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Statutory Construction

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The Supreme Court of South Carolina considered four cases in the general field of statutory construction. Several of them were of no more than routine interest either from the standpoint of practitioners or the standpoint of the public.

One of the cases of routine interest, *Gunn v. Burnette*,[1] involved the question of whether a wrecker being used to hoist a truck was a "motor vehicle" within the meaning of the statute creating a lien upon the vehicle for damages involved "when a motor vehicle is operated" negligently.[2] The Court held that a stationary wrecker was not such a "motor vehicle," relying for its decision upon an earlier decision holding that the statute was passed for the protection of people traveling on the public highways. The Court felt that a stationary wrecker was not likely to endanger people traveling on the public highways. The Court also relied upon dictionary definitions of the word "vehicle" but was not able to make a very compelling argument out of the dictionary definition.

An interesting problem created by the "inept" use of a word by the legislature was considered in *Pinkston v. Morrall*.[3] Section 47-71 of the 1952 Code provided, among other things, that a municipal corporation was liable for damages arising from the negligent operation of a motor vehicle, not to exceed $4,000, except that there could be no recovery if the plaintiff was contributorily negligent or "if such plaintiff's injury or damage was brought about by the *contributory* negligence of any third person." A truck of the city of Beaufort, allegedly illegally parked by a city employee, was struck by a second vehicle operated by the other defendant and driven into the plaintiff. Under the pleadings it was apparent that the operation of the second vehicle contributed to the plaintiff's injuries. On demurrer by the city of Beaufort the Court held that the negligence of the driver of the second vehicle was "contributory negligence of any third person" within the meaning of the quoted portion of the statute. The

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1. 236 S. C. 496, 115 S. E. 2d 171 (1960).
2. CODE OF LAWS OF SOUTH CAROLINA § 45-551 (1952).
3. 236 S. C. 601, 115 S. E. 2d 286 (1960).

problem, of course, arose out of the fact that the term "contributory negligence" ordinarily means negligence of the plaintiff. Said the Court: "The lower court must have been confused by the *inept* use of the adjective 'contributory'; its meaning in the context is, nevertheless, clear enough."[4]

Perhaps the most interesting case from the standpoint of the legal practitioner is *Southern Ry. v. South Carolina Highway Dep't.*[5] The case involved the right of the Highway Department to require a contribution from the railroad company for the cost of constructing a "grade separation structure" within the meaning of Sections 58-831 to-834 of the Code. The Highway Department asked that the railroad company pay forty per cent of the cost of reconstructing a bridge on Highway 321 near York. The facts were not in dispute. Apparently the tracks of the railroad were in a cut and a bridge was built for the highway over the cut. The legal question presented was whether the term "grade separation structure" used in the statute included the bridge in question.

The Court concluded that the bridge was not a "grade separation structure," with the statement that the term was used to describe a structure having a particular function—that is, to separate the level of a road from the level of a railroad track at a point where the road and track crossed. The bridge in question here, so the Court held, was built to span a cut and was no different from a bridge built to span any type of depressed area.

In reaching its decision the Court relied upon the old familiar principle that the statute, being in derogation of the common law, must be strictly construed and upon the principle that statutes *in pari materia* must be construed together. Detailed consideration of the related statutes is, of course, beyond the scope of this note. The Court also discussed and relied upon three earlier cases. One of those cases held that where a highway was relocated and a bridge built to cross a railroad track, the resulting structure was not a "grade separation structure" which "eliminated" a dangerous crossing (since the old crossing remained). The second case held that a bridge crossing the railroad tracks and a river was not a "grade separation structure" because the bridge served other purposes besides "separating" the road and railroad.

4. *Id.* at 605, 115 S. E. 2d at 288.
5. 237 S. C. 75, 115 S. E. 2d 685 (1960).

The third case, involving a railroad and a county, held that a bridge spanning a cut in which the railroad's tracks lay (just as in the instant case) was not within a related statute.

Unquestionably the case attracting the greatest amount of public interest in the field was *Carolina Amusement Co. v. Martin*,[6] wherein the application and constitutionality of the State's "Blue Laws" were considered. The action was for a declaratory judgment involving the "orderly showing of motion pictures on Sunday" in Greenville County and presented the question whether Section 64-1 of the 1952 Code applied and whether the statute, if construed to apply to the acts in question, was violative of the First and Fourteenth Amendments of the United States Constitution and various articles of the South Carolina Constitution. Section 64-1 provided in part that "No public sports or pastimes, such as bear-baiting, bull-baiting, football playing, horse-racing, interludes or common plays, or other games, exercises, sports or pastimes, such as hunting, shooting, chasing game or fishing," shall be "used" on Sunday and that any person violating the statute should be guilty of a misdemeanor.

The motion picture operators contended that the exhibition of motion pictures was not within the terms of the statute because motion pictures were unknown at the time of its enactment (1712). The Court summarily disposed of that contention on the ground that motion pictures were embraced in the words of the statute "interludes or common plays." Further, other activities, such as golf, professional baseball, and automobile racing, also unknown at the time of the passage of the statute, had previously been held by the Court to be within the prohibition of the statute. Further, awkwardly enough for the plaintiff, motion pictures had in an earlier case been held to be within the ban of the statute. The motion picture operators also relied upon the rule of strict construction of criminal statutes, but the Court said that even construing the statute strictly, the exhibition of the pictures was within the intended ban and that in any event the proper construction of a penal statute is that "which finds and puts into effect the intention of the law-making body as gathered from a reasonable interpretation of the words" of the statute.

The motion picture operators further argued that the legislative intent was to prohibit only disorderly and noisy

6. 236 S. C. 558, 115 S. E. 2d 273 (1960).

sports or pastimes, such as those named in the statute. The Court said, however, that the purpose of the statute was to promote the "physical and moral welfare of man" by having at stated intervals a day of rest from common labor. In reaching that conclusion the Court also considered Section 64-2 of the Code, which forbade work on Sunday (except work of necessity or charity).

With respect to the attack on the statute on the ground that it violated the First Amendment of the Federal Constitution and the corresponding provision of the State Constitution inhibiting laws respecting the establishment of religion or prohibiting the free exercise thereof, the Court said that the statute had previously been held to be constitutional by its earlier decisions and that the United States Supreme Court had upheld similar statutes so far as the Federal Constitution is concerned. The Court said, and quoted decisions from the United States Supreme Court to the same effect, that Sunday statutes were not dependent on religious beliefs and are justifiable under the police powers of the State "to promote the physical and moral welfare of man." A civil duty is none the less enforceable because it is also a real or supposed religious obligation. Furthermore, said the Court, other religions prescribe different days as the day of rest and the incidental fact that the day of rest prescribed by the legislature coincides with the Christian Sabbath is not material.

With respect to the motion picture operators' claim that moving pictures are permitted in certain areas of the State under specified conditions, thereby working a discrimination against the plaintiffs, the Court said that it was the general statute which was applicable to the particular plaintiffs and that the right of the legislature to make classifications (as to where motion pictures could be shown on Sunday) was not shown to be an unreasonable classification.

The operators also claimed that the statute was in conflict with the State and Federal constitutional guarantee of free speech. The operators relied on cases prohibiting the censoring of films on the ground that such censoring amounted to a violation of the right of free speech. The Court, however, concluded that the film censoring cases were inapplicable and that the banning of the films for one day out of seven was a reasonable restriction if any free speech element were involved at all.