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RECENT LEGISLATION

A SUMMARY OF THE GENERAL ENACTMENTS OF THE 1950 GENERAL ASSEMBLY

JAMES L. GIBBS*

[Editor's note] Since the Acts and Joint Resolutions of the General Assembly of 1950 have not yet been published in volume form, the specific Acts mentioned herein will be cited by giving the ratification number and the date of approval by the governor. All Code Section Numbers refer to the South Carolina Code.

It is the purpose of this summary to present only those enactments of the 1950 General Assembly which appear to be most pertinent to the practicing attorney — not a list of all the Acts.

Legislation which is local in scope has generally been omitted except for a small number of Acts which relate to the jurisdiction of certain courts.

Uniform Partnership Act.¹ An Act of this type which embraces an entire field of law cannot be summarized in a few paragraphs. A complete and detailed discussion of this Act will be forthcoming in the *South Carolina Law Quarterly*.

Uniform Divorce Recognition Act.² Section 1 of this Act states the rule that "A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced". The Act further provides that where a person obtains a divorce in another jurisdiction it shall be prima facie evidence that the person was domiciled in this state if there is proof (1) that such person was domiciled in this state within twelve months prior to the commencement of the proceeding and resume residence in this state within eighteen months after the date of his departure therefrom, or (2) that such person maintained a place of residence within this state at all times after his departure from this state and until his return.

Divorced Wife Barred of Dower in Lands Formerly Owned by Husband. Under the provisions of Act No. 137 of the Acts and Joint Resolutions of 1949, which is the South Carolina Divorce

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1. Ratification No. 770, approved February 13, 1950.
2. Ratification No. 1333, approved June 3, 1950.

Law, it is provided that on the granting of a final decree of divorce the wife shall thereafter be barred of dower in lands then owned or thereafter acquired by her former husband. The original Act is silent as to lands "formerly owned" by the husband. An Act³ if the 1950 General Assembly amends the Divorce Law so as to bar a divorced wife of dower in lands formerly owned by the former husband.

In Divorce Matters the Master Need Not Summon Parties in Default. This Act,⁴ which is an amendment to Section 6 of Act No. 137 of the Acts and Joint Resolutions of 1949, provides that in divorce cases referred to a master or special referee, such master or referee shall not be required to summon a party who is in default before him for the purpose of reconciling the parties.

Filing and Publishing of Rules and Regulations Adopted Pursuant to General and Permanent Laws. An Act⁵ to amend Code Section 2118-3, relating to the filing and publishing of rules and regulations adopted pursuant to general and permanent laws, was enacted by the General Assembly at its last session. The amendment rewrites Section 2118-3 and provides that rules and regulations adopted under authority of general and permanent laws must be filed in the office of the Secretary of State in order to become effective. Such rules and regulations will not be accepted by the Secretary of State for filing unless the authority for the issuance of such rules is cited. This Act also provides that the Secretary of State shall index all rules and regulations in a suitable book. The Act provides for the procedure of filing by the issuing officer or agency and also provides for publication of such rules by the Code Commissioner in the Code of Laws and in the Acts and Joint Resolutions of each regular session of the General Assembly.

Clarification of the Landlord and Tenant Law. Sections 19, 20, 21 and 30 of Act No. 873 of the Acts and Joint Resolutions of 1946, known as the Landlord and Tenant Law, were revised by an Act⁶ of the 1950 General Assembly with a view toward clarifying the law as originally enacted.

3. Ratification No. 1120, approved May 11, 1950.

4. Ratification No. 1302, approved June 3, 1950.

5. Ratification No. 1173, approved May 25, 1950.

6. Ratification No. 1235, approved June 3, 1950.

Section 19 of the original Act, which specifies the grounds for which a tenant may be ejected, was amended by adding a proviso to the effect that after the commencement of ejectment proceedings by the issuance of a rule to vacate or to show cause, the rental for the use of the premises shall continue to accrue against the tenant so long as he remains in possession. The amendment further provides that the rental shall be at the same rate as prevailed at the time of the issuance of the rule; that collection may be enforced by distress and that the acceptance by the landlord of any rent, whether accrued at the time of issuance of the rule or subsequently, shall not operate as a waiver of the landlord's right to insist upon ejectment, but the rights of the parties as they existed at the time of the issuance of the rule shall control.

Section 20 of the original Act, which gives the procedure for instituting ejectment proceedings, was amended by inserting various words and phrases throughout the section. The amendment, in substance, provides that a landlord seeking to eject a tenant may apply to any magistrate *having jurisdiction* who shall issue a rule requiring the tenant to vacate *forthwith* or show cause *why he should not be ejected* within ten days after service of a copy of the rule upon the tenant. Where no person can be found in possession of the premises, the *rule to show cause* may be served by affixing a copy to the most conspicuous part of the premises. (Words in italics indicate the new matter inserted by the amendment.)

Section 21, relating to the ejectment of a tenant upon failure to appear and show cause, was amended so as to provide for ejectment where the tenant fails to appear and show cause within ten days after service. The time limit of ten days was added by this amendment.

Section 30, in part, formerly provided that in the event a tenant fails to file bond on an appeal from ejectment within five days after service of the notice of appeal, that such appeal would be dismissed. The section did not provide who should dismiss the appeal. The present amendment provides that the appeal shall be dismissed by the trial magistrate.

Recording of Mechanics' Lien — Release of Property from Lien by Substituting Securities. Code Section 8735, relating to the recording of mechanics' liens, was amended by an Act⁷ of the 1950 General Assembly which rewrites the section and divides it into two subsections.

7. Ratification No. 1207, approved May 27, 1950.

Subsection (1) of the new code section embraces all of the provisions of the former code section, and, in addition, requires the person claiming the lien to serve the owner of the premises with a copy of the statement which is required to be filed in the office of the Register of Mesne Conveyances or Clerk of the Court.

Subsection (2) of the new code section is new matter. This portion of the amendment allows the owner, or any other person having an interest in the involved property, to secure the discharge of the property from the lien by filing, in the office of Clerk of Court or Register of Mesne Conveyances where the lien is filed, a written undertaking in an amount equal to the amount claimed. This undertaking must be secured by cash, specified securities or by an approved surety bond. The undertaking together with the pledge takes the place of the property and becomes subject to the lien. If suit for enforcement of the lien is not commenced within the time specified in Code Section 8737, the undertaking becomes null and void and the cash or securities deposited therewith are released from the lien.

Recording of Marriage Certificates by the Bureau of Vital Statistics. This Act⁸ amends Code Section 8561, as amended, which relates to the recording of marriage licenses, by providing that a copy of all marriage licenses and certificates shall be sent to the Bureau of Vital Statistics of the State Board of Health for filing. This department is directed to file and index the marriage licenses and certificates and to furnish certified copies to proper parties upon request. The primary purpose of this amendment is to provide a central place for the filing of marriage licenses and certificates so that the marital status of parties may be determined, when necessary, by referring to one office. Marriage licenses and certificates will continue to be filed also by the judge of probate of the county where they were issued.

Mis-Statement of the Age of an Insured in His Application for Insurance. Code Section 1986, as last amended by Section 51 of Act No. 232 of the Acts and Joint Resolutions, relating to the time limit within which insurance companies may dispute the truth of an application for insurance, was amended by an Act⁹ so as to delete the proviso that mis-statement of age may be disputed at any time. The amendment further provides that where the age of the person

8. Ratification No. 1236, approved June 3, 1950.

9. Ratification No. 966, approved April 15, 1950.

insured has been mis-stated the insurance company may, at any time, adjust the benefits of the policy according to the correct age.

Subsequent Marriage of the Parents of an Illegitimate Child. Code Section 8679, relating to adoption of children, was amended by an Act¹⁰ which adds a proviso to the effect that an illegitimate child shall become legitimate upon the subsequent marriage of the parents and that the child shall take the name of the father as if born in lawful wedlock.

Commissions Allowed Receivers. The provision contained within subdivision (4) of Code Section 584, which limited the commissions of corporate receivers to five per cent of the amount received and disbursed by them, was eliminated by an Act¹¹ which places the amount of commissions within the discretion of the court.

Commissions Allowed Assignees and Agents in the Matter of Assignments for the Benefit of Creditors. Code Section 9105, which provides the amount of commissions which shall be paid to assignees and agents was amended by an Act¹² which states that fees in excess of those provided in Section 9105 may be allowed, in the discretion of the court, upon a petition by the assignees and agents.

Other Acts of the 1950 General Assembly which may be of interest are briefly listed as follows:

An Act regulating telephone utilities.¹³

An Act providing for a defense force and establishing a military code for South Carolina.¹⁴

An Act which regulates the distribution of milk and cream brought into South Carolina from other states.¹⁵

An Act known as the South Carolina Election Law which regulates the registration of Electors, the holding of general elections and the conduct of party primaries and conventions.¹⁶

An Act which creates a Water Pollution Control Authority for South Carolina.¹⁷

10. Ratification No. 1357, approved June 16, 1950.

11. Ratification No. 727, approved January 30, 1950.

12. Ratification No. 763, approved February 13, 1950.

13. Ratification No. 1377, approved June 16, 1950.

14. Ratification No. 822, approved March 3, 1950.

15. Ratification No. 921, approved April 3, 1950.

16. Ratification No. 994, approved April 20, 1950.

17. Ratification No. 1053, approved May 4, 1950.

An Act which provides for the merger and consolidation of church corporations.¹⁸

An Act making it a misdemeanor to furnish a prisoner with alcoholic beverages or narcotic drugs.¹⁹

An Act which provides that pipe line companies may exercise the same right of condemnation for pipe line purposes as may now be exercised by power companies.²⁰

An Act which requires all persons engaged in manufacturing in South Carolina to install and maintain sewerage systems in houses furnished to their employees.²¹ (This Act does not take effect until June 3, 1951.)

An Act which extends the time for making application to the Tax Commission for a refund on gasoline, purchased for agricultural purposes, from ninety days to six months.²²

An Act which provides that the compensation received by the members of the South Carolina National Guard and by all South Carolina resident members of the reserve components of the armed forces of the United States shall not be considered as income in computing state income taxes. This exemption is not applicable to income derived from tours of active military duty extending beyond customary training periods.²³

An Act which authorizes the State Highway Department to accept uncertified checks in payment for vehicle registration and license fees.²⁴

An Act which provides for recording certificates of cancellation of corporate charters.²⁵

An Act which provides that the County Court of Spartanburg County shall have concurrent jurisdiction with the Court of Common Pleas in actions relating to divorce from the bonds of matrimony.²⁶

An Act which provides that Domestic Relation Courts, in counties having a city with a population of over seventy thousand, shall have concurrent jurisdiction with the Court of Common Pleas in divorce proceedings.²⁷

18. Ratification No. 1090, approved May 11, 1950.

19. Ratification No. 1365, approved June 16, 1950.

20. Ratification No. 1285, approved June 3, 1950.

21. Ratification No. 1255, approved June 3, 1950.

22. Ratification No. 955, approved April 15, 1950.

23. Ratification No. 1389, approved June 13, 1950.

24. Ratification No. 1065, approved May 6, 1950.

25. Ratification No. 1359, approved June 16, 1950.

26. Ratification No. 750, approved February 9, 1950.

27. Ratification No. 1310, approved June 3, 1950.

An Act which provides that probate courts of counties having a population between seventy and seventy-one thousand shall have exclusive original jurisdiction of any case of a child less than sixteen years of age and of all other persons involved with or contributing to the dependency or delinquency of any child.²⁸

An Act which eliminates the existing limitation on the amount which Domestic Relations Courts, in counties having a city with a population of seventy thousand, may require a person to pay with respect to support of a wife and children.²⁹

An Act which increases the civil jurisdiction of the Civil and Criminal Court of Charleston to cases where the amount sued for does not exceed three thousand dollars.³⁰

28. Ratification No. 1257, approved June 3, 1950.

29. Ratification No. 1193, approved May 23, 1950.

30. Ratification No. 1438, approved June 16, 1950.