have considered this question have held it to be mandatory; no contra decisions have been found.[3] The court in *State v. Thornburg* said:

> While this court must accord to the Legislature, a co-ordinate branch of the government, every constitutional power or right possessed by it, the fact must not be overlooked that the Court is charged with the solemn duty of determining what acts of the Legislature are constitutional, and what acts have been passed by the Legislature in conformity with the demands of the Constitution, when such questions are properly presented to the court. The mere stopping of the clock does not stop the passing of time. The sixty day provision of the constitution does not prevent the Legislature by "a concurrence of two-thirds of the members elected to each house," from extending the session beyond sixty days, if necessity therefor exists. The method so provided for an extension of the session by the Constitution appears ample but, if not ample, we are not warranted in avoiding the direct and certain command of the Constitution by any sort of subterfuge, and we do not hesitate to say that this Court, at least as now constituted, would adjudge any legislation invalid if it be established by a proper showing to have been enacted beyond the sixty day period, where no constitutional extension is shown to have been authorized.

We may thus assume that the provision limiting the legislative session is mandatory. But the enrolled bills in the Secretary of State's office,[4] and the entries in the journals of both houses[5] will not disclose that any legislation was enacted subsequent to February 19. As a matter of evidence, how can it be shown that the constitutional provision was in fact violated?

The rules adopted by the various states on the validity of the enrolled bill are:[6]

1. The enrolled bill is conclusive and cannot be attacked. This is known as "the enrolled bill rule."

2. The enrolled bill is prima facie correct, and only in case the legislative journals show affirmatively that the constitutional requirements were not met will it be set aside. This rule is called "the affirmative contradiction rule."

3. Although the enrolled bill is prima facie correct, evidence from the journals or other extrinsic sources is admissible to strike the bill down. This rule is usually known as "the extrinsic evidence rule."

4. The legislative journals are conclusive, and the enrolled bill is valid only if it accords with the recitals in the journal. This rule is often called "the conclusive presumption rule."

2. State ex rel. Cunningham v. Davis, 123 Fla. 41, 166 So. 289 (1936); Shay v. Roth, 64 Cal.App. 314, 221 Pac. 967 (1923).
3. State v. Thornburgh, 137 W.Va. 60, 70 S.E.2d 73 (1952); State v. Heston, 137 W.Va. 375, 71 S.E.2d 481 (1952); State ex rel. Cunningham v. Davis, 123 Fla. 41, 166 So. 289 (1936).
4. Wyo. Comp. Stat. § 18-202 (1945).
5. Wyo. Const., Art. 3, Sec. 13.
6. I Sutherland, Statutory Construction, 1405 (2nd ed., Lewis, 1904).

With respect to upsetting the enrolled bill as deposited with the Secretary of State after its enactment, Wyoming follows rule number 3, the extrinsic evidence rule.[7] This is probably the majority rule, although there is a conflict on the point.[8] In any event, there is a strong movement toward the extrinsic evidence rule.[9] The other states clearly following this rule are Colorado, Maryland, Missouri, New Hampshire, North Dakota, South Dakota, and West Virginia.[10]

A good statement of the Wyoming rule is this: Whenever the existence of an act of the legislature is called into question, the court may resort to "any source of information capable of conveying to the judicial mind a clear and satisfactory answer" to such question.[11]

It should be pointed out that the presumption of validity of enrolled bills is very strong, and courts are very hesitant to upset them.[12] They will do so only upon proof of their invalidity by clear and convincing evidence.[13]

Many cases hold that parol evidence is not admissible to impeach the enrolled bill or the legislative journals of both the houses.[14] The rationale of this rule is that even though on rare occasions the exclusion will result in giving validity to legislation not strictly regular in its enactment, such evil is less than the unsettling of the evidentiary foundation of all statutory law, and the weakening of public faith in the existing legislative enactments which would occur if the records of legislative enactment were open to impeachment by parol testimony. The courts are not willing to depend on the recollection of individuals as a basis for statutory law. The Wyoming Court in applying this identical reasoning in *White v. Hinton* said:

> It appears from the bill of complaint that the journals of both houses of the legislature and the records of the secretary's office show that the act of December 15, 1877, was passed by the legislature, and approved by the governor, December 15. By a consensus of authority almost unanimous, these records are conclusive. Parol testimony cannot be admitted to impeach them. From these records, the statutes are published for the information of the people and the courts. To these records resort is had in case of any question as to the correctness of the published statutes. On these records reliance is had by the bench, the bar, the public, of necessity and of right. Resort cannot be had to the recollection of

7. Brown v. Nash, 1 Wyo. 96 (1872); State ex rel. Cheyenne v. Swan, 7 Wyo. 166, 51 Pac. 209 (1897); Cases collected in State v. Wright, 62 Wyo. 120, 163 P.2d 190 (1945).
8. See note 6 supra.
9. Ibid.
10. Ibid, § 1402.
11. State ex rel. Cheyenne v. Swan, 7 Wyo. 166, 180, 51 Pac. 209 (1897).
12. Anderson v. Bowen, 78 W.Va. 559, 89 S.E. 677 (1916); State v. Steen, 55 N.D. 239, 212 N.W. 843 (1927); State v. Adams, 323 Mo. 729, 19 S.W.2d 671 (1929).
13. State ex rel. Cheyenne v. Swan, 7 Wyo. 166, 51 Pac. 209 (1897).
14. White v. Hinton, 3 Wyo. 753, 758, 30 Pac. 953, 17 L.R.A. 66 (1892); Ridgley v. City of Baltimore, 119 Md. 567, 87 Atl. 909 (1913); Andrews v. People, 33 Colo. 193, 79 Pac. 1031 (1915); People v. Leddy, 53 Colo. 109, 123 Pac. 824 (1912); Attorney General v. Rice, 64 Mich. 385, 31 N.W. 203 (1891); Wade v. Atlantic Lumber Co., 51 Fla. 638, 41 So. 72 (1906); Koehler v. Hill, 60 Iowa 543, 14 N.W. 738 (1883); Weeks v. Smith, 81 Me. 538, 18 Atl. 325 (1889).

> individuals to show what the law is or is not, or to impeach these solemn records made by the members and officers of the legislature, and by the governor and the secretary under the sanction of their official oaths.

All courts following the extrinsic evidence rule recognize as official sources of information the legislative journals of both the house of representatives and of the senate.[15] They are careful to point out, however, that as between the two—the enrolled bill versus the journals—that the enrolled bill, duly authenticated by the responsible officer of each house and approved by the chief executive is in itself a declaration by the legislature that the bill was duly enacted, and that on principle alone, the journals constitute less trustworthy evidence than the enrolled bill. The journals are kept by clerks who ordinarily are not acquainted with the details of legislative action, are hastily prepared in the confusion of a short session, and are not subjected to close scrutiny against errors and omissions. Normally they are not formally authenticated, even by the various clerks who collaborate to prepare the various entries. Generally, where a court has been called on to weigh and determine the relative evidentiary values of the enrolled bill as against the journal, the majority have accepted the enrolled bill.[16] This is not so, however, where there is an express provision in the constitution that certain happenings must be evidenced by a specified recital in the Journal.[17]

The cases from "extrinsic evidence" states indicate that in determining whether the legislature has complied with the constitutional requirements, the court can look to the journals, and in some cases, other extrinsic evidence has been admitted. Some courts limit the introduction of extrinsic evidence to a situation where there is a patent ambiguity of the records under consideration.[18] If no ambiguity exists, then the journal recitation is conclusive. No Wyoming decisions on this "ambiguity point" have been found, nor any in which extrinsic evidence has been offered and rejected. The furthest point reached in any Wyoming case is the statement in the *Swan* case[19] that:

> The court may resort to any source of information capable of conveying to the judicial mind a clear and satisfactory answer to such question.

The courts following the extrinsic evidence rule state in broad general terms that other evidence to prove the validity of the enrolled bill is admissible, yet a study of the cases indicates that only in rare instances is any evidence except the journals ever admitted to impeach the enrolled bill. One type of evidence that has been admitted by the courts is the

15. Ibid.
16. State v. Jones, 6 Wash. 452, 34 Pac. 201 (1893); Sherman v. Story, 30 Cal. 253 (1866); Lafferty v. Huffman, 99 Ky. 80, 35 S.W. 123 (1894); Kelley v. Marron, 21 N.M. 239, 153 Pac. 262 (1915); De Loach v. Newton, 134 Ga. 739, 68 S.E. 708 (1910).
17. Smith v. Thompson, 219 Iowa 888, 258 N.W. 190 (1934).
18. State v. Thornburg, 137 W.Va. 60, 70 S.E.2d 73 (1952).
19. State ex rel. Cheyenne v. Swan, 7 Wyo. 166, 51 Pac. 209 (1897).

original documents constituting the material from which the journals were completed,[20] but the court was careful to point out that after all this material has been compiled (but not yet printed) into the official journal, then the records from which the journal was compiled would not be admitted. The memoranda of clerks is generally not admitted.[21] However, the records kept by the offices of the governor, the secretary of state, and clerks of both houses have been admitted on occasion.[22]

In view of the limited amount and nature of extrinsic evidence which has been admitted on the issue of timely enactment of legislation, it would seem that a journal entry showing the time of enactment is almost a necessity to overthrow legislation on the theory of enactment after the constitutional time limitation. This would be especially true in Wyoming since we have some language in *State v. Smart*,[23] to the effect that the recitation of the time of passage of the legislation as shown in the journals imports absolute verity and is conclusive. The language of the court at page 172 is as follows:

> Taking the journal entries in their chronological order, there may be some doubt as to the validity of the act. The journals show the date on which the various acts were done and we think in that respect the recitals purport absolute verity.

In brief summary, the Wyoming Constitution limits the session of the legislature to forty days. Legislation enacted after that date is probably invalid and could be overthrown if the actual time of passage could be proved. Wyoming courts will admit the legislative journals to prove due enactment, and if they recite the time of passage, this is, as a practical matter, probably conclusive. The cases in broad language state that other evidence is also admissible, but the cases actually allowing other evidence are scarce and there is no thread of unity or conformity running through them except for the rather frequent statement that parol evidence is not admissible to impeach the enrolled bill. The presumption of validity of enrolled bills is very strong and courts are hesitant to upset them in the absence of direct evidence from the journals.

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20. People ex rel. Manville v. Leddy, 53 Colo. 109, 123 Pac. 824 (1912).
21. People ex rel. Manville v. Leddy, 53 Colo. 109, 123 Pac. 824 (1912); Integration of Bar, 244 Wis. 8, 11 N.W.2d 204, 151 A.L.R. 586 (1943); McNeal v. Ritterbusch, 29 Okla. 223, 116 Pac. 778 (1911); State v. Marten, 160 Ala. 181, 48 So. 846 (1909).
22. Happel v. Brethauer, 70 Ill. 166, 22 Am. Rep. 70 (1873); Attorney General v. Rice, 64 Mich. 385, 31 N.W. 203 (1887); Bowen v. Missouri & Pacific Ry. Co., 118 Mo. 541, 24 S.W. 436 (1893); Hodges v. Keel, 108 Ark. 184, 159 S.W. 21 (1913); Charleston National Bank v. Fox, 119 W.Va. 438, 194 S.E. 4 (1937).
23. 22 Wyo. 154, 136 Pac. 452 (1913).