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Property

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PROPERTY

I. ZONING

Nuckles v. Allen,[1] one of the most interesting property cases decided during the survey period, presented administrative as well as property questions. The case involved a controversy between petitioning property owners and the Board of Adjustment, an administrative body set up under the Zoning Ordinance of the City of Myrtle Beach, over the right to build a motel on petitioners' property. The property was designated "R-1 — Single Family Residences." The zoning ordinance, however, granted the authority to designate certain lots within the "R-1" areas as "A" lots upon which motels could be built if, in the opinion of the board, such use would not be detrimental to other property in the section. The lots in question were "A" lots.

Several of the petitioners (hereinafter referred to as McLeod) entered into a contract of sale to purchase the lots, subject to an exception being granted.[2] McLeod prepared plot plans for several motels and submitted them to the Board of Adjustment, along with details of his proposed purchase, and asked for positive assurance of the right to so use the property. The exception was granted, and based upon this approval, the purchase was consummated.

Thereafter, McLeod contracted to sell petitioner Nuckles two of the "A" lots, with an option to buy a third. The sale was subject to the contingency that a building permit for a motel be issued immediately and that no action for an injunction against the building of a motel be taken. The building inspector issued a building permit to Nuckles for the construction of the motel, but two days later, and before Nuckles had expended money in reliance upon it, the board revoked the permit and rescinded the exception originally granted to McLeod.

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1. 250 S.C. 123, 156 S.E.2d 633 (1967).
2. The South Carolina Supreme Court did not distinguish between a variance and an exception but referred to the relief granted as a "variance or exception." Since, however, the terms of possible relief were set out in the zoning ordinance itself, it would appear that here the court was dealing with an exception rather than a variance, which is normally granted to modify zoning restrictions which have become burdensome but which provide no terms for relief.

The South Carolina Supreme Court recognized two questions which may be thus presented: (1) Could the Board of Adjustment revoke an exception granted with knowledge of a contract of sale, contingent upon that exception being granted, after the exception has been relied on to the extent that the transfer of the property was carried out? (2) Could the Board revoke a building permit issued to a subsequent purchaser of the property upon which the exception had been granted?

In first considering the question of the revocation of the exception the court looked to two South Carolina cases involving building permits, *Willis v. Town of Woodruff*[3] and *Pendleton v. City Council of Columbia.*[4] *Willis* enunciated the principle that when a permit for the erection of a structure has been granted by the proper authorities and when liabilities have been incurred thereon, a property right in the permit vests. Once created, such a right cannot be revoked without cause or absent public necessity. On the basis of this principle, the *Nuckles* court held that McLeod had acquired a vested property right to the exception when he purchased in reliance thereon, and that the Board had no right to revoke this right without cause or in the absence of public necessity.

With regard to the second question concerning the revocation of the building permit, the court held that since McLeod had a vested property right to use the property for motel purposes, that right inured to the benefit of the land and also to the benefit of Nuckles, the subsequent purchaser. One issue which was not raised but may have had bearing on the case was that of the constitutionality[5] of the provisions in the Zoning Ordinance of Myrtle Beach which allowed the designation of certain of the lots in the "R-1" district as "A" lots upon which an exception might be granted, while there were no provisions for exceptions upon the remainder of the lots in the "R-1" district.

3. 200 S.C. 266, 20 S.E.2d 699 (1942).
4. 209 S.C. 394, 40 S.E.2d 499 (1946).
5. Normally when an exception is provided for in a zoning ordinance it covers the whole area involved; however, here the exception could only be granted on specific lots designated in the zoning area. It might be argued that this designation was arbitrary and constituted "spot zoning;" however, this writer was unable to find precedent involving facts similar to those here presented in which this argument was used.

Palmetto Petroleum, Inc. v. City of Mullins[6] also involved the validity of the transfer of a building permit. Here the building inspector for the City of Mullins issued to one White a permit to build an automobile service station. White incurred no obligation in reliance upon the permit but thereafter sold the property to Palmetto Petroleum, Inc., which assumed that it could take advantage of the permit. Palmetto expended about $400.00 in reliance on that assumption.

The court held that the permit was never more than a personal privilege held by White. When White sold the property without exercising that right, the building permit became a nullity and Palmetto Petroleum had no right to rely on it. Appellant, Palmetto Petroleum, cited *Nuckles v. Allen*,[7] but the court properly distinguished *Nuckles* from the present situation. In *Nuckles* the recipient of the exception had made considerable expenditures in justified reliance upon it, while here White failed to rely on the permit at all, and it did not become a vested property right and was not transferable.

II. CONTRACT AND TORT

On appeal from an order overruling a demurrer to the complaint in *Rogers v. Scyphers*[8] our court considered two questions of novel impression in this jurisdiction: (1) Is a party who is engaged in the business of building and selling new dwelling houses liable to the purchaser or invitees[9] of the purchaser for personal injuries sustained as a result of defective construction caused by the builder's negligence? (2) Is such builder-seller of a new house liable for such injuries if he negligently or wilfully fails to disclose dangerously defective construction, of which he either knew or, in the exercise of due care, should have known?

The defendant was engaged in the construction of houses and sold one of them to the plaintiff's husband. While the house was relatively new, the plaintiff, who was pregnant

6. 159 S.E.2d 854 (S.C. 1968).
7. 250 S.C. 123, 156 S.E.2d 633 (1967).
8. 161 S.E.2d 81 (S.C. 1968).
9. The court referred to the wife of the purchaser as an invitee of the purchaser throughout the case in a possible attempt to broaden the holding. Since the injured party was an immediate member of the purchaser's family, rather than an invitee, the holding of this case is narrower than the words of the opinion would suggest.

at the time, was seriously injured when a folding stairway to the attic fell from under her. The plaintiff's complaint alleged negligence, and the demurrer of the defendants raised the above stated questions.

The court realized the seriousness of these questions because of the increasing volume of construction of homes for sale to individuals. In overruling the demurrer the court relied on the rationale of *Salladin v. Tellis*[10] and of *MacPherson v. Buick Motor Co.*[11] and decided that there was no rational difference between the duty owed by the manufacturer of a chattel and the duty owed by the builder-vendor of a new structure. The court said:

> We think there was a duty on the defendants as builders to use reasonable care in the construction of the home to avoid unreasonable risk and danger to those who would normally be expected to occupy it, and a duty to disclose to the purchaser any dangerous condition of which they knew or should have known, in the exercise of reasonable care. Such were duties owed by them, not only to the purchaser, but to members of his family whom they, of course, should have known would likely be injured by the dangerous condition.[12]

The court rejected the old rule,[13] that the grantor of real estate is not liable for injuries to a purchaser or members of his family resulting from an existing defective condition of the premises conveyed, in cases where the house is a new one, built by the vendor or for the vendor.[14]

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10. 247 S.C. 267, 146 S.E.2d 875 (1966).
11. 217 N.Y. 382, 111 N.E. 1050 (1916).
12. 161 S.E.2d at 84.
13. *See* Annot., 78 A.L.R.2d 446 (1961).
14. Although mentioned only as one of a number of cases that generally supported this court's position, Schipper v. Levitt & Sons, Inc., 44 N.J. 70, 207 A.2d 314 (1965), very strongly suggested abrogation of the privity requirement in a situation similar to that in the instant case on both the theory of negligence and that of implied warranty. In *Schipper*, the plaintiff, lessee of the original buyer of the house, sued the builder-vendor who was a mass developer of homes. The builder installed a water heater on which there was no means of regulating the temperature of the water, and a child of the lessee was severely burned by the scalding water. The New Jersey court reversed a dismissal and remanded the cause for trial stating that the facts constituted a cause of action under both the theory of negligence and the theory of implied warranty.

Frasher v. Cofer[15] presented an interesting contrast to *Rogers*. The plaintiff in *Frasher* proceeded under the theory of implied warranty to recover damages for a defective heating system which was a part of the house that the defendant-builder sold to the plaintiff. The court quoted from *Lessly v. Bowie*[16] the principle that "[i]n a sale of lands there is certainly no implied warranty, as there may be in reference to personalty. . . . A purchaser must protect himself, if at all, by covenants in writing, out of which all his rights of defence must come, except, perhaps, in the case of fraud."[17]

In addition to the case of fraud the court hinted that there might be liability when the house is new, built by the vendor, sold shortly after completion, and the defective condition was one of which the vendor knew or should have known, and of which the vendee did not know or have reason to know. Unfortunately, the complaint was insufficient to state a cause of action under either theory. It seems certain, however, that in light of dicta in *Rogers* and of statements in *Frasher*, the court will impose liability on the theory of implied warranty if the case meets the standards set out above.

In *Lumpkin v. Allstate Insurance Co.*[18] the plaintiff sued her insurance carrier for conversion of her automobile. The plaintiff was insured by Allstate under a policy which afforded one hundred dollars deductible collision insurance. The automobile was wrecked and taken to a body shop, where later the shop operator gave the defendant's adjuster a repair estimate. The adjuster left with the shop operator a draft for the amount of the repair bill, less the deductible portion, the signing of which would constitute a full release; and also left a separate full release, both to be signed by the plaintiff. The defendant's agent authorized repairs and left instructions not to deliver the car to the plaintiff before she executed the two documents. At no time did the plaintiff expressly authorize repairs or assent to this transaction. In fact the plaintiff understandably refused to sign the releases since prior to the accident the value of her

15. 160 S.E.2d 560 (S.C. 1968).
16. 27 S.C. 193, 3 S.E. 199 (1887).
17. *Id.* at 197, 3 S.E. at 200.
18. 159 S.E.2d 852 (S.C. 1968).

automobile was about $3,000 while, according to the plaintiff, its market value after the repairs were performed was only $1,300.

Under the principles set forth in *Campbell v. Calvert Fire Insurance Co.*[19] the defendant's liability under a policy "to repair or replace the property or such part thereof with other of like kind of quality" is not limited to the amount of the repair bill but extends to the cost of placing the automobile in the same condition that it was in prior to the accident. It is obvious that in the present case the defendant had not fully discharged its obligation to its insured.

The court found that the acts of the defendant in authorizing repairs and giving directions as to the retention of the automobile constituted constructive possession, which made the repairman the defendant's agent, and that the acts of both constituted a conversion.[20]

III. TAKING

In *Brown v. School District of Greenville County*[21] the plaintiff landowners sued the School District and the City of Greenville for damages caused when surface waters were concentrated on the plaintiffs' land. Their complaint alleged that the school wrongfully constructed the school buildings and grounds so that the natural flow of rain water was concentrated onto plaintiffs' property with great force and that the city, after properly assuming maintenance of the road between the school and the damaged property, failed to provide proper drainage. In ruling on the school's demurrer the court quoted from *Lindsay v. City of Greenville.*[22]

> When a public agency acting under authority of statute uses land which it has lawfully acquired for public purposes in such a way that neighboring real estate, belonging to a private owner, is actually invaded by superinduced additions of water, earth, sand or other material so as effectually to destroy

19. 234 S.C. 583, 109 S.E.2d 572 (1959).
20. *See, e.g.*, Powell v. A.K. Brown Motor Co., 200 S.C. 75, 20 S.E.2d 636 (1942).
21. 161 S.E.2d 815 (S.C. 1968).
22. 247 S.C. 232, 146 S.E.2d 863 (1966).

> or impair its usefulness, there is a taking within the meaning of the constitution.[23]

On the basis of *Lindsay* the court overruled the school's demurrer. With regard to the city, the court concluded that there must have been positive action[24] on its part for statutory liability to attach.[25] Since no positive action was alleged, the city's demurrer was properly sustained by the lower court.[26]

IV. EASEMENTS

In *Tyler v. Guerry*[27] sixty-six persons brought an action demanding that the defendants be enjoined from interfering with their use of two roads, both ending on the defendants' land; and that the right of the public to use these roads be determined.

One of the roads, known as the old road, had been used by the local residents for more than fifty years as an access to a river bank on defendant's land. The river bank was used, sometimes with permission and sometimes not, for fishing, swimming, picnicking, and occasional baptismal services. Only one witness testified that he put a boat in at the river bank. It did not, therefore, legally qualify as a landing. The court held that since the road was one across the land of two owners, ending on the land of one of them, rather than a road connecting a public road and a public waterway, no prescriptive easement arose.

The plaintiffs attempted to prove a dedication of the new road, which had been in use for about ten years, by showing that the county authorities helped with the construction of the road. The evidence demonstrated, however, that the defendants provided the necessary labor and materials for the road and that it was common practice for the county road officials to assist private landowners in this manner. The court adopted the standard set out in *Seaboard Air Line*

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23. *Id.* at 238, 146 S.E.2d at 866. *See also* Chick Springs Water Co. v. State Highway Dep't., 159 S.C. 481, 157 S.E. 842 (1931). *But see* Gasque v. Town of Conway, 194 S.C. 15, 8 S.E.2d 871 (1940).
24. For an example of "positive action," see Chick Springs Water Co. v. State Highway Dep't., 159 S.C. 481, 157 S.E. 842 (1931).
25. S.C. CODE ANN. § 59-224 (1962).
26. Hill v. City of Greenville, 223 S.C. 392, 76 S.E.2d 294 (1953).
27. 160 S.E.2d 889 (S.C. 1968).

Railroad Co. v. Town of Fairfax[28] with respect to the quantum of proof necessary to show a dedication. *Seaboard* required that the proof must be strict, cogent and convincing and that the acts proved must not be consistent with any construction other than that of a dedication. The court held that a higher degree of proof than by the preponderance of the evidence was required and that the plaintiffs did not meet that standard.

While primarily involving procedural questions, *Marshall v. Winter*[29] was a case in which an abutting property owner sought damages for the defendant's interfering with his right to use an abandoned public highway as a means of ingress and egress. Under the principles expressed in *Taylor v. Cox*,[30] title remains vested to the center of the road in abutting property owners, and when the road is a way of necessity, the easement in the remaining half of the road is not extinquished. Thus, it would seem that when a public road is abandoned, the abutting property owners have an easement in the road as a means of ingress and egress when the road is necessary to the use of the property owner's land.

V. Deeds and Grants

Stylecraft, Inc. v. Thomas[31] was a very interesting case involving a dispute over the quantum of estate conveyed by a deed, which in the familiar language of such instruments, provided in part:

> I, T. C. Hammond in the State aforesaid, Aiken County, in consideration of the sum of Eighty & No/100 Dollars to me paid by Tom McCain, James Smith, & William Hammond as Trustee of Carys Hill School in the State aforesaid Edgefield County have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Tom McCain, James Smith and William Hammond, their successors and assigns, All that lot or parcel of land in the State & County above named containing Four (4) acres and bounded East, North

28. 80 S.C. 414, 61 S.E. 950 (1908).
29. 250 S.C. 308, 157 S.E.2d 595 (1967).
30. 218 S.C. 488, 63 S.E.2d 470 (1951).
31. 159 S.E.2d 46 (S.C. 1968).

> & West by lands of the Grantor (T. C. Hammond) and South by lands of H. W. McKie.
>
> It is specifically understood and agreed by all parties that the land is to be used for school purposes only — should it ever be used for other purposes the said property is to be revert [*sic*] to him the said T.C. Hammond or his heirs and assigns forever.
>
> . . .
>
> TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Tom McCain, James Smith and William Hammond, their successors and assigns forever.

The plaintiff acquired the property through a long chain of conveyances from the above grantees, and the defendant claimed as assignee of the grantor's alleged reversionary interest.[32] The issue, as stipulated by the parties, was whether or not subsequent words in the same instrument could limit a fee simple estate previously established in the granting clause. The court, citing numerous cases as precedent, stated that when the granting clause in a deed purports to convey title in fee simple absolute, the estate may not be cut down by subsequent words in the same instrument.[33] The court held that the deed conveyed a fee simple absolute and that the restrictive words following the description of the property were ineffectual to cut down that estate.

The appellants contended that the above rule should not be followed because it violated the clear intent of the grantor. The court rejected this argument because of the principle that the intention of the grantor will not be allowed to prevail if it runs counter to an established rule of law.

It would certainly appear that the court did not address itself to the principal issues that the facts of this case presented. One important question that should have been decided, but which was not considered by the court, was whether or not the instrument here involved was a trust deed. No mention of a trust was made by either party in the briefs or by the court. If it might be assumed, however, that this was not a trust deed, the question would certainly arise as to the

32. *See infra* note 37.
33. *E.g.*, Groce v. Southern Ry., 164 S.C. 427, 162 S.E. 425 (1932).

quantum of estate conveyed in the absence of the magic words "their heirs and assigns."[34] It should be recognized that these words were omitted and the words, "their successors and assigns," were used instead. This would seem to create no more than a life estate in the grantees. On the other hand, if the instrument involved were considered a trust deed, as would be suggested by *McCown v. King*,[35] no such words of inheritance would be necessary.

If the quantum of estate held to have been conveyed can be justified, however, on the grounds that this is a trust deed,[36] the practical implication of the court's decision striking the words of condition would be astounding. This decision would make it extremely difficult to create a fee simple determinable.

It would seem that if this were in fact a trust deed it would be very difficult to ignore the words which were used in an attempt to create the defeasible fee. As is seen in the *McCown* case, rules of law are not rigidly applied in trust deeds and careful consideration is normallly given to the intention of the grantor. In this case, from looking at the instrument as a whole, it is clear that the grantor intended to create some sort of defeasible fee.[37]

It is hoped that this decision will not be taken as one involving a trust deed. Assuming that it is not, the decision is well supported by South Carolina precedent holding that subsequent words in a deed may not limit a fee simple estate created in the granting clause. But, as previously in-

34. *See* Means, *Words of Inheritance in Deeds of Land in South Carolina: A Title Examiner's Guide*, 5 S.C.L.Q. 313 (1953).

35. 23 S.C. 232 (1885).

36. The rule as stated in McCown v. King, 23 S.C. 232 (1885), is that if it appears anywhere in the instrument that a trust is intended then that trust will be given effect. Here it would seem from a close look at the deed that a trust was intended. Since the property was conveyed to three individuals, apparently already acting as trustees of the school, to use for school purposes and since the consideration was paid by these individuals in their capacity as trustees, it would certainly seem that the grantor was attempting to create a trust.

37. Not necessary to the decision of the case was the question of whether a possibility of reverter or a right of entry would have been created had the clause been given effect. For examples of the opposing views in South Carolina see White v. Birtton, 75 S.C. 428, 56 S.E. 232 (1906), and Purvis v. McElveen, 234 S.C. 94, 106 S.E.2d 913 (1959). In the event that the court had given effect to either a possibility of reverter or a right of entry, these interests in land are usually considered inalienable by inter vivos conveyance, and the defendant's interest in the property would be doubtful.

dicated, the words of the granting clause were insufficient to create a fee simple estate unless this were a trust deed.

Lane v. McEachern[38] was a case involving a land grant from King George II of Great Britain to James Bullock. The land was situated along the Edisto River, which is a fresh water navigable river, but is also tidal in that the water level changes with the ebb and flow of the salt water tide in and out of the mouth of the river. The disputed property was situated between the high and low water marks of the river. The land was described by the use of a plat which was attached to the grant, and it was stipulated that the land within the distances and area shown on the plat included the property between the high and low water marks.

The defendant contended that under the rule of construction set forth in *Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.*,[39] a grant, from a sovereign, of land bounded by navigable waters passes title only to the high water mark in the absence of some specific reference to a "low water mark." The court rejected this argument in the instant case because the plat was specific enough to convey the property in dispute and there was no need to resort to a rule of construction.

VI. JUDICIAL SALES

Cumbie v. Newberry[40] involved the validity of a judicial sale of a tract of land to a purchaser in good faith. In an earlier action for the partition of this tract, the parties agreed that the property be sold and the proceeds held until further order of the court. The court issued a consent order for the sale of the land with the normal proviso that if the original successful bidder should fail to comply with the terms of his bid within 10 days after the acceptance of the bid, the property should be readvertised and resold on the same terms at some subsequent day. The clerk of court was authorized to execute a fee simple title to the purchaser when the purchaser had complied with the terms of the sale. The first successful bidder failed to comply, and in compliance with the order, the clerk sold the property to the defendant.

38. 162 S.E.2d 174 (S.C. 1968).
39. 148 S.C. 428, 146 S.E. 434 (1928).
40. 159 S.E.2d 915 (S.C. 1968).

In this action, the plaintiff asked to have the sale and deed set aside on the grounds that he was given no personal notice of the second sale and had no opportunity to be present and protect his interest at the bidding.[41] The court concluded that the clerk had the authority to resell the property under the order of sale without giving personal notice to the parties and without a new order of the court. The court concluded that public policy requires that the validity of judicial sales be upheld when they reasonably can be. To support this principle the court cited the rule[42] that a purchaser in good faith at a judicial sale is not affected by irregularities in the sale, but is required to ascertain only the jurisdiction of the court and whether or not all proper parties were before the court when the order was made. It would seem that the rights of those who have an interest in the property would be adequately protected by this rule since they would have a much better chance of keeping a close check on the proceedings than would a prospective purchaser.

VII. MECHANIC'S LIENS

Guignard Brick Works v. Gantt[43] involved the question of whether or not the plaintiff has a valid mechanic's lien on the property of the defendant. Gantt had entered into a contract with Van Builders for the construction of a house on his property. Van entered into a contract with Guignard for the supply of the necessary brick to be used. Guignard sold and delivered 22,000 brick to Van, 6,700 of which Van used in building the house. At this point Van abandoned the contract, and Gantt proceeded with the construction using the remaining 15,300 brick to complete the house. It appears that Gantt knew before he completed the construction that Van had not paid Guignard for the brick.

In this action Guignard attempted to establish a lien under section 45-251 of the South Carolina Code[44] on the brick that Gantt used after Van abandoned the contract. Essential to

41. The plaintiff was apparently displeased because one of the opposing parties to the original action bought the property for $700 which was substantially less than the $1,100 bid at the first sale.
42. Bennett v. Floyd, 237 S.C. 64, 115 S.E.2d 659 (1960); Brownlee v. Miller, 208 S.C. 252, 37 S.E.2d 658 (1946); Wingard v. Hennessee, 206 S.C. 159, 33 S.E.2d 390 (1945).
43. 159 S.E.2d 850 (S.C. 1968).
44. S.C. CODE ANN. § 45-251 (1962).

the existence of this lien was the fact that the materials were supplied with the "consent of the owner." Guignard asserted that the use of the brick by Gantt with knowledge that they had not been paid for by Van constituted "consent of the owner." The question appears to be one of novel impression in this jurisdiction, but the court looked to applicable principles in past decisions. First, in *Williamson v. Hotel Melrose*[45] it was stated that a party seeking to establish a statutory lien must bring himself fairly within the expressed intention of the lawmakers. If the material is not supplied with the clear "consent of the owner" then the supplier would certainly appear not to be within the expressed intent of the legislators.

In *Metz v. Critcher*[46] the facts were similar to those in *Guignard* except that the builder did not abandon the contract. The court held that the supplier of lumber for the house did not have a lien because the owner had no choice as to who furnished the lumber; it was supplied with the owner's knowledge but not with his express consent. The court considered that the ability of the owner to choose was essential to his giving consent and that the acts of Gantt were insufficient to constitute consent on his part. *Guignard* relied on *Rapid Fireproof Door Co. v. Largo Corp.*,[47] in which the court held that when title to the brick remained in the seller, it was possible for him to establish a mechanic's lien. The dicta of *Rapid Fireproof*, however, expressly supported the defendant's position in the case in which the plaintiff no longer had title to materials at the time the defendant used them in the completion of the building.

VIII. CONDEMNATION PROCEEDINGS

Kunkle v. South Carolina Electric & Gas Co.[48] involved an action under section 10-2401 of the South Carolina Code[49] to determine the estate or title that passed under 1933 condemnation proceedings to the Lexington Water Power Company. It was stipulated that Lexington acquired either an easement in the land or fee simple title thereto for the con-

45. 110 S.C. 1, 96 S.E. 407 (1918).
46. 86 S.C. 348, 68 S.E. 627 (1910).
47. 243 N.Y. 482, 154 N.E. 531 (1926).
48. 161 S.E.2d 163 (S.C. 1968).
49. S.C. CODE ANN. § 10-2401 (1962).

struction and maintenance of a dam and reservoir on the Saluda River.

The court assumed, for the purpose of this decision, that Lexington had the authority to condemn the fee. As pointed out in *Atkinson v. Carolina Power and Light Co.*,[50] however, such authority is optional with the condemners, subject to review by the courts. The court held that it was necessary for the condemnation proceedings to show the interest sought to be acquired in order that the landowners have adequate notice of the extent of the taking. The landowners refused to assent to the taking. Lexington therefore filed a petition with the court to be allowed to proceed with the acquisition of the property. The petition stated in part that the "lands above described" were necessary for use in the construction and maintenance of the dam and reservoir. Lexington was allowed to proceed and the amount of compensation was fixed by a jury. There was no specific notice that the fee was being taken, and it appears that the only notice that was given at all was that the "lands" were "required" as stated in the petition.

The issue involved was whether or not notice that the "land" was "required" constituted the necessary notice of the condemnation of the fee. The court held that the term "lands" did not constitute an unqualified notice that the fee was being taken since "lands" may mean any interest or estate in land, including an easement. For that reason and the fact that an easement would adequately serve the proposed use, Lexington acquired an easement in the property rather than a fee simple.

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50. 239 S.C. 150, 121 S.E.2d 743 (1961).