Washington University Law Review

Volume 1952 | Issue 2

January 1952

The Doctrine of Ejusdem Generis in Missouri

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NOTES

THE DOCTRINE OF EJUSDEM GENERIS IN MISSOURI

The Missouri cases evince no definitely consistent pattern as to the applicability or non-applicability of the doctrine of *ejusdem generis* as an aid in the interpretation of statutes. Therefore, it is rather difficult to discuss the problem in accordance with any symmetrical arrangement. However, some clarification may be achieved by adherence to the following outline:

I. Definition and description of the *ejusdem generis* doctrine.

II. Discussion of cases where the doctrine has been invoked.

III. Exceptions to the application of the rule.

I. EJUSDEM GENERIS DEFINED

Several definitions of the *ejusdem generis* rule have been offered. One of the most clear, concise, and correct is that formulated by the Missouri Supreme Court in *State v. Eckhardt:*[1]

> . . . where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The rule is based on the obvious reason that if the Legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes. . . . The doctrine of ejusdem generis, however, is only a rule of construction to be applied as an aid to ascertaining the legislative intent. . . .[2]

The converse is, of course, also a part of the general rule. That is, when general words follow the enumeration of particular classes of persons or things, the general words will ordinarily be deemed to bring those objects of the same general class as those enumerated within the purview of the statute. However, the doctrine is ordinarily stated in the negative, the affirmative aspect being implied.

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1. 232 Mo. 49, 52, 133 S.W. 321, 322 (1910).

2. For similar definitions and explanations of the *ejusdem generis* rule, see: 59 C.J. 981-985; 50 AM. JUR. 244-248; ENDLICK, INTERPRETATION OF STATUTES § 409 (1888); 2 SUTHERLAND, STATUTORY CONSTRUCTION § 4909 *et seq.* (3rd. ed., Horack, 1943); BOUVIER, LAW DICTIONARY 979 (1914).

In the *Eckhardt* case the defendant was found to have violated a statute which read as follows:

> If any father or mother of any child under the age of six years, or any other person to whom such child shall have been confided, shall expose such child in a street, field or other place with intent wholly to abandon it, he shall . . . upon conviction. . . .[3]

The defendant claimed immunity from criminal liability under the *ejusdem generis* rule, since she abandoned the child in question in a street railway station, a location concededly not *ejusdem generis* with a street or field. The court, over-ruling defendant's contention, held the rule inapplicable and affirmed her conviction. It said that the "great fundamental rule in the interpretation of statutes is to ascertain and give effect to the intention of the Legislature,"[4] and that here the legislators certainly intended a person occupying the status of the defendant to come within the purview of the statute.

The *Eckhardt* case serves a two-fold function. It affords a clear definition of the *ejusdem generis* rule, and at the same time points out that the doctrine is only to be used as an aid in ascertaining legislative intent. It will be disregarded if to apply it would contravene that intent. Keeping these two propositions in mind, we shall now discuss those cases in which the Missouri courts have made use of the *ejusdem generis* rule.

II. Cases Involving Application of the Doctrine

The rule of *ejudem generis* has been applied by the Missouri courts in all sorts of cases involving statutory interpretation. As was mentioned, it is extremely difficult to reconcile the decisions and postulate rules as to the applicability of the doctrine to each of the varying factual situations. However, there seems to be some slight difference when penal, as contradistinguished from remedial, statutes are involved. In the case of penal statutes, we find the courts construing them strictly (*i.e.*, in favor of the defendant). Unless the defendant (or what the defendant has done) is very much *ejusdem generis* with the persons or acts specifically enumerated in the statute, no violation will be found. On the other hand, when the statute is remedial, the courts adopt a more liberal attitude toward the

3. Mo. Rev. Stat. § 1856 (1899).
4. State v. Eckhardt, 232 Mo. 49, 53, 133 S.W. 321, 322 (1910).

legislation, and therefore less hesitantly find that a person or thing is *ejusdem generis* with the persons or things specifically enumerated in the statute.

It should be emphasized that whether the statute is remedial or penal has no effect upon the applicability of the doctrine. This aspect will not vary with the type of statute involved. Rather, the differentiation arises in the second phase of interpretation—when the court must determine what is and what is not of the same general class.

In view of this difference in the interpretation of legislative intent, penal and remedial statute situations will be discussed separately. It must be remembered at the outset, however, that there is no sharp line of distinction between penal and remedial statutes; many statutes fall within a "gray area" between the two. Because of this difficulty, the discussion will proceed in the following manner: under "penal statute cases" will be discussed only those cases where the statute is *clearly* penal in nature; under "remedial statute cases" will be discussed all other cases. It is clear that some of the statutes placed in the latter category might be classed by some as penal, in certain of their aspects at least.

A. Remedial Statute Cases

The *ejusdem generis* rule has been applied by the Missouri courts in a number of situations involving remedial statutes. It is difficult to categorize these cases either factually or doctrinally, but some grouping can be made.

1. *Regulation and Taxation of Business.*

There have been a few cases decided by the Missouri courts involving the licensing of businesses, trades, and avocations. In *Wonner v. Carterville*,[5] the defendant, a baker, challenged the validity of a city ordinance which exacted a license fee of ten dollars per annum for every bakery wagon operating in the City of Carterville. A Missouri statute provided:

> The mayor and board of aldermen [of cities of the fourth class, of which Carterville was one] shall have authority to regulate and to license, and to levy and collect a license tax on . . . merchants of all kinds, grocers, . . . butchers, . . .

5. 142 Mo. App. 120, 125 S.W. 861 (1910).

> hackney carriages, omnibusses, carts, drays, transfer and job wagons, ice wagons, and all other vehicles, . . . and all other businesses, trades and avocations whatever. . . .[6]

The Springfield Court of Appeals, refusing to enjoin enforcement of the ordinance, held it a valid exercise of the police power under the statute just quoted, and declared:

> The question is: Are bakery wagons ejusdem generis with other vehicles enumerated in the statute? We think that ice wagons and bakery wagons fall within the same general class. They handle business in the same manner, go over the same routes in the same way, soliciting business or filling orders, and are in every essential respect similar.[7]

A similar result has been reached in other cases. In *St. Louis v. Herthel*,[8] a statute authorized the city "to license, tax, and regulate lawyers, doctors, doctoresses, undertakers, dentists, auctioneers"[9] (and about fifty other pursuits) without naming architects. The statute then concluded, "and all other businesses, trades, avocations or professions whatever." The Missouri Supreme Court invoked the *ejusdem generis* rule and held that architects were of the same class as the professions specifically enumerated, hence taxable and regulable under the "catch-all" clause at the end of the statute. And in *Ex parte Smith*,[10] a similar statute, naming several types of businesses regulable and taxable by the city, and concluding with a similar general phrase, was held applicable to plumbers, although that trade was not specifically enumerated.[11]

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6. MO. REV. STAT. § 5978 (1889).
7. Wonner v. Carterville, 142 Mo. App. 120, 127, 125 S.W. 861, 863 (1910).
8. 88 Mo. 128 (1885).
9. § 26, CHARTER, CITY OF ST. LOUIS.
10. 231 Mo. 111, 132 S.W. 607 (1910).
11. *Ibid.* It should be noted here that the *Smith* case was probably wrongly decided. Under normal circumstances the case would illustrate a proper application of the *ejusdem generis* rule. However, as pointed out later in Keane v. Strodtman, 323 Mo. 161, 18 S.W.2d 896 (1929), there was in effect then, and at the time *Ex parte Smith* was decided, a Missouri statute which provided: "No municipal corporation in this state shall have the power to impose a license tax upon any business, avocation, pursuit or calling, unless such business, avocation, pursuit or calling is specifically named as taxable in the charter of such municipal corporation, or unless such powers be conferred by statute." [MO. REV. STAT. § 8702 (1919), which was MO. REV. STAT. § 9580 (1909) when the *Smith* case was decided]. Thus it can be seen that while plumbers might generally be held taxable under such a statute as the one presented in the *Smith* case, the above quoted statute specifically forbids such an inclusion. In the *Keane* case the Missouri Supreme Court refused to include as taxable, persons engaged in the business of erecting, maintaining or repairing awnings. The statute

Another case involving the regulation of business presents an interesting problem. In *Stall v. Frank Adam Electric Co.*,[12] the plaintiff was an employee in a retail electric appliance store which was owned by the defendant. The store sold, *inter alia*, washing machines. The plaintiff was injured when her hand became caught in one of the machines. She alleged in her petition negligence proximately caused by the defendant's violation of the following Missouri statute:

> The belting, shafting, machines, machinery, gearing and drums in all manufacturing, mechanical and other establishments in this state, when so placed as to be dangerous to persons employed therein or thereabout while engaged in their ordinary duties, shall be safely and securely guarded whenever possible.[13]

In holding for the plaintiff, the St. Louis Court of Appeals pointed out that the statute was intended by the legislature to be remedial, not penal, and "is to be construed liberally in favor of the safety of the lives and limbs of the employees who may be employed about dangerous machinery."[14] The court went on to say that it should construe the statute so as to include retail stores, even though the defendant argued that such a store was not *ejusdem generis* with "manufacturing" or "mechanical" establishments.

It is difficult to discern whether the court invoked the doctrine and construed the statute so that the phrase "other establishments" included retail stores as *ejusdem generis* with manufacturing or mechanical establishments, or whether the court held the doctrine inapplicable because to have applied it would have defeated the legislative intent. It would seem that the court's reasoning is but a mere verbalization of the conclusion that the plaintiff should recover, a result reached on other grounds. It seems difficult to reason that the legislature intended that the statute quoted should include within its application a retail electric appliance store.

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under which the ordinance was passed was as all-inclusive as the one relied upon in the *Smith* case.

12. 213 Mo. App. 395, 240 S.W. 345 (1922).

13. Mo. Rev. Stat. § 6786 (1919).

14. Stall v. Frank Adam Electric Co., 213 Mo. App. 395, 401, 240 S.W. 245, 246 (1922).

2. *Miscellaneous Cases Applying Ejusdem Generis.*

In a number of other varied factual situations the Missouri courts have applied the doctrine of *ejusdem generis.* Where the right to appeal from the decision in a will contest was available to "any heir, devisee, legatee, creditor, or other person having an interest in the estate under administration," it was held that the general clause ("or other person") was restricted in scope to persons of the same class as those specifically named in the statute, and that by this construction the only eligible persons were those having a *financial* interest or claim in the estate.[15]

In *Mears Mining Co. v. Maryland Casualty Co.*,[16] the Springfield Court of Appeals held that an action on an insurance policy of indemnity could not be brought under a statute authorizing an action ". . . to recover any loss under a policy of fire, life, marine, or other insurance."[17] The court followed the *ejusdem generis* rule and said that the insurance in question was not of the same class as those varieties enumerated.[18]

State ex rel. McKittrick v. Wilson[19] presents an interesting problem. There one X was the duly elected clerk of the circuit court of Henry County, Missouri. His term of office was for four years, but after having served for a short time he was inducted into the Army of the United States to serve for the duration of World War II. A Missouri statute provided:

> When any vacancy shall occur in the office of any clerk of a court of record by death, resignation, removal, refusal to act *or otherwise,* it shall be the duty of the Governor to fill such vacancy. . . .[20] [italics added].

Pursuant to this statute the defendant was appointed by the Governor to fill the vacancy thus created. A writ of quo warranto was brought to oust the defendant. The Missouri Supreme Court sustained the ouster. It stated that the *ejusdem generis* rule was applicable and that one's being drafted was not of the

15. State *ex rel.* Goodloe v. Wundeman, 286 Mo. 153, 227 S.W. 64 (1910).
16. 162 Mo. App. 178, 144 S.W. 883 (1912).
17. *Id.* at 191, 144 S.W. at 887.
18. It would seem tenable that this conclusion is unwarranted. As will be seen from the discussion *infra,* the *ejusdem generis* rule is not applied where the things or person specifically enumerated in the statute are themselves of different classes. Here "fire, life, marine," are certainly of different geni. It could be argued that since different types or classes are enumerated, still another type could have been intended by the clause "or other insurance," and that the action in the *Mears* case should have lain.
19. 350 Mo. 468, 166 S.W.2d 499 (1942).
20. Mo. Rev. Stat. § 13284 (1939).

same class of events as those enumerated; hence that reason for a vacancy could not come within the purview of the statute under the phrase "or otherwise." It is submitted that this reasoning is nothing more than a rationalization employed by the court to reach a pre-determined result. Certainly the legislature intended that, irrespective of what event effected the vacancy, it should be filled. The vacancy occurred here, and the Governor filled it. It would seem that the court felt itself compelled, as a matter of patriotic duty, to leave the soldier's office open for him. This motive is praiseworthy, but the result completely ignores a relatively clear expression of legislative intent.

Above are discussed the cases involving remedial statutes.[21] It is difficult to postulate any rules which the courts follow in applying *ejusdem generis* when this type statute is involved. It may be said, however, that the ever present liberal attitude of the courts with regard to remedial statutes is evinced when *ejusdem generis* is applied, just as it is in situations involving other rules of statutory interpretation. The discussion of remedial statutes having been concluded, a discussion of penal statutes will now be undertaken in an effort to discern lines of distinction between the two classes of legislation.

B. Penal Statute Cases

The Missouri courts have applied the *ejusdem generis* rule to penal statutes in the same manner that they have dealt with remedial legislation. However, since the courts persist in construing penal statutes strictly in order to afford defendants every possible protection, the person or thing involved in each case must generally be much more like the classes specifically enumerated before the courts will hold the statute applicable. In other words, the rule will more frequently operate to prevent application of a statute in a given case.

An interesting case involving the typical "strict interpretation" rule is *State ex rel. Springs v. Robinson.*[22] A Missouri statute provided:

> The board [State Board of Health] may refuse to license individuals of bad moral character, or persons guilty of

21. In Obetz v. Boatmen's Nat. Bank, 234 S.W.2d 618 (Mo. 1950), the doctrine of *ejusdem generis* was employed to aid in the construction of a will, although no statute was involved.

22. 253 Mo. 271, 161 S.W. 1169 (1913).

> unprofessional or dishonorable conduct, and they may revoke licenses . . . for like causes. . . . Habitual drunkenness, drug habit or excessive use of narcotics, or producing criminal abortion . . . shall be deemed unprofessional and dishonorable conduct under this section, but these specifications are not intended to exclude all other acts for which licenses may be revoked.[23]

The State Board of Health became suspicious of the defendant, a doctor, believing that he was performing criminal abortions. In order to either allay or confirm this suspicion, the Board sent letters to the defendant, signed "Susie Davis," a fictitious character. These notes confessed that the poor damsel "was indiscreet to allow my beau liberties which I should not have done," and pleaded that he criminally abort her. After several letters of negotiation, the defendant consented to perform the operation for a consideration of one hundred dollars. At this point the defendant's license was revoked. The defendant appealed and was reinstated.

The Missouri Supreme Court said that since the statute was penal in nature, it must be construed liberally in favor of the defendant, and that "where the penalty, as in this case, is onerous, no one can be held to have violated its provisions, unless his acts come within both the letter and spirit of the law."[24] Turning to the *ejusdem generis* rule, the court pointed out that all those acts of dishonorable or unprofessional conduct enumerated were *affirmative acts,* and that all defendant had done was *consent to do an act.* The court said that the defendant had done no act, and that mere *willingness to act* criminally was not *ejusdem generis* with *acting* criminally. This opinion is, to say the least, a very strict interpretation of the statute. It seems obvious that the legislature intended to protect society by demanding of physicians the highest type of moral conduct. Certainly, the defendant flagrantly violated the spirit of the statute set out by consenting to kill the unborn foetus in question. Perhaps the court was impressed by the fact that the case arose out of an attempted entrapment of the defendant and that there was no real person whom the defendant consented to abort. But this is no justification of the result reached.

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23. Mo. Rev. Stat. § 8317 (1909).
24. State *ex rel.* Springs v. Robinson, 253 Mo. 271, 285, 161 S.W. 1169, 1172 (1913).

Other cases have also adhered to a strict interpretation of penal statutes where *ejusdem generis* has been applied. Thus where a statute required that persons seeking office in the municipal assembly "shall not have been convicted of malfeasance in office, bribery or other corrupt practices or crimes,"[25] the St. Louis Court of Appeals held the statute inapplicable to one who had been convicted of selling lottery tickets. The court said that such an act "is not in its nature or turpitude to be classed with malfeasance in office or bribery."[26]

So also, in *McClaren v. G. S. Robins & Co.*,[27] the Missouri Supreme Court refused to rule that one who sold carbon tetrachloride without marking the bottle "poison" had violated a statute requiring such marking of bottles containing "any arsenic, strychnine, corrosive sublimate, prussic acid, or other substance . . . usually denominated as poisonous."[28] The court pointed out that carbon tetrachloride, a grease solvent sold commercially as a cleaning fluid, was not *ejusdem generis* with the named items, which were all drugs. Hence, it felt the product could not be included under the statute's catch-all phrase, "or other substance usually denominated as poisonous."

Several other cases have used the strict construction rule in applying the doctrine of *ejusdem generis* to penal statutes.[29] In fact, *State v. Broderick*,[30] a decision rendered by the St. Louis Court of Appeals, seems to present the only possible exception to this procedure. There the defendant was convicted under a statute which provided:

> If any carrier or other bailee shall convert to his own use, any money, property . . . he shall, on conviction. . . .[31]

The defendant was a bailee-converter of three mules, and on appeal argued that by the rule of *ejusdem generis*, the phrase "or other bailee" was restricted in its meaning to a bailee of the same class as that enumerated, *i.e.*, a carrier. The court refused

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25. Art. III, § 6, CHARTER, CITY OF ST. LOUIS.
26. State *ex rel.* Vogel v. Busch, 83 Mo. App. 657, 665 (1900).
27. 349 Mo. 653, 162 S.W.2d 856 (1942).
28. ILL. REV. STAT., c. 38, § 184 (1937).
29. See Zinn. v. Steelville, 351 Mo. 413, 173 S.W.2d 398 (1943); Tucker v. St. Louis-San Francisco Ry., 233 S.W. 512 (Mo. 1921); State v. Dinnesse, 109 Mo. 434, 19. S.W. 92 (1891); Puretan Pharmaceutical Co. v. Pennsylvania R.R., 230 Mo. App. 848, 77 S.W.2d 508 (1935); McClaren v. G. S. Robins & Co., 224 Mo. App. 265, 26 S.W.2d 818 (1930).
30. 7 Mo. App. 19 (1879).
31. Wagner's Stats. § 37, p. 457.

to accept this argument, saying that to employ such reasoning would defeat the legislative intent. Here would seem to be a liberal construction; but it cannot forcibly be argued that the result is erroneous. It will be noted that we do not have a typical situation. There was only one class specifically enumerated. Moreover, that class is distinctive and complete in itself. Therefore, if the term "or other bailee" was to have any significance the doctrine could not be applied.

From the preceding discussion it is evident that when penal statutes are involved, the Missouri courts generally demand that the person or thing sought to be brought within the purview of the statute be one that is inherently very similar to the things or persons specifically enmerated. If not, the courts are prone to say that the thing or person is not *ejusdem generis* with those things mentioned specifically.

III. Exceptions to the Application of the Ejusdem Generis Rule

It is well established that the *ejusdem generis* rule is not one which will be arbitrarily applied in all cases. Rather, it is to be used *only* as an aid in ascertaining and giving effect to legislative intent. When the doctrine will not serve this valuable function, the courts will not employ it.

Two basic types of situations will occur in which the courts will refuse to apply the principle. First, the court may find itself faced with a situation wherein the person or thing sought to be brought within the purview of the statute is in fact *ejusdem generis* with the specific persons or things enumerated there, and yet the court might feel that to hold the statute applicable would defeat the legislative intent. In such a case, the court will not apply the doctrine and will hold the statute inapplicable. The second instance in which the doctrine will not be applied is the converse of the first, *i.e.*, a situation where the person or thing involved is clearly *not* of the same general class as those things specifically enumerated in the statute, but where, nevertheless, the court feels the legislature intended that the statute apply to this person or thing.

There have thus been developed some fairly well-defined exceptions to the *ejusdem generis* rule. These are clearly and con-

cisely set out by the Missouri Supreme Court in *State v. Eckhardt.*[32]

> The doctrine of ejusdem generis, however, is only a rule of construction to be applied as an aid to ascertaining the legislative intent, and does not control where it clearly appears from the statute as a whole that no such limitation was intended. Nor does the doctrine apply where the specific words of a statute signify subjects greatly different from one another; nor where the specific words embrace all objects of their class, so that the general words must bear a different meaning from the specific words or be meaningless.[33]

There are, then, at least three instances in which the rule will not be employed by the courts. These will be discussed in the same order in which they appear in the above quotation.

A. Legislative Intent Governs

Of course, most cases involving situations where the courts refuse to apply the *ejusdem generis* rule fall under this exception, and it can reasonably be postulated that this is the ultimate reason for the court's refusal to apply the rule in all cases. It should be pointed out that the courts often confuse the real issue here. They sometimes say that they are not applying the rule when actually it could be argued that the thing or person involved is, in fact, *ejusdem generis* with the things specifically enumerated. Whatever the reasoning used, however, the following decisions hold that the particular statute does or does not apply to the person or thing involved on the sole ground that the legislature did not intend that it should. The courts wholly disregard the question whether the person or thing sought to be brought within the purview of the statute is *ejusdem generis* with the persons or things specifically mentioned therein.

Thus in the *Eckhardt* case, the Missouri Supreme Court held the defendant criminally liable for abandoning a child in a street railway station, under a statute which imposed liability when a child was abandoned in a "street, field, or other place."[34] The court admitted that perhaps a street railway station was not of the same class as the places specified, but affirmed the de-

32. See note 1 *supra.*
33. *Ibid.*
34. *Ibid.*

fendant's conviction on the ground that the legislature certainly intended to include the acts of the particular defendant.

The converse situation is illustrated by *City of St. Louis v. Laughlin*.[35] The defendant, a practicing attorney, failed to pay a license tax, in violation of a city ordinance enacted pursuant to a statute which specifically enumerated some thirty businesses as taxable and concluded with the phrase "and all other businesses, trades, avocations or profession whatever."[36] The Missouri Supreme Court, in refusing to hold the defendant liable under the statute, stated that if the legislature had intended to include lawyers in the statute, it would have named them. Here, then, although "lawyer" was certainly *ejusdem generis* with some of the named avocations, the court refused to place the defendant within the purview of the statute.

The Missouri courts, in other cases too numerous to be discussed here, have refused to hold a statute applicable (or inapplicable) in a particular factual situation on the ground that to do so would flaunt the legislative intent, even though the statute might well have been held applicable (or inapplicable) if the standard *ejusdem generis* tests had been applied.[37]

B. Specific Words Signifying Different Classes

Where the specific words employed in the statute signify subjects greatly different in nature from one another, the *ejusdem generis* rule will not be applied.

Caruthersville v. Faris[38] illustrates this proposition. There a statute authorized the taking of private property by a city of the third class (to which Caruthersville belonged), "for the purpose of establishing, opening, widening, excavating or altering any street, alley, avenue, wharf, creek, river, watercourse, market place, . . . and for any other necessary public purposes."[39] The Springfield Court of Appeals held that private property could be taken in order to expand a public cemetery. Here the purposes

35. 49 Mo. 559 (1872).
36. *Id.* at 562-563.
37. State *ex rel.* Pike County v. Gordon, 268 Mo. 321, 188 S.W. 88 (1916); State *ex rel.* Blach v. Fry, 186 Mo. 198, 85 S.W. 328 (1905); State v. Smith, 223 Mo. 242, 135 S.W. 465 (1911); *Ex parte* Smith, 231 Mo. 111, 132 S.W. 607 (1910); Industrial Loan & Investment Co. v. Mo. State Life Ins. Co., 3 S.W.2d 1046 (Mo. App. 1928); State v. Brodwich, 7 Mo. App. 19 (1879).
38. 237 Mo. App. 605, 146 S.W.2d 80 (1940).
39. Mo. Rev. Stat. § 6852 (1929).

enumerated were varied, and the court said that the use petitioned for need not be *ejusdem generis* with those mentioned.

In *State v. Turner*,[40] a Missouri statute provided:

> If any person, or persons, shall wilfully and knowingly obstruct any public road, by throwing . . . osage orange, or other brush, trees or bushes in said road . . . or by fencing the same or by planting any hedge [thereon] . . . or shall obstruct said road . . . in any manner whatever, he shall pay a fine of not less than $20.[41]

The defendant dug a ditch in one of said roads. This act was not a named violation in the statute, but the St. Louis Court of Appeals affirmed defendant's conviction. Although the court did not place its holding upon the exception now under discussion, that exception seems applicable here. What the legislature intended was to prevent obstruction of the roads, and it enumerated a number of widely different methods which would constitute violations. Certainly, the defendant's conduct was of the type that the legislature intended to prevent, and the court could have held that even though the act of the defendant was not precisely of the same class as any of the acts named, he had nevertheless violated the statute.

C. Specific Words Which Exhaust the Class

Another instance in which the *ejusdem generis* rule will not be employed arises when the things specifically enumerated exhaust the class to which they belong. In such a case, it is thought that the general words which follow the specific enumerations must relate to other classes of persons or things. Otherwise, why would the legislature have used the general words? One case exemplifying this exception to the rule is *State v. Smith*.[42] There a statute provided:

> It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, or to profess to cure and attempt to treat the sick and others affected with bodily or mental infirmities. . . .[43]

The defendant was a chiropractor and claimed that he did not "practice medicine or surgery" within the meaning of the

40. 21 Mo. App. 324 (1886).
41. Mo. Laws 1883, § 33, p. 165.
42. 233 Mo. 242, 135 S.W. 465 (1911).
43. Mo. Laws 1901, § 1, p. 207.

statute. He said that he merely "adjusted" difficulties which arose as a result of some spinal disorder and did not "cure." Holding defendant responsible under the statute, the Missouri Supreme Court declared:

> . . . this rule of ejusdem generis is, after all, resorted to merely as an aid in construction. If, upon consideration . . . it is apparent that the Legislature intended the general words to go beyond the class specifically designated, the rule does not apply. If the particular words [here 'to practice medicine or surgery'] exhaust the class, then the general words must have a meaning beyond the class or be discarded altogether. Certainly here the words 'medicine or surgery in any of its departments' exhaust the genus or class.[44]

The *Smith* case shows clearly a legislative enactment in which there was a clear intent to regulate anyone who professed to cure the sick.

CONCLUSION

From the preceding discussion several generalizations may fairly be made:

1. When general words follow the enumeration of particular classes of persons or things, the general words will be construed to be applicable only to persons or things of the same genus or class as those things specifically enumerated. This is the *ejusdem generis* rule.
2. In using the *ejusdem generis* rule when penal statutes are involved, the Missouri courts are inclined to require that the person or thing sought to be brought under the statute be very much like the specific persons or things enumerated. A more liberal attitude is adopted when remedial statutes are involved.
3. The sole purpose of the *ejusdem generis* rule is to aid in ascertaining and effectuating legislative intent. The rule will not be abitrarily applied in every case involving a statute wherein a general phrase follows the enumeration of specific persons or things. When to apply the rule would thwart legislative intent, the rule will not be applied. There are at least two specific instances in which this situation occurs:

44. State v. Smith, 233 Mo. 242, 257, 135 S.W. 465, 468 (1911).

a. When the specific words in a statute signify objects greatly different from one another so that they do not all belong to the same general class.

b. When the specific words in a statute embrace all objects of their class, so that the general words must have been intended to bear a different meaning from the specific words or be meaningless.

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