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## RECENT LEGISLATION

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## RECENT LEGISLATION \*

### A RESUME OF THE MORE IMPORTANT ACTS OF THE 1949 GENERAL ASSEMBLY

GEORGE H. FISCHER

Each year with the closing of another session of the General Assembly, the lawyers and judges of South Carolina are confronted with the task of discovering what new laws have been passed and what changes have been made in old laws by amendments. The purpose of this article is to list some of the more important of the newly adopted acts and amendments without any attempt at interpretation. It is not meant to be a definitive list but is rather a brief sketch of the changes in the general law.

#### POWER TO FIX ATTORNEYS' FEES IN PARTITION PROCEEDINGS

An amendment which should be of interest to all practicing attorneys throughout the State was made to Section 8827, wherein it was provided, that the court of common pleas is authorized and empowered to fix attorneys' fees in all partition proceedings and as may be equitable to assess such fees against any or all of the parties in interest. Prior to this amendment, Section 8827 merely empowered the court of common pleas with jurisdiction in all cases to make partition in kind of real and personal estates held in joint tenancy or in common.

#### DIVORCES FROM BONDS OF MATRIMONY PROVIDED FOR IN SOUTH CAROLINA

One of the most important changes has resulted from the ratification of an amendment to the Constitution of South Carolina, 1895, eliminating therefrom Section 3 of Article XVII, prohibiting divorces from bonds of matrimony in this State and substituting a new provision whereby divorces are made legal. A Joint Resolution proposing such an amendment

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\* All references to Code Sections are made to the Code of Laws of South Carolina, 1942.

to the Constitution was submitted to the qualified electors of this State in the general election last fall. A majority of these electors voted in favor of such an amendment and at the next meeting of the General Assembly an Act to ratify the amendment then in force, prohibiting divorces, was passed. Section 3 of Article XVII of the Constitution, as so amended, reads as follows:

“Section 3: Divorces from the bonds of matrimony shall be allowed on grounds of adultery, desertion, physical cruelty, or habitual drunkenness”.

During the same term of the General Assembly an Act to provide for and regulate the granting of divorces from the bonds of matrimony in this State was enacted. This Act bestows exclusive jurisdiction upon the equity side of the court of common pleas; sets forth the grounds upon which a divorce may be obtained in this State; requires a party to have been a resident of South Carolina for at least one year prior to the commencement of the action; and, further regulates the procedure to be followed in order to institute an action for divorce.<sup>1</sup>

It should be noted, in connection with the granting of exclusive jurisdiction to the court of common pleas in all divorce actions, that after the passage of the above Act, Section 119, relating to jurisdiction of County court for the county of Greenville, and Section 165, relating to jurisdiction of County court for the county of Richland, have been amended so as to provide, that such courts shall have jurisdiction in divorce proceedings. These amendments provide that the respective county courts shall have concurrent jurisdiction with the court of common pleas of that county in actions relating to divorce. It is further provided, that one of the parties to the action must have been a resident of the county for one year or more prior to the filing of the summons and complaint.

Section 44 of Act No. 509 of the Acts of the General Assembly of South Carolina, 1944, Regular Session, relating to juvenile-domestic relations court in counties having a city with a population of between sixty thousand and seventy

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1. Ed. Note—A more complete and detailed discussion of this Act will be forthcoming in the September issue of the SOUTH CAROLINA LAW QUARTERLY, VOLUME II, PART I.

thousand, according to the 1940 census, has also been amended to provide that such court shall have jurisdiction in divorce proceedings. This jurisdiction is concurrent with that of the court of common pleas and limited to residents of that county of one year or more.

# COLLECTION, PAYMENT AND DISHONOR OR DEMAND ITEMS BY BANKS AND THE REVOCATION OF CREDIT FOR, AND PAYMENT OF, SUCH ITEMS

This Act will be of primary importance to all banking establishments throughout the State, as well as those who are legally associated with them. The Act stipulates that in cases where a bank receives for some reason other than immediate payment over the counter, a demand item payable, at or through that bank, and credit is given therefor before midnight of the day on which it was received, the bank may have until midnight of the following business day after receipt within which to refuse payment of such item. Any credit which has been given, together with pertinent entries on the books of bank extending such credit, may be revoked by returning the item, or if the item is withheld for protest or is not in the possession of the bank and its whereabouts are unknown, by giving a notice in writing of dishonor, nonpayment, or revocation. In order for the item to be returned within the time limit set forth by this Act, it must be dispatched in the mails or by other expeditious means not later than midnight of the bank's next business day after the item was received. If an item is duly presented and credit therefor is revoked as authorized by this Act, it shall be deemed dishonored on the day the item or notice is dispatched. Any bank which revokes credit pursuant to the authority of this Act, is entitled to refund of, or credit for, the amount of the item.

Section 2 of this Act places the following construction on certain terms used therein:

(a) "An item received by a bank on a day other than its business day, or received on a business day after its regular business hours or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of its next business day;

(b) "The term 'credit' includes payment, remittance, advice or credit, or authorization to charge and, in cases where the item is received for deposit as well as for payment, also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether the item is posted to individual customer's ledgers; and

(c) "Each branch or office of a bank shall be deemed a separate bank."

The effect of this Act may be varied by agreement.

SERVICE OF PROCESS ON NON-RESIDENTS IN ACTIONS  
ARISING OUT OF ACCIDENTS OR COLLISIONS OF MOTOR  
VEHICLES

This is an Act to amend Section 437, relating to the service of process on non-residents in actions arising out of accidents or collisions of motor vehicles, so as to further provide for the service of process upon such non-residents. The amendment should be of valuable aid to all attorneys handling such cases. It provides for cases where the defendant fails or refuses to accept and receipt for registered mail containing notice of service and copy of process. In such cases the same should be returned to the plaintiff or the motor vehicle division of the State Highway Department. The original envelope as returned should be retained, and said notice and copy of summons should be sent by open mail. This envelope, with an affidavit of mailing with sufficient postage of such open letter, should be filed with the clerk of court in which the action is pending, and upon the filing thereof, it shall have the same force and effect as if such process had been personally served upon such defendant.

The amendment further provides for service of process upon the personal representative of a non-resident who has caused injuries or death. Any person who has an interest in the action may apply to the Probate Court of the county of residence of the party so interested or of the county in which the wrong may have been inflicted for the appointment of a personal representative of such deceased wrongdoer. When such appointment has been made an action may be commenced against such personal representative of such non-resident deceased and service of such process shall be made upon such personal representative and a copy of such process shall be made upon such personal representative. The copy of the

process should be mailed to the address of such deceased person, as provided in Section 437, Subsection 1, Code of Laws of 1942, or as provided in subsection (3) of this amendment.

If the foreign personal representative of any such deceased wrongdoer or any party interested in the defense of the action desires an order staying such action for a reasonable period of not exceeding sixty days, he may, within sixty days after service as provided, above, apply to the court in which the action may be pending for such order. During this time, application may be made to the Probate court for the procurement of the appointment of some other suitable person to act as personal representative. Upon such appointment, the new personal representative shall be made a party defendant on motion of plaintiff without the further service of process. If no application for such a stay is made, the original personal representative must answer such process within sixty days from the date of such service upon him or be adjudged in default.

#### JUDGES CALLED FROM RETIREMENT TO PERFORM JUDICIAL DUTIES

Under this amendment to Section 2 of Act No. 136 of the Acts of the General Assembly, 1945, a retired justice or judge may be called upon and appointed to perform judicial duties by the Chief Justice of the Supreme Court. Such appointment may be made to the Supreme Court or to any one of the Circuit Courts as such retired justice or judge may be willing and qualified to undertake. The judicial duties of any such justice or judge so appointed shall be performed without pay except his actual expenses while serving.

#### DISTRIBUTION OF INTESTATE ESTATES

A much needed amendment was made to subdivision (1) of Section 8906, which formerly provided, that if the intestate left a widow and only one child then the widow took  $\frac{1}{3}$  and the child  $\frac{2}{3}$  of the estate. It has been the current of legal opinion throughout the State for some time now that such means of distribution of intestate estates worked an undue hardship upon the surviving widow. The present amendment alleviates any such hardship whereby the surviving widow is forced to receive as her share of the estate a lesser amount than a single surviving child. Section 8906, or the statute of

descent and distribution as it is sometimes called, is not affected by this amendment insofar as the distribution of an intestate estate between a widow and several surviving children is concerned. Such distribution shall continue to be  $\frac{1}{3}$  to the widow and the remaining  $\frac{2}{3}$  equally divided among the children. However, in the event that there remains only a widow and one child surviving, then the distribution shall be  $\frac{1}{2}$  to the widow and  $\frac{1}{2}$  to the child.

CAUSES OF ACTION FOR DEATH BY WRONGFUL ACT SHALL  
SURVIVE AGAINST THE PERSONAL REPRESENTATIVE OF  
DECEASED WRONGDOER

Since 1928, the date of the decision in the case of *Claussen v. Brothers*, 148 S. C. 1, 145 S. E. 539, the law of this State relating to a cause of action brought under Lord Campbell's Act has been, that such cause of action would not survive the death of the wrongdoer. Quoting from the *Claussen* case the court stated:

"The ground upon which it has been held that an action for wrongful death does not survive the death of the wrongdoer is that it does not accrue until the death of the injured party, and it is then not a devolution of any preexisting cause of action, but is purely a statutory creation given not for any damage to the person or to the property rights or interests of the beneficiaries, but as a new and independent cause of action unknown to common law."

Justice Stabler, the author of the opinion in the *Claussen* case, concluded his remarks by saying, "If it be thought that a different rule would be more just and in keeping with the progress or enlightenment of the age, the Legislature is the proper body to make such provision." During the last session of the General Assembly the Legislature did just that.

By an amendment to Section 411, commonly known as Lord Campbell's Act, the following words were added at the end thereof:

"In the event of the death of the wrongdoer, such cause of action shall survive against his personal representative."

Thus, the intent of the Legislature, in this respect, is no longer open to construction by the courts and the decision

set forth in the *Claussen* case, *supra*, as it relates to this phase of the law, is no longer controlling in South Carolina.

#### CAUSES OF ACTIONS FOR DAMAGES AGAINST MUNICIPAL CORPORATIONS

An Act to amend Section 7345, relating to causes of action for damages against municipal corporations, was enacted by the General Assembly during its last session. The amendment is in the form of an addition to Section 7345, adding thereto Section 7345-2, which provides for and defines the causes of action allowable against municipal corporations and counties for damages.

Actual damages, not exceeding Four Thousand (\$4,000.00) Dollars, may be recovered by any person suffering bodily injuries, property damage or death by reason of the careless or negligent management or operation of any motor vehicle under the control of any municipal corporation, then engaged in the business of such corporation or county. The same provision applies to any corporation suffering property damage. The plaintiff, however may not recover under this statute if such injury, death or damage was brought about by his, her or its contributory negligence, or the contributory negligence of any third person. In order for an action to be brought under this statute, a duly certified claim must be filed with such municipal corporation or county, within three months after the date of such injury or damage, or an action must be commenced within one year from the date of filing such verified claim, or the cause of action shall be thereafter barred.