

STATUTES: RETROACTIVE RETROSPECTIVE REFLECTIONS

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One of the most difficult problems in the process of statutory construction is the application of the presumption against the retrospective operation of statutes.

Many years ago, as a legal officer in the Department of Justice, I had to deal with the problem whether a particular statute applied in respect of an event that took place before the statute was enacted. This raised the question whether the presumption against the retrospective operation of statutes applied. To answer that, it was necessary to ask the fundamental question—What is a retrospective operation? Naturally, I went to the text-books to find out. I was astonished and disappointed that I found nothing to answer this question. All I could find in the text-books and articles was a statement of the presumption and references to countless decisions where the presumption was applied or not applied. I then began to read cases. But no answer to my question emerged. I found mostly confusion. Nowhere could I find a clear definition of a retrospective statute, or any clear statement of principle as to when the presumption applied or did not apply. Since my question remained unanswered, I undertook a study of the decisions to see if I could not formulate a workable answer. I came to some conclusions, on the basis of which I disposed of the case before me. Subsequently I wrote a paper entitled “The Retrospective Operation of Statutes”¹ in which I set forth my conclusions.

The first conclusion I came to was that there was confusion between two presumptions, namely, the presumption against interference with vested rights, and the retrospective presumption. I could not see how a statute that interferes with or destroys a previously acquired right could be said to be retrospective. The decision in *Rex v. Levine*² illustrates this distinction.

In that case the accused was in possession of liquor on premises that were used partly as a store and partly as a dwelling house. At the time of purchase the premises were included in the definition of

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¹ Legal essays in Honour of Arthur Moxon. Edited by J. A. Corry (1953), p. 1.

² (1926), 46 C.C.C. 342.

"residence" in the Liquor Control Act, and accordingly the accused was lawfully in possession at the time of purchase. The statute was then amended so as to exclude from the definition of "residence" premises of the class described. The accused was convicted and the conviction was affirmed by the Manitoba Court of Appeal. Prendergast J.A., who delivered the majority judgment, held³ that the effect of the amendment in its application to the case under consideration was in no way retrospective. He went on to say:⁴

Now, none of the ingredients of the offence charged are "in respect to transactions or considerations already past". The existence or presence of the liquor on the premises, only refers to its existence or presence there on the 27th. The appellant's possession of it, is merely her possession of it on that day. The condition or lay-out of the premises which made them "a place other than the private dwelling house in which she resides" (being the inclusion of a store), is also the condition of the premises on that same day. So that all the things and matters that are either formally set forth or implied in the information, happened or existed on the 27th, quite independently of anything that happened or existed before. . . .

Of course, the appellant's status was altered by the amendment, and certain rights which she previously had, came thereby to an end. But that is the effect and in fact the function, of most, if not all, public enactments of a regulating character. I cannot conceive that a statute prohibiting, for instance, the keeping of more than 10 barrels of gasoline in factories where 20 were previously allowed, or (which is more to the point) the keeping of certain inflammable material otherwise than in buildings with a metal roof, could be deemed retrospective, although interfering with existing rights.

That decision cited *West v. Gwynne*.⁵ There the question was whether section 8 of the Conveyancing Act, 1892, was of general application, or whether its operation was confined to leases made after the commencement of the Act. It provided that "in all leases" containing a covenant against assigning or underletting without licence or consent, the covenant should be deemed to be subject to a proviso to the effect that no fine was payable for such licence or consent. It was said in argument that a statute is presumed not to have a retrospective operation unless the contrary appears by express language or by necessary implication. Cozens-Hardy M.R. said⁶ he assented to that general proposition, but he also said he failed to appreciate its application to the present case.

Buckley L.J. was of the opinion that "the word 'retrospective' is inappropriate, and the question is not whether the section is retrospective. Retrospective operation is one matter. Interference with existing rights is another".⁷

³ *Ibid.*, at p. 348.

⁴ *Ibid.*, at pp. 348-349.

⁵ (1911), L.R. 2 Ch. D.1.

⁶ *Ibid.*, at p. 11.

⁷ *Ibid.*, at pp. 11-12.

In *Acme Village School District v. Steele-Smith*⁸, Lamont J.⁹ recognized the independence of the two presumptions; the first "that statutes are not to be construed as having retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary or distinct implication", and the second, that statutes "should not be given a construction that would impair existing rights, unless that effect cannot be avoided without doing violence to the language of the enactment".

Sedgwick¹⁰ defined a retrospective statute as one that takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed.

It seemed to me that this statement, taken as a whole, was incorrect; a statute surely cannot be called retrospective merely because it takes away or impairs a right acquired under existing laws. Only the second branch of this statement could, in my opinion, be regarded as a definition of a retrospective statute.

In searching judicial decisions for an answer to my question, I began with *The Queen v. The Inhabitants of St. Mary, Whitechapel*.¹¹ The statute there provided that "no woman residing in any parish with her husband at the time of his death shall be removed, nor shall any warrant be granted for her removal, from such parish, for twelve calendar months next after his death, if she so long continue a widow". Before the enactment of the statute the woman had become a widow and an order of removal had been made. Lord Denman C.J. said:¹²

It was said that the operation of the statute was confined to persons who had become widows after the Act passed, and that the presumption against a retrospective statute being intended supported this construction; but we have before shewn that the statute is in its direct operation prospective, as it relates to future removal only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing. The clause is general, to prevent all removals of the widows described therein after the passing of the Act; the description of the widow does not at all refer to the time when she became widow; and we are therefore of opinion that the pauper was irremovable at the time she was removed.

Lord Denman's observations struck me as being eminently sound. A widow is a widow, no matter when she became one, and the application of the statute to a widow who became one before the

⁸ [1933] S.C.R. 47.

⁹ *Ibid.*, at pp. 50-51.

¹⁰ *The Construction of Statutory and Constitutional Law* (2nd ed., 1874), p. 160.

¹¹ (1848), 116 E.R. 811.

¹² *Ibid.*, at p. 812.

statute is no more a retrospective application than is the application of a statute to persons who were born before the statute.

This decision suggested to me two distinct kinds of "requisites" for the application of a statute "drawn from time antecedent to its passing", namely, (1) a characteristic (status) and (2) an event; and I concluded that a statute cannot be said to be retrospective if it is brought into operation by a characteristic or status that arose before it was enacted; but that it is retrospective if it is brought into operation by a prior event described in the statute. Clear support for this conclusion is to be found in *West v. Gwynne*.¹³ The fact-situation there bringing about the operation of the statute was a characteristic only, and not an event. To the same effect was the decision in *Acme Village School District v. Steele-Smith*¹⁴ where a statute was held to apply to an agreement made before the statute was enacted.¹⁵ But in *Maxwell v. Callbec*¹⁶ the fact-situation on which the statute operated was "where by the fault of two or more persons damage or loss is caused"—an event, and it was held that the statute applied only to damage or loss occurring after the enactment of the statute.

I then formulated an answer to my fundamental question as follows:¹⁷

It is perhaps dangerous to generalize, but the position appears to be that whenever the operation of a statute depends upon the doing of something or the happening of some event, the statute will not operate in respect of something done or in respect of some event that took place before the statute was passed; but if the operation of the statute depends merely upon the existence of a certain state of affairs, the *being* rather than the *becoming*, the statute will operate with respect to a status that arose before the passing of the statute, if it exists at the time the statute is passed. Having decided that a statute is not by reason of the retrospective rule precluded from operating in particular circumstances, there is the further, and unrelated, question whether the statute is precluded from so operating for the reason that it impairs existing rights.

In formulating the foregoing conclusions I was, of course, concentrating on the meaning of retrospective. It is obvious that not all retrospective statutes attract the presumption; only those, to use the words of Sedgwick, that "create a new obligation, or impose a new duty or attach a new disability in respect to transactions or considerations already passed". In brief, the presumption applies only to prejudicial statutes; not beneficial ones. Although this must necessarily be implied in what I said, my failure to say so expressly

¹³ *Supra*, footnote 5.

¹⁴ *Supra*, footnote 8.

¹⁵ See also *Chapin v. Matthews* (1915), 24 D.L.R. 457, and *Nadeau v. Cook*, [1948] 2 D.L.R. 783.

¹⁶ [1939] S.C.R. 440.

¹⁷ *Op. cit.*, footnote 1, p. 15.

in the immediate context of the above quoted paragraph has caused some confusion in the minds of my readers. Also, at that time I did not see the problems that can arise in relating new duties, obligations or disabilities to prior transactions. Referring to Sedgwick's definition, when can it be said that an obligation, duty or disability is *in respect to* a prior transaction?

Because of the frailty of language it is often difficult to say whether the words in a statute setting forth a fact-situation are intended to describe an event or a characteristic. For example, suppose a statute applied to a "person who was employed on January 1st, 1970". It is impossible to tell from those words alone whether the person described is one who took employment that day (event), or one who on that day was an employee (characteristic).

Thus, in *The Queen v. Vine*¹⁸ the statute provided that "every person convicted of a felony" should be disqualified from selling spirits by retail; the majority held this to mean a "convicted person" and therefore applicable to persons convicted before the statute was enacted, but Lush J., dissenting, said¹⁹ the phrase meant "every person who shall hereafter be convicted". According to the majority there was no occasion to consider the presumption since its application to persons convicted prior to the statute was not a retrospective application. In Lush's view, however, it was, and he applied the presumption.

The ideas I expressed in my 1950 essay I carried forward into my text on the *Construction of Statutes*²⁰. I thought at the time that I had found the complete answer to my fundamental question. However, after I began the teaching of this subject, class-room experience taught me otherwise. While I still stand by what I wrote in 1950 and later in 1974, I began to realize I did not have the complete answer. I also discovered that the expression of my thoughts was not as clear as it might be, since my students had difficulty in following me, and some were confused by my explanations. Hence, I had another go at it in the 1976 *Supplement* to my text. There I deal more clearly with the difference between a retroactive statute and a retrospective one.

A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in respect of a past event. A retroactive statute *operates backwards*. A retrospective statute *operates forwards*, but it looks backwards in that it attaches new consequences *for the future* to an event that took place before

¹⁸ (1875), L.R. 10 Q.B. 195.

¹⁹ *Ibid.*, at p. 201.

²⁰ (1974)

the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.

In *West v. Gwynne*²¹ the true reason for holding that the statute there was not retrospective is, I suggest, that there is no reference in the statute to a past event or transaction. The only reference is to leases of a certain kind. Yet Buckley L.J. rejected the presumption because the statute was not operative as of a past time. His definition of retrospectivity was in reality a definition of retroactivity. He said:²² "If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective." And in *Phillips v. Eyre*²³, an Act of Indemnity, which did operate as of a past time, was called retrospective.

I had always known that there was a difference, even though in the dictionaries the definition of each word includes the other, and in the decisions the two words are often equated and used interchangeably. I did not previously attach any particular significance to the difference, but I discovered that unless a clear distinction is made between the two words, there is bound to be confusion. Thus, a statute could be retroactive but not retrospective, retrospective but not retroactive, or both retroactive and retrospective; and both retroactive statutes and retrospective statutes could be, and usually are, prospective also. The presumption applies to both, but the test of retroactivity is different from that of retrospectivity. For retroactivity the question is: Is there anything in the statute to indicate that it must be deemed to be the law as of a time prior to its enactment? For retrospectivity the question is: Is there anything in the statute to indicate that the consequences of a prior event are changed, not for time before its enactment, but henceforth from the time of enactment, or from the time of its commencement if that should be later.

In my 1974 *Supplement* I took one further step in trying to clarify my own thinking, and what I have said earlier, namely, that only if an enacted law attaches an obligation or disability or imposes a duty as a new consequence of a prior event, can it be said to be retrospective. An example I gave²⁴ was the statute considered in *Nadeau v. Cook*,²⁵ which provided that:

Where any person recovers in any court in the province a judgment for an amount exceeding one hundred dollars, exclusive of costs, in an action for

²¹ *Supra*, footnote 5.

²² *Ibid.*, at p. 12.

²³ (1870), L.R. 6 Q.B. 1.

²⁴ P. 17.

²⁵ *Supra*, footnote 15, at p. 784.

damages resulting from bodily injury to, or the death of, any person occasioned by, or arising out of, the operation or use of a motor vehicle by the judgment debtor, upon the determination of all proceedings including appeals . . . such judgment creditor may . . . apply by way of originating notice to a judge of the Supreme Court of Alberta for an order directing payment of the judgment out of the [Unsatisfied Judgment] fund. . . .

Judgment for damages was recovered after the statute was enacted, but the accident giving rise to the action occurred before. The court held that the application of the statute to the judgment was not a retrospective one. Ford J. said that the words "damages resulting from . . . the operation or use of a motor vehicle" defined the cause of action and did not have a limiting effect. Here, the enacted law was a consequence of the judgment and not of the accident; the fact-situation on which the enactment operated was the recovery of the judgment.

Another example I gave was *Ward v. Manitoba Public Ins. Corp.*,²⁶ where the statute under consideration, together with the regulations, provided for increased premium assessments based on demerit points calculated according to the number and nature of offences committed by the insured. The court held that the inclusion of offences committed before the statute was enacted was not a retrospective operation. Guy J.A. said²⁷ that "we are satisfied that the intent of the legislators to deal with records implies an intent to deal with antecedent basic facts and apply them to prospective charges for insurance premiums". Here, the increased charges were the result of the record of the accused, and not the commission of the offence.

Also *In re a Solicitor's Clerk*,²⁸ where the statute provided that "Where a person who is or was a clerk to a solicitor . . . has been convicted of larceny . . . or any other criminal offence in respect of any money or property belonging to or held by the solicitor . . . an application may be made . . . that an order be made directing that . . . no solicitor shall . . . take or retain the said person into or in his employment." It was held that the making of an order in respect of a clerk who had been convicted prior to the enactment of the statute was not a retrospective operation. Goddard C.J. said:²⁹

But in my opinion this Act is not in truth retrospective. It enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. . . . This Act simply enables a disqualification to be imposed for the future which is no way affects anything done by the appellant in the past.

²⁶ [1975] 2 W.W.R. 53.

²⁷ *Ibid.*, at p. 55.

²⁸ [1957] 1 W.L.R. 1219.

²⁹ *Ibid.*, at p. 1222.

The fact-situation here was the characteristic of the clerk as a convicted person. Similarly, in *The Queen v. Vine*,³⁰ where the statute imposed a disability on "every person convicted of a felony", it was held that the statute applied to persons convicted before the statute was enacted; here, the statute attached a disability to a characteristic and not to the felonious act or the conviction.

Also, in *Chapin v. Matthews*³¹ where the statute provided that no covenant in any agreement should be binding on the purchaser of farm machinery if a court or judge should decide it to be unreasonable, the court applied the statute to agreements made before the statute was enacted; here again, the description was by characteristic. This decision may be contrasted with *J. I. Case Threshing Machine Co. v. Whitney*³² where a similar statute was considered. In it there was a provision that "in the case of a vendor repossessing any . . . implement . . . the implement shall . . . be appraised . . . by two arbitrators", and it was held that the provision did not apply in respect of an implement that was repossessed before the enactment came into force and sold thereafter without appraisal; here the fact-situation was an event, namely, the act of repossessing. The distinction between characteristic and event was recognized by Stuart J. when he said that³³ "It does not follow that a similar result would be reached with respect to the other sections of the Act . . . where the expression 'shall be sold' is found"; that would be an event.

In conducting my lectures in the following year, I realized that I still did not have the complete answer. I now realized that there are three kinds of statutes that can properly be said to be retrospective, but only one that attracts the presumption. First, there are the statutes that attach benevolent consequences to a prior event; they do not attract the presumption. Secondly there are those that attach prejudicial consequences to a prior event; they attract the presumption. Thirdly there are those that impose a penalty on a person who is described by reference to a prior event, but the penalty is not a consequence of the event; these do not attract the presumption.

It is usually easy enough to identify a retroactive statute. It will say that it came into force on a day prior to its enactment, or that it operates on past transactions. What is difficult is first, to identify a retrospective statute, and secondly, what is even more difficult, to distinguish between those retrospective statutes that attract the

³⁰ *Supra*, footnote 18.

³¹ *Supra*, footnote 15.

³² [1922] 3 W.W.R. 643.

³³ *Ibid.*, at pp. 470-471.

presumption and those that do not. The latter difficulty may be illustrated by two examples:

(1) Every person convicted of impaired driving is disqualified from holding a licence

This provision imposes a new disability, and the courts would in all likelihood hold that the statute would be given retrospective effect if it were applied in respect of prior convictions.³⁴

(2) Every person convicted of impaired driving shall pay an additional insurance premium of \$100.00 to the Government Insurance Commission

Here also a further penalty is imposed in respect of a conviction, but, following *The Queen v. Vine*,³⁵ *In re a Solicitor's Clerk*³⁶ and *Ward v. Manitoba Public Ins. Corp.*³⁷ the courts in all likelihood would hold that its application in respect of prior convictions was not a retrospective operation.

Here we have, I believe, the most difficult problem with the retrospective presumption. The first two examples look alike, but, following the cases cited, the results are different. How can we distinguish the two kinds of situations? What would the courts say about this:

A person who has been convicted of an indictable offence is ineligible to hold public office.

The extreme cases are easy. Thus, if a statute provided that "every one who has attained the age of eighteen years is qualified" to vote at an election, no one would say that the statute applies only to persons who attained the age of eighteen years after its enactment. This is a beneficial provision. But if a statute should provide that the lands of "every one who has been convicted of the offence of treason" are forfeited to the Crown, no one would apply that statute to convictions before its enactment. This is a prejudicial provision.

But the situations in between these two extremes are the difficult ones.

The principle I have postulated is that the presumption applies if the statute would attach a new duty, penalty or disability—that it to say, a prejudicial consequence—to a prior event. But when is a prejudicial law a consequence of an event, and when is it not? An answer may be found in the following decisions.

³⁴ See *In re Athumley*, [1898] 2 Q.B. 547; *Ward v. British Oak Insurance*, [1931] 2 K.B. 637; *In re Pulborough*, [1894] 1 Q.B. 725.

³⁵ *Supra*, footnote 18.

³⁶ *Supra*, footnote 28.

³⁷ *Supra*, footnote 26.

In *The Queen v. Vine*,³⁸ the statute considered there provided that:

Every person convicted of a felony shall forever be disqualified from selling spirits by retail, and no licence to sell spirits by retail shall be granted to any person who shall have been so convicted. . . .

The question, as stated by Cockburn C.J., was whether a person who had been convicted of felony before the Act was passed became disqualified on the passing of the Act. There was no provision in the Act that could be construed as a rebuttal of the retrospective presumption.

Cockburn C.J. held that the Act did apply. He said³⁹ that "if one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony" he could feel the force of the argument in favour of applying the presumption. "But", he said, "here the object of the enactment is not to punish offenders, but to protect the public against public houses in which spirits are retailed being kept by persons of doubtful character".

He obviously construed the words "every person convicted of a felony" as referring to a status or characteristic only, and not to a past transaction. He also said⁴⁰ "the words are in effect equivalent to 'every convicted felon' ". Miller, and Archibald J.J. concurred, but Lush J. disagreed. He expressed the view⁴¹ that a person who had previously been convicted would forfeit his licence, and this was, therefore a highly penal enactment.

The majority regarded the new disability as protection to the public, and not a new punishment, Archibald J. said⁴² "it is an enactment with regard to public and social order, and the infliction of the penalty is merely collateral". In his view the statute was retrospective, since he considered that a new disability was attached to past events. But on Cockburn's view, which, it is submitted, is the correct view, the statute was prospective only, since the fact-situation described in the statute was a characteristic that arose in the past and not a past event.

In *In re Pulborough*⁴³ the Court of Appeal considered a provision of the Bankruptcy Act, 1883, which provided that "where a debtor is adjudged bankrupt" he should be subject to certain

³⁸ *Supra*, footnote 18.

³⁹ *Ibid.*, at p. 201.

⁴⁰ *Ibid.*, at p. 202.

⁴¹ *Ibid.*, at p. 201.

⁴² *Ibid.*, at p. 202.

⁴³ *Supra*, footnote 34.

disqualifications, including being elected to the office of member of a school board. The question was whether the statute applied to a person who had been adjudged bankrupt before its enactment.

The majority held that it did not. Lopes L.J. said:⁴⁴

It has been contended that the words "is adjudged bankrupt" are to be read, "has been adjudged bankrupt either before or after the passing of this Act".

I cannot so read those words. Independently of other considerations, with which I will presently deal, and regarding them only from a grammatical standpoint, I should read them, "is adjudged bankrupt under this Act". The sentence would then be, where a debtor "is adjudged bankrupt under this Act he shall, subject to the provisions of this Act, be disqualified". This reading seems more consonant with sense than "where a debtor has been adjudged bankrupt under this Act, or any previous Act, he shall, subject to the provisions of this Act, be disqualified". The former reading gives to "is" its ordinary and natural meaning; the latter distorts it. . .

Under s. 32 of the Bankruptcy Act, 1883, the respondent on being adjudged a bankrupt is disqualified from being elected a member of the school board until the adjudication of bankruptcy against him is annulled, or he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part.

A new disability, therefore, is imposed upon him, and disabilities are imposed on other persons which had no existence before the Bankruptcy Act of 1883. Having regard to the scope of the Act, and the rule of construction applicable to statutes, I am confirmed in my view as to the true reading of the words in s. 32 "is adjudged bankrupt".

Davey C.J. stated:⁴⁵

Now, reading those words alone, and apart from considerations arising out of the subject-matter of the section in which they occur, I should certainly understand them (according to the ordinary use of the English language) to mean, if any man shall or may hereafter be adjudged bankrupt; and unless there be some controlling context in the Act or in the section, I hold that to be the meaning of the words. It has been suggested that the words may be read as meaning "where a man is an adjudicated bankrupt". The answer seems to me to be that those are not the words before us, and that the words we have to construe are grammatically different. I think the words "is adjudged" are the verb, whereas in the paraphrase suggested the word "adjudicated" would be an adjective. The one form of sentence points to an event to happen, whereas the form suggested predicates a certain quality of the subject which may just as well attach to him by a previous adjudication as by a subsequent one.

Lord Esher, however, dissented. He said:⁴⁶

In my opinion, s. 32 is not penal within the meaning of the proposition, which states that a penal statute must be construed strictly, and in my opinion it is not, in the true sense of the term, retrospective. . . .

I cannot think that the legislature intended these disqualifications as punishments, for by the same section it appears that the disqualifications are to

⁴⁴ *Ibid.*, at pp. 736, 737-738.

⁴⁵ *Ibid.*, at p. 740.

⁴⁶ *Ibid.*, at pp. 733, 734.

be removed if the debtor obtains a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part. To my mind, to say that the legislature intended to punish a debtor of whom that can be said would be to charge the legislature with injustice. The disqualifications are intended solely for the protection of the public, and not by way of punishment. The case of *Reg. v. Vine* is a strong authority to shew that under such circumstances that which is enacted is not penal.

West v. Gwynne and *R. v. Vine* were referred to in *In re a Solicitor's Clerk*.⁴⁷ The statute considered there provided that "where a person who is or was a clerk to a solicitor . . . has been convicted of larceny . . . an application may be made . . . that an order be made directing that . . . no solicitor shall . . . take or retain the said person into or in his employment". The solicitor's clerk had been convicted before the statute was enacted, but it was held that the statute applied. Lord Goddard C.J. said:⁴⁸

It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.

The case of *In re a Solicitor's Clerk* was followed by the Manitoba Court of Appeal in *Ward v. Manitoba Public Ins. Corp.*⁴⁹ Under the statute and regulations there, additional premiums were assessed on the basis of convictions for offences, and it was held that the intent of the statute was to "deal with antecedent basic facts and apply them to prospective charges for insurance premiums".⁵⁰

In the end, resort must be had to the object of the statute. If the intent is to punish or penalize a person for having done what he did, the presumption applies, because a new consequence is attached to a prior event. But if the new punishment or penalty is intended to protect the public, the presumption does not apply.

There can be differences of opinion about the intent of the statute. In the case of *R. v. Vine* the majority held that the object of the statute was not to punish offenders but to protect the public; Lush, J. dissenting, said it was a highly penal enactment, and on his view the presumption would apply.

In *In re Pulborough* the majority held the disabilities to be disabilities to be added to those set out in the Bankruptcy Act; Lord Esher, however, did not think that the new disqualifications were

⁴⁷ *Supra*, footnote 28.

⁴⁸ *Ibid.*, at pp. 1222-1223.

⁴⁹ *Supra*, footnote 26.

⁵⁰ *Ibid.*, per Guy J.A., at pp. 55-56.

intended as punishment, but that they were intended solely for the protection of the public.

In *In re a Solicitor's Clerk*, Lord Denman said the statute would be retrospective if anything done prior to the Act should be made void or voidable or if a penalty were inflicted "for having acted in this or any other capacity before the Act came into force".

In *Ward v. Manitoba Public Insurance* the statute and regulations were clearly for the protection of the public.

To summarize:

1. A retroactive statute is one that changes the law as of a time prior to its enactment.

2. (1) A retrospective statute is one that attaches new consequences to an event that occurred prior to its enactment.

(2) A statute is not retrospective by reason only that it adversely affects an antecedently acquired right.

(3) A statute is not retrospective unless the description of the prior event is the fact-situation that brings about the operation of the statute.

3. The presumption does not apply unless the consequences attaching to the prior event are prejudicial ones, namely, a new penalty, disability or duty.

4. The presumption does not apply if the new prejudicial consequences are intended as protection for the public rather than as punishment for a prior event.
