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Automobiles--Negligence--Parking Wrecking Truck on Highway Contrary to Statute

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RECENT CASE COMMENTS

AUTOMOBILES — NEGLIGENCE — PARKING WRECKING TRUCK ON HIGHWAY CONTRARY TO STATUTE. — Defendant's employees parked a wrecking truck owned by defendant on a heavily traveled highway at night in order to retrieve a car gone off the highway. Plaintiff's decedent who resided nearby undertook without request by defendant to warn oncoming cars of the obstacle in the road. One of them skidded into decedent, causing injuries from which he died. The administrator brought a death action against defendant, alleging *inter alia* a violation of the statutes prohibiting parking vehicles on the highway and regulations adopted by the State Road Commission.[1] Defendant demurred to the declaration and the demurrer was sustained. Held on appeal that no cause of action against defendant was stated.[2]

The present position of the West Virginia courts is that the fact of violation of a statute or ordinance is *prima facie* negligence sufficient to sustain a directed verdict in the absence of any other showing, but rebuttable.[3] However, the Supreme Court of Appeals held that none of the statutory or regulatory provisions applied to wrecking cars occupied with retrieving automobiles gone off the highway. This holding accords with that of other courts which have passed upon the application of similar statutes to similar factual situations. Many of these statutes contain express exemptions in behalf of vehicles disabled or involved in accidents,[4] which exemptions have been extended by construction to other vehicles necessarily stopped on the highway to render them assistance.[5] Even without express exemptions the courts have uniformly interpreted the statutes as not applying to cases of this nature.[6] In *Henry v. Liebovitz*[7] the statute prohibiting parking on the highway

[1] W. VA. CODE (Michie, 1937) c. 17, art. 8, § 2; *id.* at c. 17, art. 19, § 9; *id.* at c. 17, art. 19, § 13; State Road Commission Safety Regulations, Rule 57, Part II, §§ 22-25.

[2] Cooper v. Teter, 15 S. E. (2d) 152 (W. Va. 1941).

[3] Oldfield v. Woodall, 113 W. Va. 35, 166 S. E. 691 (1932); Tarr v. Keller Lumber Construction Co., 106 W. Va. 99, 144 S. E. 881 (1938). *Contra*: Ambrose v. Young, 100 W. Va. 452, 130 S. E. 810 (1925); Krodel v. Baltimore & Ohio R. R., 99 W. Va. 374, 128 S. E. 824 (1925); Ashley v. Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016 (1906).

[4] W. VA. CODE (Michie, 1937) c. 17, art. 8, § 24, is typical ("Provided that the provisions of this section shall not apply in case of accident").

[5] Henry v. Liebovitz, 312 Pa. 397, 167 Atl. 304 (1933).

[6] Miller v. Douglas, 121 W. Va. 638, 5 S. E. (2d) 799 (1939); Beach v. Union Brewing Corp., 187 So. 332 (La. App. 1939); LaFleur v. Poesch, 126 Neb. 263, 252 N. W. 902 (1934).

[7] See note 5, *supra*.

was held not to apply where defendant stopped his truck on and temporarily blocked the highway to tow another's car out of a ditch and plaintiff was injured in a collision with the truck. The word "park" in such statutes is frequently interpreted as not referring to emergency stops or those made for similar purposes.[8] *A fortiori* this meaning seems proper where the stationary vehicle is a wrecking truck maintained for that express purpose.[9] In any event decedent in the instant case was probably not a member of the class which the legislation was designed to protect, being neither motorist nor pedestrian but only an onlooker.[10]

However it should be observed that exemption of disabled vehicles and those rendering assistance thereto from the application of the statutes does not release such vehicles from the basic requirement of reasonable care.[11]

D. D. J., Jr.

CONSTITUTIONAL LAW — IMPAIRMENT OF CONTRACT — RETROSPECTIVE LIMITATIONS ON CLAIMS UNDER OPTIONAL COMPENSATION SYSTEM. — A 1939 amendment to the Code[1] provided that no further award should be allowed on claims for workmen's compensation resulting from injuries incurred prior to March 2, 1929, unless written application for redetermination were made before September 15, 1939.[2] The amendment took effect March 11, 1939, thus leaving six months to apply for redetermination. Claimant, injured in 1919 when there was no time limitation on redetermination of awards,[3] received an award, which was modified twice, and which expired June 21, 1923; he filed application for redetermination August 2, 1940. *Held*, that the amendment, in depriving the

8 Leveillee v. Wright, 300 Mass. 382, 15 N. E. (2d) 247 (1938).
9 Bowmaster v. DePree Co., 258 Mich. 538, 242 N. W. 744 (1932) Shearer v. Puent, 166 Minn. 425, 208 N. W. 182 (1926); Duke v. Mitchell, 153 Miss. 880, 122 So. 189 (1929).
10 Sprayberry v. Snow, 59 Ga. App. 744, 1 S. E. (2d) 756 (1939).
11 Montgomery v. National Convoy & Trucking Co., 186 S. C. 167, 195 S. E. 247 (1938); Body, Fender & Brake Corp. v. Matter, 172 Va. 26, 200 S. E. 589 (1939); Kastler v. Tures, 191 Wis. 120, 210 N. W. 415 (1926); 42 C. J. 1007, 1009, 1012.

1 W. VA. CODE (Michie, 1937) c. 23, art. 4, § 16.
2 "... no further award may be made in either fatal or non-fatal cases arising on account of injuries occurring prior to March seventh, one thousand nine hundred twenty-nine, unless written application for such award, signed personally by claimant, or, in case of claimant's infancy or physical or mental incapacity, by his or her guardian, next friend, or committee, be filed with the commissioner on or before September fifteenth, one thousand nine hundred thirty-nine." W. Va. Acts 1939, c. 137, art. 4, § 16.
3 W. VA. CODE (Barnes, 1923) c. 15P, § 40.