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## BUSINESS CORPORATIONS AND PARTNERSHIPS

MARSHALL T. MAYS\*

### 1. *Business Corporations*

The only decision by our appellate courts in the field of business corporations during the period of this survey was *Sanders v. Allis Chalmers Mfg. Co.*<sup>1</sup> This was an action in Barnwell County for the purchase price of farm equipment on an alleged breach of warranty. The defendant, a foreign corporation domesticated in the State of South Carolina, made a timely motion for change of venue to Orangeburg County where its agent resided, on the ground that it had no office or agent in Barnwell County and under the terms of Section 10-303 of the 1952 Code of Laws it was entitled to trial "in the County in which the defendant resides at the time of the commencement of the action." The trial judge, Julius B. Ness, denied the motion, apparently finding that the defendant did not maintain an *office* in Orangeburg County. The majority opinion of the Supreme Court cites a line of South Carolina decisions to the effect that a foreign corporation, whether or not domesticated, may be sued in any county of the state where it has an agent and an office for the transaction of its business. The Court refused to upset the trial judge's finding that the defendant did not maintain an office in Orangeburg County although it was argued that the defendant's agent maintained an office at his home. There was a strong dissent by Mr. Justice Oxner against literal interpretation by the majority of the word "*office*", which in effect establishes or continues a different test for venue in cases concerning foreign corporations than that applied to South Carolina corporations. As a result, a domestic corporation may be sued "in any county where it has and maintains a place of business, or an agent engaged in conducting and carrying on the business for which it exists."<sup>2</sup>

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1. 235 S. C. 259, 111 S. E. 2d 201 (1959).

2. *Morris v. Peoples Baking Co.*, 191 S. C. 501, 5 S. E. 2d 286, 287.

The paucity of decisions by our appellate courts in the field of corporation law serves to commend the adoption of a model or Uniform Corporation Act for South Carolina. In 1958, the South Carolina Bar Association recommended a legislative study of our corporation laws and authorized the President of the Association to appoint a committee to work jointly with the Legislative Committee. A Legislative Committee has been recently appointed, composed of Senators Bristow and Richardson, Representatives C. Claymon Grimes, Jr. and William F. Fairey, Mr. Richard M. Osbourne and Mr. Henry C. Nelson, Jr., appointed by the Governor and the Secretary of State, to study corporation and security laws of this state. As yet a committee from the Bar Association has not been appointed.

## 2. *Partnerships*

A dearth of case law in this state on the subject of partnerships was remedied by the adoption in 1950 of the Uniform Partnership Act. There were no decisions by our appellate courts in the field of partnership law during the period of this survey but the General Assembly this year adopted the Uniform Limited Partnership Act. This Act provides a desirable and flexible form of business association, which is currently in vogue for use in real estate investment. The repealing clause of the new Act provides for the continuation of existing limited partnerships under the old law.