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## Statutory Construction

J. F. Buzhardt Jr.

*Buzhardt & Buzhardt (McCormick, SC)*

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## STATUTORY CONSTRUCTION

J. FRED BUZHARDT, JR.\*

The cases included in this summary were selected either for their tendency to clarify statutes in fields of frequent litigation or because the statute construed and the reasoning behind the construction affects a large field of potential litigation.

The so-called "motor vehicle attachment statute"<sup>1</sup> was construed in *Stephenson Finance Co. v. Burgess*.<sup>2</sup> The specific question before the court was whether the lien on a vehicle which had been attached for damages resulting from the negligent operation of the vehicle was released by the filing of a bond by the owner of the vehicle. The court distinguished the result of filing an undertaking where a lien is created by statute from where a lien is created by the attachment, as in *Bates, Reed & Cooley v. Killian & Bros.*<sup>3</sup> Where the lien is created by statute, the only effect of the filing of bond is to release the attached property from custody of the law.

In *Rogers v. U. S. Fidelity & Guaranty Co.*,<sup>4</sup> the plaintiff sought to recover on the statutory bond of an automobile dealer for damages resulting from fraudulent dealings of the dealer. Construing the statute<sup>5</sup> requiring the bond by the automobile dealer, the court held that the bond was conditioned solely on the lawful operation of the dealer's business, and was not for the benefit of the public. One of the determining factors of the legislature's intention was the amount of the bond required.

The question of what is an educational or an ordinary county purpose, as required by the State constitution<sup>6</sup> for issuance of county bonds, was before the court twice during the year. In one case,<sup>7</sup> the court held that bonds issued for the construction of a hospital were for an ordinary county purpose. In another case,<sup>8</sup> the court rejected the constitutionality of a proposal to issue county bonds for the purpose of promoting a system of physical education for the public school system and which provided for public use of recreational facilities during school vacation periods. The court found the

\*Member of the firm of Buzhardt & Buzhardt, McCormick, S. C.; LL.B., University of South Carolina, 1952.

1. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 45-551.
2. 225 S.C. 347, 825 S.E. 2d 512 (1954).
3. 17 S.C. 553 (1882).
4. 225 S.C. 298, 81 S.E. 2d 896 (1954).
5. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 46-92.
6. SOUTH CAROLINA CONSTITUTION OF 1895, art. 10, § 6.
7. *Bolt v. Cobb*, 225 S.C. 403, 82 S.E. 2d 789 (1954).
8. *Lenord v. Talbert*, 225 S.C. 559, 83 S.E. 2d 201 (1954).

latter project to be recreational rather than educational, and not “ordinary” at all.

The statutory remedy<sup>9</sup> for a taxpayer from whom a sales or use tax is unjustly collected was construed in a recent case,<sup>10</sup> and while the remedy was held exclusive, it was also held unapplicable to a bailor whose property was seized under a tax execution against the bailee. The court upheld the right of the bailor to maintain an action in claim and delivery for the property.

In what might well be a far reaching decision<sup>11</sup> the court held a statute<sup>12</sup> affecting municipalities within a strict population limitation to be special legislation, and, as such, unconstitutional. This particular act,<sup>13</sup> the court found, could apply to municipalities in only one county in the state, and, in addition, it drastically changed the method of annexation of areas to municipalities affected from that prevailing throughout the other counties in the state. The court’s opinion that the legislation was general in form, but special in its operation, may have been more largely prompted by the drastic departure from ordinary method of annexation than from the exclusiveness of the population limitation.

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9. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 65-1464 through 65-1467.

10. *Stephens v. Hendrix, Tax Collector*, 226 S.C. 79, 83 S.E. 2d 634 (1954).

11. *Town of Forrest Acres v. Town of Forrest Lake*, 226 S.C. 349, 85 S.E. 2d 192 (1954).

12. 48 STATUTES AT LARGE 1494 (1954).

13. See note 12 *supra*.