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Miscellaneous

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MISCELLANEOUS

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Several cases of interest decided in South Carolina during the past year could not be appropriately classified under general Survey Headings. Therefore, these cases have been grouped together under the heading of Miscellaneous, with sub-headings to distinguish each unique issue presented.

Unemployment Compensation

A question of unemployment compensation was decided in the case of *Southern Bell Telephone and Telegraph Company v. The South Carolina Employment Security Commission.*[1] Twenty-four claimants joined in filing similar claims for benefits, and the parties stipulated that although testimony would be taken only as to the claim of one, the decision would be controlling in the cases of the others.

The claimant was employed by Southern Bell Telephone and Telegraph Company in Union, South Carolina, prior to her discharge due to the company's change over from a manual to a dial operated system. Upon discharge on September 6, 1958, she was given one week's severance pay. On September 8, 1958, she filed her initial claim for unemployment compensation. The claims examiner held that the wages paid constituted wages for past services, and that the claimant was not thereby ineligible for unemployment compensation. His finding was upheld by the commission and upon judicial review by the Court of Common Pleas for Union County, the commission was affirmed.

The South Carolina Supreme Court citing *Industrial Commission v. Sirokman,*[2] *Ackerson v. Western Union Telegraph Company,*[3] *Western Union Telegraph Company v. Texas Employment Commission*[4] and *Kroger Company v. Blumenthal,*[5] and referring to Section 7.04C3 of the employer-union agreement and Section 68-17, Code of Laws of South Carolina 1952, affirmed the lower court. The Court found that payment

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1. 240 S. C. 40, 124 S. E. 2d 505 (1962).
2. 134 Colo. 481, 306 P. 2d 669 (1957).
3. 234 Minn. 271, 48 N. W. 2d 338 (1951).
4. 243 S. W. 2d 217 (Tex. 1951).
5. 13 Ill. 2d 222, 148 N. E. 2d 734 (1958).

of a week's wages was merely a method of calculating the amount owed for services previously rendered under the union contract.

Penalties

South Carolina State Highway Department v. Southern Railway Company[6] raised the issue of whether or not the recovery of a fine imposed by section 3 of Act No. 627, 1956, Acts of the General Assembly of South Carolina required a civil action or a criminal prosecution.

Under the terms of the act, the State Highway Department is given the power to require construction and maintenance of certain grade crossings by railroad operators in this state. Failure to comply within 30 days subjects the railroads to a fine of ten dollars per day for each day's delay.

The State Highway Department instituted civil proceedings in the Court of Common Pleas against Southern Railway Company for an order to require the defendant to construct a crossing over one of its railroads, and for the collection of the fine imposed by the act for failure to construct the crossing on demand of the plaintiff. The defendant moved to strike a portion of the complaint referring to recovery of the fine on the grounds that a criminal conviction was necessary before such fine could be imposed. The motion was granted by the lower court.

The South Carolina Supreme Court reversed, stating that the word "Fine" as used in the act meant penalty and could be construed as criminal or civil. They determined that since the violation of the act was not a criminal offense, the legislature did not intend to limit the meaning of the word fine to its restricted sense as punishment for a crime. The Court concluded that although the collection of a fine can involve proceedings either criminal or civil, where no mention is made as to the method of collection, as was the case here, it may be collected by a civil action.

Labor Relations

The National Labor Relations Act was held not to exclude the state from acting in the case of alleged tortious action by an employer and a labor union against an employee in *Kimbrell v. Jolog Sportswear, Inc.*[7]

6. 239 S. C. 227, 122 S. E. 2d 422 (1961).
7. 239 S. C. 415, 123 S. E. 2d 524 (1962).

Plaintiffs were employed by Jolog Sportswear, Inc., a wholly owned subsidiary of Jonathan Logan, Inc. None of the plaintiffs except one had ever been a member of, or affiliated with the defendant union. Plaintiffs were entitled to certain vacation pay and were notified by the defendant employer that the money would be distributed by the defendant union. The union issued checks to the plaintiffs, but withheld certain amounts.

Plaintiffs claimed that this was in violation of sections 40-46.2 and 40-126 of the 1952 Code of Laws of South Carolina. The defendants demurred and the lower court sustained on the grounds that the courts of South Carolina have no jurisdiction to determine the issues involved because they are within exclusive control of the National Labor Relations Board.

The Supreme Court reversed and held that the courts of South Carolina had jurisdiction to determine the questions arising under the facts alleged. Citing *Garner v. Teamsters Union*,[8] the Court said that Congress has not excluded all state action in the field of industrial relations, and *International Union United Auto Workers v. Russell*,[9] which stated that "[S]tate jurisdiction has not been preempted where the consequences of the conduct involved were of compelling state interest." In the present case, the Court found such an interest, pointing to the fact that section 40-46.10 of the 1960 cumulative supplement to the 1952 Code of Laws makes it a criminal offense to withhold wages of an employee against his will to be paid as fees or dues to an organization.

Creditors' Rights

In *Klein v. Kneece*,[10] an action was brought against the appellant, a judgment debtor, to set aside a deed made by him to his wife as having been made in violation of the Statute of Elizabeth, now in force in this state as section 57-301 of the 1952 Code of Laws of South Carolina.

The conveyance in question was made on October 26, 1950, and the judgment obtained on August 9, 1951. An execution on the judgment was issued and delivered to the Sheriff of Richland County, and returned *nulla bona*. The present action was commenced on August 26, 1960.

8. 346 U. S. 485, 74 S. Ct. 161 (1953).
9. 356 U. S. 634, 78 S. Ct. 932 (1958).
10. 239 S. C. 478, 123 S. E. 2d 870 (1962).

The appellants affirmatively pleaded the statute of limitations as a bar to the action and moved for a motion on the pleadings. The trial judge refused to grant the motion on the grounds that this defense could only be determined by a trial of the factual issues presented by the pleadings.

The appellants contended that the pleadings raised no issue of fact and the motion should have been granted since only an issue of law was involved. The South Carolina Supreme Court agreed with this contention, and reversed the lower court.

After disposing of question of pleading, the Court stated that the statute of limitations began to run from the time the Sheriff made the *nulla bona* return. Under Section 10-143(7) of the 1952 Code the six-year statute of limitation begins to run at the time of the acquisition of knowledge of such facts that are sufficient to put the party on inquiry which, if developed, will disclose the alleged fraud. In this case, the respondent knew that the appellant possessed real estate at the time credit was extended since an affidavit of the president of the respondent stated that one factor in extending credit to the appellant was that he owned the aforementioned real estate in fee simple. The return *nulla bona* declared that at the time of execution the appellant had no property upon which to levy. Therefore, respondent was put on the inquiry required in the above code section at the time the *nulla bona* was returned.

Usury

Atlantic Discount Corporation v. Driskell,[11] required a determination of penalties for usury under sections 8-3 and 8-5 of the South Carolina Code of Laws.

Respondents sought to foreclose in equity, a mortgage given for a promisory note executed by appellants. The face value of the note was $576.00, but the appellants had received only $425.00 from respondents. The matter was referred to a master, and he determined that $134.51 of this discounted amount was usurious interest actually received by respondents. Accordingly he awarded appellants double this amount in accordance with section 8-5 of the South Carolina Code of Laws.

11. 239 S. C. 500, 123 S. E. 2d 832 (1962).

The judge of the county court on appeal found that the $134.51 was usurious interest, but had not actually been received by the respondents, and held that the appellants were entitled to recover double the amount of interest allocated to the aggregate of monthly payments made by them.

The Supreme Court of South Carolina held that the county court was correct in its determination that the terms of the note and chattel mortgage placed in evidence by respondent did not support the master's finding. The actual amount sought by the appellants was $425.00, which they received. They were to repay this in 18 installments of $32.00 each. The Court found that the trial judge's calculations were correct in view of the evidence.