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## TORTS—APPLICATION OF STEAM SIGNAL STATUTE TO DIESEL LOCOMOTIVE

Plaintiff's deceased, driving a truck across the tracks of Defendant railroad, was struck and killed by a diesel-powered locomotive which had failed to give the statutory signal. There was evidence of contributory negligence. Code of Virginia § 56-414 (1950) provided that each railroad company whose line was operated by steam should provide each locomotive with a "steam whistle" to be sounded over 300 yards but under 600 yards from crossings. § 56-416 provides that in case of failure to comply with § 56-414 contributory negligence is no longer a bar to recovery, but considered only in mitigation of damages. Subsequent to the accident, the Virginia Legislature passed a statute<sup>1</sup> amending § 56-414 to include all types of locomotive power and providing that there be "a bell . . . and whistle or horn." The title of the act states that its purpose is to "extend the application thereof." In an action to recover damages for the death of the deceased, Defendant contended that the diesel locomotive was not within §56-414, evidenced by the later amendment to cover previously omitted cases. The jury was instructed that contributory negligence was to be considered only in mitigation of damages. Verdict and judgment for Plaintiff, on appeal, *held*, affirmed. *Norfolk So. Ry. Co. v. Lassiter*, 193 Va. 360, 68 S. E. 2d 641 (1952).

The court, in affirming the award for Plaintiff, said that §56-414 should have a rational interpretation, consistent with its purpose, not one which would defeat it. Quoting *Norfolk, etc. R. Co. v. White*<sup>2</sup> it refused to "brush aside and by our judgment render nugatory this most salutary purpose and intent because . . . statutes contain words . . . susceptible of such technical construction, which if adopted would defeat the legislative intent." The statute is concerned with the volume of the whistle, not what causes it to blow. "A thing which is within the intention of the makers of the statute, is as much within the statute, as if it were within the letter."<sup>3</sup> Despite the words of the title of the amending act to the effect that application was thereby extended, the court further said that the subsequent legislation was only affirmative and declaratory of the scope of the sections prior to amendment.

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1. Acts of Assembly, 1950, c. 476 p. 944.

2. 158 Va. 243, 163 S.E. 530 (1931).

3. *United States v. Freeman*, 3 How. 556 (U. S. 1844).

Because it has to do with but one type of situation, and because the amendment renders the precise question here decided moot as to future cases, the old § 56-414 loses importance. Nevertheless, the *Lassiter* case is significant law on statutory interpretation in Virginia. Rules of construction, simple in recital, often conflict or overlap.

The Plain Meaning Rule is practically self-explanatory. The interpreter asks himself, "Does this statute mean exactly what it says or is there an unexpressed intent?" The rule, when followed straight down the line, means that the statute in question is to be carried out to the letter unless its result would be clearly and obviously absurd or unjust. When the wording of a statute is clear and unambiguous the court should look no further to find other meanings.<sup>4</sup> Here, the plain meaning would exclude other than steam locomotives.

Legislatures often pass statutes, the real intent of which does not appear from the words. The duty of the court includes discovering the intent of the legislature, often by looking at the history of the particular law.<sup>5</sup> What happened in committee? On the floor? Did the sponsor clearly indicate the intent of the then pending legislation? The history of § 56-414 reveals legislation in 1919 to keep up with the increasing injuries and deaths at grade crossings, according to the revisors' note, and a former coverage of "steam, electricity, or other motive power." The intent of the legislature is assumed in the *Lassiter* case to be that all locomotives should comply.

Penal statutes and statutes in derogation of the common law or embodying any ambiguity should be interpreted in favor of the defendant.<sup>6</sup> The court is under a duty to interpret them strictly; to the letter. In *Anderson v. Commonwealth*<sup>7</sup> it was said, "... Courts are not permitted to rewrite statutes. This is a legislative function. The manifest intention of the legislature, clearly disclosed by its

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4. *Chung Fook v. White*, 264 U. S. 443 (1924); *Caminetti v. United States*, 242 U.S. 470 (1917); *Lemmon Transport Co. v. Commonwealth*, 192 Va. 416, 65 S.E.2d 537 (1951); *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944).

5. *Holy Trinity Church v. United States*, 143 U.S. 457 (1892); *Gossnell v. Spang*, 84 F.2d 889 (3rd Cir. 1936); *Commonwealth v. Appalachian Electric and Power*, 193 Va. 37, 68 S.E.2d 122 (1951).

6. *Waller v. Commonwealth*, 192 Va. 83, 63 S.E.2d 713 (1951); *Campbell v. Commonwealth*, 176 Va. 564, 11 S.E.2d 577 (1940); *Commonwealth v. Dodson*, 176 Va. 281, 11 S.E.2d 120 (1940); *Faulkner v. Town of South Boston*, 141 Va. 517, 127 S.E. 380 (1925).

7. 182 Va. 560, 29 S.E.2d 838 (1944).

language, must be applied. . . . A penal statute cannot be extended by implication. . . ." If § 56-414 is not applicable, the plaintiff is not deprived of a cause of action; he is merely left to recover under ordinary rules for tort actions.

Conflict arises between the policy of finding legislative intent, and the penal features of denying Defendant its defense of contributory negligence, both in interpreting the statute as it was at the time and in the light of the amendment. It is submitted that were it not for the strong public policy in favor of recoveries in this class of cases, the case at hand could not be fairly said to have been within the statute.

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