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Statutory Construction

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The familiar principles of established law relating to statutory construction remained unchanged during the period covered by this survey. There were, however, quite a number of cases involving the application of those principles to situations of more than passing interest.

The statutes relating to mechanics' liens were construed at length in *Lowndes Hill Realty Company v. Greenville Concrete Company.*[1] That case presents without question the most painstaking job of statutory construction accomplished by the Court during this period. The entire legislative history of the statutes relating to mechanics' and materialmen's liens commencing with the 1816 enactment was reviewed for the purpose of determining primarily (1) whether a subcontractor must give to the owner the *notice* provided for in § 45-254 of the 1952 Code before furnishing the materials and (2) whether materialmen and mechanics who perfect liens take in the order of their priority or pro rata. The Court decided (1) that the notice requirement could be met by the service upon the owner of a proper certificate of lien so that notice before furnishing material was unnecessary and (2) that materialmen and mechanics perfecting their liens must take pro rata. In the course of its analysis of the history of legislation in the field, the Court noted that the codification of the Code beginning in 1922 had made applicable to subcontractors, laborers and materialmen provisions which in their original enactments had related only to the prime contractor. The Court, however, in construing the 1952 Code said that there was no ambiguity in it and that resort could not be had to original enactments for interpretation, citing *Town of Forest Acres v. Seigler*[2] and *State v. Connally.*[3]

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1. 229 S. C. 619, 93 S. E. 2d 855 (1956).
2. 224 S. C. 166, 77 S. E. 2d 900 (1953).
3. 227 S. C. 507, 88 S. E. 2d 591 (1955).

The nearest thing to judicial double talk in this field appears in *Gregory, et al. v. Rollins, Chairman, Board of Directors of Lancaster County, et al.*[4] At the engagement of a grand jury of Lancaster County, approved by the Circuit Judge, a certified public accountant and an attorney conducted an audit of the affairs of the County. Since no money was forthcoming from the County to pay for their services, the Circuit Judge, upon petition of the accountant and the attorney, issued a writ of mandamus requiring the Board of Directors, the County Treasurer and the Legislative Delegation to issue and pay warrants in satisfaction of their claims. The claim was made pursuant to § 38-409 of the 1952 Code providing, in part, that "Grand juries may . . . employ . . . accountants [to audit the affairs of a county] and . . . fix the amount of compensation or per diem to be paid therefor, upon the approval of the presiding or circuit judge given before any expert is employed". The Supreme Court denied the power of the Circuit Judge to issue the writ of mandamus, saying that to do so would amount to appropriation of public funds — a matter within the exclusive domain of the Legislature.[5] The Court conceded, however, that the courts may by mandamus require the proper officials of a county to include a proper claim against the county in their next budget for county expenses to be submitted to the General Assembly,[6] or to pay a claim out of funds in the hands of the treasurer belonging as a matter of law to the claimant and not to the county.[7] Perhaps the claimants should next follow the *Green v. West* route and attempt to compel the proper officials, through mandamus, to include the claim in the next budget for county expenses. That, according to the Court, would not amount to an "appropriation".

The case is of interest in the field of Statutory Construction primarily in that it illustrates the construction of conflicting statutes which are *in pari materia.* In reaching the foregoing result the Supreme Court adverted to the supply bill for the county for the year involved (the supply bill provided funds for a routine audit) to show that the Legislature contemplated only one audit for the year. The Supreme Court said that § 38-409 and the supply bill were *in pari materia* so far as

4. 230 S. C. 269, 95 S. E. 2d 487 (1956).
5. S. C. Const., Art. X, § 9.
6. Green v. West, 161 S. C. 161, 159 S. E. 23 (1931).
7. Scott v. Anderson County, 195 S. C. 92, 10 S. E. 2d 359 (1940).

they related to the audit of the books of the county for the year involved, that therefore they must be construed together, and that the supply bill, being "special", must prevail over § 38-409, which was "general", where the two conflict.[8]

Another guide for the construction of enactments apparently contradictory can be found in *Griggs v. Hodges*,[9] relating to the establishment of a hospital in Chesterfield County. By joint resolution approved January 26, 1955, the General Assembly directed a referendum to be held in Chesterfield County as to whether a hospital would be established "to be located in or near the Town of Chesterfield". By an act passed several months later a Board was created to construct the hospital but no restrictions were included in the act as to the site of the hospital. The hospital was in fact finally put near Cheraw, and the action of the Board was attacked as being contrary to the referendum. After detailed consideration of the two enactments the Supreme Court said that while it saw no repugnancy between them, it was well established that the last enactment would prevail.[10]

There were three other cases in the field. In *Field v. Gregory*[11] the Supreme Court, in order to uphold a judge's charge to the jury in the words of a statute, applied the elementary principle of statutory construction that words used in a statute should be taken in their ordinary and popular signification unless something in the statute required a different interpretation. In *Beard v. South Carolina Tax Commission*[12] the Court, in construing the income tax statute, adverted to the same principle and declared that the word "income" as used in a tax statute is to be taken in its ordinary sense of gain or profit. The Court also said that a tax statute is not to be construed to extend beyond the clear import of its language, and that any substantial doubt as to its meaning should be resolved against the Government and in favor of the taxpayer. In *Dantzler v. Callison*[13] the Supreme Court construed a 1956 Act of the General Assembly repealing all or part of the existing law relating to the practice of naturo-

8. South Carolina Electric & Gas Co. v. South Carolina Public Service Authority, 215 S. C. 193, 54 S. E. 2d 777 (1949).
9. 229 S. C. 245, 92 S. E. 2d 654 (1956).
10. Ward v. Cobb, 204 S. C. 275, 28 S. E. 2d 850 (1944); South Carolina Electric & Gas Co. v. South Carolina Public Service Authority, 215 S. C. 193, 54 S. E. 2d 777 (1949).
11. 230 S. C. 39, 94 S. E. 2d 15 (1956).
12. 230 S. C. 357, 95 S. E. 2d 628 (1956).
13. 230 S. C. 75, 94 S. E. 2d 177 (1956).

pathy. The 1956 Act provided in the first sentence of the principal section that it was "unlawful for any person whether heretofore licensed or not . . . to practice naturopathy" and in the remainder of the section provided that a person qualified as a medical doctor could practice medicine. Faced with an apparently large body of law that the right to practice a profession is a property right entitled to protection and several of its own decisions to the effect that naturopathy was recognized as such, the Court cleverly construed the statute as one imposing additional qualifications upon those who would practice naturopathy rather than as one banning the profession. The Court in reaching that decision said that all statutes relating to one subject should be construed as *in pari materia*. The case did not, however, involve the application of any new or different principles of statutory construction.