South Carolina Law Review

Volume 22 | Issue 4 Article 6

1970

Evidence

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EVIDENCE

I. The Best Evidence Rule

The Best Evidence Rule followed in South Carolina is generally in line with the rule followed in other states in that the terms of the writing must be at issue and, if the original document is unavailable, its unavailability must not be the result of fault on the part of the person seeking to introduce it.[1] There were several cases during the survey period in which the Best Evidence Rule was in issue.

Among the most important of these cases was *Shirer v. Jefferson Standard Life Insurance Co.*[2] This case concerned the financing of a motel by the defendant life insurance company. The plaintiffs sought to recover a liquidated damage deposit which had been demanded by the defendant in a letter which contained the contract terms and had been mailed to the plaintiffs during the negotiation period. When the defendant sought to introduce the letter into evidence, the defendant could produce only a carbon copy, the original being in the possession of the broker who arranged the transaction.

The South Carolina Supreme Court, in upholding the decision of the trial judge not to admit the copy, noted a recent trend in other states toward allowing certified copies to be introduced, but still refused to allow the copy in question to be introduced.

It should be noted that the court has stated that the legislature is the proper place to change the bad effects of the Best Evidence Rule.[3] In his book, *A Guide to Evidence Law in South Carolina*, Professor Dreher asserts that there seems to be no reason why a certified copy, made photostatically, possibly under the supervision of a court officer, should not be sufficient. If the sole purpose of the rule is to insure the most accurate rendering of the terms of a document which is the subject of the litigation, then a photostatic copy should logically be the best substitute.[4]

In a slightly different context but one concerning the Best Evidence Rule, the court, following earlier cases, upheld the principle that the trial judge has the final decision regarding a

1. J. Dreher, A Guide to Evidence Law in South Carolina 49 (1967), *citing* C. McCormick, Handbook of the Law of Evidence § 196 (1954).
2. 253 S.C. 232, 169 S.E.2d 621 (1969).
3. Griggs v. Driggers, 230 S.C. 97, 94 S.E.2d 225 (1956). *See also* S.C. Code Ann. § 26-101 (1962).
4. J. Dreher, A Guide to Evidence Law in South Carolina 53 (1967).

determination of whether the original has been proved sufficiently unavailable. The defendant in *Windham v. Lloyd*[5] sought to protect his claim of title to a piece of land by introducing into evidence a copy of a page from a deed book showing that the deed to the land had been recorded, and also a photostatic copy of the deed as recorded.[6] The court said that, before the proffered exhibits would be admissible, evidence must be introduced to indicate that the original was unavailable; this requirement prevented the court from admitting the defendant's exhibits, since he merely stated that he had "given the deed to a lawyer" many years before and failed to produce either the lawyer or a plausible explanation for his inability to offer the original in evidence. Relying on *Macedonia Church v. Columbia*,[7] the court held that there must be evidence introduced to prove that the deed was lost. The court also re-affirmed that, absent a clear showing of abuse, the trial judge has discretion to determine whether the document has been shown sufficiently unavailable.[8]

A criminal action for support of an illegitimate child formed the backdrop for further litigation involving the Best Evidence Rule. In *State v. Bailey*[9] the defendant moved for a directed verdict on the grounds that there was not sufficient evidence to convict him of failure to support an illegitimate child. The defendant contested the fact that no birth certificate was introduced to prove that a child had in fact been born; the prosecution instead relied upon the testimony of the alleged mother of the child. The defendant's attorney asserted that the "best evidence" that the child was born was a birth certificate, but the trial judge allowed the alleged mother's testimony to enter the record without proof of the unavailability of the birth certificate. The supreme court upheld the judge's ruling on the basis of *State v. Wagstaff*[10] where the court held that a birth certificate was not necessary as the best evidence of the age of a child. The rule followed by the court has been summarized as follows:

5. 253 S.C. 568, 172 S.E.2d 117 (1970).
6. *See* S.C. CODE ANN. § 26-805 (1962), which allows a party to introduce a record of the deed, as allowed at common law, as well as use any other method of proof allowed at common law. This provision is, of course, subject to § 26-101, in that the original deed must be shown to be unavailable, or a notice to produce must be sent to the adversary, and he must refuse to produce the document.
7. 195 S.C. 59, 10 S.E.2d 350 (1940).
8. *See* Uzzel v. Horn, 71 S.C. 426, 51 S.E. 253 (1905).
9. 253 S.C. 304, 170 S.E.2d 376 (1969).
10. 202 S.C. 443, 25 S.E.2d 484 (1943).

> In the absence of a contrary statutory provision, a certificate of birth or other official record is not necessarily required to prove a person's age, the best evidence of such fact being the testimony of a person having actual knowledge thereof.[11]

Since the mother of the child obviously would have actual knowledge of the child's age as well as his date of birth, the court decided that her testimony was properly admitted.

II. IMPEACHMENT AND CROSS-EXAMINATION

In deciding cases dealing with impeachment, the process of impugning the credibility or veracity of a witness, the supreme court stayed within the well-marked boundaries of previous decisions. The main case in the impeachment area dealt, not with the impeachment of a hostile witness, but with the impeachment of a lawyer's own witness. This situation arose in *State v. Harvey*[12] when the defendant's counsel called an agent of the State Law Enforcement Division to testify concerning statements[13] which the agent made to the defendant's relatives when they came to visit the defendant while in jail awaiting trial. The agent denied having made the statements; the attorney for the defense then attempted to contradict the agent through testimony from other witnesses, but the trial judge refused to allow him to impeach his own witness on collateral matters. The supreme court affirmed the trial court's ruling. The court noted that, in South Carolina, an attorney, in order to impeach his own witness or have him declared hostile in order to use prior inconsistent statements, must show actual surprise and harm by the witness's testimony.[14]

Professor Dreher questions the wisdom of applying such an ironclad rule:

> The only reasons that have ever been given for it are: (1) that the lawyer who calls the witness "vouches" for his veracity, and (2) that without the

11. 22A C.J.S. *Criminal Law* § 694 (1961).
12. 253 S.C. 328, 170 S.E.2d 657 (1969).
13. The statements concerned a possible "break" for the defendant in return for cooperation with the state in preparing the case.
14. *See* State v. Trull, 232 S.C. 250, 101 S.E.2d 648 (1958). In this case, the "surprise" was evidently inferred by the court; this case seems out of line with the present views about surprise. *See also* State v. Nelson, 192 S.C. 422, 7 S.E.2d 72 (1940), for an example of one type of notice that will give the attorney knowledge and thus prevent him from impeaching his own witness.

> rule the witness would be at the mercy of the calling lawyer and therefore subject to coercion by him. An answer to (1) is that, with the exception of experts, the lawyer does not select his witnesses; he calls to the stand those persons who have knowledge of the facts under litigation . . . . An answer to (2) is that the application of the rule in many situations puts the calling lawyer, and the court itself, at the mercy of a corrupted witness.[15]

If a legal contest is aimed at exposing the truth, then it seems wrong to force an attorney who calls a witness to sit by helplessly when a witness recants earlier statements upon which the attorney has relied. One possible solution to this dilemma[16] would be for the judge to call the witness himself, as he could do at common law[17]; this would allow both attorneys to cross-examine the witness and establish or destroy his credibility. The adoption of rules similar to the Federal Rules of Civil Procedure, which allow an attorney to impeach his own witness,[18] might possibly be an alternative solution.

The issue presented to the court in *Spears v. Collins*[19] was: May the trial judge prohibit an attorney from pursuing a certain line of questioning on cross-examination? The plaintiff, the operator of a dancing studio, brought suit to collect the balance due on a contract for 320 hours of dancing lessons. The defendant attempted to bring out on cross-examination that the plaintiff had pleaded guilty to a charge of child neglect and also that he was not licensed to do business. The supreme court upheld the action of the trial court in refusing to allow the defendant to cross-examine about these matters. In doing this, the court followed the general rule that the trial judge controls the manner and the scope, as well as the method, of cross-examination. This discretion extends to prohibiting, as in this case, the use of irrelevant questions in order to harass or

15. J. DREHER, *supra* note 1, at 16-17. *See also* C. MCCORMICK, *supra* note 1, at § 38 (1954).
16. *See* Farr v. Thompson, 25 S.C.L. (Cheves) 577 (1839), for an example of the length to which this rule has been carried. Protecting the witness seems like a flimsy reason for applying this rule—what of the litigant whose legitimate claim goes unredressed because of the treachery of a witness?
17. J. DREHER, *supra,* note 1, at 17 (1967). This right exists today also. *See* J. DREHER, *supra* note 1 at 3-4 (1967).
18. FED. R. CIV. P. 43.
19. 253 S.C. 510, 171 S.E.2d 606 (1970).

discredit the witness by introducing matters not at issue in the suit.[20]

A third case dealing with cross-examination was *State v. Hinson*[21] in which the defendant was on trial for assault and battery with intent to kill. The defendant's attorney asked a witness if he thought that Hinson "knew what he was doing" at the time of the alleged shootings. The witness, who had been present at the defendant's place of business at the time of the shootings, was stopped by the judge, who sustained the solicitor's objection to the question. The judge did, however, allow a question as to whether the defendant was in "normal control" at the time of the incident. In his brief to the supreme court the defendant contended that he had been unduly restricted in his cross-examination of the witness, but the court found nothing in the record to indicate that the judge had restricted the defendant in any way.

III. COMPETENCY - THE DEADMAN'S STATUTE

Only one case concerning competency was decided by the supreme court during the survey period, and that case dealt with the so-called Deadman's Statute.[22] Broadly stated, the statute prohibits certain persons from testifying as to transactions with a person deceased at the time of the trial.

In *Shelley v. Shelley*,[23] on a second appeal,[24] the court upheld the trial court's decision for the plaintiff in a dispute over a boundary line. The statute was cited in the appendix to the opinion by the supreme court. The trial judge ruled that the plaintiff and his wife were incompetent to testify at the trial, since they stood to gain if they received a favorable verdict. The supreme court, citing the general rule,[25] affirmed the trial court's ruling, since the Deadman's Statute is designed to prevent a person from giving testimony which obviously cannot be contradicted or corroborated by a dead man.

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20. 98 C.J.S. *Witnesses* § 404 (1957).
21. 253 S.C. 607, 172 S.E.2d 548 (1970).
22. S.C. CODE ANN. § 26-402 (1962).
23. 253 S.C. 238, 170 S.E.2d 764 (1969).
24. Shelley v. Shelley, 244 S.C. 598, 137 S.E.2d 851 (1964) (first appeal).
25. *See* Long v. Conroy, 246 S.C. 225, 143 S.E.2d 459 (1965), for an examination of the rule as applied in South Carolina.

IV. HEARSAY - BLOODHOUND EVIDENCE

In *State v. Bostick*,[26] in spite of the fact that the point was not argued in the brief, the court dealt with the issue of testimony by a bloodhound's owner as to the actions of the dog in tracking a fugitive. In South Carolina the courts, following the majority view, have reasoned that the owner is considered the witness.[27] Before such evidence will be admitted, an adequate basis, generally consisting of testimony showing the dog's blood line, his training, and experience in tracking, must, however, first be laid.[28] Basically, what must be established is the dog's "credibility."

V. DEMONSTRATIVE EVIDENCE - PHOTOGRAPHS

A Negro defendant, in *State v. Stallings*,[29] was charged with the rape of a Caucasian girl. The solicitor attempted to introduce into evidence a photograph of the victim and some of her bloodstained clothing. The defense objected on the grounds that the evidence was irrelevant. The trial judge, however, overruled the objection; the supreme court, affirming, noted that the determination of relevancy lies within the purview of the trial judge and that his decision will be upset only upon a showing of extreme abuse of discretion.[30] The court further stated that, as long as the photograph is not shown to be prejudicial to the defendant, such evidence would be admissible, subject to the trial judge's decision upon the issue of relevancy.

VI. TESTIMONY CONCERNING A PREVIOUS SUIT

When may evidence, consisting of the pleading of the plaintiff in an earlier suit, be introduced in a later suit? This issue faced the supreme court in *Young v. Martin*,[31] a complex case which arose out of an automobile collision.

The plaintiff was involved in an automobile accident in October, 1967, which was settled after she filed suit in February, 1968.

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26. 253 S.C. 205, 169 S.E.2d 608 (1969).
27. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1915). *Contra,* Brott v. State, 70 Neb. 395, 97 N.W. 593 (1903).
28. 22A C.J.S. *Criminal Law* § 646 (1961).
29. 253 S.C. 451, 171 S.E.2d 588 (1969).
30. State v. Thorne, 239 S.C. 164, 121 S.E.2d 623 (1961). In this case, a photograph of the defendant, who was tried for rape also, was introduced in evidence as proof of his physical development. The state was attempting to prove the element of force, necessary in a conviction for rape.
31. 173 S.E.2d 361 (S.C. 1970).

In the interim the plaintiff was, however, involved in a second accident which was the subject of this action. In the complaint filed in the first suit, the plaintiff had alleged severe back, leg, and neck injuries. The complaint filed in the second suit was almost an exact copy of that filed in the first suit. Since it is settled law[32] that one is liable only for those injuries which result from his own negligent conduct, the defendant's attorney sought to introduce the complaint in the first suit and also call the attorney for the defense (who had negotiated the settlement) in that first suit.

At the trial of the second action the plaintiff testified that she had not filed an earlier suit or received any payment in compensation as a result of the earlier suit. The trial judge, however, refused to admit any of this evidence and likewise refused an offer to place the defense attorney from the first suit on the witness stand. The supreme court, reversing the decision of the trial court, said that any evidence tending to show the condition of the plaintiff at the time of the second suit was relevant; upon the admission of such evidence the jury could then properly determine the extent and severity of the injuries received in the second accident. The court stated that the defense attorney from the first suit should have been allowed to testify for the same reason.

Parties are normally bound by their admissions or assertions in earlier actions, even if there is no actual knowledge of matters contained in prior pleadings, although this fact will affect the weight given the evidence by the jury.[33] This position is supported by the general weight of authority.[34] The court noted that the plaintiff had had an opportunity to explain the apparent conflict in her testimony and had chosen not to do so, and that, under these circumstances, the judge should have admitted the evidence.

VII. OPINION EVIDENCE — EXPERT TESTIMONY

South Carolina has recently seen an increase in the number of products liability cases concerning automobile manufacturers, the most spectacular being *Mickle v. Blackmon*,[35] a case which

32. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 42 (3d ed. 1964).
33. Burlington v. Dixon, 196 N.C. 265, 145 S.E. 244 (1928).
34. 31A C.J.S. *Evidence* § 303 (1964). An admission or statement in a pleading may be placed in evidence if it is relevant and material to the issues involved in the second action, so long as the person against whom the pleading is to be introduced was a party to the first action.
35. 252 S.C. 202, 166 S.E.2d 173 (1969).

saw Ford Motor Company paying $312,000 in damages to a young lady who was paralyzed from the neck down in an automobile accident. A case of note this year was *Redmon v. Ford Motor Co.*[36] in which the supreme court upheld a lower court decision for the plaintiff, although the court admitted that the issue was close.

The main issues in the field of evidence revolved around the testimony of an expert witness called by the plaintiff. The issue upon which the case rested was whether the forces generated in an automobile accident were sufficient to disengage the rear axle bearing from the rear axle. When this disengagement occurs, the automobile becomes uncontrollable. The plaintiff contended that the axle detached from the bearing because of negligence on the part of the defendant, Ford Motor Co. The expert witness for the plaintiff was a mechanic with over fifty years experience in the field of automotive service, repairs, and maintenance. During this time he had supervised the separation of axles and bearings, although he had never himself detached the axle and bearing of a 1958 Ford, the model car in which the plaintiff's intestate had been killed after the car had been driven less than 1,000 miles.

In deciding this case, the supreme court was confronted with several questions concerning expert testimony. The main question considered by the court dealt with the qualifications of an expert witness. In deciding to allow expert testimony, the judge must answer affirmatively two questions: (1) Is the subject about which the expert will testify one of which the average juror would have too little knowledge to make an intelligent decision based only on the testimony of lay witnesses?; and (2) Does this particular expert have the skill or knowledge necessary to testify so as to aid the jury in making its decision?[37] In South Carolina, as in most states, these two questions are left with the judge, who must exercise his discretion with regard to both the expert's qualifications[38] and the subject of the expert's testimony. It should be noted that it is not necessary, in order to qualify as an expert witness, for a person to be a scholar or a professional man. As in this case, the expert can be a person whose knowledge has been gained through long practical experience. In this case the trial judge decided that the expert was

36. 253 S.C. 266, 170 S.E.2d 207 (1969).
37. C. McCormick, *supra* note 1, at § 13 (1954).
38. O'Kelley v. Mutual Life Ins. Co., 197 S.C. 109, 14 S.E.2d 58 (1941).

qualified; the supreme court refused to question or upset the trial judge's exercise of discretion.

There are two ways in which the expert's abstract knowledge can be tied to a particular factual situation. One way is to have the expert make an actual physical examination of some object and give his conclusions based on that examination. The other way is through the use of a hypothetical question based on the facts of the case. The latter method was used in *Redmon*, because the expert had not examined the bearing or the axle in question, since these two items disappeared under mysterious circumstances after being impounded.

In *Redmon* the witness answered the characteristically long, detailed hypothetical question, but the defense objected on the ground that allowing the witness to answer the question invaded the province of the jury, since the question was addressed to the ultimate issue of fact, whether defective manufacture was the cause of the accident. On appeal the supreme court replied that in an earlier case[39] the court allowed testimony by experts on an issue of fact which was ultimately to be decided by the jury and approved the practice, since the jury would still have the final decision as to the credibility of the expert and the consequent weight to be given his testimony in reaching a verdict. The *Redmon* court noted further that the issue was made much closer because of the testimony of a Ford engineer which directly contradicted that of the expert; in this case at least the verdict rested on the jury's assessment of the two witnesses's credibility. The defense also contended that allowing the expert to answer the question without examining the axle and bearing led to pure speculation and should not have been allowed, but the supreme court again refused to disturb the ruling by the trial judge; the court, finding no abuse of discretion, cited the expert's wide experience in automotive affairs as a reason for permitting the question.

The *Redmon* court thus upheld the general pattern of allowing the trial judge to exercise his discretion in supervising the testimony of experts in order to obtain the most benefit from such testimony.

VIII. OPINION EVIDENCE - OPINION BY A LAYMAN

The giving of opinions by non-expert witnesses is a subject about which there is some confusion. Professor Dreher summarizes the general rule thus:

39. *Id.*

> There is no blanket rule against a witness expressing an opinion. All that is prohibited . . . is the giving of an opinion when the facts are capable of being so clearly described that the jury can draw its own conclusion . . . . Frequently the only way a witness can describe something is by drawing an overall conclusion about it from a mass of observed facts.[40]

In *Phillips v. K-Mart*[41] the plaintiff was injured by a fall in the defendant's store. She alleged that the fall was caused by a "white substance" left on the floor by store employees who had been cleaning the floor. The plaintiff and another witness, while trying to show knowledge on the part of the employees of the store, testified that the white substance was swirled around on the floor as if by a rag or mop. The defendant objected on the ground that this was an opinion of the witness, but the trial judge allowed the testimony to stay in the record. The supreme court, sustaining the action of the trial judge, stated that the witnesses, as a practical matter, would have been unable to describe the condition of the floor without giving their opinion as to how the floor looked. The court, following the general rule[42] summarized above, stated that a witness must sometime be allowed to give an opinion so that the jury can better visualize a situation or condition about which the witness is testifying.

In *State v. Hinson*[43] the trial judge allowed a witness to testify on cross-examination as to the defendant's mental state at the time he allegedly shot two South Carolina tax agents; at the time of the shooting the agents were trying to confiscate the defendant's supply of beer, the agents having confirmed that he was selling beer on Sunday, a violation of state law.[44] The defense attorney asked the witness if he thought Hinson "knew what he was doing," but the judge sustained the prosecution's objection. The defense attorney then rephrased the question to ask if the witness thought Hinson was in control of his actions, to which he replied that he thought that he had never seen Hinson so irrational.

On appeal the supreme court affirmed the conviction of Hinson for assault and battery with intent to kill. The opinion

40. J. DREHER, *supra* note 1, at 8 (1967).
41. 173 S.E.2d 916 (S.C. 1970).
42. *E.g.*, State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965); Green v. Sparks, 232 S.C. 414, 102 S.E.2d 435 (1958); State v. Ramey, 221 S.C. 10, 68 S.E.2d 634 (1952).
43. 253 S.C. 607, 173 S.E.2d 548 (1970).
44. S.C. CODE ANN. § 4-204 (1962).

by the court revealed that the witness had been in the defendant's store at the time of the shootings and had been acquainted with Hinson for some time. The court, therefore, allowed the layman's opinion as to the defendant's mental health to stand, such decision being in accord with the generally accepted rule as to the giving of opinion evidence by other than expert witnesses. The general rule, which is the subject of some controversy, allows a layman to assess the mental condition or state of an individual, provided that the witness's conclusion is based on observed appearances and first-hand knowledge of the person. In addition, the person testifying must have a more-than-casual acquaintance with the party whose mental state is in issue.[45] Some states hold that there is too much risk of unreliability involved in such testimony and refuse to admit such testimony. South Carolina has, however, in the past admitted testimony by non-experts as to a person's mental state,[46] and this case seems to assert again the court's belief in the wisdom of the rule. It should be noted that the rule can cut both ways. The rule allowing such testimony can aid the jury by allowing it to hear the statements of those who have had personal knowledge of a long acquaintance with the defendant; when testimony about a person's mental state approaches a revelation of a more permanent condition, a lay witness might, however, mislead a jury, since he is unqualified to testify at any length or in any depth in the area of the more permanent or serious mental disorders.[47]

Another contention raised by the defendant in *Hinson* concerned the testimony given by a doctor from the South Carolina State Hospital about the condition of the defendant, in reply to the statement by the lay witness that the defendant seemed irrational. The defendant contended that the testimony should have been introduced during the solicitor's case in chief, rather than in reply. The supreme court refused to accept this contention. The court stated that in criminal trials there is a presumption of sanity operating in favor of the state, which must be overcome by the witnesses for the defense,[48] and that the trial judge is the final arbiter who must determine at what point the defense has shifted the burden of proof to the state, and whether testimony should be made in reply or as part of the case in

45. 32 C.J.S. *Evidence* § 546(32)(b) (1964).
46. State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965).
47. *But see* 32 C.J.S. *Evidence* § 546(29) (1964).
48. State v. Paulk, 18 S.C. 514 (1883).

chief.[49] Here, the court felt that the evidence produced by the defense, that is, the statement on cross-examination that the defendant was "irrational," was not sufficient to overcome the burden of proof required to show that the defendant was not sane at the time of the crime. The court thus upheld the decision of the trial judge to allow the doctor, the only witness introduced by the state on the issue of sanity, to testify in reply rather than in the case in chief.

IX. CONDEMNATION PROCEEDINGS - EVIDENCE OF VALUE

Specialized rules of evidence apply in condemnation proceedings. In *South Carolina State Highway Dep't v. Bryant*,[50] a case which became largely a debate over semantics, the defendant owned rural land upon which no improvements had been made. This land was condemned by the State Highway Department, and this case arose out of a judicial proceeding to determine the price to be paid the owner.

At the trial one of the witnesses testified as to what he thought was an accurate figure for the value of the land; he was subsequently asked how he arrived at the figure. The witness replied that he arrived at the price by estimating the number of lots into which the defendant's land could be divided and by then determining the value of each lot. The highway department's attorney objected on the ground that the price of land could not be so estimated. He asserted that the price must be based upon the value of unimproved rural land, not upon the value of "lots." The supreme court, however, upheld the award based upon the estimate; the court conceded the correctness of the plaintiff's contention[51] but stated that the witness meant something different from what the plaintiff thought that he meant. When the witness used the term, "lots", he was referring to rural land upon which no improvements had been made, because that was the common usage of that word in the area and because the witness at other times referred to the land as merely "land." The court decided that these factors indicated that the witness had not made his estimate incorrectly. The court noted that the cost of grading and improving land cannot correctly be added to the cost of the land in determining the

49. State v. Bradley, 210 S.C. 75, 41 S.E.2d 608 (1947).
50. 253 S.C. 400, 171 S.E.2d 349 (1969).
51. 4 P. NICHOLS, THE LAW OF EMINENT DOMAIN § 12-342(1) (3d ed. 1950).

value of the land for condemnation purposes, but found that this method had not been used by the witness in this case; rather, he took the price of one unimproved lot and multiplied that by the number of unimproved lots into which the condemned land could be divided, this method being a permissible way to estimate value.

X. ADDENDA

In *Wyatt v. Greenville County*[52] the plaintiff was injured when a storm drain cover gave way under his weight, turned over, and caused him to fall into the storm drain. He brought suit against the county, which was responsible for maintaining the storm drain, under section 33-921 of the South Carolina Code of Laws, this section permitting suits against a county when a person is injured by the negligence of a municipal unit.

The sole issue on appeal was whether the evidence introduced by the plaintiff was sufficient to create an issue of fact for the jury. The supreme court summarized the evidence in the light most favorable to the plaintiff and decided that the evidence as introduced showed overwhelmingly that the county had been negligent. The plaintiff's evidence showed that the dangerous condition had existed for quite some time and was known to the employees of the county, who had cleaned the storm drain several times. Further testimony showed that the condition was known by those who lived in the neighborhood, but that the plaintiff would have no reason to know of the hazard.

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52. 174 S.E.2d 762 (S.C. 1970).