IN THE SUPREME COURT OF THE STATE OF NEVADA.

State of Nevada, Ex-Rel Joseph Wyerhorst, Relator and Appellant.
vs.
S. L. Lee, Secretary of the Nevada State Board of Medical Examiners, Respondent.
Appeal from the Third Judicial District Court in and for Nye County, Hon. Peter Breen, District Judge..
George A. Clark, Attorney for Appellant.
William Forman and W. B. Pittman, Attorneys for Respondent.
Opinion by Norcross, J.

This is an appeal from a judgment and from an order sustaining demurrer to appellant's petition to the Third Judicial District Court of the State of Nevada, in and for the county of Nye, for a writ of mandate to be directed to respondent requiring him, as Secretary of the State Board of Medical Examiners, to issue to appellant a temporary certificate entitling appellant to practice his profession of medicine and surgery in this State until the next regular meeting of the State Board of Medical Examiners.

Relator, by his petition, claims to be qualified to have issued to him by the State Board of Medical Examiners a certificate or license entitleing him to practice his profession in the State of Nevada, and that under the provisions of Section 4, of an Act entitled: 'An Act providing for the creation of a State Board of Medical Examiners, and to regulate the practice of medicine and surgery in the State of Nevada", approved March 15, 1899, (Compiled Statutes Sec. 1542), it is the duty of the respondent, as Secretary of the State Board of Medical Examiners, to issue him a temporary certificate entitling relator to practice until the next regular meeting of the Board.

The only material question presented upon this appeal is whether or not that portion of the said Act of 1899, providing for the issuance of temporrary certificatec by the Secretary of the Board of Medical Examiners has now any force as a part of the law of this State regulating the practice of medicine and surgery.

The Legislature of this State at its last session passed an Act entitled "An Act regulating the practice of medicine, surgery, and obstetrics in the State of Nevada; providing for the appointment of a State Board of Medical Examiners and defining their duties; providing for the issuing of licenses to practice medicine; defining the practice of medicine; defining certain misdemeanors and providing penalties, and repealing all other Acts, or parts of Acts, in conflict there-with." Approved March 4, 1905. (Stats. 1905, p. 87.)

The court below held that the effect of the Act of 1905, was to repeal the Act of 1899, and as the Act of 1905 contained no provision for the granting of temporary certificates to applicants to practice medicine, surgery or obstetrics, there remained nothing upon which to bace a writ of mandate.

The correctness of the decision of the trial court is maintained by counsel for respondent, while counsel for appellant takes the position that the provisions of the Act of 1899, authorizing the issuance of temporary certificates by the Secretary of the State Board of Medical Examiners, is not in conflict with any provision of the Act of 1905, and, as the latter Act does not contain any clause expressly repealing the Act of 1899, the provision in question is still in force.

A careful comparison of the two Acts, however, leads us to the conclusion that, under a well settled rule of statutory construction, the entire Act of 1899 is repealed by he Act of 1905.

The Act of 1905 is a comprehensive measure, complete in itself, revising the whole subject matter of the Act of 1899, and evidently intended as a substitute for it, although it contains no express words to that effect. In the case of Bartlett et al. vs. King, Executor, 12 Mass. 537, the rule applicable to this case was stated as follows: "A subsequent statute, revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must, on the principles of law, as well as in reason and common sense, operate to repeal the former." This Court has heretofore twice quoted with approval the rule as above declared in the Bartlett case and it is supported by abundant authority from other courts. (Thorpe vs. Schooling, 7 Nev., 15; State vs Rogers, 10 Nev. 319; Mack vs Jastro, 126 Cal., 132; State Board of Health vs Ross, 181, Ill., 87; see also, 26 Am. & Eng. Enc. L. 2d Ed. 731 and authorities cited in note 4.)

The case of the State Board of Health vs Ross, supra, is particularly in point and we quote a brief extract from the opinion in that case: "An examination of the Act of 1887, shows that it is a complete revision of the whole subject matter of the former Act of 1887, is a complete and perfect system in itself, and, as we have seen, was an Act to regulate the practice of medicine in the State of Illinois and gave power to the Board of Health to revoke certificates of persons licensed under the Act, for unprofessional or dishonorable conduct. This being so, the Act of of 1887 operated as a repeal of the Act of 1877, without any reference to the express repealing clause contained in the former Act. (Culver v. Bank, 64 Ill., 528, and cases there cited; Devine vs. Board of Commissioners, 84 Ill, 590; People vs Town of Thornton, 186 Id. 162; Sutherland on Statutory Const. Sec. 156; Norris vs Crocker, 13 How. 438.) In the Devine case this Court say:

'A subsequent statute revising the whole subject of a former one, and intended as a substitute for it, although it contains no express words to that effect, operates as a repeal of the former.' In the very recent case of People vs Town of Thornton, supra, the Supreme Court say: 'Where the Legislature fram[es a] new statute upon a certain subject matter, and the legislative intention appears from he latter statute to be to frame a new scheme in relation to such subject matter and make a revision of the whole subject, there is, in effect, a legislative declaration that whatever is embraced in the new statute shall prevail and that whatever is excluded is discarded. The revision of the whole subject matter by the new statute evinces an intention to substitute the provisions of the new law for the old law upon the subject.' It follows that the claim that the Act of 1877 is still in force is untenable, as it is repealed by the Act of 1887."

In the case of Mack vs Jastro, supra, the question involved was whether the County Government Act of 1897, operated as a repeal of the County Government Act of 1893. The court in that case say: "We think however, that a reading of the two sections at once discloses that the legislature in the County Government Act of 1897 designed and devised a new and complete scheme for the issuance of county bonds, and while it is true that repeals by implication are not favored, whenever it becomes apparent that a later statute is revisory of the entire matter of an earlier statute, and is designed as a substitute for it, the latter statute will prevail, and the earliest statute will be held to have been superceeded, even though there be found no inconsistences or repugnancies between the two. Frequently, these cases arise where the later statute covering the whole subject matter omits or fails to mention certain terms or requirements found in an earlier, and it is insisted as here, that those particular provisions of the earlier statute should be held to be still in force. But, as is said by the Supreme Court of the United States in Murdock vs Meyer, etc. 20 Wall. 590, where a like question was presented to that tribunal: 'It will be perceived by this statement that there is no repeal by positive new enactments inconsistent with the old law. It is the words that are wholly omitted in the new statute which constitute the important feature in the questions thus propounded for discussion. * * * * * A careful comparison of these two sections can leave no doubt that it was the intention of Congress by the latter statute to revise the entire matter to which they both had reference, to make such changes in the law as it stood as they thought best, and to substitute their will in that regard entirely for the old law upon the subject. We are of the opinion that it was their intention to make a new law so far as the present law differed from the former, and that the new law embracing all that was intended to be preserved of the old, omitted what was not so intended, because complete in itself, and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform.'" After citing a number of additional authorities the court further say: "The facts in the case above quoted and in the one at bar are strictly analogous, and the principle declared is pertinent and decisive. It would unduly and unnecessarily prolong this consideration to set forth the two statutes for purpose of comparison and contrast, but as has been said, a mere reading of the two will at once disclose that the legislature, by the latter, formulated a plan for the issuance of bonds, full and complete in itself, and, therefore, a plan which superceded its earlier declaration on the matter. It is not so much a repeal by implication as it is that, the legislature having made a new and complete expression of its will upon the subject, this last expression must prevail, and whatever is excluded therefrpm must be ignored."

Counsel for appellant, while admitting the correctness of the rule relied on, argues that it is not applicable to statutes like that of 1905 in question, for the reason that the legislature having, in the repealing clause of the Act, expressed its intention as to the extent the Act should operate as a repeal of former statutes or provisions of law, such repealing clause is controlling. Section eighteen of the Act of 1905 contains this repealing provision: "All acts and parts of Acts in conflict with this Act are hereby repealed."

From this position counsel argues that the provisions of the Act of 1899, relative to the granting of temporary certificates by the Secretary of the Board of Medical Examiners, are not in conflict with the provisions of the Act of 1905, and, hence, are still in force and impose the duty upon respondent to grant the temporary certificate demanded of him. Counsel has cited one or two authorities which seem to support his contention, particularly the case of Borden vs Wells, 14 Mont. 462. In the case last mentioned the court gave a literal construction to a repealing clause similar to that contained in the Act of 1905, in question, and virtually held that it alone was determinative of the intention of the legislature in so far as the repealing effect of the statute was concerned. If it was the intention of the Montana Court to hold the rule applied in the Bordon case to be an inflexible one, to be applied in all cases where statutes containing similar repealing clauses are to be construed, then it becomes a rule of interpretation to which we cannot subscribe.

Where the rule which we have held to be governing in this case, has been applied by the courts generally, repealing provisions of a general nature, like that herein in question, have not been given controlling effect in determining the intention of the legislature as to the extent the Act should operate to repeal former statutes or provisions thereof.

'If from the entire body of the statute the legislative intent is plainly manifest, the intent is controlling and will be given effect, even though a a single section, taken alone, might be so construed as to manifest a different intent. The same rules of construction are applicable to repealing clauses as to other portions of a statute. (Smith vs. The People, 47 N. Y. 339; 26 Am. & Eng. Enc. of L. 2d Ed. 720.) In the case of Smith vs The People supra the Court say: "A clause in a statute purporting to repeal other statutes is subject to the same rules of interpretation as other enactments, and the intent must prevail over literal interpretation. One part of an Act of the legislature may be referred to in aid of the interpretation of other parts of the same act."

In the case of Mack vs Jastro: State Board of Health vs Ross and Thorpe vs Schooling, supra, cited in support of the rule held applicable in this case, all contain repealing sections practically identical with section eighteen of the Act of 1905.

Even if the rule we have held governing in this case were not applicable, nevertheless, appellant could not prevail for the reason that the provisions of the Act of 1899, relative to the granting of temporary certificates, are in conflict with certain of the provisions of the Act of 1905. By section one of the latter Act it is provided: "That it shall hereafter be unlawful for any person, or persons, to practice medicine, surgery or obstretics in this State without first obtaining a license so to do as hereinafter provided." By section seven it is provided: "After this law goes into effect, any person desiring to practice medicine, surgery or obstetrics or any of the various branches of medicine in this State, shall, before beginning to practice, procure from the State Board of Medical Examiners a certificate that such person is entitled to practice medicine, surgery, or obstetrics in this State," etc. If under the provisions of the Act of 1905 quoted, it is necessary to obtain a license from the State Board of Medical Examiners before lawfully becoming entitled to practice, how can it be argued that one can also be lawfully entitled to practice upon a certificate issued simply by the Secretary of the Board, and upon the issuance of which the Board has not passed?

The Act of 1899 did not contain any similar provision making it incumbent to obtain a license from the Board of Medical Examiners before beginning to practice. It authorized such Board to issue licenses at regular meetings and permitted the Secretary of said Board to grant temporary certificates between the regular meetings, good until the next regular meeting of the Board. Taking the Act of 1905 as a whole and we think it is clearly manifest that it was the intention of the legislature to provide that no one should be permitted to practice medicine, surgery or obstetrics in this State except after obtaining a license to do so from the State Board of Medical Examiners.

It is argued that as only two regular meetings of the Board are provided for per annum, a construction of the statute as here given will impose a great hardship on those seeking to enter the practice between such regular meetings, and to impute such intention upon the legislature would be unfair to that body. Doubtless the legislature in the passage of the Act of 1905, was considering the public good rather than the convenience of private individuals, but the legislature, also doubtless, intended to obviate the inconvenience that applicants to practice might experience from being unable to longer obtain temporary certificates, by the provision, not found in the Act of 1899, permitting special meetings of the Board to be held at the call of the President of the Board upon two weeks published notice.

The conclusion we have reached upon the main question makes it unnecessary to consider others presented in the record.

The judgment and order of the trial court are affirmed.

We concur:
Fitzgerald, C. J.
Talbot, J.

IN THE SUPREME COURT OF THE STATE OF NEVADA.

The State of Nevada, Plaintiff.
vs.
Frank Williams, Defendant.
Atty.-General Sweeney, Attorney for Plaintiff.
D. H. Hartson and P. N. Packard, Attorneys for Defendant.
Appeal from 2d Judicial District Court of Washoe County.

OPINION.

Jointly with three others, Fred Roberts, J. P. Sevener and T. F. Gorman, this defendant was convicted of murder in the first degree in Humboldt County, and on a former appeal with them was granted a new trial by this court. 77 P. 598.

Later, and after the case against all of them had been transferred to Washoe County, Williams was given a separate trial which again resulted in his conviction and sentence of death. He appeals from the judgment and order denying a new trial. The facts are stated in the opinion which we have rendered against the other three.

It is said that the evidence is insufficient to justify the verdict of murder in the first degree because the shooting was not done until about two minutes after the robbery. It occurred as part of a continuous assault lasting from the robbery to the shooting and apparently was done for the purpose of preventing detection. The court properly instructed the jury that under the statute all murder committed in the perpetration of robbery is of the first degree. If there had been no robbery there was sufficient time for premeditation to justify the verdict.

State v Gray, 19 Nev. 218.
State v Lopez, 15 Nev. 407.
State v McMillain, 3 Nev. 409.
State v Ah Wook, 12 Nev. 369.

It is claimed that one of the jurors, A. C. Hombold, was incompetent by reason of having formed and express-

(Continued on Page Four.)

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