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Miscellaneous

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MISCELLANEOUS

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Various types of cases are presented this year under this section of the Survey. Although the name of the section implies insignificance, several of the cases will be of interest to the profession.

Labor Relations

In *Piedmont Shirt Co. v. Amalgamated Clothing Workers of America, AFL-CIO*,[1] the Taft-Hartley Act[2] was held to have pre-empted the tortious acts complained of from being heard in a state court. No allegations of violence or intimidation were involved so that the acts complained of could legitimately be argued as being within Sections 7 and 8 of said Act. Our Court accordingly affirmed the trial court's decision dismissing the action.

A cause of action based on the South Carolina Right to Work Law[3] for damages resulting from alleged unlawful acts of the defendants was upheld in *Branham v. Miller Elec. Co.*[4] The trial court had sustained a demurrer to the complaint for insufficiency on the ground that plaintiff had failed to allege that he was discharged by the defendant by reason of either membership or non-membership in the union. This was reversed by the Supreme Court which stated through Mr. Justice Legge:

> Here, the first section of the statute expressly declares it to be the public policy of this state that the right of persons to work shall not be denied or abridged on account of membership or non-membership in a labor union. But viewing that section in conjunction with the others before mentioned, particularly Section 2, it seems to us quite clear that the evils to which the legislative intent and the remedial purpose of the statute were directed were: (1) union control of employment on the one

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1. 237 S. C. 13, 115 S. E. 2d 499 (1960).
2. 29 U.S.C.A. §§ 157-158.
3. CODE OF LAWS OF SOUTH CAROLINA § 40-46 to-46.11 (Supp. 1960). All references to Code sections are to this Code.
4. 237 S. C. 540, 118 S. E. 2d 167 (1961).

hand; and (2) employer boycott of, or insistence upon, union labor on the other. To hold that the prohibition was directed exclusively against requirement of union membership or non-membership as a condition of employment would be to disregard the prohibition, in Section 2, against agreements whereby the union acquires an employment monopoly, and to permit frustration of the legislative purpose by agreements such as the complaint here alleges, conditioning employment upon union referral or approval.

So far as the applicability of our statute is concerned, we can perceive no sound distinction between an agreement to hire only through the union and one to hire only such persons as have been cleared through or referred or approved by it. In either case it would be certain, as a practical matter, that only union members in good standing would be employed. In either case the 'employment monopoly' forbidden by Section 2 of our statute would be assured.

Condemnation

The State Highway Department, through eminent domain, can condemn for its use property which was hitherto dedicated to a public use. This was the holding in *Riley v. South Carolina Highway Dept.*[5] Justice Oxner distinguished this case from *Commissioners v. Holliday*[6] by holding that the State itself was in reality the condemnor here whereas the County of Clarendon, a political subdivision of the State, was the condemnor in the earlier case. The Court went further and held that the statutes giving the highway department authority to condemn were broad enough to imply full condemnation authority so that property already dedicated to the public could be taken through condemnation.

In a condemnation case,[7] our Court held that a charge by the trial judge that ". . . the property owner cannot be allowed to make a profit at public expense" was an improper charge to the jury. The question before the jury was "what was the 'just compensation' for the land taken," and whether

5. 238 S. C. 19, 118 S. E. 2d 809 (1961).
6. 182 S. C. 510, 189 S. E. 885 (1937).
7. Johnson v. South Carolina Highway Dept., 236 S. C. 424, 114 S. E. 2d 591 (1960).

the owner made a profit on the land by reason of condemnation was not in issue. This statement can hardly be questioned.

"Is the State Highway Department exempt from liability for compensation where in the course of construction or improving a state highway within a municipality, it takes private property for public use?" This was answered in the negative by both the trial court and the Supreme Court in *Moseley v. South Carolina Highway Dept.*[8]

The department contended that Section 33-112 relieved it of liability for all damages "to property or persons resulting from improvements, construction, reconstruction, or alteration carried out in accordance with the plans approved by the said municipality." The Court pointed out, however, that Article 1, Section 17, of the Constitution prohibiting the taking of private property for public use, was self executing and could not be abridged by legislation. Further, the Court held that Section 33-173 and 33-174 did not relieve the Highway Department from liability but that compensation for taking private property for public use fell within the liability imposed upon municipalities by the foregoing code sections. The net effect of the statutes was to fix the liability for any such damages as between two agencies of the sovereign, namely, the Highway Department and a municipality.

Attachment of Automobile

The Court held in *Gunn v. Burnette*[9] that a wrecker being used to hoist another vehicle by contractural agreement to change the tires thereon, is not being operated as a motor vehicle within the purview of Section 45-551. It followed that an attachment based on such circumstances was improper, and was dissolved by the Court.

Attorney's Contract

It was contended in *Ex parte Rankin v. Superior Auto. Ins. Co.*[10] that an attorney's contract with an insured was binding on the insurer-subrogee, so that the percentage contingency fee applied to the amount subrogated. The Court held that

8. 236 S. C. 499, 115 S. E. 2d 172 (1960).
9. 236 S. C. 496, 115 S. E. 2d 171 (1960).
10. 237 S. C. 380, 117 S. E. 2d 525 (1960).

the facts did not give rise to either an express or implied contract, and that the most that could be said was that the services rendered by petitioner Rankin incidentally benefited the subrogee. Such, however, does not give rise to a contract.

Disciplinary Action by Bar

The Supreme Court had disciplinary matters before it in *Burns v. Clayton.*[11] Voluminous testimony was taken in the cases, but it is unnecessary to restate the facts here. Suffice it to say that the facts as found by the Board of Commissioners on Grievances and Discipline and the Supreme Court were sufficient to justify the punitive measures taken, viz., indefinite suspension of one attorney and a public reprimand for the other.

It should be said that the South Carolina Bar Association and the Supreme Court have and are taking steps to police the improper activities of the members of the South Carolina Bar. This action is gratifying to the Bar and the public alike. This is the way the profession can regain and increase its prestige with the public.

Appointment of Committee

The unambiguous language of Section 32-990.2 was given effect in *In re Estate of Garrie S. Cogdell,*[12] wherein the Court reversed the trial court's order appointing a committee because the order was based on a report of the examiners made before their appointment. The late Chief Justice Stukes stated:

> It is noted that the provisions in Sec. 32-990.2 for mental examination is prospective in nature and does not contemplate a certificate of the examiners based upon a former examination. (The order conformed, but the examination and certificate did not.) The wisdom of that is manifest; it is within common knowledge that a person may be normal mentally at one time, and not at another. (It is the opinion of some experts that no one is perfectly normal mentally, that all are abnormal in more or less degree.)

11. 237 S. C. 316, 117 S. E. 2d 300 (1960).
12. 236 S. C. 404, 114 S. E. 2d 562 (1960).

Foreign Judgments

Hamilton v. Patterson[13] involved a suit on a judgment rendered in the State of Florida. An answer was filed in the Florida suit so that there was no question as to the Court's jurisdiction of the parties. The case here was for the amount of the deficiency judgment of the Florida court. The answer here denied the validity of the Florida judgment, and attempted to allege fraud in the sale out of which the judgment arose. The plaintiff moved to strike these and other defenses on the ground that the answer was irrelevant, sham and frivolous and not constituting a defense to the cause of action. The trial court granted this motion and gave judgment on the pleadings.

After stating that it was presumed that the Florida court had jurisdiction of the subject matter and the parties to the action, and that the answer contained nothing to rebut the presumption the Court stated:

> . . . The attack now made upon the judgment goes only to the merits of the case tried in Florida. Where a judgment rendered by a court having jurisdiction of the cause and the parties is challenged in another State, 'the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.' *Milliken v. Meyer,* 311 U.S. 457, 61 Sup. Ct. 339, 342, 85 L.Ed. 278.

The Court then held that the defenses now attempted to be asserted could have been set up in the answer in the Florida court.

Public Schools

The dismissal of a high school principal was sought in *Stanley v. Gary*[14] for dismissing several children, including one of the plaintiffs, from school. The action of the principal apparently was brought on by reason of a boycott of certain milk served in the school cafeteria. However, nothing was alleged as having been wrong with said milk.

A demurrer was interposed by defendants based on several grounds, one of which was that the "complaint fails to state

13. 236 S. C. 487, 115 S. E. 2d 68 (1960).
14. 237 S. C. 237, 116 S. E. 2d 843 (1960).

a cause of action in that it shows on its face that the appellants have not exhausted available administrative procedures by an appeal to the school trustees and to the County Board of Education." The demurrer was sustained on this ground by the trial court.

On appeal the Court held that whether Gary should be continued as supervising principal of Mayo High School was within the provision "matter of local controversy" as provided for in Section 21-247. Therefore, the plaintiffs had not followed the procedures available to them as required by law, viz., appeal to the County Board of Education from a decision of the board of trustees of any school district.