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New Trials

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South Carolina has not as yet clearly outlined the legal basis for that distinction, but *Smith v. Culbertson,* (1855), 9 Rich. 106, 43 S. C. L., would not admit an affidavit of a juror as to a quotient verdict, and *State v. Parris,* (1931), 163 S. C. 295, 161 S. E. 496, at page 299, also would not countenance admission of unsworn statements of jurors, as said therein at page 299:

> The statements of the jurors, filed in the lower Court, have been submitted in the record to this Court. As to these statements, we desire to say that they should not have been presented to, or received by, the Court. Even if they had been sworn to, it was improper for them to have been presented or received. In fact, the jurors should not have signed these statements, which, perhaps they did without understanding that their action was improper. The zealous young counsel, who has, with much ability, presented his client's cause in this Court in his effort to secure, what he conceived to be, justice in that client's behalf, committed an error, which we know was absolutely unintentional on his part when he secured and offered the jurors' statements to the Court. Without reflecting, or with the slightest intention to reflect, upon the counsel or any of the jurors, we must nevertheless express our disapproval of what was done in this regard. We invite attention to the language of the distinguished jurist, David L. Wardlaw, in *Smith v. Culbertson,* 9 Rich. (43 S. C. L.), 106, where he said: "The mischiefs, the delays, the arts, the scandal likely to ensue, come naturally to our thoughts, when we imagine encouragement given to the pursuit of jurors by disappointed suitors, for the purpose of obtaining affidavits to invalidate verdicts regularly rendered." See, also, *State v. Long,* 93 S. C., 502, 77 S. E., 61.

NEW TRIALS

Sections 10-1215, 10-1461 to 1463 and Circuit Court Rule 72 should be carefully read with their annotations. A new trial in South Carolina means trying the case *de novo,* e.i. re-trying it in its factual entirety, or from scratch. See *Durst et al. v. So. Ry. et al.* (1931), 161 S. C. 498, 159 S. E. 844, *Mishoe v. A. C. L. R. R.* (1938), 186 S. C. 402, 197 S. E. 97.

In *Elliott v. Black River Elec. Cooperative* (1958), ___ S. C. ___, 104 S. E. 2d 357, at page 372, the court differentiates new trial nisi and new trial absolute, and when each is grantable, as follows:

> . . . An order for a new trial nisi is one whereby a new trial is granted unless the party opposing it shall comply with a condition prescribed by it. A motion for a new trial nisi because of excessiveness of the verdict contemplates not the striking down of the verdict in toto, but remission of part of it and the granting of a new trial in default thereof. Such a motion is founded on the contention that the verdict was not inherently unlawful, but was, under the facts of the case, unduly liberal; it is addressed to the discretion of the trial judge, who alone has power to reduce a verdict in this manner; and his refusal to grant it will not be reviewed here. *Brown v. Hill,* 228 S. C. 34, 88 S. E. 2d 838. When it is desired to attack a verdict upon the ground that it is so shockingly excessive as to warrant the conclusion that the jury was moved by passion, prejudice or other improper considerations, the appropriate motion is for a new trial absolute; because such a verdict, being inherently vicious, is wholly unlawful, and no part of it may be permitted to stand.

If a verdict is excessive, the trial judge has discretionary power to grant a new trial *nisi,* i. e., unless the party recovering money remits a part of the verdict. This is done by the attorney for that party endorsing on the record in the clerk's office, over his signature, a remission of the amount ordered. If that is done, then there is no new trial. Also, it is only when the trial record shows that there was caprice or prejudice on the part of the trial judge that the appellate court will disturb his order. *Morrel v. S. C. Power Co.* (1938), 186 S. C. 308, 195 S. E. 638, *Brown v. Hill,* (1955), 228 S. C. 34, 88 S. E. 2d 838. As declared by the Court at page 44 in the latter case:

> Exception No. 6 charges error in refusal of appellant's motion for new trial *nisi* upon the ground that "there was not sufficient or substantial evidence to support the amount of the jury's verdict, said verdict being the result of passion and prejudice and based upon improper and speculative evidence". So far as it was based upon

the charge that the verdict was the result of passion and prejudice, the motion for new trial *nisi* was inappropriate. If a verdict is so grossly excessive as to indicate that the jury was moved by passion or prejudice, it is the duty of the trial court to set it aside, not reduce it. If its amount is such as to indicate merely undue liberality on the part of the jury, the power to reduce it rests with the trial judge alone, and his refusal to do so will not be reviewed here. *Nelson v. Charleston & W. C. Ry. Co.*, S. C., 86 S. E. (2d) 56. Considering the motion in the instant case as one for a new trial absolute, we find no abuse of discretion by the trial judge in his denial of it. At the time of her injury respondent was twenty-six years of age and in good health. She had been employed in the same textile factory for about eight years, and at the time of the accident her rate of pay was $1.00 per hour. From the testimony of the surgeon who performed the operation on her leg immediately after the accident, and under whose care she still remained up to the time of the trial more than a year later, it appeared that she had undergone six operations, had been hospitalized for some fifteen weeks, was still totally disabled, would require surgical attention for nine months or a year longer, and would have some permanent disability because of shortening of the injured leg and limitation of motion in the knee and hip. In view of this testimony, we cannot say that the verdict, for $10,000.00 actual damages, was so shockingly excessive as to require the conclusion that it was the result of passion or prejudice.

Writ of Attaint: Fortunately, our social and legal development is such that the writ of attaint, with its almost unbelievable injustice, is now entirely out of the picture. It is now solely a discretionary power of the trial judge, who in South Carolina steps in as the 7th or 13th juror. *Fallon v. Rucks* (1950), 217 S. C. 180, 60 S. E. (2d) 88. As said beginning at page 188:

The problem presented by the original failure of the jury to distinguish the nature of the damages included in the verdict was close to that recently considered by this court in *Limehouse v. Southern Ry. Co.*, S. C., 58 S. E. (2d) 685, and our earlier relevant cases were

there cited and discussed, with [which (sic)] renders unnecessary present review of them. The rule deducible from these authorities is that upon rendition of a verdict which is improper in form, objection must ordinarily be immediately made in order to save the point of either litigant thereabout. Here the court raised objection before publication of the verdict and the record is clear that counsel consented, impliedly if not expressly, that the case be resubmitted to the jury after further instruction. That course was followed and the jury reformed the verdict, thereby removing the objection. It was said in the Limehouse opinion, page 689 of the S. E. report, that it was unnecessary to determine in that case whether upon publication of the verdict, the court was empowered to require the jury to reconsider the case so as to bring in a proper verdict. Here, incidentally, the objectionable verdict was not published, but was inspected and discussed by the court and counsel, at the invitation of the judge, without the hearing of the jury. More important, and conclusive, is that there was reconsideration and amendment of the verdict by the jury by consent of all. We cannot avoid the conclusion that whatever error in the verdict there may have been was effectively cured and no ground remained for complaint by respondents. They should not have been heard to complain of contended error which had already been corrected with their consent. The court erred in granting new trial upon the alleged error in the form of the original verdict, and that is all that is embodied in the appeal. "A jury's verdict should be upheld when it is possible to do so and carry into effect what was clearly the jury's intention." *Joiner v. BeVier*, 155 S. C. 340, 152 S. E. 652, 656.

The decisions cited by respondents have been carefully considered. [Cases Cited]

The cases typify the power of a trial judge to grant a new trial absolute or *nisi* in a law case upon his disapproval of the verdict on factual grounds. The power has often been said to be inherent and it is expressly authorized by the terms of secs. 34 and 605 of the Code. It is an essential discretion of a trial court which this court does not possess under the present constitution.

See the decisions in the footnotes to the cited Code sections.

But the discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them, hence his sometime designation as the thirteenth juror. No such element is present in the case at bar. Proper grounds were laid in respondents' motion for new trial to call into play discretionary power to grant it, but the judge overruled them; and he granted it only upon the wholly untenable ground of objection to the verdict's form before it was amended by the jury upon resubmission by consent. Judicial discretion was not involved. Its purported exercise was error.

The writ of attaint, unbelievable as it may seem, is set forth in 3 Bl. Comm. at page 404 as follows:

> Under a writ of attaint the inquiry was made by a jury, double the number of those who rendered the alleged false verdict, and if they found the verdict a false one, the judgment of the common law was, that the jurors should become infamous; should forfeit their goods and the profits of their lands; should themselves be imprisoned, and their wives and children thrown out of doors; should have their houses razed, their trees extirpated, and their meadows plowed; and that the plaintiff should be restored to all that he lost by reason of the unjust verdict.

Why Grounds Should be Used and Not Exceptions: It should be noted that both sections 10-1461 and 10-1462 use the word "exceptions" in connection with a motion for a new trial. It rarely, if ever, functions in that connection. The word "grounds" has taken its place in practice, thereby avoiding confusion with the necessary use of "exceptions" in appeal procedure. Section 7-406, Supreme Rule 4, Sections 1 & 6.

In this State can a judge of his own motion grant a new trial? There is no South Carolina case in point but he should be able to do so, if the analagous case of *McCall v. Cohen* (1881), 16 S. C. 445, holding he could grant of his own motion a nonsuit is kept in mind, though he must be very careful in taking such a step.

South Carolina follows the majority rule that, though on a reasonable inference the judge *must* let the case go to the jury, still, as the 7th or 13th juror, if the verdict is against the preponderance of the evidence or is manifestly unjust, he can set it aside but only by granting a new trial before another jury, See *Fallon v. Rucks, ante.*

In other words, even if there is a "mountain" of evidence in favor of one party and only a "molehill" in favor of the other, the "molehill", if a scintilla or reasonable inference, carries it to the jury, but if a verdict is based on that and not on the "mountain" the judge, if his conscience is shocked, has the power to grant a new trial, and the Supreme Court can't interfere unless he has abused his discretion or been capricious. *Mishoe v. A. C. L. Ry. Co.* (1938), 186 S. C. 402, 197 S. E. 97, states on page 424:

> Concerning the suggestion that the return of a verdict for $40,000.00, in the absence of specific instructions as to the several elements of damage which might be considered by them, and the lack of direct testimony as to the earning capacity of deceased, warrants this Court in concluding that the jury gave no serious or judicial consideration to the primary issues of (1) negligence, (2) proximate cause, (3) contributory negligence, and (4) contributory gross negligence, suffice it so say that we know of no decision of the Court of last resort of any jurisdiction, nor has any been called to our attention, which has gone so far as to declare that a grossly excessive verdict indicates that the jury returning the same did not give such consideration to those fundamental issues. And, in the very nature of the secrecy imposed upon a jury's deliberations, it is impossible for a Court, confined by salutary, constitutional limitations to the correction of errors of law only, so to adjudicate. For aught that appears to the contrary, the jury in the instant cause may have given most careful and deliberate consideration to the primary issues of negligence, proximate cause, contributory negligence, and contributory gross negligence before deciding such issues adversely to appellants, and yet made a mistake, if one were made, in estimating the damages. Certainly, there is no suggestion of any basis in the record for an adjudication here that the amount awarded as damages discloses "as

a matter of law," or "as a fact susceptible of no other reasonable inference," that the jury did not give proper consideration to the underlying issue of liability.

Nor can we say, although conceding that the verdict was a large one, that the sum awarded is so excessive as to force the conclusion (1) that it was the result of caprice, passion, prejudice, sympathy, or other considerations not founded in the evidence and (2) that the trial Judge's refusal to grant a new trial absolute, though exercising his authority to reduce the verdict, constituted a manifest abuse of the discretionary power exclusively vested in him; nor that any "such error appears as to warrant our imputing to Judge and jury a connivance in escaping the limits of the law." [Cases cited]

Again at page 426 it is declared:

An appellate Court, confined to the correction of errors of law only, cannot conclude, from a verdict that is excessive as to amount, that the jury gave no serious or judicial consideration to the primary issue of liability — without invading the constitutional province of the triers of the facts; the most that can be said of an excessive verdict is that the jury erred in fixing the amount, either through passion, prejudice, caprice, sympathy, or some other consideration not founded in the evidence, and, for that reason, the aggrieved party did not receive that consideration to which every litigant is entitled; and (9) under the statute, the evidence, the charge of the trial Judge, and the former decisions of this Court, the verdict, concededly a substantial one, is not so large as to warrant the holding here that "the facts are susceptible of no other reasonable inference than that the verdict was so excessive as to indicate that it was the result of prejudice, caprice, or passion, or other consideration not founded on the evidence, and that the Circuit Judge's refusal to grant a new trial (absolute) amounted to manifest abuse of the discretionary power in such matters, exclusively vested in him by law."

A motion for a new trial in South Carolina must be made prior to the adjournment for the term. It may be argued

later, regardless of the old *Molair* case, annotated under Sec. 10-1466, but only if certain conditions are met. The attorney making the motion should see to it that the judge *marks* the motion "heard" and puts his signature or at least his initials beneath same on the calendar, and that opposing counsel is duly notified or consents. If not, the right of hearing the motion can be lost. *Altman v. Efird Bros. Co.* (1936), 180 S. C. 205, 185 S. E. 543, lays down the rule at p. 211:

> "Has a trial judge the power and right, after the adjournment of the court *sine die,* to pass an order which reverses or modifies the order made in term time?
>
> "It is such a well-settled principle of law in this state that, when a trial judge adjourns his court *sine die,* he loses jurisdiction of a case finally determined during that term, except under special circumstances, as where either by consent or acquiescence of counsel for both sides, or postponing determination of motions duly entered during the sitting of the court, or in some cases where supplemental orders germane to and carrying out the order duly made, and not inconsistent therewith, may be passed, that any extended discussion thereof is deemed unnecessary."

In the case now before the Court appellant's attorney, in the absence of respondent's attorney, notified the Court that he would make a motion for a new trial; thereupon, his Honor "noted" the motion, but did not mark it "heard". Thereafter, when the term of the Court had adjourned *sine die,* the trial Judge notified the attorney for appellant that he would hear the motion on a certain day. On the morning of that day, appellant's counsel notified respondent's counsel that the motion would then be heard. Respondent's counsel appeared and stated to the Court that this was the first time that he had heard that a motion for a new trial had been made, that he was taken by surprise and asked for time, which was given him.

The Court had adjourned *sine die* before respondent's counsel was even aware that a motion for a new trial had been "noted"; there was no agreement of counsel about it, the motion was not marked "heard." The fact that respondent's counsel was called on and did resist the motion, after the Court had adjourned *sine die,* could

> not confer in the trial Judge jurisdiction to hear the motion. . . .

Circuit Court Rule 47 is seldom, if ever, used now. It seems to be like Rule 48. See annotation under latter Rule, which says it seems this rule is no longer in force. One wonders why either rule should still be in the Code.

When Should a Judge Send Jury Out? At this point, though the matter doesn't strictly pertain to new trials, attention should be called to the recent case of *State v. Chasteen* (1955), 228 S. C. 88, 88 S. E. 2d 880, which treats of a rather legal as well as practical dilemma in dealing with the voluntariness of a confession (the same would apply to a dying declaration). Should the judge in first passing on the factual issue of voluntariness send the jury out? If he does, the identical testimony should be again brought out before the jury, and yet a witness may answer differently, or his demeanor and conduct on the stand may be entirely different. This would mean that, besides the waste of time, the jury would not be trying the exact issue that the judge did.

On the other hand, if the jury is not sent out and the judge finds the confession inadmissible, the jury would have heard evidence which, though they be charged not to consider it, will function at least in their sub-consciousness. The South Carolina court calls attention to the rule in other jurisdictions that the jury should be absent but doesn't finally decide the point, however, it suggests on page 98 that "That the better practice is for the trial Judge to conduct the preliminary inquiry and determine the admissibility of the confession in the absence of the jury."

A New Trial on After Discovered Evidence: There is no definite time limit in this State for making a new trial motion on the above ground. *State v. Williams* (1917), 108 S. C. 295, 93 S. E. 1006, declares at page 298:

> But in the Courts of law of the United States, a party may, under certain circumstances, become entitled to a new trial on account of newly discovered testimony; the ground being that the facts upon which he now relies are external to those which transpired at the trial. Can this appellant be cut off, then, from the opportunity of availing himself of this testimony because, at the time of his conviction, he moved for a new trial on the

then existing facts, and, failing in that, sentence had been pronounced against him? If this be so, the right of a new trial on the ground of after-discovered testimony is a delusion and a snare. It is a promise to the ear, but broken to the hope. If this be so, the only possible case in which such testimony could be made available would be where the party had waived his motion at the trial.

The right to a new trial on newly-discovered testimony, when sufficient, is as fully settled and guaranteed by the law as any other, and this right cannot be lost because a new trial had once been refused upon facts wholly different from and not involving this newly discovered testimony.

Even after judgment has been affirmed on appeal, it is within the discretionary power of the Circuit Court to grant a new trial on the ground of newly discovered evidence. *State v. Lee,* 80 S. C. 367, 61 S. E. 657.

The statute empowering the Circuit Judges to grant new trials on after-discovered evidence does not limit the time within which the motion must be made. *Sams v. Hoover,* 33 S. C. 401, 12 S. E. 8. Nor is there any prescribed time within which the Circuit Court shall exercise its inherent right to grant new trials in such cases. If a party is entitled to a new trial, and is serving the sentence imposed upon him, there is even a stronger reason for hearing his motion than if he had not entered upon the service of his sentence, as his rights are thereby more directly affected.

State v. Strickland (1942), 201 S. C. 170, 22 S. E. 2d 417, apparently leaves no doubt that due diligence must be used and that a failure to make the motion more than nine months after a trial resulting in a conviction is lack of such diligence and warrants a denial of such motion. However, it should be remembered that *due diligence,* like a *reasonable time* depends after all upon the circumstances of the particular case. In this connection Supreme Court Rule 24 should be carefully considered.

Even the Supreme Court on its own motion can raise the point. *Smith vs. Quattlebaum* (1953), 223 S. C. 384, 390, 76 S. E. 2d 154. If that is so, then even more than nine months can elapse.

The conditions for granting such a motion in South Carolina are the usual ones:

1. Evidence must be discovered after former trial.
2. Could not have been discovered by due diligence for use in former trial.
3. Must be material.
4. Must appear that the evidence will probably, not merely possibly, change the result.
5. That it is not merely impeaching.
6. That it is not merely cumulative.

See *Johnston v. Belk-McKnight Co., Inc.* (1938), 188 S. C. 149, at page 153, 198 S. E. 395. That case at pages 157 and 158 also tackles the difficult problem as to what is *cumulative* and what is *impeaching* evidence. One finds the following:

> Is it *merely cumulative,* or impeaching?
>
> In the case of *McCabe v. Sloan, supra,* this Court on the consideration of the question "What constitutes cumulative evidence?", adopted the following statement from 20 R. C. L., 297, Sec. 79.
>
> *"What Constitutes Cumulative Evidence.* — Cumulative evidence has been tersely defined as additional evidence of the same kind to the same point. It is apparent that there is a wide difference in meaning between the terms 'of the same kind' and 'to the same point', as used in the various definitions. Newly discovered evidence, to be cumulative, must not only tend to prove facts which were in evidence at the trial, but must be the same kind of evidence as that produced at the trial to prove those facts. If it is of a different kind, though upon the same issue, or of the same kind on a different issue, it is not cumulative. Nor is evidence cumulative in the legal sense which, while tending to establish the same general result, does it by proof of a new and distinct fact. To render evidence subject to the objection that it is cumulative, in the legal sense, it must be cumulative, not with respect to the main issue between the parties, but on some collateral or subordinate fact bearing on that issue. * * * Newly discovered evidence raising a new ground of claim or defense is, of course, not cumulative, nor is evidence explaining an apparent conflict in or contradicting, evidence offered at the trial.

Newly discovered evidence of admissions has been held not to be cumulative to evidence of facts and circumstances."

From Section 72 of the same authority this is taken:

"As a general rule a new trial will not be granted on account of the discovery of facts and circumstances merely cumulative in their character. The reason of the rule is that public policy, looking to the finality of trials, requires that the parties be held to diligence in preparing their cases for trial, and it is not, strictly speaking, an independent rule, but a mere corollary of the requirement that the newly discovered evidence must be such as to render a different result probable on a retrial of the case. The rule must, however, be taken in its proper sense, and is not to be understood as precluding a new trial in every case, where the new testimony relates to a point contested on the former trial; for if it were so a new trial could seldom, if ever, be granted in any case."

The Court adheres to the announcement there made.

Is the newly discovered evidence "impeaching"? This term appears in connection with Subsection 5, which prescribes that the newly discovered evidence "must not be cumulative or impeaching."

We do not understand that the words "cumulative" and "impeaching" mean the same thing. Cumulative evidence, as we have seen, supplements that which has already been testified. Impeaching must mean that which is outside the evidence already given, and impeaches that evidence; it may be by attacking the character, the motives, the integrity, or veracity of those who gave the testimony.

Black's Law Dictionary, Third Ed., page 922, gives this definition of the word "impeach":

"In the Law of Evidence — To call in question the veracity of a witness by means of evidence adduced for that purpose. The adducing of proof that a witness is unworthy of belief."

We do not understand that if the new evidence of independent facts show the inaccuracy of testimony, and thereby cast reflection upon the witnesses that gave the testimony, that the newly discovered evidence is ob-

noxious to the provisions of Subdivision 5 because it impeaches the witness in the legal meaning of the word "impeaching."

State v. Pittman (1925), 137 S. C. 75, 134 S. E. 514, seems to modify the *Belk* case as to No. 6 saying that cumulative evidence, if strong, is admissible. It states at page 88:

> As to the testimony of Early Harrison, Rufus Plumley, and H. S. Howard, tending to corroborate Alex Pittman's plea of alibi, we think the Circuit Judge correctly held that it was merely cumulative. It is true that newly discovered testimony, which is in a sense cumulative, may throw such new light on a vital issue and may be of such compelling force as clearly to require a new trial in the interest of justice. Such was the character of the after-discovered evidence in the cases of *State v. Wiley,* 106 S. C., 439; 91 S. E., 382, and *State v. Casey,* 116 S. C., 281, 108 S. E., 112, cited by appellants. But the testimony here relied on is not, as we apprehend, reasonably susceptible of that classification or evaluation. . . .

However, *State v. Strickland, supra,* appears to hark back to the rule as stated in the *Belk* case, while *State v. Casey* (1921), cited in the *Pittman* case is distinguished therein by asserting that if evidence is only incidentally or merely cumulative but can probably change the result it is admissible. One has to be thoroughly familiar with these cases to handle a case properly.

Waiver: In South Carolina the right to a new trial is waived, if one appeals. *Murdock v. Courtnay Mfg. Co.* (1897), 52 S. C. 428, 29 S. E. 856. However, in view of Supreme Court Rule 24 and the foregoing cases there would be no such waiver regarding a like motion on after-discovered evidence. See also *State v. Hawkins* (1922), 121 S. C. 290, 114 S. E. 538, which held that such a motion must be made before electrocution of a defendant.

Minutes of the Court: This is a phrase of rather indefinite meaning now. The journal kept by the Clerk of Court comes, of course, within that phrase, but as to what else, is uncertain. Sec. 15-1762 is never followed now. A judge would be astounded if a clerk came to read over to him each day the minutes of that day.

Improper Separation of Jury: See *State v. Loftist* (1957), __ S. C. ___, 100 S. E. 2d, 671, wherein a motion for a new trial, on this ground was made and refused. It was held in that last paragraph of the decision:

> It affirmatively appears, from the record in this case, that the juror who was separated from the jury under the circumstances heretofore outlined, was not subjected to any outside influence by word or act. There is no showing that any outside influence reached the juror or the jury. The reverse is true. The motion of the appellant was addressed to the discretion of the presiding Judge and we see no abuse of discretion in refusing the motion. There is nothing in the record to show any injury or prejudice to the appellant.

Form of Motion: A motion for a new trial must have a specific ground or grounds so that the adversary will have notice of what he has to meet and the judge of what he has to decide. South Carolina cases haven't laid down any definite yardstick as yet, but it is doubtful if just a general ground such as "for error in the exclusion of evidence" would be sufficient. On the other hand one would hardly be required technically to be as specific as an exception would have to be on appeal under Supreme Court Rule 4, Section 6, which requires that one state why a ruling was erroneous. *State v. Glenn,* (1940), 195 S. C. 410, 11 S. E. 2d 859. However, to so state a ground for a new trial motion is not only fair to the adversary and to the Court, but is the safer course.

In view of the above and Circuit Court Rule 47, which, however, is seldom used in practice, such a motion must be in writing in this State, or at least dictated to the court stenographer in open court in the presence of the judge and opposing attorney and reduced to writing. The last paragraph of Circuit Court Rule 18 furnishes one an analogy.

Can such a motion be heard at chambers? Yes, regardless of the old cases in 5 and 14 S. C. Reports, wrongly annotated under Sec. 10-1461. Since those cases, the law was changed in South Carolina in 1925, which now as a part of Sec. 15-233 gives to the trial judge "all powers" at chambers which he has in open court except for matters requiring a jury trial. A note of caution may be suggested here, namely, that there are quite a few similar errors in the 1952 Code annotations which an attorney had better watch out for.