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Construction of Statutes--Meaning of the Word "Garage" in License Tax Provisions

Jack C. Burdett
West Virginia University College of Law

RECENT CASE COMMENTS

CONSTRUCTION OF STATUTES — MEANING OF THE WORD "GARAGE" IN LICENSE TAX PROVISIONS. — By its charter, granted in 1921 by the legislature of West Virginia, the city of Bluefield was given the power to levy license taxes on certain things not licensed by the state, including "automobile garages". Plaintiffs were the proprietors of two rooms, each 25 by 50 feet in size, located within the city, wherein they conducted an automobile repairing business. No separate charge was made for storage of cars kept for repair but some were housed with the express provision that plaintiffs should service them regularly, receiving a specified payment therefor. A sign in front of the building read, "Short Bros., Garage". On this business the city levied a $25 license tax, and plaintiffs sued for an injunction against its collection, on the ground that their building, used only for repair, was not, under the meaning of the city's charter, a garage. The trial court granted the injunction, and the West Virginia Supreme Court of Appeals, being evenly divided on the question (Judge Woods was absent from the bench), affirmed the decision of the trial court,[1] holding that the building was not a garage, because not used primarily for storage for safe-keeping. *Short v. City of Bluefield.*[2]

The meaning of the word "garage", upon which this litigation turns, has frequently been considered by various courts,[3] but usually in cases involving statutory definitions[4] or other distinguishing features. Apparently the most analogous situation was that which confronted a Mississippi court[5] in an action to recover a privilege tax on an automobile repair shop, paid under protest. There, also, the shop was one in which automobiles were stored without charge, but with the expectation of doing the repair work. The Mississippi court, briefly noting the usual character of present-day garages and the fact that they almost invariably include *both* storage rooms and repair shops, concluded

[1] BLACK, THE LAW OF JUDICIAL PRECEDENTS, 76-80. A divided court affirms, as between the parties, a decision before it on appeal, but in only two jurisdictions (South Carolina and the House of Lords), is such an affirmance regarded as a precedent.

[2] 160 S. E. 562 (W. Va. 1931).

[3] DEC. DIG., AUTOMOBILES, key no. 364.

[4] The statute involved in State v. Elkins, 187 N. C. 532, 122 S. E. 289 (1924), a widely cited case, defines a garage as "any place where automobiles are repaired or stored, and for which a charge is made".

[5] Lawrence v. Middleton, 103 Miss. 173, 60 So. 130 (1912).

that the legislature meant the license tax provision in question to cover both, singly or in combination, and so held the repair shop a public garage and the operator thereof liable for the license tax.

While the West Virginia decision, rendered by an evenly divided court, is not a precedent in West Virginia,[6] as to the exact point involved, the case is of added interest because of the method of interpretation employed in construing the statute. The court chose for its interpretation of the word "garage" a definition set out in a number of dictionaries and in the holdings of certain "authorities", those holdings being, in most instances, *verbatum* repetitions of the dictionary definition.[7] As the meaning which the charter's framers meant the word to have is the one to be ascertained,[8] this method of interpretation presumes that the legislators meant to indicate a purely "dictionary" meaning. There is, admittedly, a possibility that they did, and the decision is certainly not without authority,[9] but the "dictionary" presumption is not so conclusive as to preclude a feeling that this decision, as well as many other similar holdings, may be unsound.

Automobiles and automobile businesses are of comparatively recent introduction, but are now of such legal importance that they comprise a separate topic of the law. Prominent among the mass of new terminology covering that topic is the word "garage". Recently adopted into English from the French language, with, naturally, its native meaning, (and it is that meaning which practically all dictionaries set out),[10] this word has grown in popular concept until it is generally inclusive of many kindred automobile businesses, such as storage depots, sales rooms and repair shops, which are usually incorporated into the modern "garage".[11] This concept of the word is sufficiently popular in use to warrant its consideration, in the statute's interpretation, under abundant authority from many jurisdictions.[12] A presumption that the legislators so meant to use the word is, if anything,

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[6] W. Va. Const., art. 8, § 4.

[7] It is noteworthy that the opinion was written by a dissenting judge, and that the material and references incorporated in it give as much support to the "minority" as to the "majority" view.

[8] Altmeyer v. Caulfield, 37 W. Va. 847, 17 S. E. 404 (1893); Click v. Click, 98 W. Va. 419, 127 S. E. 194 (1925).

[9] Note (1929) 61 A. L. R. 312.

[10] *Ibid.*

[11] Lawrence v. Middleton, *supra* n. 5.

[12] De Ganay v. Lederer, 250 U. S. 376, 39 S. Ct. 524 (1919); Wellman v. Bethea, 243 Fed. 222 (D. C. S. C. 1917); U. S. v. Graham, 250 Fed. 499 (D.

stronger than the presumption that they were guided by a dictionary.[13]

The court's method of interpretation might be justified, from a practical standpoint, if its result were sufficiently desirable. However, it does not seem that large repair shops used only secondarily for storage, should be granted exemptions, and license tax levies made on small storage buildings, rented indiscriminately to the public. It appears that such would be the result of the "dictionary-minded" distinction drawn by the West Virginia court.

—JACK C. BURDETT.

EVIDENCE — ADMISSIBILITY OF AN ATHEIST'S DYING DECLARATION. — In a murder prosecution, a question arose as to the admissibility of the dying declaration of an atheist. The dying declarant did not believe in any Supreme Being, or in any future existence beyond death. He did not possess a belief in any form of divine punishment or reward. The court relying on a statute abolishing the requirement that a witness must testify under oath, held the declaration admissible. *Wright v. State.*[1]

The common law admitted dying declarations, within certain limits, as an exception to the hearsay rule. It required that the dying declarant possess a belief in God, in addition to a belief that he was to die very soon. The courts felt that the gravity of death under such circumstances was equal to the solemnity of an oath in court as a guaranty of trustworthiness.

In the principal case the court recognized the common law rule, but held that it was abrogated by the statute making an atheist competent to testify.

It is clear that the statute cited by the court removed the bar of atheism from the declarant's testimony and made him fully competent to be a witness. There still remains, however, the problem of determining whether the dying declaration is sufficiently

C. Va. 1917); Wilkinson v. Mutual Saving Ass'n., 13 F. (2d) 997 (C. C. A. 7th 1926); Balanced, *etc.*, Attractions v. Town of Manitou, 38 F. (2d) 28 (C. C. A. 10th 1930); Perrin v. Miller, 35 Cal. App. 129, 69 Pac. 426 (1917); People v. Muldoon, 306 Ill. 234, 137 N. E. 863 (1922); Bohannon v. City of Louisville, 193 Ky. 276, 235 S. W. 750 (1921); West v. Lysle, 302 Pa. 147, 153 Atl. 131 (1931); Scott v. Doughty, 124 Va. 358, 97 S. E. 802 (1919); Brown v. Robinson, 175 N. E. 269 (Mass. 1931).

[13] People v. Elliff, 74 Colo. 81, 219 Pac. 224 (1923).

[1] 135 So. 636 (Ala. 1931).