Construction of Statutes--"ejusdem generis"

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that the former construction is still in force. Thus the court would be faced with the same problem that it had here, and to be consistent would have to validate the issue, since it had been made in conformity with the court's construction of section 157 of the Constitution.

The court argues that property rights having arisen under former decisions, they should not be disturbed. But the former court-approved bonds would not be invalidated by a decision overruling the prior construction. And no property rights have arisen under these bonds, since the rights have not been determined until the issue is approved or disapproved. The only ones who could validly assert an interference with property rights are the creditors of the city who were to be paid with the funds realized from the bonds. But the Supreme Court has stated many times that the obligation of contracts may be impaired by judicial decision; and that "the mere fact that the state court reversed a former decision to the prejudice of one party does not take away his property without due process of law". There being no valid constitutional objection, therefore, it would seem that the court should have actually overruled its prior decisions by reversing the judgment of the lower court approving the bond issue. As the case now stands, in spite of the strong language of the court, it overrules nothing.

ALAN R. VOGELE

CONSTRUCTION OF STATUTES—"EJUSDEM GENERIS".

A statute provided:

"The fiscal court shall have jurisdiction to appropriate county funds authorized by law to be appropriated; to erect and keep in repair necessary public buildings, secure a sufficient jail and a comfortable and convenient place for holding court at the county seat; to erect and keep in repair bridges and other structures [italics ours]..."

By the doctrine of ejusdem generis the court held this statute did not give the fiscal court the authority to appropriate money to obtain rights-of-way for a flood wall, the wall to be built by the Department of War under an Act of Congress requiring assurance that the rights-of-way be furnished without cost to the United States. "And other structures" does not include "flood walls" for the reason that it is not

"General words in a statute must receive a general construction, unless there is something in it to restrain them, but in accordance with what is commonly known as the rule of ejusdem generis, where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general word will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated, unless there is a clear manifestaton to the contrary." ²⁴

The classic illustration of the application of the rule is the "bull" case.⁵ A statute making it a crime to ill-treat any "horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle" would not support a charge for "bull-baiting." It was argued that a bull is superior to an ox, cow, or heifer and is not, therefore, in a class with them and could not be included in the term "or other cattle". The rule is based upon the reasoning that the legislature had in mind a particular class of persons or objects, and that if it had intended the general words to operate in their unrestricted meaning, no mention would have been made of the specific persons or objects.⁶

The strictness with which the earlier English courts applied the rule is probably traceable to their jealous attitude toward the encroachment of statutory law upon the common law. Modern courts readily recognize that the legislature is a legitimate source of law, and try to arrive at the legislative meaning of a statute as enacted. This respect for statutory law diminishes the value of the doctrine of ejusdem generis, and accounts for the tendency now to avoid its use whenever possible.²⁸

Certain situations were recognized comparatively early where the doctrine did not apply. It is only one of several rules of construction, and is not to be used to override other principles of interpretation. Its purpose is to determine in a certain class of cases the intent of the legislature, when from the language of the statute that intent is not clearly shown. If in any way the intent of its framers can be

²⁴25 R. C. L. 996; quoted in Federal Chemical Co. v. Paddock, 264 Ky. 338, 94 S. W. (2d) 645 (1936). (A statute allowing corporations to organize without capital stock for "religious, charitable, educational or any other lawful purpose" only embraces associations ejusdem generis, and does not authorize the incorporation of a supposedly mutual organization of farmers that was actually selling products to non-members for profit.)


²⁷Jones, Statute Law Making (1912) 133.

²⁸Pound, The Spirit of the Common Law (1921) 45, 46; Black, Construction and Interpretation of the Laws (2d ed. 1911) 368.

²⁹Pound, Courts and Legislation, (1913) 77 Cent. L. J. 219 at 277; Black, Construction and Interpretation of the Laws (2d ed. 1911) 11.

determined, there is no need for the application of the doctrine. If the enumeration of particular words exhausts a certain class or genus, then there can be nothing left *ejusdem generis*, and the general words must have some meaning other than would be attached to them by the rule. Where the particular words embrace terms unlike in meaning or signify greatly different subjects the general word is not limited by the specific words. Since there is no common genus or similarity of subjects any classification would be illogical if not impossible.

Statutes that are generally strictly construed, such as penal statutes and those giving authority to subordinate governmental agencies, have with conspicuous frequency been interpreted with the aid of the rule of *ejusdem generis*. It would seem that the traditional policy of the law with respect to this class of statutes alone would insure a restricted application in particular cases, and that actually a result already reached is merely expressed in terms of a mechanical rule. Consequently, the rule of *ejusdem generis* does not materially affect the interpretation of this type of statute.

In the instant case it was suggested by the court that the only authority for building levees is given in Kentucky Statutes, sections 938a-1 to 938a-13. These sections provide for the building of levees by districts, but require a degree of personal cooperation on the part of property owners difficult to obtain. As a matter of fact, the fiscal court has given up the flood wall project, at least for the present. While it would seem that the construction placed on the statute has worked a hardship on an area subject to the possibility of great damage by the recurrence of a flood, it must be remembered that the authority of local governmental units is only that conferred by statute.

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24 Goldsmith v. United States, 42 F. (2d) 133 (1930); Phelps v. Commonwealth, 209 Ky. 318, 272 S. W. 743 (1925); 25 R. C. L. 998 and cases there cited.


26 McQuillen, Municipal Corporations (2d ed. 1928) sec. 368.

27 United States v. One Zumstein Briefmarken Katalog, 24 F. Supp. 516 (1938); Commonwealth v. Kammerer, 11 Ky. L. Rep. 777, 13 S. W. 108 (1890); Black v. Commonwealth, 171 Ky. 289, 188 S. W. 362 (1816); (delegations to governmental agencies). Radin, *Statutory Interpretation*, (1930) 43 Harv. L. Rev. 863 at 875. (In a criticism of the doctrine Prof. Radin says it “would have some value in cases in which the doctrine of strict construction is applied”.)
It is submitted that the court could have relied solely upon the principle expressed in its opinion of giving "the strictest construction to such statutes as authorize the fiscal court to expend funds raised by taxation" without using the technical device of *ejusdem generis*.

R. VINCENZ GOODLETT

DOMESTIC RELATIONS—RIGHT OF THE HUSBAND TO SUE FOR LOSS OF CONSORTIUM

D negligently operated his motor trailer, striking the automobile in which P's wife was riding and injuring her. The wife in a prior suit had recovered damages for her own personal injuries. P now sues for loss of consortium. A husband has such a right to his wife's services, society and companionship that he may maintain an action for their impairment or loss resulting from a third person's negligent act and such a right is not affected by statutes relating to married women, nor by the fact that compensation may have been awarded the wife for her personal injuries. *Commercial Carriers, Inc. v. Small.*

The reasoning of the Kentucky court, in line with the weight of authority, is that there are two separate and distinct injuries: one to the wife for her personal pain and suffering, and another to the husband for the loss or impairment of his wife's service and society. These are two independent injuries for which damages may be recovered in separate actions. Dean Pound points out that as a result of our method of trial and assessment of damages by jury, if each were allowed to sue instead of each recovering an exact reparation, each would be reasonably sure to recover what would repair the injury to both. Yet is it more likely to occur here than in other cases? The fact is that in many cases because of an injury to one spouse there is an unmistakable injury to the other. In the principal case the husband was forced to withdraw from the active social life he and his wife had enjoyed. They could no longer attend church together, his conjugal relations were impaired, his former companion became emotionally unbalanced, a neurotic. This constitutes a real injury to the husband, one for which he alone is entitled to damages. Certainly no undesirable result is reached in allowing the husband to sue in such a case.

The rule is criticized in a few jurisdictions on the ground that the action of consortium at common law was based on the husband's

277 Ky. 189, 126 S. W. (2d) 143 (1939).
3 Annotation (1923) 21 A. L. R. 1517.
4 Holbrook, *The Change in Meaning of Consortium,* (1933) 22 Mich. L. Rev. 1, 8. It would seem that if this be a valid criticism it is directed at the entire method of trial by jury under instruction of the court and should not be directed at this particular action.