South Carolina Law Review

Volume 11
Issue 5 *SPECIAL ISSUE 3-A*

Article 8

Spring 1959

Jurisdiction

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JURISDICTION

Before a court can determine a right it must have the power to act. This brings to the forefront in every cause or proceeding the problem of jurisdiction — a problem that is sometimes difficult of solution. This handbook will not attempt to cover all the variations, but will only high-light what might be considered the most important ones.

As a back-log to this phase it will be well to familiarize oneself with Sections 1-160 of Vol. 7 of Wests' S. C. Digest.

Of course a thorough knowledge of the provisions of the Constitution of 1895 and the Code Sections relative to the subject must be attained. This can be done without the aid of a handbook. See Article 5 of the Constitution and chapter 4 and 5 of the 1952 Code and their annotations. But after that is accomplished the trouble begins with the interpretation and application of those provisions.

Jurisdiction of Subject Matter:

Jurisdiction of the subject matter cannot be waived. See Code Sections 10-301 to 303. As said in *Riddle v. Reese* (1898), 53 S. C. 198, 31 S. E. 222, at page 202:

> Finally, it is contended that the defendant, by appearing and answering, and announcing himself as ready to go to trial, has waived this question of jurisdiction. As we understand it, jurisdiction cannot be conferred even by actual consent, and cannot be waived by any act or omission of the parties. On the contrary, the question may be, and has been, raised for the first time, even in this Court. *State v. Penny*, 19 S. C., 218; *Ware v. Henderson, supra.* Indeed, it may be raised by this Court without any motion from either of the parties. *Lowery v. Thompson*, 25 S. C., 416. It is true, that jurisdiction *of the person* may be waived; but this is not a case of that character.
>
> Inasmuch, therefore, as the Court of Common Pleas for York County had been deprived of jurisdiction to try this case by an act of the legislature, transferring the case to the Court of Common Pleas for Cherokee County before the trial was commenced, it follows that all the proceedings leading up to the judgment, and the judgment itself, are mere nullities for want of jurisdiction, and must be so declared.

However, there can be waiver of jurisdiction of the subject matter, if one raises the question below and fails to appeal from an adverse ruling. *Dunlap v. Zimmerman* (1938), 188 S. C. 322, 199 S. E. 296, wherein it was declared at page 329:

> Appellants argue, however, that the question of the Court's jurisdiction of the subject-matter may not be lost, but may be raised at any time and place. This principle, of course, is firmly settled in this State, but it is not applicable in this appeal. The question of jurisdiction may be raised once, but when the issue has been decided adversely to a party he cannot continue to raise it, in different stages of the trial. His remedy is to preserve his exception in the first instance, and his failure to do so forecloses the right to again raise it.

Jurisdiction as to real property must be in the county in which the land lies. As to this there can be no waiver even by consent. *First Nat. Co. v. Strak* (1928), 148 S. C. 410, 146 S. E. 240.

Jurisdiction of the Person:

As just pointed out jurisdiction of the subject matter cannot be waived. On the other hand jurisdiction of the person can be waived, either expressly or impliedly. But the puzzling question is: When is it one and not the other? Section 10-303, formerly 422, provides that "In all other cases the action shall be tried in the county in which the defendant resides at the time of the commencement of the action."

In *Nixon and Danforth v. Piedmont Mut. Ins. Co.* (1906), 74 S. C. 438, 54 S. E. 657, one thought it was finally ruled that, when jurisdiction depended on the residence of the defendant, the question related to jurisdiction of the subject matter, which involved a substantial right, and could not be waived, but, when it depended on service of a summons, it concerned only jurisdiction of the person and could be waived, as, for instance, by a general appearance. But even when one is sued in the wrong county, if he is properly served, and makes no move to have the cause transferred, and lets it go to judgment by default, he is deemed to have waived his substantial right to be sued in the county of his residence. In other words a motion must be timely made. If not, it is considered jurisdiction of the person and not of the subject matter. As said in *Rosamond v. Lucas-Kidd Motor Co. Inc.*

(1936), 182 S. C. 331, 189 S. E. 641, quoting at page 339 from the *Lillard* case in 170 S. C.:

> . . . . 'For, while under the above-named sections of the Code the Court had no jurisdiction to try the case on its merits, it had jurisdiction to hear a motion to transfer the case to the proper county, and, if the defendant had pursued this course before time for answering expired, the Court would have been bound to have granted the motion. However, the defendant did not do this, and waited until judgment had been rendered in the cause before taking any steps in the matter. Therefore the defendant waived the jurisdictional question, and, in effect, gave to the Court of Richland County authority to hear the said case on its merits, and judgment was thereafter rendered in said Court against the defendant as in any other default case. The contention is made that, the question being a jurisdictional question, the same could not be waived, even by the defendant — by direct act or by failure to appear. This is true when jurisdiction of subject-matter is involved, for the subject-matter cannot be waived even by consent, but it is the recognized rule of this Court that jurisdiction of the person may be waived. Therefore, the question involved in the case at bar being jurisdiction of the person, it is clear that the defendant had the right to waive such question, and under the facts of this case we must hold that the defendant did waive the same by his failure to file any paper in the cause or take any steps until after the time for doing so prescribed under the Code had passed.'

Power of Court to Change Venue to Proper County:

Though a court, even a circuit court, may have no jurisdiction because of the case being brought in the wrong county, and though jurisdiction of the subject matter cannot be acquired, even by consent, such court has the statutory power to order the case changed to the proper county, and it even has this power at chambers.

In applying what is now Section 10-303 it was held in *Ex Parte Jones* (1931), 160 S. C. 63, 158 S. E. 134:

> Although the language of the Act is mandatory, and places exclusive jurisdiction within the county of residence [Cases cited], the Court is fully empowered under

> the provisions of Section 382 of the Code to change the place of trial, among other grounds, where the county designated in the complaint is not the proper county, and, while the Court has no jurisdiction to try the cause on its merits in the wrong county, even where no demand has been made for the removal of the cause to the proper county [Cases cited], it has jurisdiction at chambers *(Castles v. Lancaster County,* 74 S. C., 512, 55 S. E. 115), to order the place of trial changed to the proper county *(Steele v. Exum, supra; Manufacturing Company v. Sanders,* 26 S. C. 70, 1 S. E. 159; *Bell v. Fludd, supra),* and it is its imperative duty to do so upon proper showing....

See also *Shelton v. Southern Kraft Corp.* (1940), 195 S. C. 81, 10 S. E. 2d 341.

Jurisdiction of the Person:

Jurisdiction of the person, whether individual or corporation, must be by proper use of a summons, except as hereinafter discussed, unless there be waiver as by voluntary appearance. As said in *Matheson v. McCormac* (1938), 186 S. C. 93, 195 S. E. 122, at page 109:

> The proof of service must show affirmatively that the service of process was correctly made. This is imperatively necessary to give the court jurisdiction of the person thus sought to be brought into court.

As to voluntary appearance, one is told in *Stephens v. Ringling* (1915), 102 S. C. 333, 86 S. E. 683, at page 342 that:

> *Any action* by the defendant which really *amounts to an intent to be* in Court is also a voluntary appearance.
>
> And for the very reason that a defendant may choose to come into Court with trumpets, or quietly by the back door, the statute has not declared what act or acts shall constitute 'appearance.'
>
> It may be by formal writing, or it may be by informal parol action. The act of appearance is defined to be 'a coming into Court,' 'the first act of a defendant in Court,' 'a submission to the jurisdiction of the Court.' Black Law Dic. 77; 2 R. C. L. 322; 3 Cyc. 502.

Service on a Foreign Corporation:

This service must also meet the statutory requisites. The two most troublesome questions are: (1) When is a corporation doing business within the state? And (2) When is the individual served an agent of the corporation? *Jones v. Gen. Motors Corp.* (1941), 197 S. C. 129, 14 S. E. 2d 628, answers both questions. As to (1), on page 137, it is stated:

> What constitutes 'doing business' by a foreign corporation cannot be formulated in an all-embracing rule, because the solution of the question depends upon and is controlled by the facts of the particular case. [Cases cited.]
>
> We have held that where a foreign corporation sends an agent into the State for the transaction of its corporate business — a business or transaction out of which the cause of action arises — it may be regarded as doing business in the State to the extent that service of process upon such agent will give the Courts of this State jurisdiction. This rule is based upon an implication arising from the facts of the case that the corporation does business or has business in the State for the transaction of which it sends an agent here. It prevails where the officer or agent is in the State with reference to the settlement or adjustment of the claim sued upon, since in such case the mere presence of the officer or agent for such a purpose may be held to constitute the doing of business in the State. . . .

As to (2) on page 135, it is declared:

> The test usually applied is, whether the agent served sustains such relation to the corporation or to the business out of which the alleged cause of action arose as to justify a fair and reasonable inference of a duty on his part to communicate the fact of service to the corporation. In other words, process must be served on an agent having such a relation to the corporation that notice to the agent may well be deemed notice to the principal, without a violation of the principles of natural justice. It is not the descriptive name employed, but the nature of the business and the extent of authority given and exercised, which is determinative. . . .

However, it should be remembered that since provisions of the United States' Constitution often come into such situations, Federal authorities are finally controlling. *Thompson v. Ford Motor Co.* (1942), 200 S. C. 393, 21 S. E. 2d 34; *International Shoe Co. v. Washington* (1945), 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95, 161 A. L. R. 1057, and *McGee v. International Life Ins. Co.* (1957), 355 U. S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223, which was followed in *Ross v. American Income Life Ins. Co.* (1958), ___ S. C. ___, 102 S. E. 2d 743. See also *Hanson v. Denckla* (1958), ___ U. S. ___, 78 S. Ct. 1228.

COURTS

It is important to know which courts are courts of record; whether limited in jurisdictional powers or not, and which are inferior courts. As to those in the former category, as for example a circuit court, there is the conclusive presumption, when its judgment is attacked collaterally, and nothing appears upon the face of the proceedings, that it had jurisdiction. As said in *Coogler v. Crosby* (1911), 89 S. C. 508, 72 S. E. 149, at page 509:

> 'All presumptions must be indulged in favor of the jurisdiction of a Court of general jurisdiction. To avoid such a judgment for want of jurisdiction the jurisdictional defects must appear affirmatively on the record.'

The Court points out that there is no conclusive presumption when a direct action is brought to avoid a judgment for lack of jurisdiction. On the other hand it may be assailed collaterally and with impunity by anybody if the lack appears upon the face of the proceedings.

The rule as to presumption of jurisdiction relative to courts of general jurisdiction has its exceptions. As said in *Ex Parte Hart* (In Re Bowen, 1937), 186 S. C. 125, 195 S. E. 253, at page 132:

> While it is not necessary that the record of the proceedings of such Court should affirmatively show the existence of jurisdiction, *Ex Parte Pearson*, 79 S. C. 302, 60 S. E. 706, there are exceptions to the rule, 15 C. J., Courts, § 159. Thus where the general powers of the Court are exercised over a class of subjects not within its ordinary jurisdiction, upon the performance of prescribed

> statutory conditions, no such presumption of jurisdiction will attend the judgment of the Court. [Cases cited.]

As to inferior courts, for example magistrate courts, there is no presumption that the court had jurisdiction. A judgment therein may be assailed collaterally and proof will be necessary. This makes it imperative that, when a client's right is before an inferior tribunal, one must see to it that the record of the proceedings shows that such tribunal had jurisdiction, so as to either prevent an attack, or have at hand the recorded data to succeed in winning in the event of attack. *Comstock & Co. v. Alexander* (1844) 2 Speers 274, at page 277, states: "But an inferior jurisdiction must, by the record, show itself to have jurisdiction; . . . ."

In addition to the respective constitutional provisions, the various courts and their functions, are dealt with in detail in Title 15, Vol. 2, 1952 Code, beginning at page 475.

County Courts:

Particular attention is called to the county courts. Chapter 5 of the Title 15, deals with them. Art. 1 of that chapter it will be noted is inclusive of the General Enabling Act of 1900 as amended. Courts established thereunder like the courts established under the Acts relating to certain counties (See Art. 2 through Art. 6 of Chapter 5), are all courts of record, though of limited jurisdiction, and therefore are not classed as "inferior" courts in the strict meaning of that word.

The General Enabling Act, now Sections 15-601 to 15-678 is not operative as to a county court unless the court was established under it. *Pickens v. Maxwell Bros. & Quinn* (1935), 176 S. C. 404, 180 S. E. 348. In fact, there are only a few counties in which it could be operative as 35 counties are expressly excepted from the Act. Section 15-627.

It appears that no presently existing county court in South Carolina was established under that Act. Each such court has been established otherwise by specific legislation as shown by Articles 2 to 6 of Chapter 5. Since one finds that the powers and functions of each such court vary, one must carefully follow the Article under which each is functioning. And the Code Sections should be shepardized to date as substantial changes may be made in any year. For example in 1956 criminal jurisdiction was added in the Richland County Court. See Acts of 1956, page 1704.

Powers with which the Constitution has invested circuit courts the legislature cannot take away and confer upon a county court. At most only concurrent jurisdiction can be conferred. *Strickland v. Seaboard A. L. Ry. Co.* (1918), 112 S. C. 67, 98 S. E. 853.

Other Courts:

Municipal courts (Chapter 6, page 595, Vol. 2 of Code); Juvenile & Domestic Relations Courts (Chapter 7, page 619); Children's Courts (Chapter 8, page 659); Magistrate Courts (Title 43, page 637)—all are inferior courts with appeal to the circuit court.

It would take too much space to specifically set forth the various magistrate courts of the state, as they vary in different counties, sometimes as to functions; sometimes as to jurisdiction. For instance, in Anderson county the magistrate residing in the City of Anderson or within seven miles is designated as a "county judge"; that court has jurisdiction in civil cases of not over $1,000 except where it involves title to real estate or a counterclaim of more than $1,000 is pleaded. Sections 43-532 to 536. The magistrate in Sumter and Concord Townships in Sumter county, including the city of Sumter, also has a special jurisdiction. Section 43-1038. It will thus be seen that reference must always be had to the sections controlling in any particular county to ascertain magisterial jurisdiction therein.

Particular attention is called to the rule that in an inferior court, or in one of limited jurisdiction, a party may reduce a claim involving a money demand in order to bring a cause or a counterclaim within the courts' jurisdiction but any amount so abated cannot thereafter be the basis of a suit. However, where the counterclaim is beyond the jurisdictional limit its interposition doesn't oust jurisdiction of the plaintiff's action. *Stroy v. Nicpee* (1916), 105 S. C. 265, 89 S. E. 666, *DuPre v. Gilland* (1930), 156 S. C. 109, 152 S. E. 873. With regard to jurisdiction of a magistrate court it is imperative that the statutory requirements be met. However, no presumption is indulged in that an inferior court had jurisdiction, as is done with a court of general jurisdiction, so one must always see to it that the record or proceedings in a magistrate court shows "everything necessary to give jurisdiction". *Benson v. Carrier* (1887), 28 S. C. 119, 121. It was

also held therein that, as to jurisdiction of the person, waiver can give jurisdiction.

As to serving of process in magistrate courts, there are different time limits for certain proceedings which must never be confused and which are later set forth herein.

The Domestic Relations Court in Laurens County (Chapter 7.1, page 656) is "one of record" with appeal direct to the Supreme Court. The inference would seem to follow that the presumption as to jurisdiction would apply to that court.

The Civil Court of Darlington County (Chapter 9.1, page 701), and the Civil Court of Florence (Chapter 10, page 705), like the existing County Courts are inferably courts of record, though of limited jurisdiction, and an appeal is direct to the Supreme Court. This would appear to be true of the Florence Court, though Sections 15-1601 describes it as "A Court inferior to the Circuit Court", which tends to leave one in doubt.

The City Court of Charleston (Chapter 9, page 684), though an inferior court, has appeal direct to the Supreme Court. Section 15-1579. As declared in *City Council of Charleston v. Weller* (1890), 34 S. C. 357, 13 S. E. 628, at page 360:

> . . . . While, therefore, the City Court of Charleston was not declared *in terms* by that case to be an inferior court, yet we think that such is the necessary inference from that decision.

and at page 362:

> . . . . while as a general rule in appeals from the decisions of an inferior court the appeal is to the Circuit Court, yet the City Court constitutes an exception, and an appeal from that court is to be heard and determined by the Supreme Court.

Probate Courts:

Probate courts are courts of record, though appeal therefrom is to the circuit court and not to the Supreme Court. Here again, as with the Domestic Relations Court in Laurens County, the inference would seem to follow that the presumption as to jurisdiction would prevail. Also as to when a "Probate Court's decision" will be accepted by the U. S. Supreme Court as "evidencing" the law of a state, see *Pitts v. Hamrick* (1955), 228 Fed. 2d 486.

There is no doubt that a judgment or decree admitting a will to probate is conclusive except only on direct attack. As said

in *Davis v. Davis* (1949), 214 S. C. 247, 52 S. E. 2d 192, at page 258:

> As stated in 68 C. J. p. 874, the probate of a will is in nature a proceeding *in rem*, wherein all persons having any interest are deemed parties and concluded by the decision therein. Our conclusion in this case is further confirmed by the following citation from 68 C. J. pp. 1228, 1229: 'Conclusiveness of Proceedings — (a) In General. As a proceeding to probate a will is a judicial one, a judgment or decree admitting a will to probate stands on the same footing as a judgment of any other court of competent jurisdiction; and, while it is not conclusive in the sense that a person having the requisite interest may not attack it by a direct proceeding within the period of time allowed by statute, without a statute conferring the right to contest, the order admitting the will to probate would be final on all parties.' . . . . .

As to conclusiveness of presumption of jurisdiction of a court of record, see *Ex Parte Darby* (1930), 157 S. C. 434, 154 S. E. 632.

The Supreme Court, in *State ex rel. Burnett v. Burnside* (1890), 33 S. C. 276, 11 S. E. 387, while holding that under the existing circumstances the probate judge was not subject to mandamus, ruled as follows on page 278:

> . . . . The Court of Probate, though of limited jurisdiction, is a court of record with large powers, and as to proceedings within its jurisdiction cannot be said to be, in the ordinary sense of the term, and inferior court. The functions of the court are judicial and not merely ministerial — resting on the discretion of the judge, not only in making the order of sale, but in executing titles. Besides, if that court commits error, the remedy is by appeal, and, as we understand it, that is the only manner in which the Court of Common Pleas can review and correct its proceedings.

Attention is called to the fact that the probate court in Charleston County is a constitutional court, the powers of which the legislature cannot change, while those of all other counties are not. Hence, " . . . . in any or all of the other counties the Legislature may vest the jurisdiction formerly exercised by the probate court, or any part of it, in other

courts, as it may deem expedient". *Bradford v. Richardson* (1918), 111 S. C. 205, 212, 97 S. E. 58. See also *City Council v. Weller* (1890), 34 S. C. 357, at page 360; 13 S. E. 628, wherein it is pointed out that appeal from a probate court is to the circuit court, thus indicating it is an inferior court, though one of record.

City Council; When a Court, When Not:

A city council may be invested with judicial power. On the other hand, it may be exercising only administrative authority. *Ex Parte Evans* (1905), 72 S. C. 547, 52 S. E. 419, at page 551, points out the distinction thus:

> Section 6 provides a penalty for failure to comply with this ordinance.
>
> This would doubtless give the city council jurisdiction as a court to try offenses for a violation of said city ordinance, if sustained as valid, but no such authority is attempted to be exercised in the present matter, but it confers no authority upon the city council as a court to hear and determine a controversy arising between neighbors as to whether the owner shall have the right or a permit to build a certain kind of house upon her premises. In so far as the city council may assume to grant or refuse such a permit, their action is administrative rather than judicial. Their decision in such matters is not binding in the sense of a judgment of a court. The application for a permit is *ex parte*. If objection be offered, that does not raise a controversy between the petitioner and the objector which is submitted to the judicial authority of the city council. As the city council was not acting in the capacity of a court in the premises, there was no *case* before the city council for which a right of appeal is saved in art. V., sec. 15, of the Constitution. . . .

Before leaving the subject of courts and their jurisdictional powers, attention is briefly called to the following: judicial function as distinguished from that of other branches of the government: *Ex Parte Tillman* (1910), 84 S. C. 552, 66 S. E. 1049, 26 L. R. A. U. S. Jurisdiction of intermediate court sufficient: *Senn v. Spartanburg County* (1940), 192 S. E. 489, 7 S. E. 2d 454. Jurisdiction as to injunction in condemnation case must be in county where the lands are situated: *Augusta et. Co. v. Savannah River Elec. Co.* (1929), 152 S. C. 295,

149 S. E. 924. As to subject of the action, novation of an obligation, and requirement that agreements of attorneys be in writing: *Ophuls & Hill, Inc. v. Car. Ice & Fuel Co.* (1931), 160 S. C. 441, 158 S. E. 824, 827. Actions, when transitory and when local; also venue as to same: *Odell Hardware Co. v. Scarborough's, Inc.* (1938), 186 S. C. 370, 195 S. E. 631.

Also, when is foreign corporation doing business in the state, where plaintiff is a resident, cause arose out of the state, and corporation's agent was served: *Lipe v. C. C. & O. Ry.* (1923), 123 S. C. 515, 116 S. E. 101; see also, *McSwain v. Adams Grain etc. Co.* (1912), 93 S. C. 103, 76 S. E. 117, as to when is one an agent upon whom service will be sufficient. One will be held to be an agent, upon whom proper service can be made, even though contract says there is no such agency: *McNeil et al. v. Elec. etc. Battery Co. et al.* (1917), 109 S. C. 326, 96 S. E. 134; jurisdiction of parties after repeal of statute: *Trapier v. Waldo* (1881), 16 S. C. 276; it is the function of a court and not a jury to decide a factual issue as to jurisdiction. *Bargesser v. Coleman Co.* (1957), 230 S. C. 562, 96 S. E. 2d 825.