

have been obtained by means of a statutory amendment to P. L., c. 101, s. 9, enacted by Laws 1937, c. 69, rather than by a direct overruling, it is fair to say that this principle has ceased to be law. "It is a matter of common knowledge that the rule in the *Johnson* case has been freely criticized as unduly harsh and unrealistic." *Mandell v. Company, supra*, 3.

Whenever a violation of a statute is claimed to be causal of damages, it is necessary to ascertain the intention of the Legislature in passing the statute. In the circumstances of the *Johnson* case, it was not the intention of the Legislature, in making it a misdemeanor for an unlicensed person to operate a motor vehicle on the highway, to make him an insurer against all accidents on the highway in which he might be involved and to allow him no recovery regardless of fault. In the present case, it is not a reasonable construction of the Constitution and the statute requiring disbursements by the State Treasurer on executive warrants to make him an insurer against all improper payments where such warrants are lacking. The purpose of the law is additional protection for the State, not to penalize the Treasurer. In not waiting for the warrant, he takes the risk that it will not authorize the payment made; he does not become an insurer that the payments are proper in every respect. Liability as an insurer should not be imposed on anyone without a clear expression of the legislative intent to that effect.

Rockingham, } No. 3914.
Jan. 2, 1951. }

ALFRED R. TRIS *v.* BENJAMIN F. ADAMS.

John W. Perkins and Everett P. Holland (Mr. Perkins orally), for the plaintiff.

Hamblett, Griffith & Moran (Mr. Griffith orally), for the defendant.

JOHNSTON, C. J. The defendant does not dispute the finding of the Master that the plaintiff had no notice of the tax sale as required by R. L., c. 80, s. 19, and the finding that there was a fatal defect in the tax sale. *Cf. Palmer v. Coulombe*, 95 N. H. 266.

The defense is based upon chapter 103 of the Laws 1947, which is as follows: "1. DEED. Amend chapter 80 of the Revised Laws by adding after section 33 the following new section: 33-a. INCONTESTABILITY. A tax collector's deed shall be incontestable after three years from the date of record, in regard to defects of form or procedure in the tax assessment and the tax sale upon which such deed is based; provided however, that all towns, cities and other incorporated places shall be amenable to process in the superior court for the redress of any actual injury other than those purely technical or nominal in nature resulting from the foregoing provisions. 2. TAKES EFFECT. This act shall take effect upon its passage. [Approved April 23, 1947.]"

Accordingly, the question is raised whether this statute, which shortens the period during which a tax collector's deed may be contested was intended to apply to such deeds that had been recorded more than three years before its passage. In our opinion it was not so intended. The case of *Hall v. Hall*, 64 N. H. 295, is in point. There the right to bring suit upon notes secured by a mortgage so long as an action could be brought upon the mortgage was limited to real estate mortgages. It was held that the narrowing of time from twenty to six years in actions involving notes secured by personal mortgages, did not destroy a right of action where the six years had already elapsed. The court decided that the new statute was not intended to apply to such rights of action. G. L., c. 1, s. 33 (now R. L., c. 7, s. 35) was cited. See also, the cases cited in the *Hall* opinion.

In *Bourque v. Adams*, 93 N. H. 257, a statute extending the time for a lien in favor of the town for taxes was upheld. The lien under consideration had already started to run but had not become lost. This decision was supported by *Willard v. Harvey*, 24 N. H. 344, where it was said on page 355: "It is wholly immaterial whether the time of limitation has already expired in part or not, provided a sufficient time remains before any claim in question becomes barred, to enable the claimant by the use of reasonable diligence to save his claim by a suit." To the same effect is *Gilman v. Cutts*, 23 N. H. 376.

Decree affirmed.

All concurred.

Belknap, }
Jan. 2, 1951. } No. 3917.

CITIZENS NATIONAL BANK *v.* WALTER R. HERMSDORF & *a.*