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CRIMINAL LAW — PROCESS — Immunity of Service of Summons of Non-Resident While in the State to Testify in a Criminal Action. — Defendant, a non-resident, in compliance with summons mailed to him, returned to this State to appear as a witness in a criminal action. Immediately after the hearing and on the same day thereof, plaintiff sued out an attachment against him and against the automobile in which he was traveling. The trial court granted a motion to quash service of process on defendant and the service of attachment on his automobile and dismissed the suit. On appeal, HELD: Affirmed. The defendant, a non-resident and while attending a criminal trial in the Commonwealth of Virginia, was immune from service of process and such immunity extended also to the attachment of his automobile. *Davis v. Hackney,* 85 S.E. 2d (Va. 1955).

From the very earliest times, the rule of law has prevailed that a suitor or witness is exempt from service of process while without the jurisdiction of his residence for the purpose of attending court in an action to which he is a party, or in which he is to be sworn as a witness. *Person v. Grier,* 66 N.Y. 124, 23 Am. Rep. 35 (1876); *Cooper v. Wyman,* 122 N.C. 784, 29 S.E. 947 (1898); *Durst v. Tautges, Wilder & McDonald,* 44 F. 2d 507, 71 A.L.R. 1394 (1930); *Dyar v. Georgia Power Co.,* 173 S.C. 527, 176 S.E. 711 (1932). This rule of immunity is of such ancient origin that it is mentioned in the Year Books of England as early as Henry VI. *Sofge v. Lowe,* 131 Tenn. 626, 176 S.W. 106 (1915); *Harris Foundation v. Pottawatomie County,* 196 Okla. 222, 163 P. 2d 976 (1945). It came to us out of the common law with only such modifications as were required to make the principles underlying it harmonize with American institutions and accord with American jurisprudence. *Brooks v. State,* 3 Boyce 1, 79 Atl. 790, 51 L.R.A. 1126 (Del. 1911); *Sofge v. Lowe, supra.* The privilege or immunity is personal to the suitor or witness, and is based on fundamental considerations of public policy and the impartial and efficient administration of justice. *In re Healey,* 53 Vt. 694, 38 Am. Rep. 713 (1881); *Stewart v. Ramsay,* 242 U.S. 192 (1916). To allow such service of summons would discourage the voluntary appearance of those whose presence is necessary or convenient to the judicial administration in the pending litigation. *Baldwin v. Emerson,* 16 R.I. 304, 15 Atl. 83 (1888); *Lewis v. Miller,* 115 Ky. 623, 74 S.W. 691 (1903); *Lamb v. Schmitt,*

285 U.S. 222 (1932). This immunity works no injustice to anyone, for unless the witness comes within the state there would be no opportunity to serve process upon him. *Sherman v. Gundlach,* 37 Minn. 118, 33 N.W. 549 (1887); *Malloy v. Brewer,* 7 S.D. 589, 64 N.W. 1120 (1895); *Breon v. Miller Lumber Co.,* 83 S.C. 221, 65 S.E. 214, 24 L.R.A. 276 (1909). With the exception of non-resident witnesses, the reason for the rule has, for the most part, passed away. Civil arrests, in most states, no longer exist and any actual interruption of the court by service of summons would be grounds for contempt of court. *Mertens v. McMahon,* 334 Mo. 175, 66 S.W. 2d 127 (1933). In some jurisdictions the tendency has been to enlarge, rather than to diminish, the privilege of parties and witnesses from service of process. *Underwood v. Fosha,* 73 Kan. 408, 85 Pac. 564 (1906); *Barber v. Knowles,* 77 Ohio 81, 82 N.E. 1065, 14 L.R.A. 663 (1907). In others, the tendency is to restrict the privilege. *Greenleaf v. People's Bank,* 133 N.C. 292, 45 S.E. 638, 63 L.R.A. 499 (1903); *Nelson v. McNulty,* 135 Minn. 317, 160 N.W. 795 (1917). In any event, the privilege should not be enlarged beyond the reason upon which it is founded. *Lamb v. Schmitt, supra; Brooks v. State, supra.* Having in mind that the privilege arises out of the authority and dignity of the court and has for its primary purpose the protection of the courts in its administration of justice, and not the immunity of the person, it may in general be said that it is to be accorded or withheld as judicial necessities require. *Long v. Ansell,* 293 U.S. 222, 79 L. Ed. 208 (1934); *Lamb v. Schmitt, supra; Brooks v. State, supra.*

It is well known that ambassadors and other public ministers serving in a foreign country are not subject to the laws of the country in which they serve, and are exempt from the service of judicial process in a civil action or proceeding. Also, there are, in most jurisdictions, constitutional or statutory provisions which secure to certain other classes of persons, including non-resident witnesses in a criminal action, a privilege or exemption from service of process in a civil action against them. Such a privilege or exemption does not necessarily rest upon the authority of a constitutional or statutory provision but may be given by the courts upon grounds of public policy, independently of legislative sanction. The majority of the courts, including South Carolina, agree with the holding of the principal case in that a non-resident witness is immune from service of summons while without the jurisdiction of his residence for the purpose of attending court as a witness.

J. N. MALPHRUS.

MASTER AND SERVANT — Master's Duty to Furnish Servant Safe Place to Work — Places Owned, Controlled, or Provided by Third Persons. — Plaintiff was employed by defendants to haul and place crushed stone on a stock pile which was located on the premises of a third person. While operating one of defendant's trucks under their direction and control, plaintiff was severely injured while unloading rock, when stock pile caved in and threw him against the truck. Upon trial court's failure to sustain the defendant's demurrer, and for a judgment based on such ruling, defendant appealed to the Supreme Court. HELD: Reversed. Where an employee predicates a right of recovery on the failure of his employer to exercise due care to provide him a reasonably safe place to work, complaint must show that employer either owned or had control of the premises where injury occurred. *Shives v. Sample,* 238 N.C. 724, 79 S.E. 2d 193 (1953).

The general rule is that the master is under a non-delegable duty to his servant to afford him a reasonably safe place in which to work. *Lester v. Carolina Clinchfield & Ohio Railway of South Carolina,* 93 S.C. 395, 76 S.E. 976 (1912); *McBrayer v. Virginia Carolina Chemical Co.,* 95 S.C. 239, 78 S.E. 895 (1913). Even under the general rule the master is not liable for harm resulting from dangerous conditions of which he is not aware and which by a reasonable inspection he would not have discovered. *McGuire v. Bell Telephone Co. of Buffalo,* 167 N. Y. 208, 60 N.E. 433 (1901); *Armour v. Galkaiska,* 202 Ill. 144, 66 N.E. 1037 (1903). An exception to the general rule is that a master is not liable for injuries to his servant by reason of defects in places of work which are furnished by or under the control of a third person. *Wilson v. Valley Improvement Co.,* 69 W. Va. 778, 73 S.E. 64 (1911); *Crawford v. Michael & Bivens Inc.,* 199 N.C. 224, 154 S.E. 58 (1930). This exception is not generally recognized where the master contracts to do work on the premises of another and retains direction and control of the work, *Vilter Manufacturing Co. v. Quirk,* 199 F. 766 (C.C.E.D. Wis. 1912); *Albert Miller & Co. v. Wilkins,* 209 F. 582 (C.C.W.D. Wis. 1913); and when the master used the premises regularly and permanently as distinguished from casual and incidental occupancy, *McGuire v. Bell Telephone Co., supra; Central of Georgia R. Co. v. McClifford,* 120 Ga. 90, 47 S.E. 90 (1904); or where there are dangerous conditions created by third persons near the place of work, *Driggers v. Atlantic Coast Liner Co.,* 151 S.C. 164, 148 S.E. 889 (1928); *Clark v. Union Iron & Foundry Co.,* 234 Mo. 436, 137 S.W. 577 (1911); or where the duty to keep reasonably safe the means of

ingress and egress from the place where the work is done is an incident of the duty of the master to provide a safe place to work, *Powers v. Standard Oil Co.,* 53 S.C. 358, 31 S.E. 276 (1897); *E. B. Hunting and Co. v. Quarterman,* 120 Ga. 344, 47 S.E. 928 (1904); nor where the master has actual knowledge of a specific defect which he does not communicate to the servant. *Dunlap v. Richmond & D. R. Co.,* 81 Ga. 136, 7 S.E. 283 (1888); *Hume v. Ft. Halifax Power Co.,* 106 Me. 78, 75 Atl. 300 (1909). To impose a duty on a master to provide a safe place to work on premises over which he has no control, or which he had never seen, and the condition of which he neither knew nor could know, might be to impute to the master the negligence of a third person. *Seminole Graphite Co. v. Thomas,* 205 Ala. 22, 87 So. 366 (1920); *Gillespie Ex'rs v. Howard,* 219 Ky. 721, 294 S.W. 154 (1927). Generally the master is not liable where he neither has, nor assumes, possession, use, or control of the premises where the servant may be at work. *Channon v. Sanford Co.,* 70 Conn. 573, 40 Atl. 462 (1898); *Lidgren v. William Bros. Boiler Mfg. Co.,* 112 Minn. 186, 127 N.W. 626 (1910).

The master's liability for failure to furnish a safe place of work arises from a breach of a non-delegable duty owed to the servant. The necessity for an exception to the general rule, when the employee is on the premises owned or controlled by a third party, is questioned. As between a servant and his employer all premises which he is authorized or directed to use ought, in fairness, to be placed upon the same footing as those which actually belong to the employer. There is no ground for contending that his want of control over the premises constitutes a serious obstacle to his obtaining sufficient knowledge of its condition; therefore, there would be no hardship or injustice in requiring him to make such investigation as may be necessary for that purpose. The mere fact that the employer has no control over the premises and thus is unable to remedy defective conditions, should not absolve him from liability as he could, and certainly should, refrain from giving his servants orders which would put them in a position where their safety would be imperiled by such conditions.

ROBERT L. HAWTHORNE, JR.

INSURANCE — Insurer's Acceptance and Retention of Premiums as Evidence of Intention to Continue Policy in Force. — This is an action by an insured against her insurer to determine whether or not a policy had been renewed and was in effect at the time of an

accident. The defendant advised that all questions as to the policy should be called to the attention of the local representative. Prior to the expiration of the policy, plaintiff received a notice of a required premium due to renew the policy. She then made inquiry to the local representative who assured her of a 30 day grace period although the policy gave no reference to such. Twenty-eight days after the policy had expired payment was mailed. Later the same day, the truck covered by the policy was demolished. Eighteen days later, after the defendant had knowledge of the accident, he notified plaintiff that the payment had arrived too late to prevent cancellation of the old policy since the period of grace was only 17 days, but that the payment had been applied to a new policy. Plaintiff replied stating that she refused to accept a new policy and had no further need of one, and that she considered the old policy still in effect. No tender or return of premiums was ever made. Judgment was rendered for the plaintiff. On appeal, HELD: Affirmed on either of two grounds: (1) The apparent authority of the agent was sufficient to bind the principal; or (2) The defendant, by receiving the premium notice of the plaintiff with his payment, and being explicitly advised that no new contract was desired or accepted, was obligated either to return the premium, or to be held to have waived its ground for avoidance or forfeiture of the original policy. *Farm Bureau Mut. Auto Ins. Co. v. Bobo,* 214 F. 2d 575 (4th Cir. 1954).

An insurance company may waive, or be estopped to assert, a ground for avoidance or forfeiture of any insurance policy and the courts are prompt to seize on any circumstances which indicate a waiver on the part of the company or which will raise an estoppel against it. 45 C. J. S. *Insurance* § 672. Where a contract of accident insurance expires from time to time subject to renewal at the option of both parties, the failure to pay an additional premium essential to renewal of the policy causes a lapse of the policy. *Jackson v. Wash. Nat. Ins. Co.,* 13 Cal. App. 2d 254, 56 P. 2d 1264 (1936); *Taylor v. Mutual Benefit Health and Accident Ass'n.,* 133 F. 2d 279 (8th Cir. 1943). A conflict exists among the authorities as to whether the renewal of an insurance policy constitutes a new contract or is merely a continuance of the old contract. Annot., 77 A.L.R. 357. Cases taking the view that a new contract is created are: *Equitable L. v. McElroy,* 83 F. 631 (8th Cir. 1897); *Wastun v. Lincoln Nat. L. Ins. Co.,* 12 F. 2d 422 (8th Cir. 1926). Cases supporting the view that the old contract is continued, with which South Carolina is in accord, are: *Mutual L. Ins. Co. v. Lovejoy,* 203 Ala. 452, 83 So. 591 (1919); *New York L. Ins. Co. v. Buch-*

berg, 249 Mich. 317, 228 N.W. 770, 67 A.L.R. 1483 (1930); *Murray v. Metropolitan L. Ins. Co.,* 193 S.C. 368, 8 S.E. 2d 314 (1939). If the date at which the reinstated policy is to begin is uncertain, it must be construed as to protect the policyholder. *MacDonald v. Metropolitan L. Ins. Co.,* 304 Pa. 231, 155 Atl. 491, 77 A.L.R. 353 (1931). The acceptance of a premium or assessment, liability for which exists only on the assumption that the policy is to continue in force, is an election not to terminate it because of a known breach of condition. *Doyle v. Hill,* 75 S.C. 261, 55 S.E. 446 (1906); WILLISTON, CONTRACTS, P. 568 (Revised 1938). Retention of unearned premiums by an insurer with knowledge of facts sufficient to work a forfeiture of its policy is a waiver of the condition and the insurer is estopped from claiming a forfeiture. *Gandy v. Orient Ins. Co.,* 52 S.C. 224, 29 S.E. 655 (1897); *American Fire & Casualty Co. v. Castham,* 185 F. 2d 729 (1950). Acceptance of the payment of a premium note after maturity also operates as a waiver of the forfeiture. *Hodson v. Guardian L. Ins. Co.,* 97 Mass. 144, 93 Am. Dec. 73 (1867); *Duncan v. Missouri St. L. Ins. Co.,* 160 F. 646 (8th Cir. 1908). When an insurer learns of facts sufficient to establish a forfeiture, he must either cancel the policy or forego further collections of premiums, and a failure to do either will operate as a waiver. *Hicks v. Home Security L. Ins. Co.,* 226 N.C. 614, 39 S.E. 2d 914 (1946). He may not treat the policy as avoided for purposes of defense in an action to recover on the policy and at the same time treat it as valid for the purpose of earning and receiving premiums. *Guaranty L. Ins. Co. v. Pughaley,* 57 Ga. App. 588, 196 S.E. 265 (1938). Acceptance and retention of premiums manifestly indicate waiver of forfeiture. *Dubuque Fire & Marine Ins. Co. v. Miller,* 219 S.C. 17, 64 S.E. 2d 8 (1951). By accepting overdue premiums an insurance company may waive its rights to enforce a forfeiture of the policy. *Duncan v. Missouri St. L. Ins. Co.,* 160 F. 646 (8th Cir. 1908); *Jordan v. Equitable L. Assur. Soc. of U. S.,* 170 S.C. 19, 169 S.E. 673 (1933). In addition to giving notice as provided by the policy, the company must return or tender the unearned premiums in order to effect a cancellation. *Nitch v. Am. Century Ins. Co.,* 152 N.Y. 635, 46 N.E. 1149 (1897); *Tisdell v. N. H. Fire Ins. Co.,* 155 N.Y. 163, 49 N.E. 664, 40 L.R.A. 765 (1898).

When an insurance policy has expired and caused a lapse, there is a split of authority as to whether the renewal of a policy creates a new contract which must be accepted by the insurance company, or whether the old contract is continued in effect upon the payment

of the premiums. The latter view is the one expressed by the South Carolina courts and must be followed in this case. Since an insurance company, by accepting a premium on the assumption that the policy is to continue in force, or retaining unearned premiums, or accepting payment of a premium note after maturity or overdue premiums, is estopped from claiming a forfeiture of the policy, and must forego further collections of premiums and tender unearned portions thereof in order to effect a cancellation, we must conclude that the defendant has, by accepting and retaining the overdue premiums, waived its rights to enforce a forfeiture of the policy. On first appearance it may seem that this rule alone would not extend to the present case without the support of the first finding of the court as to the power of the agent to bind the principal, since the defendant had not received the premium at the time of the accident, and the policy gave no mention of a grace period. Also, there might have been grounds for the insurer applying the premiums to a new policy as alleged. However, the law of South Carolina is that the old policy is in effect upon the payment of the overdue premium and the insurance acceptance and retention of them is, as a matter of law, evidence of his intention to continue the policy in force.

PAUL ROGERS.

ATTORNEYS — Unauthorized Practice of Law by Corporations — What Acts Amount to Such Unauthorized Practice. — This was an action to enjoin defendant corporation from engaging in the alleged unauthorized practice of law. The lower court refused to enjoin defendant from probating estates, through its employees who were licensed attorneys, in which defendant was named executor, and its appearance in court in the administration of estates or trusts in which it was named executor, administrator, guardian, or other fiduciary. This included preparation of notices, inventories, accounts, motions, precedents for orders, and all other pleading and instruments which were necessary or admissible in the administration of such estates or trusts. On appeal, HELD: Affirmed in part and reversed in part. The defendant has the right to use its books and facilities to compile data necessary to the drafting of inventories and accounts only and to actually prepare and draft the same. It is the presentation of such instruments in court and the invocation of the court's processes thereon and not the preparation thereof that constitutes the unauthorized practice of law. *Arkansas Bar Association*

et al. v. Union National Bank of Little Rock, 273 S.W. 2d 408 (Ark. 1954).

At common law and generally by statute an individual may appear as counsel in his own behalf and perform acts which, if done for others, would constitute the practice of law. *Americus v. McGinnis,* 128 Wash. 28, 221 Pac. 987 (1937); *Stewart v. Hall,* 198 Ark. 403, 129 S.W. 2d 238 (1939); *Jefferson v. British American Oil Producing Company,* 193 Okla. 599, 145 P. 2d 387 (1944). The purpose of prohibiting laymen from practicing law is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the pursuit of justice by preventing the intrusion of incompetent and unlearned persons in the practice of law. *State ex rel. Daniel v. Wills,* 191 S.C. 468, 5 S.E. 2d 181 (1939). When an individual appears in court to represent himself he must comply with the established rules of procedure. *People ex rel. Chicago Bar Ass'n. v. Tinkoff,* 399 Ill. 282, 77 N.E. 2d 693 (1948); *Briggs v. Spader,* 411 Ill. 42, 103 N.E. 2d 104 (1951). And where such representation has disrupted the functioning of the courts, impeding judicial progress, the case would be subject to dismissal. *Jefferson v. British American Oil Producing Company, supra; Shotkin v. Kaplan,* 116 Colo. 295, 180 P. 2d 1021 (1947).

In many of the jurisdictions the trend has been to regulate the practice of law by corporations by enacting statutes. *Corporate Fiduciaries and the Unauthorized Practice of Law,* 18 VA. L. REV. 444 (1939). The determining factor as to what is the practice of law is the character of service rendered and not the type of tribunal before whom such services are rendered. *People ex rel. State Bar Ass'n. v. People's Stock Yard State Bank,* 344 Ill. 462, 176 N.E. 901 (1931); *State ex rel. Daniel v. Wells,* 191 S.C. 468, 5 S.E. 2d 181 (1939). There are many opinions as to what services constitute the practice of law. At least one court has held that where a corporation is authorized to carry on a fiduciary business, such as executor, administrator, trustee, agent, custodian or manager, it is not engaged in the practice of law in probating wills or in giving advice on the management of estates and related problems, where services performed are reasonably incidental to the conduct of its authorized business. *Merrick v. American Security & Trust Co.,* 107 F. 2d 271, 71 App. D.C. 72 (1940). The Georgia Court takes the position that the statute regulating the practice of law has reference to the practice before the courts only and a lawfully organized corporation may examine, certify and guarantee titles of real estate requested by a

customer. *Atlanta Title & T. Co. v. Boykin,* 172 Ga. 437, 157 S.E. 455 (1931). But the majority of courts hold that the practice of law is not limited to appearing before the courts but includes drafting of documents to be presented to the courts. *In re Show Mfrs. Protective Ass'n.,* 295 Mass. 369, 3 N.E. 2d 746 (1936); *Detroit Bar Association v. Union Guardian Trust Co.,* 282 Mich. 237, 267 N.W. 372 (1938). In examining the services performed by the corporation in determining whether the corporation is unlawfully practicing law, the courts are particularly interested as to whether or not the corporation is holding itself out for the practice of the law. *Atlanta Title & T. Co., supra; Creditors National Clearing House v. Bannwart,* 227 Mass. 579, 116 N.E. 886 (1917). It is to be noticed that most of the corporations have attempted to hide their practice of law by employing licensed attorneys. *Re Co-operative Law Co.,* 198 N.Y. 479, 92 N.E. 15 (1910); *Re Otterness,* 181 Minn. 254, 232 N.W. 318 (1930). And it is generally accepted that it cannot practice law directly or indirectly. *Judd v. City Trust & Saving Bank,* 133 Ohio 81, 12 N.E. 2d 288 (1938); *Montgomery v. Utilities Ins. Co.,* 134 Tex. 640, 138 S.W. 2d 162 (1938).

The reasoning behind regulating the practice of law is that it is not a business open to all, but a personal right limited to those who can qualify. *Re Co-operative Law Co.,* 198 N. Y. 479, 92 N.E. 15 (1910); *People v. Merchants Protective Corp.,* 19 Cal. 531, 209 Pac. 363 (1922). If the corporation were allowed to engage lawyers to practice of the public the close relationship of trust and confidence between the client and his attorney would be at an end. *People v. Merchants Protective Corp., supra; United States Title Guaranty Co. v. Brown,* 217 N.Y. 628, 111 N.E. 828 (1916). The attorney would look to the client and the corporation with divided loyalty; the public would suffer and the bar would be degraded. *Re Co-operative Law Co.,* 198 N.Y. 479, 92 N.E. 15 (1910); *People v. People's Trust Co.,* 180 App. Div. 494, 167 N.Y. Supp. 767 (1917). A corporation can employ an attorney to conduct its own legal affairs, but the conducting of fiduciary relations by a corporation through an attorney employed by it is the illegal practice of law. *Swift v. Board of County Commissioners,* 76 Minn. 194, 78 N.W. 1107 (1899); *Stewart Abstract Co. v. Judicial Commission of Jefferson County,* Tex. Civ. App., 131 S.W. 2d 686 (1939).

The purpose of regulating the practice of law is for the benefit of the individual. Controlling the practice of law is necessary to preserve the close relationship between the client and attorney which is necessary for justice and good practice, and as the basis for the all-

important regulation of the profession. The corporation should be limited to the practice of law insofar as their own business is concerned. Beyond this point in cases where the business of the corporation is that of representing the customer in a fiduciary capacity, there should be strict enforcement of any regulations governing the practice of law. The responsibility of enforcement would fall on members of the legal profession, and prosecution should be through the bar association of the particular jurisdiction. There is no doubt that the drawing and the handling of legal papers is as much a part of the practice of the law as representing a client in the courts. It requires a qualified legal mind, and one that is not separated from the client by divided loyalty. The public deserves this protection from those who can most effectively give it.

G. H. KEARSE.