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PART II

CONSTITUTIONAL LAW

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Debt Limitations

During the period covered by this review four cases — one of major significance and here first discussed — were decided by the Supreme Court involving the question of constitutional debt limitations applicable to political subdivisions in South Carolina.

Some background reference to the problem disposed of in the case of *Berry v. Millikin*[1] is required.

When the South Carolina Constitution of 1895 was written, the delegates to that Convention were extremely conscious of the vast amount of fraudulent debt that had been imposed upon the taxpayers of the State during Reconstruction by the carpetbag and Negro Legislature ruling the State at that time. That situation is aptly described in the language of State Treasurer W. T. C. Bates in a report prepared for the Legislature in 1892. He therein states:

> The plunder and destruction of the public funds and property by the Negro Legislature and Reconstructionists that came into power under the auspices of the Federal Government, is perhaps without parallel in the history of civilized countries. Money was raised by any and every means found available, with a reckless disregard to cost, and in violation of every principle of honesty and justice, not to be expended for legitimate public uses, but squandered and embezzled in a manner that defies description, and is almost incredible. This iniquity was accomplished by increased taxation upon onerous assessments of property, the issue of Bonds, Stocks and Certificates in the name of the State by the Legislature, Governors, Treasurer and Speakers of the House of Representatives and Financial Agents, and by their sale and hypothecation at frightful reductions in value by the payment of accounts for unnecessary public printing; for the enrichment of publishing companies;

*Sinkler, Gibbs and Simons.

1. 234 S. C. 518, 109 S. E. 2d 354 (1959).

> for bills for legislative service; for wines, groceries and dry goods (these last alone amounting to $543,232.00); by the reproduction and payment of warrants and coupons that had already been paid, but had never been cancelled; and even by the 'raising' of checks on public account by interpolation and alteration of figures, etc., etc. — for a more extended expose and for proof of which, see *Reports of Legislative Frauds, 1871-74.* Under such an administration of rule and ruin, the credit of no government on the face of the earth could have been preserved.

Restrictions imposed upon the incurring of bonded debt by the State have been altogether avoided by the Special Fund Doctrine,[2] and even more carefully worded restrictions were written into the Constitution to control the issuance of general obligation bonds by the political subdivisions of the State. Not only was an 8% debt limitation imposed upon each political unit but it was clearly provided by Section 5 of Article X that:

> no county, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as valued for State taxation. And wherever there shall be several political divisions or municipal corporations covering or extending over the territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per cent limitation that the aggregate debt over and upon any territory in this State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State . . . .

Unfortunately, neither the people nor the courts were ever too happy about this provision, and as early as 1897, in the case of *Todd v. Laurens*,[3] three of the four Justices then constituting the Court merely concurred in an opinion by Mr.

2. Sinkler, *Constitutional Limitations on Public Finance In South Carolina*, 3 S. C. L. Q. at 311 (1951).
3. 48 S. C. 395, 26 S. E. 682 (1896).

Justice Pope which literally implemented the the unequivocal language of Section 5 of Article X.

A number of decisions dealing with the application of the 15% limitation followed during the next 25 years. While all of these could be disposed of on the theory that they dealt with special constitutional amendments, the door which seemingly had been so firmly shut by Mr. Justice Pope's interpretation of Section 5 of Article X had begun to creak. In 1924 in the case of *Elliott v. Heyward,*[4] "Richard opened the door." In a far reaching decision which contains little reasoning, and only 185 words, the Supreme Court, speaking through Mr. Justice Watts, stated that a county had a right to issue bonds up to 8% regardless of whether the debt of one of the lesser units of the county was such that the proposed issue imposed bonded debt of more than 15% upon some of the taxable property of the county. Once the door was opened, case followed case, and in short order the Supreme Court categorically held that the 15% limitation had no effect upon an incorporated municipality,[5] nor yet, upon a school district.[6] These decisions are now so ingrained into the constitutional provision, and so many millions of dollars of bonds have been issued upon the strength of them, that the Supreme Court has very properly refused to reconsider the results of those cases.[7] However, the Court did indicate that it would not extend that doctrine further using this language in the *Ashmore* case where it required an auditorium district to observe the 15% limitation:

> Former decisions (subsequent to *Todd v. City of Laurens, supra)* have been cited wherein the fifteen per cent limitation appears not to have been applied to the issuance of bonds by the subdivisions there involved, respectively. They are: *Elliott v. Heyward,* 127 S.C. 468, 121 S.E. 257, a county; *Banks v. School District,* 129 S.C. 218, 123 S. E. 834, a school district; *Bagnall v. Clarendon-Orangeburg Bridge District, supra,* 131 S.C. 109, 126 S.E. 644, a bridge district composed of two counties under a special act of the legislature; and *Winstead v. Williams,* 132 S.C. 365, 128 S.E. 46, a city or town.

4. 127 S. C. 468, 121 S. E. 257 (1924).
5. Winstead v. Williams, 132 S. C. 365, 128 S. E. 46 (1925).
6. Banks v. School District, 129 S. C. 218, 123 S. E. 834 (1924).
7. Ashmore v. Greater Greenville Sewer District, 211 S. C. 77, 44 S. E. 2d 88 (1947).

> The result of the cited decisions, *to which we adhere,* was that the particular subdivisions validly issued and sold the bonds which were questioned in those actions, but none of the cases constitutes a precedent which is controlling of this case . . . . (emphasis added)

In the *Berry* case, the question to be decided was whether a district, properly held by the Court to be a political subdivision within the State within the meaning of Section 5 of Article X, might incur bonded debt in disregard of the 15% limitation. The door, seemingly closed by *Ashmore,* opened once again and the Court held that the district could incur bonded indebtedness up to 8% without regard for the 15% limitation. The Court bases its opinion on the case of *Bagnall v. Clarendon & Orangeburg Bridge District,*[8] but the facts and reasoning of the *Bagnall* case do not sustain its opinion. In the *Bagnall* case a special district had been created, consisting of Orangeburg and Clarendon Counties, and was empowered to issue $180,000 of bonds to build a bridge across the Santee River. While the bonds to be issued were denoted "general obligations" of the District, the Act itself and the opinion of Acting Associate Justice W. C. Cothran clearly show that the bonds were the several obligations of Orangeburg and Clarendon Counties, since each County was responsible for one-half of the amount to be issued. In that case, the Court had difficulty in overruling the objection of a Clarendon taxpayer, who, by virtue of the fact that the assessed value of property in Clarendon County was only one-third of that in Orangeburg County, had to pay three times as much in the way of taxes to pay off the debt as did his Orangeburg counterpart. The Court justified such action by pointing out that the situation was in fact bonded debt incurred by each of the two counties, and since the tax levy in the respective counties would be uniform as to those Counties, the aggrieved Clarendon taxpayer was not justified in invoking the due process clause.

Actually, the *Bagnall* case is no more nor less than an extension of the *Elliott* case, and if the *Elliott* case is to be regarded as a definitive holding — as indeed it must — then the result in the *Bagnall* case was justified.

The *Bagnall* case, however, furnishes no logical support for the result in the *Berry* case, since the tax to be imposed on

8. 131 S. C. 109, 126 S. E. 644 (1925).

the property of the airport district is uniform throughout the district. Thus, we see Section 5 of Article X further weakened, so that now not only may a city, a county, or a school district incur bonded debt without regard to the 15% limitation, but a district comprised of two counties may incur bonded debt under the same conditions. Justice Legge dissented from this ruling.

Effect of Special Constitutional Amendments Upon Debt Limitations

The case of *Baldwin v. McFadden*[9] deals with the effect of two special constitutional amendments and the questions raised there merely sought a holding that debt incurred pursuant to such constitutional amendments was debt outside of the 15% limitation and need not be considered in determining if the Clinton Hospital District bond issue would violate the 15% limitation. The Court very soundly concludes that the purpose of the constitutional amendments was to remove debt incurred thereby from consideration in determining bonded debt within the 15% limitation. But the Court concluded by stating that a hospital district — which is a lesser unit than a county — might incur debt, but it would have to observe the 15% limitation. The lack of consistency between this ruling and that handed down in the *Berry* case is notable.

The case of *Knight v. Allen*,[10] like the *Baldwin* case discussed above, considers the effect of a special amendment relating to York County alone. S. C. CONST. art. X, § 5, as amended 1927, Code of Laws of South Carolina (1952), Vol. 7 at page 285. This amendment (a) removed the original constitutional limitation from York County bonded debt for highway and bridge construction purposes, and (b) imposed an 18% limitation upon such bonded debt. The question before the Court was whether or not the amendment eliminates York County highway and bridge construction bonds from consideration in calculating the amount of bonded debt that might be incurred for other purposes within the 8% limitation. The appellant's contention was that the amendment should be construed to mean that the limit to which York County might incur bonded debt was the original

9. 234 S. C. 563, 109 S. E. 2d 579 (1959).
10. 234 S. C. 559, 109 S. E. 2d 585 (1959).

8% provided by Section 5 of Article X, unless further bonded debt was incurred for the purpose of highway and bridge construction, in which event York County may incur bonded debt up to an aggregate of 18%. The respondents' position, which the Court sustained, was that under the amendment York County had the right (a) to incur bonded debt of 18% for the purpose of highway and bridge construction, and (b) at the same time have outstanding bonded debt of 8% which had been incurred for purposes other than highway and bridge construction.

The Court's opinion in this case is sustained by the earlier decisions cited in the opinion. As noted by the Court, any other holding would have in effect interpreted the amendment as reducing the 8% debt limit and, as the opinion states, "all of the many amendments to this section of the Constitution have been for the purpose of enlarging, not reducing the original debt limits . . ."

The third decision handed down during the period under review considering the effect of a special constitutional amendment upon debt limitation, is *Johnson v. Thomason.*[11] The question before the Court was a very narrow one involving the interpretation of the phrase "to vote bonds" contained in the 1921 amendment to Section 5 of Article X of the State Constitution relating to the bonded indebtedness of Laurens County. The question to be decided was whether by virtue of the quoted phrase, the amendment required the vote of the qualified electors of Laurens County on the question of the issuance of bonds within the meaning of the amendment.

Two other constitutional amendments proposed in 1920 by the Laurens County delegation simultaneously with the amendment in question had related to relaxations of the debt limitations. One had used the phrase "to vote bonds" and the other "to issue bonds." However, both further provide in express language that the question of incurring the indebtedness be submitted to the qualified electors. Because the amendment under consideration in the case under review does not so provide, the lower court construed the word "vote" as meaning "issue" and sustained the act in question authorizing a bond issue within the meaning of the amendment, but not requiring an election. The Supreme Court reversed the

11. 236 S. C. 135, 113 S. E. 2d 417 (1960).

lower court in this decision which turned upon the point of legislative intent.

The Supreme Court found that the language quoted above from the amendment is ambiguous. However, where the lower court had used contemporary amendments to the Constitution introduced by the Laurens County Delegation in 1920 in reaching its conclusion that the word "vote" was used as meaning "issue," the Supreme Court, in reversing, pointed to the action of the 1921 Legislature within three weeks of its ratification of the amendment as indicating a contrary intent. The scales, which were so evenly balanced on the question of legislative intent, where apparently tipped by the decision in *Dial v. Watts*.[12] This decision, which followed the unusual course of adopting as the opinion of the Court the "very clear, logical and convincing argument of counsel for the petitioners" in the case, by way of dicta, indicates that a vote of the electorate was a condition precedent to the issuance of bonds under the amendment in question. Apparently the holding in the *Dial* case sufficiently impressed the Court to overcome the presumption in favor of the constitutionality of the act under attack.

Home Rule Sustained in South Carolina

During the period covered by this review our Supreme Court reaffirmed in unequivocal language a basic principle vital to the governmental scheme established and expressed in the South Carolina Constitution of 1895. In the *Sossamon*[13] case the Court had before it the question of the constitutionality of an act creating the Greater Gaffney Metropolitan Utilities Area, the pertinent provisions of which are set forth in the opinion. The effect of this act, if upheld, would have been the abrogation of the right of the City of Gaffney to operate its municipal waterworks beyond the city limits, a right which it had exercised through its Board of Public Works for over fifty years.

The basic attack upon the constitutionality of this act was upon the grounds that it violated Article VIII, Section 1 of the 1895 Constitution, which reads as follows:

> The General Assembly shall provide by general laws for the organization and classification of municipal cor-

12. 138 S. C. 468, 136 S. E. 891 (1927).
13. Sossamon v. Greater Gaffney Metropolitan Utilities Area, 236 S. C. 173, 113 S. E. 2d 534 (1960).

> porations. The powers of each class shall be defined so that no such corporation shall have any powers or be subject to any restrictions other than all corporations of the same class. Cities and towns now existing under special charters may reorganize under the general laws of the State, and when so reorganized their special charters shall cease and determine.

This attack was not based on the premise that the Legislature lacked the constitutional power to strip a municipal corporation of rights and powers, but rather that the exercise of such legislative power must, by virtue of Article VIII, Section 1 of the South Carolina Constitution be effected by a general law; the petitioners contended that the constitutional scheme guaranteed to municipalities the strength of unity *vis a vis* the Legislature. In sustaining the petitioners' contention, the Court recognizes, and we think rightly so, that the otherwise unlimited power of the General Assembly over municipal corporations is restricted by Article VIII, Section 1. When considered in the light of the fact that through time honored legislative courtesy the General Assembly seldom hesitates to pass local acts sanctioned by the local county delegation, the effect of this decision is to confirm and strengthen the hand of local self-government at the municipal level against the otherwise unlimited control by the county delegation. It should be pointed out that the petitioners did not question the motives, sincerity and patriotism of those whose sponsored the legislation under attack. However, they noted that despotism in government usually first comes about when unusual powers are given to good rulers and that, therefore, constitutional safeguards must be equally applicable to the good as well as to the bad.

The Court further held that the act attempted to create an unconstitutional restriction upon the city of Gaffney's right to acquire and operate a waterworks system as guaranteed to it under Article VIII, Section 5 of the Constitution. This holding appears to be sound, and no doubt the case could have been disposed of on that ground alone. Therefore, the Court is to be especially commended for undertaking to resolve the more basic issue involved under Article VIII, Section 1.

Perhaps attention should here be directed to a doctrine which does give the legislature the power to pass special laws:

applicable only in the field of municipal finance. A long line of decisions upholds the validity of such enactments. *Floyd v. Parker Water and Sewer District*,[14] *Briggs v. Greenville County*,[15] *Rutledge v. Greater Greenville Sewer District*[16] *Mills Mill v. Hawkins*.[17]

Court Review of Actions of Administrative Agencies

The constitutional question involved in the case of *Board of Bank Control v. Thomason*[18] relates to the function of the Court to review the action of an administrative agency to whom was delegated the function of granting (and withholding) licenses to engage in the small loan business. The act itself contained sweeping language. The CODE OF LAWS OF SOUTH CAROLINA Section 8-794.161 (1952) provides that the Court should have jurisdiction to review the facts and the law and to examine, modify, or set aside the order or decision of the Board. The Supreme Court quoted with approval from an opinion by the United States Supreme Court which had observed that statutes which employ broad terms to confer power of individual review are not always to be read literally. The reason for this, observed the Court, was that to honor the doctrine of the separation of powers, courts should not perform non-judicial functions. Consequently, if it were concluded that the ministerial agency here was performing a function which was essentially legislative and administrative, the scope of judicial review should be limited.

The Court then concluded that the function of the State Board of Bank Control was one that was essentially legislative and administrative. Specifically, the Court held that this function was non-judicial. Once it reached this conclusion the Court determined that it should limit its review to that customarily reserved for actions by administrative agencies. Citing decisions, it noted that actions by administrative agencies were to be presumed valid and would not be set aside unless shown to be arbitrary. It noted that its disposition of appeals from the State Public Service Commission, the State Tax Commission, the Board of Naturopathic Examiners, and other administrative agencies fell into this pattern. Con-

14. 203 S. C. 276, 17 S. E. 2d 223 (1941).
15. 137 S. C. 288, 135 S. E. 153 (1926).
16. 139 S. C. 188, 137 S. E. 597 (1927).
17. 232 S. C. 515, 103 S. E. 2d 14 (1957), discussed in 11 S. C. L. Q. at 9 (1958).
18. 236 S. C. 158, 113 S. E. 2d 544 (1960).

sequently, it determined that its review of the action of the State Board of Bank Control in refusing to grant the respondent a small loan license would be limited to a review of the record to determine if the action of the State Board of Bank Control had been reasonable. Concluding that sound reasons existed which supported the judgment of the State Board of Bank Control, the majority decision of the Supreme Court reversed a lower court decision and reinstated the decision of the State Board of Bank Control rejecting the respondent's application.

In a dissenting opinion, Justice Taylor stated that the powers granted to the Court were clear and unambiguous. He noted that the Legislature had granted to the Court the power to affirm, modify, or take other action on decisions reached by the State Board of Bank Control, and therefore, concluded that the scope of review should be that literally contemplated by the Legislature.

The majority opinion here seems to be generally in accord with the weight of decision elsewhere. Certainly, the task of determining whether licenses to engage in the small loan business is not primarily a judicial function. If this business is to be regulated—and indeed, it can be hardly argued to the contrary—then regulation should be performed by an administrative agency. Under the very nature of the circumstances, the action of such an agency should be more informed and more likely to be in the public interest than that of the courts, which, in the final analysis, would merely review a record. For that reason, the scope of judicial review should be limited.

"Novel" Constitutional Position Not Sustained in Condemnation Case

The case of *Ex Parte Wessinger*[19] involves an appeal from a refusal by the lower court to grant a property owner's petition for permission to appeal from a condemnation award after time therefor had elapsed. The statute, allowing an appeal in such case, CODE OF LAWS OF SOUTH CAROLINA Section 33-139 (1952), provides that notice of appeal shall be served on the State Highway Department within twenty days "after the receipt of the resolution of the condemnation board."

19. 235 S. C. 239, 111 S. E. 2d 13 (1959).

The resolution making the award in question was sent to the appellant by registered mail and he signed the return receipt therefor on December 18, 1956. Thereafter, on January 10, 1957, appellant served by registered mail his notice and grounds of appeal upon the State Highway Department, exactly two days too late to comply with the statute.

In affirming the lower court's refusal to grant the petition, the Supreme Court held, on the only constitutional question involved, that the failure of the resolution notifying the appellant of the award to give notice thereon of appellant's right to appeal and to state that the award was final unless it be appealed within a prescribed time, does not render the condemnation an unconstitutional taking of property without due process and without just compensation. Apparently no authority was cited by appellant for his constitutional position, which the Court in striking down termed "novel." The Court pointed out that appellant was charged with knowledge of the condemnation statutes and was represented by counsel at the hearing, testified and offered evidence. The Court's holding on the constitutional question seems eminently correct.

Legal Incidence Test in Determining Immunity From State Taxes

The case of *E-G Sheet Metal Works v. Crain*[20] was an action against the members of the South Carolina Tax Commission to recover sales and use taxes paid under protest.

During 1950 the Atomic Energy Commission and E. I. duPont de Nemours & Company entered into a contract for the construction of the Savannah River project. Under this contract duPont was to be reimbursed by the government for all its costs and expenses in connection with the project and for its services was to receive only a nominal fee of $1.00. Further, title to all materials, equipment and supplies procured by duPont under the contract was to vest in the Government whenever title passed from the seller. The taxpayer, E-G Sheet Metal Works, contracted with duPont to furnish certain materials and labor in connection with the construction of the Savannah River Project.

The Tax Commission did not contest the immunity of the taxpayer from taxes on articles of tangible personal property

20. 235 S. C. 290, 111 S. E. 2d 562 (1959).

purchased by it, *to which title became vested in the United States or duPont.* The issue revolved around use and sales taxes paid on those materials and supplies, the title to which remained in the taxpayers, and never vested in duPont or in the Government, which materials and supplies (ranging from automobiles to toothpicks) were never incorporated into the project. The lower court upheld the Master's finding that the taxes in issue were wrongfully collected and ordered them to be refunded. The taxpayers' claim of immunity was based on two grounds, both of which were rejected by the Supreme Court in reversing the lower court.

The first ground raised by a taxpayer was the implied constitutional immunity of the Federal Government from State taxation. In the very able opinion, the Court reviewed cases on the point from *M'Culloch v. Maryland*[21] down to the recent decisions of the United States Supreme Court. The Court points out that in some of the early cases attempts to levy state taxes were stricken down where their collection would ultimately have placed *an economic burden upon the Federal Government.* However, the Court concludes that this "economic burden" test is no longer the law, but that implied immunity from state taxation only encompasses such taxation as has a "legal incidence" upon the Federal Government. There is little room to argue with the Court's holding that, although an economic burden upon the Federal Government might be traced to the taxes in question, there was no legal incidence in connection therewith on the Federal Government, and that therefore the taxes in question were not encompassed within the implied constitutional immunity.

In its opinion, the Court refers to the then recent decision of *United States v. Livingston.*[22] This opinion of a three judge district court sets forth in a brief passage a clear account of the reasons for the development of the "legal incidence" test. Because this passage provides a clearer understanding of the legal incidence test, we invite attention to the same in the footnote to this article.[23] This Federal

21. 4 Wheat (17 U. S.) 316, 4 L. Ed. 579 (1819).
22. 179 F. Supp. 9 (1959).
23. "The doctrine [of immunity] was born of the necessity of protection of the functions of each sovereignty, operating in the same territory, from a frustrating taxing power of the other. Since the principle requires immunity from the economic burden of the other's taxes, it is not surprising that in an earlier year when governments were small and taxes and economics less complex, a concentration upon the economic burden should have led to an extension of the doctrine to persons dealing with the governments.

Court decision where the Court found that a "legal incidence" existed makes an interesting comparison with the case under review where no such legal incidence was found.

The taxpayer's second ground on his claim of immunity was based upon the wording of section 9(b) of the Atomic Energy Act of 1946, which provides in part:

> The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any subdivision thereof.

The above quoted sentence had been repealed, but the taxes in question were collected prior thereto.

The question to be resolved was whether the taxpayer's contract with duPont and its performance thereunder were "activities" within the meaning in the above quoted language.

In rejecting a taxpayer's claim on this ground, the Court noted that the construction contended for by the taxpayer had not been adopted by the Atomic Energy Commission, which had taken the position that exemption from state and local taxation by virtue of section 9(b) should not be sought with reference to use taxes on tangible property which remains the property of the contractor, or sales taxes on tangible personal property purchased by the contractor which remains his property. The Court recognized that the statutory interpretation by the Atomic Energy Commission was entitled to great weight.

In reaching the conclusion that the taxpayer's purchasing of material and supplies which were not incorporated in the project was not such an "activity" of the Atomic Energy Commission as is exempted from state taxation under section 9(b), the Court realized that some limit must be placed upon

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Taxation of salaries of government employees and of the activities of vendors to government of goods and services created an economic burden readily perceived, if imperfectly measured. Carried to its extreme in modern society, however, the logical extension of the doctrine would be ridiculous. Economists may estimate the total tax increment in the cost of a complicated machine or of construction of a building, but an attempt to relieve a purchasing sovereign of the economic burden of all taxes, however remote and indirectly imposed, would not only be impossible of accomplishment, but would seriously disrupt the functions of each of the dual sovereignties. Confinement of the extension was difficult, for distinctions between imposts more or less remote and indirect frequently lacked substance. Furthermore, it was not easy to see why the obligations of a manufacturer to the state and community, whose protection and services he enjoyed, should vary with the fluctuations in the ratio of his sales to the United States to his total sales."

the "activities" exempted. Otherwise, there would be practically no transaction in any way connected with the project which would not be an activity of the Commission.

In the case of *Mullis v. Celanese Corporation of America*,[24] the Court gave effect to a statute, CODE OF LAWS OF SOUTH CAROLINA, Section 64-6 (1952), which exempts certain manufacturing establishments requiring continuous and uninterrupted operation from the operation of statutes prohibiting work on Sunday. The Court, after a thorough consideration of the legislative background of section 64-6, concluded that it applied to the manufacturing establishment under consideration, and holding that the act was constitutional, reversed the lower court and granted the appellant-employer's motion for summary judgment in this action instituted by certain employees to compel the employer to refrain from demanding Sunday work and asking for a judgment for back wages at time and a half for Sunday work already performed.

The Court's consideration of the legislative background of section 64-6 was impressively thorough, and on the basis thereof, its conclusion that section 64-6 applied to the manufacturing establishment under consideration, cannot be questioned. The constitutional question facing the Court was the right of the General Assembly to classify certain industries and exempt them from the General Statutes requiring the observance of the Sabbath. The plaintiffs took the position that the classification and exemption of section 64-6 offended the equal protection clause of the State and Federal Constitutions and Article III, Section 34, Subdivision IX of the South Carolina Constitution. The Court affirmed the right of the General Assembly to classify pursuits, occupations or businesses for inclusion in or exemption from statutes requiring observance of Sunday, as long as such classification is based upon pertinent and substantial differences rationally justifying the diversity. Further, the Court found, on the basis of background legislative studies that the classification in question was reasonable and not arbitrary.

Of particular interest in connection with the question disposed of in this case is the subsequent case of *Carolina Amusement v. Martin*,[25] decided July 7, 1960, upholding CODE OF

24. 234 S. C. 380, 108 S. E. 2d 547 (1959).
25. 236 S. C. 558, 115 S. E. 2d 273 (1960).

LAWS OF SOUTH CAROLINA Section 64-1 (1952) (prohibiting public sports or pastimes on Sundays) against constitutional attack. This decision has been appealed to the United States Supreme Court where it is awaiting action at this writing. If Sunday statutes such as section 64-1 are stricken, then statutes creating exemptions therefrom might become unnecessary.

In the case of *State v. Gorey*[26] the Court was faced with the question of determining the effect of CODE OF LAWS OF SOUTH CAROLINA Sections 15-1335, 15-1336 (1952) upon the constitutional jurisdiction granted by Article V of Section 1 of the South Carolina Constitution to the Court of General Sessions in manslaughter cases. The Code sections above mentioned provided that the Children's Court of Spartanburg County should have exclusive original jurisdiction of any case of a child less than 16 years of age who is delinquent, dependent or neglected. The appellant, who committed the offense with which he was charged at the age of thirteen, was convicted the following year in the Court of General Sessions of Spartanburg County. Apparently, he never appeared before the Children's Court of Spartanburg County. Appellant's contention was that he should have been brought before the Children's Court of Spartanburg County before he was tried in the Court of General Sessions.

In the opinion, the Court denies the efficacy of the statutes under consideration to abridge the constitutional jurisdiction of the Court of General Sessions. This holding appears in keeping with basic principles of constitutional government.

26. 235 S. C. 301, 111 S. E. 2d 560 (1959).