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Public Corporations

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During the period under review, the South Carolina Supreme Court considered a number of interesting questions, some of first impression in this state, in the field of public corporations. Important to the future financing of sewer facilities is the Supreme Court's upholding of the right of the General Assembly to provide for the imposition of an enforceable sewer service charge. Annexation questions, which we have come to expect, were once again before the court, as were questions regarding condemnation actions. Of great significance in connection with the General Assembly's efforts to provide for equal property assessments throughout the state is the Supreme Court's decision upholding the legislation providing for the reassessment of Richland County School District No. 1.

SEWER REVENUE BONDS INTRODUCED INTO SOUTH CAROLINA

Two of the more interesting decisions of recent years in the field of public finance were handed down during the period under review in the cases of *Ruggles* v. *Padgett*[1] and *Distin* v. *Bolding*.[2]

The *Ruggles* decision concerns the effort of the Hanahan Public Service District, located to the North of North Charleston in Berkeley County, to provide a system of public sewage disposal. Sewage for the most part was handled by septic tanks, which, due to the nature of the soil, functioned poorly.

The district did not own or control its water distribution facilities. They were owned and operated by the Commissioners of Public Works of the City of Charleston which furnished water to district residents.

The first problem encountered by the General Assembly in connection with the construction of a district sewer system was the method of financing. District general obligation bonds payable from a district-wide ad valorem tax could be issued but the

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1. 240 S.C. 494, 126 S.E.2d 553 (1962). This case is also noted in the Constitutional Law section at note 25.
2. 240 S.C. 574, 126 S.E.2d 649 (1962).

resulting tax burden would fall unfairly in many instances in the light of the benefits obtained. If, on the other hand, the bonds were retired from a sewer charge to be imposed upon those actually using the sewer facilities, it would be difficult to enforce payment of sewer charges. Disconnection of the defaulting property-owner's facilities from the sewer system would be unduly expensive and contribute to the unhealthy conditions sought to be alleviated.

The district's problem was resolved in a novel fashion in South Carolina. The General Assembly at its 1960 Session passed legislation enabling the district to issue (in addition to general obligation bonds in which case a vote was required), revenue bonds payable from sewer charges. It further empowered the district and the City of Charleston to enter into a binding agreement whereby the city would collect the district's sewer charges and enforce payment by cutting off the water service of any property-owner in the district who failed to pay the sewer charge.

The appellants (appealing from the order of the circuit judge sustaining the acts under attack) first contended that the General Assembly cannot by special legislation delegate police powers to the district enabling it to adopt mandatory regulations requiring persons within the district to connect to and use the district's sewer system. They pointed to the Supreme Court's decision in the case of *Gaud* v. *Walker*[3] as authority for this contention. There, in considering the Charleston County Council Act, Justice Oxner, in striking down that portion of the act attempting to give Charleston County Council the power to enact and enforce county police ordinances, used language which gave rise to the inference that the General Assembly cannot by special act delegate any of its police power.

The Hanahan Public Service District was empowered to require connections, and upon refusal, to apply for enforcement to a court of competent jurisdiction for the exercise of mandatory injunction or other remedial orders. The Supreme Court held that the provisions of the South Carolina Constitution prohibiting special legislation do not prohibit the creation of a special purpose district by special act. In upholding the delegation of power by special act to the District Commission to adopt mandatory regulations to require sewer connections, the court stated:

3. 214 S.C. 451, 53 S.E.2d 316 (1949).

> The Court below noted that since it has been definitely settled by this Court that special purpose districts may be created by special acts, it would be inconsistent to hold that the basic purpose of such districts could not be fulfilled through enforcement by appropriate civil measures. With this we agree.

The *Gaud* decision, the Supreme Court held, does not apply here but relates only to an attempt to delegate by special law to a local agency the power to enact *penal* ordinances.

It is noteworthy that the Supreme Court in the case under review took a step which it had hesitated to do in its earlier decisions and expressly sustained the special acts here as a proper exercise of the General Assembly's right to provide for municipal government by special provision as set forth in section 11 of article VII of the South Carolina Constitution. The court's language is significant:

> . . . the term 'municipal' used in Section 11 cannot extend in such manner as to provide authorization for special ordinances of a penal nature, such as those stricken down by Gaud v. Walker, supra. However, we are satisfied that measures, not creating crimes or misdemeanors, but which are enacted for the maintenance of the public health in such areas as special purpose districts or townships would be embraced by the term 'municipal government' as it is employed in Section 11 of Article VII. Thus, a measure providing for sewage disposal and the regulation of its uses would be embraced by Section 11 of Article VII. However, the function permitted by the Special Act must clearly be an aspect of the type of municipal service rendered by incorporated municipalities, for any enlargement of the term could have the effect of nullifying altogether subdivision 9, Section 34 of Article III. It is the duty of the Court to synchronize and not to nullify provisions in the Constitution. Only in this way can legislation, special in nature, be sustained as not violative of subdivision 9, Section 34, of Article III.

The appellants also questioned the right of the General Assembly to empower the district to impose a sewer charge with which to provide debt service for the bonds to be issued. In disposing of this contention the Supreme Court held that the charge here to be made is not an assessment and that an essential in-

gredient of an assessment is a lien upon the property subject to the assessment. The court pointed out that the charge here is rather one for services rendered similar to charges for water, gas or electric light service long sanctioned by earlier decisions.

Another question raised by the appellants related to the right of the district and the city to enter into a contract whereby the city would discontinue water service to any property-owner within the district who defaulted in the payment of sewer charge imposed by the district. In upholding this phase of the plan as a proper exercise of the police power of the state, the Supreme Court pointed to numerous decisions in other jurisdictions sustaining similar arrangements; the State of Alabama apparently being the only dissenting voice on this point.

The appellants further contended that the General Assembly was prohibited by section 1 or article VIII of the South Carolina Constitution from empowering the City of Charleston to enter into such an agreement unless at the same time it similarly empowered all other municipalities of the same class. The Supreme Court struck down this objection upon the grounds that a municipality in the operation of a municipally-owned water system has the incidental power to operate it in such fashion as to best serve its customers, and that the proposed agreement obviously being for the benefit of the Commissioners of Public Works (which would obtain as consideration the district's small water distribution system as improved) was, therefore, not an ultra vires undertaking of the city.

The General Assembly in providing for the financing of sewer construction in Jackson Gills Creek Public Service District, in Richland County, was faced with problems somewhat similar to those before it in connection with the Hanahan Public Service District, and the legislation providing the method of meeting the problems was sustained by the South Carolina Supreme Court in its decision in the case of *Distin v. Bolding*.[4]

As in the *Ruggles* case, the General Assembly was here faced with a problem of obtaining revenues to provide debt service for bonds to be issued to finance the construction of sewers. The method adopted was to provide debt service in part from a district-wide ad valorem tax and in part from special assessments levied against the properties making use of the sewer facilities. Thus, part of the cost of construction would be spread through-

4. 240 S.C. 574, 126 S.E.2d 649 (1962).

out the district by way of the ad valorem tax, while the remaining portion of the cost would be borne entirely by those using the facilities. In addition to providing part of the debt service, the sewer assessments would also provide for operation and maintenance of the system.

The method followed in the *Ruggles* case to enforce collection was not available here because no single agency operated a waterworks system throughout the district, which was served partly by public systems, partly by private water companies, and partly by individual wells. In order to enforce collection the acts here under attack provided that the sewer charges should constitute liens upon the respective properties of the users which could be enforced in the same fashion that the collection of county taxes is enforced.

The appellant here (appealing from order of the circuit judge sustaining the acts) urged many of the questions which were disposed of in the earlier *Ruggles* decision. The principal undecided question before the court for decision was the right of the General Assembly to authorize the District Commission to impose a special charge or assessment upon property-owners in the district utilizing the public sewer system which would constitute a lien upon their property. The Supreme Court sustained this right on the basis of the general rule that the legislative branches of state governments have the inherent power to make provisions for assessing of real property for benefits conferred, and that this power had been sustained in earlier decisions of the South Carolina Supreme Court. The Supreme Court further noted that its earlier decisions in the *Evans*[5] and *Rutledge*[6] cases confirmed the power of the General Assembly also to apportion the impact of such assessments "in whole or in part upon the property of such district, either according to valuation, or the superficial area or frontage." The Supreme Court found no merit in the appellants' contention that the General Assembly's power to provide for such assessments was limited by several earlier decisions including particularly *Mauldin* v. *City Council of Greenville*.[7] It recognized that the holdings in these decisions related to sewer assessments imposed by a city.

The charge here was an assessment because it created a lien upon the property benefited as distinguished from a mere charge

5. 137 S.C. 496, 135 S.E. 538 (1926).
6. 139 S.C. 188, 137 S.E. 596 (1927).
7. 53 S.C. 285, 31 S.E. 252 (1898).

for services imposed in the *Ruggles* decision. Therefore, due process required that the property-owners to be affected be given notice and the opportunity of a hearing before the assessments were levied. The acts provided for written notice of not less than ten days to each affected property-owner notifying him of the nature and quantum of the charge, and providing him an opportunity to be heard in person or by counsel. The acts further protected the right of any property-owner to appeal to the court. The Supreme Court held that the provisions of the acts relating to notice and hearing fully met all the requirements of due process under both state and federal constitutions.

ANNEXATION QUESTIONS AGAIN BEFORE THE COURT

Two extremely interesting questions involving annexation elections are decided by the South Carolina Supreme Court in its decision in *Creamer* v. *City of Anderson.*[8]

The plaintiffs challenged the official results of a special annexation election held on October 27, 1959, to extend the corporate limits of the City of Anderson. Section 47-16 of the 1962 Code provides that those voting within the city shall be registered, qualified, electors residing within the corporate limits of the city, and that those voting within the area proposed to be annexed shall be "registered, qualified, electors residing within the territory proposed to be annexed." The voters of the City of Anderson favored the annexation. However, the vote in the area to be annexed as certified by the Commissioners of Election was 1569 in favor of annexation and 1500 against. The plaintiffs contended that at least 70 votes cast in the area to be annexed were illegal because they were cast by persons who were not registered, qualified, electors residing within the territory propsed to be annexed at the time of the election, and that these illegal votes being deducted from the favorable votes, the number of votes in favor of annexation was reduced to less than one-half of the total votes cast in the area to be annexed, thereby rendering the election ineffectual.

The special referee, to whom the matter had been originally referred, upheld the election as valid, but the circuit judge reversed the special referee and held the election ineffectual.

8. 240 S.C. 118, 124 S.E.2d 788 (1962).

The first question to be resolved was the interpretation of Section 47-16 as it relates to the requirements of persons who are eligible to vote within the area to be annexed. The special referee had held as valid the votes cast by voters who did not reside in the area to be annexed at the time of the election but who had fulfilled both of two conditions: (1) within the seventeen months immediately prior to the election, they had resided within the said area; and (2) they had moved from the said area but had not, according to their testimony, as yet established a new domicile. Under these circumstances the special referee held that the residences previously established in the area to be annexed had not been altered.

The circuit judge reversed the special referee on this point and the Supreme Court affirmed the circuit judge. The Supreme Court noted that the Legislature was undoubtedly aware of the special consequences which faced persons voting within the respective areas in an annexation election when it required that the votes of each of the two groups be separately cast and be separately counted (Section 46-17 of the 1962 Code), and that these special consequences differed for each group. The Supreme Court concluded that the Legislature intended by the use of the word "residing" in Section 47-16 to limit the right to vote on the issue of annexation to those registered, qualified, electors "actually residing in each of the respective areas at the time of the election, as distinguished from those who, although having their legal domicile in such area, were actually residing elsewhere."

The decision appears to distinguish the annexation election required under the statute here from elections which come within the contemplation of Sections 2, 4 and 12 of article II of the South Carolina Constitution. In the case of *Cothran* v. *West Dunklin Pub. School Dist. No. 1*,[9] the Supreme Court held unconstitutional an act which provided for an election only by electors who return real or personal property for taxation. The Supreme Court held that as long as voters possessed the qualifications called for by the above mentioned constitutional provisions, they were entitled to vote in the election, and that the legislature cannot require additional qualifications.

The second question decided relates to the treatment of illegal votes. In cases where the margin of victory exceeds the number

9. 189 S.C. 85, 200 S.E. 95 (1938).

of unidentifiable illegal votes no problem arises as a practical matter because the illegal voting could not have affected the outcome of the election. However, here the court was faced with the situation where the margin of victory in favor of annexation was less than the number of unidentifiable illegal votes. As a general rule, this problem can be met in one of five ways:

(1) The election may be declared invalid;
(2) The vote of the precinct wherein the illegal voting occurred may be rejected;
(3) There may be a pro rata deduction of the illegal votes according to the number of votes cast on each side;
(4) The illegality may be entirely ignored; or
(5) The illegal votes can be deducted from the winning side.[10]

The special referee, as to some of the illegal votes, had withdrawn them proportionately from each side. The circuit judge reversed the special referee on this point and held that illegal votes should be deducted from the winning side and the election declared ineffectual. Again on this point, the Supreme Court affirmed the circuit judge.

In so doing, the Supreme Court recognized that it is very unlikely that all of the illegal votes were against the winning side and that, therefore, an illegal vote against annexation would be counted twice: once when cast against annexation and a second time when deducted from the favorable votes. However, the Supreme Court pointed to the fact that a new election can determine with certainty which side of the question had received greatest number of unquestionable votes. In this connection, our Supreme Court has held in the case of *Rutland* v. *City of Spartanburg*[11] that there is no statute limiting the number of annexation elections that may be held relating to the same area or prescribing a period that must elapse between two such elections. If the *Rutland* decision (which is not clear on the point) holds that a second election can be held on the basis of the original petition of freeholders and without the need for a new petition of freeholders, the authorities cited by the court support its holding here. If, however, as would seem to be the case, a second election could not have been held without first a second petition being submitted, then the matter could not conveniently have

10. Annot., 155 A.L.R. 677 (1945).
11. 230 S.C. 255, 95 S.E.2d 443 (1956).

been sent back for a new election. It seems to the writers that the facts here might have been distinguishable for that reason from the earlier decisions cited by the court. The fact that no new election can be held upon the existing petition would appear a strong argument for a proportionate withdrawal of the unidentifiable illegal votes from each side.[12]

The court's opinion does not explain why the illegal voters (including particularly the 57 voters conceded illegal by the appellants) were not called to the stand and questioned as to how they voted so that each illegal vote could be subtracted from the side for which it was cast. While it is well established that a legal and honest voter is privileged from testifying as to the candidate for whom he cast his vote, the law does not protect illegal voters, and the rule exempting an elector from testifying as to how he cast his ballot has no application to an illegal voter.[13]

The 1795 case of *Johnston* v. *Corporation of City of Charleston*[14] decision contains language which is broad enough to create some doubt as to whether in South Carolina even an illegal voter can be questioned as to how he voted. However, the situation there involved swearing the voter before the City Council of Charleston, not before a court of law. It would seem unlikely for South Carolina to dissent from the rule set forth above which appears to be generally accepted and well founded. In any event, the privilege to refuse to testify for whom he cast his ballot is personal to the voter and can be raised and waived by him only. Laws providing for the secrecy of the ballot do not preclude inquiry into the question for whom votes were cast since the voter, if he so desires, may waive the privilege of secrecy.[15]

* * *

In the case of *Hollingsworth* v. *City of Greenville*,[16] the plaintiff property owners sought to enjoin the inclusion of their land in territory to be annexed to the City of Greenville. They alleged that their property was largely unimproved farm land without roads or streets, having no need of municipal police or fire protection, and that its annexation would benefit neither the city nor the property owners. Therefore its inclusion in the proposed territory to be annexed was unreasonable and arbitrary.

12. MCCRARY ON ELECTION, §§ 495-497 (4th Ed. 1897); Annot., 155 A.L.R. 677 (1945).
13. 18 AM. JUR. *Elections* 308 (1939); Annot., 90 A.L.R. 1362 (1934).
14. 1 Bay 441 (S.C., 1795).
15. 18 AM JUR. *Elections* § 308 (1939).
16. 241 S.C. 378, 128 S.E.2d 704 (1962).

In August, 1961, a petition signed by a majority of the freeholders of a large territory lying east and south of the City of Greenville sought an annexation election. On September 15, the plaintiffs instituted this action, and on September 19, the election was held and resulted in favor of the annexation.

The lower court concluded that the plaintiffs had failed to sustain the burden of proving that the inclusion of their land was unreasonable or arbitrary, and therefore denied the injunction and dismissed the complaint.

On appeal the Supreme Court affirmed the lower court, holding that annexation is a legislative function with which the courts will rarely interfere on the grounds that it is unnecessary, unreasonable, or without benefit. However, in this connection the Supreme Court noted that the appellants' land actually lay in the heart of and bisected the area proposed to be annexed, and that if the appellants' property was excluded a much larger territory within the area to be annexed would not have been adjacent to the city and therefore ineligible for annexation.

Prior to the filing of the freeholders' petition with the city council, the appellants had requested that their property be deleted from the property described in the petition. On this point the Supreme Court affirmed the circuit judge's holding that the city council was without power to delete property from the petition. The appellants contended that the absence of such power in the city council rendered the annexation statute and the proceedings thereunder unreasonable and invalid and, in effect, deprived the appellants of their rights without due process of law. However, the constitutional issue was not raised below nor passed on by the trial judge and therefore was not passed on by the Supreme Court, although the opinion does state that the statutory provisions "afforded a reasonable and democratic means of the exercise of the legislative power."

In the case of *Dalton* v. *Town Council of Mount Pleasant*[17] the South Carolina Supreme Court had to consider the question whether or not the petition of freeholders required by Section 47-14 of the 1952 Code prior to the calling of an annexation election was signed by the required majority of freeholders.

On January 17th, 1955, three separate petitions each describing a separate area were filed with the Town Council of Mount Pleasant in Charleston County. Each petition asked for an

17. 241 S.C. 546, 129 S.E.2d 523 (1963).

election on the question of the annexation of the area described therein to the Town of Mount Pleasant. The town council determined that each petition was signed by a majority of the freeholders of the area therein described and certified this fact to the County Commissioners of Elections. Before elections were held, however, the town council decided on the annexation of a larger area, including the three areas described in the petitions of January 17th. Therefore, a new petition describing the enlarged area to be annexed was circulated and filed with the town council on or before February 17th, 1955. At a special meeting on that date the actions previously taken with respect to the January 17th petitions were rescinded, and the town council certified that a majority of the freeholders of the larger area proposed to be annexed had petitioned for an election. An election was subsequently held which resulted favorable to the annexation.

Within the prescribed time the plaintiff instituted this action to have the annexation voided on the grounds that the petition had not been signed by a majority of the freeholders in the area to be annexed. The matter was referred to the master who ruled the annexation void, and this ruling was affirmed by the Circuit Court.

Assuming, as contended by the appellants, that 228 freeholders' signatures to the petition would have constituted a majority, the issue here involved 23 signatures which the appellants contended should have been added to the 214 signatures found valid by the master to give the necessary majority.

These 23 persons, however, had not signed the petition circulated describing the larger area to be annexed. All of them had signed one of the three petitions filed on January 17th, asking for an election on the question of annexing one of the smaller areas subsequently included in the larger area voted on.

In affirming the circuit court the Supreme Court held that the 23 persons in question did not sign a petition "for the election on the annexation of the territory in question." The court concluded that the petitions signed by the 23 persons for elections on the annexation of different areas, even though these areas subsequently were included in the area annexed, were in fact separate and distinct petitions praying for elections on different annexations. It pointed to its holding in the case of *Hollingsworth* v. *The City of Greenville*[18] that a city council has no

18. 241 S.C. 378, 128 S.E.2d 704 (1962).

authority to delete a portion of the area described in an annexation petition as authority for its holding here that the city council is equally without power to increase such an area.

While the matter was before the circuit judge on exceptions to the master's report, the circuit judge allowed 18 of the 23 electors above mentioned to intervene in behalf of annexation. The Supreme Court held that this intervention could not affect the signatures to the petition and that these persons could not in effect ratify "the unwarranted action of Town Council in counting them as Petitioners."

Finally, the appellant town argued that the plaintiff lacked standing to maintain the action because she was not a freeholder. The appellants conceded that the plaintiff, being a voter, was a person interested to contest the election, but they urged that plaintiff, not being a freeholder, was not a person interested to contest the sufficiency of the petition. The Supreme Court, however, held that the distinction sought was untenable because the statute makes interest in the extension of the limits of a city or town the criterion. The Supreme Court, therefore, held that an elector in the area to be annexed is a person interested to attack both the sufficiency of the petition and the election.

The annexation had been in effect for more than six years when it was finally ruled invalid in the decision under review. During that time municipal services had been extended to and municipal taxes collected in the area thought to have been annexed. Thus, upon the rendering of the decision here the town was faced with serious administrative problems. These problems became largely academic however when new annexation proceedings were begun immediately and resulted in the annexation to the town of a large area including all the area "de-annexed" by the decision here.

REASSESSMENT OF PORTION OF RICHLAND COUNTY UPHELD

At its 1958 session, the General Assembly provided by legislative enactments for a reassessment of property in School District No. 1 of Richland County, apparently prompted by "gross inequities and inequalities" which had existed with respect to the assessment of real estate in the school district. In its de-

cision in *Hampton* v. *Dodson*[19] the Supreme Court considered the validity of these enactments.

The acts under attack created the Richland County Board of Assessment Control, giving it certain duties and powers with respect to the assessment of all taxable property within School District No. 1, only. The Act provided for the employment of personnel including a tax assessor for School District No. 1, and transferred to the assessor all powers, duties, and privileges of the Board of Tax Assessors, Board of Township Assessors and Chairmen of Boards of Assessors, so far as they related to the assessment and valuation of property in School District No. 1, subject, however, to policies determined by the board.

The desired equalization of taxes was undertaken pursuant to appropriate orders issued by the South Carolina Tax Commission, pursuant to the powers vested in it under Section 65-64 (15) of the 1962 Code.

The reassessment program was undertaken by trained personnel in an effort to equalize assessments not only within School District No. 1, but also to equalize assessments with respect to real property in other school districts. However, no reassessment program was being undertaken in a similar fashion with trained appraisal personnel in any other school district of Richland County.

The circuit judge affirmed the report of the master with certain modifications and dismissed the complaint. The appeal here followed. The appellants contended that the reassessment would result in unequal valuation and assessment of property in the school district with the result that taxpayers of the school district would bear a greater burden with respect to county-wide millage than would taxpayers in other school districts of the county, and that the tax money being expended for the reassessment program was being illegally and unconstitutionally expended.

As to the first contention, the Supreme Court held that the reassessment program was being carried out in accordance with the general law with respect to the valuation and assessment of property which governed all school districts in Richland County, and that the assessment program was not being carried out under any rules, regulations or policies inconsistent with the general statutory law. As to the second contention, the Supreme Court

19. 240 S.C. 532, 126 S.E.2d 564 (1962).

held that the reassessment program, being carried out in compliance with the general law, is a necessary and proper expenditure of tax money.

The Supreme Court refrained from passing upon the numerous constitutional questions raised because it found it unnecessary to do so on the basis of two considerations: (1) If upon completion of the reassessment program, there should exist any inequality of treatment between the several districts in Richland County, any aggrieved taxpayer would have exactly the same remedy which he had prior to the acts in question, and (2) The appellants, having failed to prove any injury or threatened injury as a result of the acts or anything being done pursuant thereto, are not in a position to question the constitutionality of the acts, because one not prejudiced by enforcement of a statute cannot question its constitutionality.

CONDEMNATION OF RESTRICTIVE COVENANTS HELD COMPENSABLE

In the case of *School Dist. No. 3 of Charleston County* v. *Country Club of Charleston*,[20] the South Carolina Supreme Court decided a question of novel impression in this state and one on which there is an irreconcilable conflict of decisions from other jurisdictions.

School District No. 3 of Charleston County had condemned about six acres out of a larger seventy-one acre tract adjoining the golf course of the Country Club of Charleston. The larger tract was owned by MacDonald and Parks, a partnership, which had purchased it several years earlier from the country club to develop it as a residential subdivision. The development of the seventy-one acre tract would undoubtedly affect the adjoining property of the country club. For this reason, the country club retained the right to enforce residential restrictions upon the entire seventy-one acre tract. The country club refused to consent to an amendment to the restrictions permitting the six acre parcel of the seventy-one acre tract sold to MacDonald and Parks to be used as a school site.

The residential restrictions were abolished by the condemnation suit that followed as far as they affected the six acre site taken for a school. Thus, the question arose whether or not the extin-

20. 241 S.C. 215, 127 S.E.2d 625 (1962). This case is also noted in the Property section at note 1.

guishment of these restrictions represented the taking of a property right for which the country club was entitled to compensation.

This question has been considered in many jurisdictions and the courts of other states are evenly split between permitting recovery and denying recovery in such cases. In the case under review, the referee and the circuit court had decided that restrictions constitute a property right, the extinguishment for which is compensable. However, both the referee and the circuit court had also held the extinguishment of the restrictive covenants in the instant case had not in fact damaged the country club, and awarded only nominal damages of $25.00 on account of their extinguishment.

For this reason the question was largely academic and was not argued before the Supreme Court in the briefs or on oral argument. The Supreme Court's decision here affirming the Circuit Court nevertheless appears to settle this question in South Carolina.

STATUS OF SPECIAL MASTER UNDER PUBLIC WORKS EMINENT DOMAIN LAW

In its decision in *School Dist. No. 10 of Charleston* v. *Wallace*,[21] the Supreme Court had occasion to consider for the first time the status of a special master appointed pursuant to the provisions of the Public Works Eminent Domain Law in relation to the statutory provisions relating to masters in general. There the school district had instituted condemnation proceedings under the Public Works Eminent Domain Law to acquire a school site. More than six years after the matter had been referred to a special master (for the purpose of determining the amount of compensation to be paid for the property taken and the persons to whom it should be paid) and before any report was filed, the school district served notice upon the property owners that it had elected to end the reference under the provisions of Sections 10-1413, 10-1414, and 25-123 of the 1952 Code.

The school district's motion to end the reference was heard and denied by the lower court, which accepted the report of the special master filed the day after the school district gave notice of its election to end the reference. The appeal here followed.

21. 241 S.C. 323, 128 S.E.2d 167 (1962).

The appellant school district contended that the provisions of Sections 10-1413 and 10-1414, providing that reports of masters and referees in general shall be filed within 60 days from the time the matter is finally submitted to them and upon failure to do so either party can elect to end the reference, applied with like effect to special masters appointed under the Public Works Eminent Domain Law.

The lower court held that Sections 10-1413 and 10-1414 governed, but also held that under the facts the report of the special master was filed within 60 days from the time that the matter was finally submitted to him.

The Supreme Court disagreed with the grounds upon which the lower court based its decision but affirmed its conclusion. The Supreme Court held that as between the general statutory provisions of Sections 10-1413 and 10-1414 and the special provisions contained in the Public Works Eminent Domain Law, the latter must prevail in an action brought under the said law, and that this result followed regardless of the fact that the special master appointed also held the office of Master in Equity for Charleston County.

Therefore the issue before the Supreme Court was determined with reference to Section 25-123 (part of the Public Works Eminent Domain Law) which provides that the report of a special master must be filed within 30 days after the date of his qualification. There is no provision in the Public Works Eminent Domain Law analogous to the provisions of the general law permitting a party to elect to end a reference. Appellant's attempted election to do so under Section 10-1414 was held to be ineffectual as that section did not apply.

The Supreme Court then proceeded to hold that the time limit set forth in Section 25-123 was directory rather than mandatory, and that the special master's failure to observe the time limit therein set forth did not ipso facto deprive him of jurisdiction of the matter. However, the Supreme Court construed Section 25-123 to impose a duty upon the special master to expeditiously dispose of the matter referred to him, and noted that either party upon his failure to comply with Section 25-123 might have the special master removed or require him to make his report. The court held that until the special master had been removed as such, his jurisdiction continued, and that whether or not his report would be received and considered after the expiration of 30 days was a matter within the discretion of the lower court.