STATUTORY CONSTRUCTION

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During the survey period the number of cases turning on the point of statutory construction was approximately the same as in the past few years. Only a few of those cases will be dealt with in this article. Many other cases in which questions of statutory construction and validity were raised have more bearing on the substantive law of the subject to which they pertain, such as taxation and constitutional law, and these cases are left for treatment by the writers of those particular topics.

Griffin v. Benton,[1] raised the question whether a statute enacted originally in 1872 could be used for the benefit of a motorist, who of course was not contemplated by the framers of the statute because automobiles were not then in existence. The statute made it unlawful to permit certain animals to run at large in counties adopting the stock law. Plaintiff alleged negligence on defendant's part in violating the statute by allowing a black mule to run at large at night, resulting in a collision between mule and automobile. Defendant contended that the statute was designed to protect only crops from trespassing animals, and was not designed to protect motorists from animals roaming on the highway. In deciding for the motorist, the court of appeals relied upon two principles, one being that a statute in general terms should be construed to apply prospectively to things coming within the purview of the statute after its enactment, and the other and perhaps stronger reason being that this statute was incorporated into the 1933 Code, and the evil of straying animals endangering automobiles was known to the General Assembly that enacted the 1933 Code.

Anthony v. Penn[2] construed the "Modification of Permanent Alimony Judgments" Act[3] as having future operation only. For this reason the statute, passed in 1955, could not be the basis for revising a final alimony decree rendered in 1942. Prior to the passage of this statute, the trial judge had no authority to modify the terms of an

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1. 92 Ga. App. 167, 88 S.E.2d 287 (1955).
2. 212 Ga. 292, 92 S.E.2d 14 (1956).
3. Ga. Laws 1955, p. 630, GA. CODE ANN. § 30-220 (Supp. 1955).

unexcepted to final decree for alimony. The statute permitting modification was completely silent as to whether it should apply to alimony judgments rendered prior to its passage or whether its future operation should be limited to judgments entered after passage of the statute. In deciding for the more restricted scope of the statute, the supreme court emphasized the general thought that a statute will be presumed to have only future operation unless it is shown that the General Assembly intended it to operate retroactively.

Jenkins v. State[4] involved the statute[5] which permits possession in dry counties of one quart of intoxicating liquor if it has been purchased for use from an authorized retailer and is properly stamped. The question presented to the court of appeals was whether the defendant as a matter of defense would have to prove where and from whom the liquor was purchased and for what purpose it was retained. The court concluded that while the defendant should have to prove that the liquor possessed was properly stamped and was within the legal limit, to require further proof of him would be unreasonable. The court recognized the principle that where there is a general enactment with exceptions, the exceptions are matters of defense as to which the burden is on the defendant. However, the cardinal rule that the intention of the legislature is to be ascertained was invoked by the court to avoid putting this heavy burden on the defendant. It would not be assumed that the legislature intended an unjust and inequitable construction of a statute.

Walden v. Owens[6] presented the frequently returning problem of whether a statute is general or special. This question was important in the case because the constitutional requirement as to local measures that they be advertised in the locality to be affected had not been complied with. The statute was one of those frequent examples involving classification by population. Although the statute applied to all counties having by the 1940 census a population of not less than 53,000 nor more than 75,000 and to all counties having a population within those brackets according to the results of any future census, the Supreme Court of Georgia found the statute to be local and thus unconstitutional on the ground that there was no provision for counties dropping out of the classification as their population altered so that they would no longer be included. In other words, a classification by population to make the statute general has to be open at both ends. It must admit counties later falling within its description and it must

4. 93 Ga. App. 360, 92 S.E.2d 43 (1956).
5. Ga. Laws Ex. Sess., 1937-38 p. 103, GA. CODE ANN. § 58-1073 (Supp. 1955).
6. 211 Ga. 884, 89 S.E.2d 492 (1955).

drop out counties which later do not continue to fall within its description.

The statutory construction case which created the most differences of opinion within the court was *Webb v. Echols.*[7] The question here was the constitutionality of a statute which repealed a statute setting up a sole commissioner of roads and revenues of Clayton County and which simultaneously created a board of commissioners of roads and revenues for that county. The later statute provided for a board of three members, one of whom was to be the former sole commissioner who was to continue until the end of his term of office. The constitution of Georgia forbids the abolition of an office to which a person has been elected or the varying of the term of that office by special bill during the term of office unless such action has been approved by a referendum. No referendum was had in this case, and the question was therefore whether the office of the sole commissioner had been abolished. The majority of the supreme court came to the conclusion that it had not. The majority of the court felt that the simultaneous repeal and re-enactment of substantially the same provisions was to be construed as a continuation of the earlier provisions rather than as the repeal of them. Under this view it seems that the court considered the office of sole commissioner as not being abolished but rather that the sole commissioner had simply had two new members added to his commissionership. The three dissenters, Chief Justice Duckworth and Justices Head and Hawkins, took the view that although the former sole commissioner would serve for the same length of time and receive the same compensation as would be the case had there been no statutory alteration, the office had in fact been abolished and therefore the constitutional provision referred to had been violated.

7. 211 Ga. 724, 88 S.E.2d 625 (1955).