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STRICT INTERPRETATION OF PENAL STATUTES OF VIRGINIA

Penal statutes strictly and properly speaking are those imposing punishment for an offense against the State, which under the Constitution, the executive of the State would have the power to pardon. In common use, however, this sense has been enlarged to include under the term penal statutes all statutes which compel or prohibit certain acts and establish penalties for their violation, and even those which without expressly prohibiting acts, impose a penalty upon their commission.

Under this broader definition penal statutes include not only those in which a penalty is recovered by a public prosecution and inures to the State, but also those permitting a recovery of the penalty by a private individual in an action of debt or *Qui Tam*, the latter of which being the type of action which imposes a penalty for doing or not doing an act, and gives the penalty in part to whosoever will sue for the same and the other part to the Commonwealth or some charitable institution and makes it recoverable by action.¹ In Virginia this field of penal statutes has been rather broad. As early as 1810, a statute which authorized the sale of land for taxes was held to be penal by the courts.²

It is very important in applying the strict interpretation rule to penal statutes to distinguish them from statutes purely remedial. The true test in determining whether a statute is penal is whether the penalty is imposed for the punishment of a wrong to the public, or for the redress of an injury to the individual. If the statute permits a recovery of the penalty by an individual for the purpose of enforcing obedience to the mandate of the law by punishing its violation, it is penal in character. If, however, the recovery of the penalty by an individual is permitted as a remedy for the injury or loss suffered by him, the statute is remedial. It is the substance and effect rather than the form which is to be looked to in determining whether a statute is penal or remedial. The word penal interpreted thusly as can be seen by the foregoing has a much broader connotation than the word criminal.³

Penal statutes are construed with the aid of all the ordinary rules for the construction of statutes. The courts do so in the light of the evil to be remedied and with the cardinal objective of ascertaining and giving effect to the intention of the legislature, as the intention of the legislature, where it can be discovered must control.⁴

The construction of these penal statutes in Virginia follows the fundamental rule of strict interpretation. Strict or literal interpre-

tation is the term applied where the intention is collected only from the words used.⁵ While the courts cling doggedly to this concept of strict interpretation, they point out that they will not carry it to the point of defeating the clear intent of the legislature or to reach any unreasonably absurd results by too strict adherence to it. It is only to resolve all reasonable doubts in favor of the defendant.⁶

In the review of a conviction on a charge of seduction of a woman who had been divorced, the court refused to interpret beyond the fair meaning of the words used in the statute and held that the words "unmarried female of previous chaste character," must be construed strictly, this being a highly penal statute. By that construction no intention on the part of the legislature could be ascertained to include divorced women within the category.⁷

In a conviction of a charge of disorderly conduct on a bus the court pointed out that disorderly conduct was not a common law crime and that the statute under which the defendant had been convicted provided penalties for "being disorderly on any car or caboose or any other part of a train or street railway." Therefore, a strict interpretation of the statute would not include disorderly conduct on a bus.⁸

In 1924, a series of cases was brought by the town of South Boston, in which the *town* sought to exercise jurisdiction granted to *cities* by the Prohibition Act.⁹ The court held that in order to enforce a penalty against a person, his act must be brought within the letter of the statute even though it be within the teeth of the spirit and policy of the law.

The court in two previous cases had pointed up the necessity of being both within the letter and the spirit of the law.¹⁰ In one of these, the *Sutherland* case, a man was carrying in his hand two saddle bags with lids closed, one of which contained a holstered pistol. He was convicted of illegally "carrying about his person hidden from common observation any pistol." The court held, interpreting the statute strictly, that this failed to come within the letter and the spirit of the law and the conviction was reversed.

In more recent cases the court has refused to extend statutes by implication. In *Boyles v City of Roanoke*,¹¹ the appellant was convicted of violating a city ordinance which was at variance with the city's charter. The charter granted power to provide penalties for violation of ordinances by "imprisonment not exceeding six months." The ordinance in question provided the accused could not be imprisoned under it for more than twelve months. Accused maintained this ordinance was void as result of this inconsistency. The court held the words of the ordinance would not be extended by implica-

tion so as to save it; the strict interpretation would be adhered to and the conviction reversed.

In a case involving the introduction of evidence of previous violations of the Alcoholic Beverage Control Act, as specifically provided by the act, the court held that interpreting the act strictly this evidence must be restricted so as to bear only on the quantum of punishment and could not be used as substantive evidence of the guilt of the accused.¹²

In a more recent case involving the conviction of a man accused of shooting dogs under a statute which permitted such prosecution if dogs were listed and assessed, the dogs in question were licensed but they were not shown to be listed and assessed in the office of the Commissioner of Revenue. The court held that it was not within their province to rewrite statutes. If the case failed to come within the letter and the spirit, no implication could bring it in.¹³

There is a tendency by the Supreme Court of Appeals to resolve all ambiguities on the face of an act in favor of the defendant.¹⁴ This rigorous application of the strict interpretation requirement serves to impress upon the legislature the necessity of careful and concise draftmanship.

It has been pointed out that this rule of strict construction of penal statutes is a fundamental rule generally followed by all courts except in jurisdictions where it has been specifically abrogated by statute. In nearly one-half the jurisdictions where these statutes have been enacted we find the courts giving effect to the strict construction rule in spite of their existence.¹⁵ Also, it has been shown by cases over a long period of time, a period which included some extreme upheavals politically, economically, and socially, how well this rule has been carried through by the Virginia courts.

One of the reasons for the inclusion of this rule in our system of law was the attempt to establish a definite rule limiting the discretion of the judge so that the individual could safely act under and understand the law to which he was required to conform. Another reason is found in the ever present concern of the law for the rights of individuals, and on the principle that the power of punishment is vested in the legislature and not in the judiciary.¹⁶ This concept, which is probably the most important reason for the strict construction rule, is based on the bed-rock of our form of government in the Constitution. This is the operative manifestation of the separation of powers principle; this is the cleavage which was thought so necessary by the framers of the Constitution. It is rather gratifying to see this strict construction rule clung to so tenaciously by the courts in guaranteeing the right of the individual under law and preserving this fundamental division between the legislature and the judiciary.

EDGAR K. WELLS, Jr.

FOOTNOTES

1. BOUVIER LAW DICTIONARY.
2. *Yancy v. Hopkins*, 1 *Munford* 419 (1810).
3. 48 CORPUS JURIS 780.
4. See *Buzzard v. Commonwealth*, 134 Va. 641, 653, 114 S. E. 664, 667 (1922); *Northrop v. City of Richmond*, 105 Va. 335, 339, 53 S. E. 962, 963 (1906).
5. 48 CORPUS JURIS SECUNDUM 112.
6. See *Buzzard v. Commonwealth*, 134 Va. 641, 653, 114 S. E. 664, 667 (1922).
7. *Jennings v. Commonwealth*, 109 Va. 821, 63 S. E. 1080 (1909).
8. *Lewis v. Commonwealth*, 184 Va. 69, 34 S. E. 2d 389 (1945).
9. *Faulkner v. Town of South Boston*, 141 Va. 517, 127 S. E. 380 (1925); *Jordan Et Al v. Town of South Boston*, 138 Va. 838, 122 S. E. 265 (1924).
10. *Withers v. Commonwealth*, 109 Va. 837, 839, 65 S. E. 16, 17 (1909); *Sutherland v. Commonwealth*, 109 Va. 834, 835, 65 S. E. 15, 16 (1909).
11. 179 Va. 484, 19 S. E. 2d 662 (1942).
12. *Campbell v. Commonwealth*, 176 Va. 564, 11 S. E. 2d 577 (1940).
13. *Anderson v. Commonwealth*, 182 Va. 560, 29 S. E. 2d 838 (1944).
14. *Jordan v. Town of South Boston*, 138 Va. 838, 122 S. E. 265 (1924).
15. *Hall, Strict or Liberal Construction of Penal Statutes*, 48 *Harv. L. Rev.* 748, 756 (1935).
16. See *Withers v. Commonwealth*, 109 Va. 837, 839, 65 S. E. 16, 17 (1909); *Sutherland v. Commonwealth*, 109 Va. 834, 835, 65 S. E. 15, 16 (1909).