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STATUTORY CONSTRUCTION

J. FRED BUZHARDT, JR.*

A large part of cases decided during the survey period which hinged on the construction by the court of statutes was attributable to the change in phraseology and grouping of sections incident to codification of the Code of 1952, resulting in a number of novel questions being decided by the application of long and well established rules of construction.

In *State v. Conally*¹ the defendant was convicted on a plea of guilty of possession of alcoholic liquors in unstamped containers, second offense, and was sentenced to eighteen months in prison, from which sentence the defendant appealed. The Alcoholic Beverage Control Act of 1945² had limited the punishment of this offense to less than the sentence imposed, as did an amendment³ to the act passed in 1951. In codification the limitation on the sentence for this offense was omitted in an unambiguously reworded section⁴ and the court affirmed this sentence; reluctantly, however, since they felt that the change was inadvertent rather than deliberate. Since the act as codified was unambiguous, the court held that they could not refer to the original act for purposes of construction.

*Raggio v. Woodmen of the World Life Insurance Society*⁵ was an action commenced by the beneficiary, who sought to recover on a life insurance policy. Defendant asserted in defense that the policy was void due to material misrepresentations made by the insured in the application for the policy, to which plaintiff demurred on the ground that the defendant was limited by statute⁶ to two years in which to vacate the policy on the ground of material misrepresentation and more than two years had passed since the issuance of the policy. The trial court overruled the demurrer on the ground that Section 37-161, CODE OF LAWS OF SOUTH CAROLINA, 1952, was inapplicable to fraternal benefit associations, to which group defendant admittedly belonged. On appeal, the Supreme Court, in a split decision, reversed

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1. 227 S.C. 507, 88 S.E. 2d 591 (1955).

2. Act No. 221, XLIV Stat. at Large, 337.

3. Act No. 379, XLVII Stat. at Large, 546, 655 (Section 94).

4. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 4-107; See also, CODE OF LAWS OF SOUTH CAROLINA, 1952 § 17-553.

5. 228 S.C. 340, 90 S.E. 2d 212 (1955).

6. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 37-161.

the trial court's ruling. Section 37-857, CODE OF LAWS OF SOUTH CAROLINA, 1952, provided that the general insurance laws of the State shall not apply to fraternal benefit associations, unless express provision therefor is made in any such act. The act⁷ containing the two year limitation was applicable to "all companies", company being defined at the beginning of the chapter under "definitions" to include fraternal benefit associations.⁸ The trial court and the dissenting opinions of the Supreme Court, strictly construing the statutes, took the view that Section 37-857 excepted defendant from the limiting section. The majority opinion, however, after reviewing the history of the act, held that the codification⁹ of the Act of May 12, 1947, XLV Statute at Large, 322, was a re-grouping and re-phrasing of the law only and indicated no legislative intent to change the operation of the law.

Section 20-6.1, Code of Laws of South Carolina, 1952, was construed by the Court in *Crawford v. Crawford*.¹⁰ This section provides in substance that children born of a void marriage, which either of the contracting parties entered in good faith, shall be deemed to be legitimate. Plaintiff in this action sought to establish her right to inherit from her father, who died on November 2, 1952. The codification act,¹¹ by its express provisions, declares the Code of 1952 "to be the only general statutory law of the State"¹² as of January 8, 1952, but also expressly provided that the act¹³ shall take effect upon approval by the Governor, which approval occurred on November 19, 1952. The court was thus faced with the question of whether the act was applicable where the person from whom it was sought to inherit died between the two dates. The court, in reaching its decision, found it unnecessary to decide that the provisions of the 1952 Code did not become effective on January 8, 1952, but upheld the decision of the Circuit Court by reasoning that the application of Section 20-6.1 to this case would divest the defendant respondent of vested rights in property in violation of Article 1, Section 8, Constitution of South Carolina (1895). In addition, the court found that Section 20-6.1 was ambiguous, in that it used verbs of past, present and future tense. The ambiguity was solved by reference to the origi-

7. *Supra*.

8. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 37-2(3).

9. CODE OF LAWS OF SOUTH CAROLINA, 1952 Title 37.

10. 228 S.C. 77, 88 S.E. 2d 874 (1955).

11. CODE OF LAWS OF SOUTH CAROLINA, 1952 (See inside cover, Vol. I).

12. *Supra*.

13. *Supra*.

nal act, which, by its terms, was not applicable to plaintiff's circumstances.

The case of *Bohlen, et al. v. Allen, et al.*¹⁴ was an action to determine who was the legal County Engineer for York County, and presented the question of whether the county engineer could be elected by a majority of the county governing body and the supervisor, or whether the governing body and supervisor, as separate entities, had to agree on a county engineer under the terms of Section 33-1922, Code of Laws of South Carolina, 1952. To determine the legislative intent, the court considered the act¹⁵ as a whole as it was phrased¹⁶ prior to codification, since the particular section under construction was patently ambiguous, and concluded that the supervisor's concurrence was essential to elect the county engineer.

In *Abell v. Bell*,¹⁷ the question presented was whether the act under construction was mandatory or permissive. The act¹⁸ concerned the conveyance of abandoned schools to community trustees by school trustees and the ambiguity was created by the use of the words, "authorized to convey", in one place and subsequently the words, "shall be conveyed". In reaching the conclusion that the Legislature intended the act to be mandatory, the court considered the terms of the entire act as a whole and scrutinized all cognate legislation thoroughly.

The recovery of fees or monies collected by the highway department erroneously or without authority of law was held to be controlled and limited by Section 46-50, Code of Laws of South Carolina, 1952, by the court in *Wilder v. South Carolina State Highway Department*.¹⁹ Although Section 33-72, Code of Laws of South Carolina, 1952, provides "the State Highway Department may enter into such contracts as may be necessary for the proper discharge of its functions and duties and may sue and be sued thereon", the court held that no suit for fees illegally collected could be maintained, since an exclusive remedy was provided by Section 45-50 by means of a claim for refund.

In *Bagwell v. Ernest Burwell, Inc.*²⁰ the court found Section 75-356, Code of Laws of South Carolina, 1952, unambiguous, and, therefore, not subject to construction. The section which the court

14. 228 S.C. 135, 89 S.E. 2d 99 (1955).

15. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 33-1921; § 33-1925.

16. Act No. 962, 46 Stat. at Large, 2316 (1950).

17. 229 S.C. 1, 91 S.E. 2d 548 (1955).

18. XLVIII Stat. at Large, 1468 (Feb. 1954).

19. 228 S.C. 448, 90 S.E. 2d 635 (1955).

20. 227 S.C. 168, 87 S.E. 2d 583 (1955).

was urged to construe creates a supersedus of thirty days only on an appeal from an award made by the Industrial Commission. The court, while specifically recognizing that the statute had the effect of creating a privileged suitor, held that such privileged suitor was created in unambiguous phraseology and, in addition, was consistent with legislative policy in the Workmen's Compensation field.