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Domestic Relations

Venable Vermont

DOMESTIC RELATIONS

VENABLE VERMONT*

Judicial Decisions

During the review period the South Carolina Supreme Court dealt with three cases involving divorce, two cases involving custody and one separate maintenance suit, each of which is reviewed herein.

Cleveland v. Cleveland[1] involved an appeal in a divorce action brought by the husband wherein the wife sought separate maintenance and support for herself and the children. No divorce was sought by the wife, the husband also asked for custody of the children.

The action was brought in the County Court for Spartanburg County and was referred to the master who concluded that the husband was entitled to a divorce on the grounds of desertion; that having left a suitable home without just cause, the wife was not entitled to support and that the wife should be given custody of the children during school months with the right to the husband to visit them in California, where she was living; and that the husband should have the right to have the children visit him in Spartanburg, South Carolina, when the children were not in school.

The master further recommended that the husband should be required to support the children in a stated amount and to pay the wife's attorneys fees.

On exceptions to the master's report the County Court sustained the finding that the husband was entitled to a divorce on the grounds of desertion and that the wife was not entitled to separate maintenance and support, modifying the master's report by increasing the amount allowed for the support of the children and increasing the amount of the attorney's fees for the wife, and by further directing that the question of visitation should be left open to enable the parties to work out a mutually satisfactory agreement, failing in which the visitation rights would be subsequently fixed by the court.

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1. 238 S. C. 547, 121 S. E. 2d 98 (1961).

The wife appealed contending the testimony failed to establish desertion for the necessary period before the commencement of the action; that she should be granted a decree of separate maintenance and support; that the amount fixed for the support of the children and attorney's fees is inadequate and that visitation rights of the husband should be fixed. The record shows that there were three children of the marriage and that in October, 1957, after some differences, both having received psychiatric treatment, the parties signed an agreement that whereas the mother was to take the children for an extended visit to the home of her mother in California, which visit should not extend beyond September 1, 1958, the parties agreed that no action for the custody of the children would be brought in any state other than the State of South Carolina unless mutually agreed upon.

In December, 1957, the husband went to California to visit the family, joining them on a week's cruise to Mexico, during which time the parties cohabited.

In February, 1958, the wife brought an action for separate maintenance and support and the instant action was commenced exactly one year and one day after the wife left the South Carolina home of the parties, alleging desertion for a period of one year and seeking divorce.

Holding that the burden was on the plaintiff-respondent to show that the desertion continued uninterrupted for a period of one year prior to the action, the court pointed out the essential elements of desertion as: 1. Cessation from cohabitation. 2. Intent on the part of the absent party not to resume it. 3. Absence of the opposite party's consent, and 4. Absence of justification.

It is uniformly held that separation of the parties by mutual consent does not constitute a desertion, although such separation may be revoked at any time by either party making a bona fide request for a resumption of the marital relations, which if refused without justification or excuse, furnishes the revoking party sufficient cause for a divorce on the grounds of desertion by the party refusing to resume the cohabitation.

The statutory period commences to run from the date of the refusal to resume relations.

The Court held that the agreement of October 4, 1957, constituted separation by mutual consent, and that the evidence showed that only after the trip did the wife conclude that there was no hope of reconciliation.

The Court did not pass on the question of whether or not there was a refusal to resume the marital relations without excuse on the part of the wife, since the request was made within the statutory one year period necessary for desertion and a refusal could not have established grounds for divorce for the statutory period of one year.

Holding that the complaint should have been dismissed on this sole ground and that it was error to find that the wife deserted without just cause or excuse since the written consent shows a separation by mutual agreement, the Court reversed and remanded for a determination by the court below whether or not the wife was justified in returning to him in the separate maintenance suit, pointing out it would then be proper to determine the right to such separate maintenance and support as well as support for the children, attorney's fees and the question of visitation by the husband.

Ford v. Ford[2] concerned the construction of a "dismissed agreed" order of a Virginia court and its effect in this State on a custody proceeding brought by the wife in the Juvenile and Domestic Relations Court of Greenville County.

Under the agreement the husband was given custody of the children with the right of the wife to have custody during the summer vacation time and for certain holiday periods. In the instant action the judge of the court below issued an order awarding custody of the children to the wife, with reasonable visitation to the husband as might be agreed upon by the parties.

On appeal the Common Pleas Court modified the custody provision somewhat and made some changes as to visitation, refusing to hold as res judicata the custody agreement and refusing to give full faith and credit to the agreed dismissal order of the Virginia court.

On appeal the Court held that the dismissed agreed order of the court of Virginia constituted a judgment on the merits barring subsequent action from the same cause, and was equivalent to a judgment of retraxit and was res judicata in

2. 239 S. C. 305, 123 S. E. 2d 33 (1960).

the state where rendered and accordingly was entitled to full faith and credit.

Further holding that a judicial award of custody of children is never final, the Court found an absence of allegation or proof of a change of circumstances requiring a change of custody of the children subsequent to the dismissed agreed order by the Virginia court which was still in full force and effect.

Mr. Justice Oxner dissented pointing out that the merits of the present controversy were never considered or passed upon in Virginia and that the agreement made between the parties was never exhibited to the Court. He further pointed out that such an order is apparently binding on the parties in Virginia because the courts cannot change the contract of the parties without their consent, but did not agree with the soundness of this principle when applied to an ordinary civil action. Pointing out that the rights of custody of children is not a mere property to be contracted away between parents, he felt the question was open to judicial inquiry as to whether or not such agreement was for the best interest of the children who were lawfully in the State of South Carolina.

In *Piana v. Piana*[3] the husband in December of 1959, had brought a divorce action on the grounds of adultery, in the Civil Court of Florence County, against the wife, seeking an equitable settlement of the ownership of certain property alleged to have been owned in common by himself and his wife, and asked that he be declared the owner of the home in which the couple resided, allegedly purchased with his money and title wrongfully taken by his wife in her own name.

The wife, denying the charge of adultery, sought a divorce on the grounds of desertion in the nature of a cross-action, seeking custody of the children and that the husband be required to support them.

She alleged half ownership in certain property and the sole ownership of others, claiming it was purchased with her funds.

The court below, after the hearing, filed an order September 9, 1960, finding the proof insufficient to establish adultery and that the wife had deserted the husband without cause

3. 239 S. C. 367, 123 S. E. 2d 297 (1960).

in September, 1959, and by reason of such desertion was not entitled to separate support, accordingly neither party was granted a divorce.

The court awarded custody of the two minor daughters to the mother and custody of the minor son to the father, with visitation privileges to each parent. The court held that both parcels of real estate, including furniture, fixtures and furnishings were acquired as a joint venture and should be equally divided between the parties, with the right of either to demand a partition if an agreeable division cannot be arranged. A notice of intention to appeal was filed but was subsequently dismissed.

Shortly after the filing of the order of September 9, 1960, a new action was instituted in the Civil Court of Florence by the husband, on the grounds of desertion, which by this time had continued for the statutory period of one year. The wife defaulted and the divorce was granted December 13, 1960.

This action was brought in the Common Pleas Court of Florence County seeking to vacate and set aside the prior decision of the Civil Court of Florence on the grounds that court was without jurisdiction to make an adjudication of the property rights. From an order refusing such motion this appeal is taken. The appellant contends that having refused to grant a divorce to either party, the court was without jurisdiction to make an adjudication of the property rights, and that in any event the court was without jurisdiction because the value of the property involved, conceded to be in excess of $11,000.00, was above the jurisdiction of the Civil Court of Florence County.[4]

The Court on appeal held that Section 15-1609[5] contemplates that in divorce proceedings the jurisdiction of the Civil Court of Florence shall be co-extensive with that of

4. The jurisdiction of the Civil Court of Florence County in ordinary civil actions is limited to cases "in which the amount claimed" does not exceed the sum of $11,000.00. CODE OF LAWS OF SOUTH CAROLINA § 15-1608 (1952). However, with reference to divorce proceedings it is provided, "Said civil court shall have concurrent jurisdiction with the court of common pleas of said county in actions relating to divorce from the bonds of matrimony and in the matter of alimony and property rights, regardless of the amount involved, connected with such divorce actions, if one of the parties to the divorce action shall have been a resident of said county within the jurisdiction territory of said court for six months." CODE OF LAWS OF SOUTH CAROLINA § 15-1609 (1952).

5. CODE OF LAWS OF SOUTH CAROLINA, (1952).

the Court of Common Pleas and the jurisdictional limitation of Section 15-1608[6] does not apply. The Court agreed with the judge of the Court of Common Pleas below that it had no jurisdiction in a collateral attack to impeach the validity of the prior adjudication of the property rights of the parties by the Civil Court of Florence.

The Court held that its first inquiry was whether the court below had the jurisdiction initially to entertain the action brought by the husband, for the general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation, the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached.

The Court distinguished between jurisdiction and the exercise of jurisdiction, holding that the authority to decide a cause at all and not the decision rendered therein, is what makes up jurisdiction, pointing out the difference between the want of jurisdiction in which the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction, in which the action of a trial court is not void, although it may be subject to direct attack on appeal.

Appellant's position was that the civil court only had jurisdiction to decide property matters when a divorce was granted, and that failing to grant the divorce its jurisdiction failed on the question of settlement of property rights. Distinguishing the South Carolina law from the law in other jurisdictions, the court relied on *Machado v. Machado*;[7] and *Cleveland v. Cleveland*[8] herein reviewed, where although divorce was denied in the action, it was held that the court had jurisdiction to determine the question of separate maintenance and support. The Court further held that in some of the decisions cited the reasoning that the parties may become reconciled and resume cohabitation had no application to the instant case because the husband had procured a divorce before the wife instituted this proceeding. Further, that this view goes merely to the exercise of jurisdiction and not to the jurisdiction of the court.

6. CODE OF LAWS OF SOUTH CAROLINA, (1952).
7. 220 S. C. 90, 66 S. E. 2d 629 (1951).
8. 238 S. C. 547, 121 S. E. 2d 98.

The Court further pointed out that in the divorce case the wife previously asked the court to make a proper division or settlement of the properties owned by the parties, and that the greater weight of authority is to the effect that the voluntary litigation in the divorce cause by the parties of their respective property rights, confers jurisdiction on the court to determine the question raised thereby, regardless of whether the court otherwise would have had jurisdiction.

Pointing out that while the divorce statute[9] does not expressly authorize the court in a divorce proceeding to settle disputed claims of the parties to real and personal property, yet such an action is within the equity jurisdiction of the court,[10] and the Court found nothing in the divorce statute undertaking to restrict the broad powers of the Court of Chancery. The court having general jurisdiction when a divorce action is brought, such jurisdiction is not lost when the divorce is denied. Assuming that in such a divorce proceeding, particularly when a divorce is denied, the court should refrain from undertaking any adjudication of property rights, the question is not one of jurisdiction, but the proper exercise of jurisdiction, and the remedy for any mistake is by direct appeal, not collateral attack.

In the original proceeding complained of here, both parties had sought an adjudication of the property rights. While not declaring an estoppel in *haec verba* the implication is clear from the opinion that the parties are now estopped from denying the jurisdiction of the court.

In *Brown v. Brown*[11] the Court reviewed a judgment of the Common Pleas Court of Horry County dismissing the complaint of a wife in a petition for a divorce *a mensa et thoro,* wherein the wife was granted support and maintenance pendente lite, but suffered a dismissal of her petition on the merits. On appeal the Court reviewed the facts and found ample evidence to support the finding of the Common Pleas Court that the wife by inviting arguments and pursuing them diligently and vigorously was substantially at fault in provoking the difficulties upon which she based her action. The Court further held that although a wife need not be wholly

9. CODE OF LAWS OF SOUTH CAROLINA Title 20, Chapter 2 (1952).
10. CODE OF LAWS OF SOUTH CAROLINA § 20-105 (1952).
11. 239 S. C. 444, 123 S. E. 2d 772 (1962).

blameless in order to recover in an action for divorce *a mensa et thoro* based upon her charges of physical cruelty and other conduct of her husband, rendering it impossible for her to continue to live with him, if the wife is chargeable with substantial fault or misconduct materially contributing to disruption of the marital relations or inducing an action by the husband upon which she relies to justify the separation, she is not entitled to separate maintenance.

Dobson v. Dobson.[12] The parents of the child whose custody was involved in this case were divorced in 1956. Custody of the child had previously been before the court.[13]

There, when the divorce decree of May 11, 1956, was granted, the mother was given custody of the child with visitation privileges to the father. The mother remarried and announced an intention to take the child to the island of Taiwan where the step father was stationed with the armed services. The father sought to prevent the mother from taking the child out of the country. The mother's right to the custody was sustained by the opinion of the standing master, the lower court and the Supreme Court.

When the mother and her second husband, Dr. Julian E. Atkinson, returned to South Carolina about September of 1958, the mother, threatened with a miscarriage, was hospitalized and subsequently on January 17, 1959, that child was born dead. For several months prior to the latter date the mother was unable to leave her home to participate in custody proceedings concerning visitation privileges of the father. On November 4, 1958, the judge of the Richland County Court issued an *ex parte* order directing the Sheriff to take the child, a little girl, into his custody and award temporary custody to the father during the pendency of the petition. In November, 1958, the mother petitioned the court to modify the November 4th order. On November 20, 1958, the mother appeared by counsel, being unable personally to attend. The next day the county court modified the order of November 4th to allow weekend visitation privileges to the mother, continuing that order in effect until the mother was able to appear personally.

12. 238 S. C. 521, 121 S. E. 2d 4 (1961).
13. Dobson v. Atkinson, 232 S. C. 12, 100 S. E. 2d 531 (1957).

On April 1st, 1959, an informal conference was held in which the county court declined to modify its order of November 4th, rendering no formal order.[14]

On October 8, 1959, the mother petitioned the court that custody of the child be confirmed to her in accordance with the decrees of the county court of May 11, 1956, and March 19, 1957. The matter was referred to the master who found that the mother, having fully recovered from her illness, and being able to take care of the child, should have the custody and the father should have the right to visitation.

Upon exceptions the county judge reversed the master, ordered custody of the child to be with the father pending further order of court, modifying somewhat the visitorial privileges previously granted to the father.

The Court on appeal held that the orders of November 4, 1958, and November 21, 1958, and January 22, 1958, were merely temporary in nature and did not attempt to fix permanent custody.

The Court agreed that the master and the trial judge had properly held that the maternal grandparents of the child had done a good job of caring for her while she was temporarily in the custody of the father, that the decision was wise to leave the child there during the period of the mother's illness, holding that a custody decision is never final and reviewing the well known standards for awarding custody. The Court upon disagreement between the master and the county judge was free to determine the question according to its own view of the evidence.

Finding that both parents were of good reputation, and giving weight to the recommendation of the master, who had had an opportunity to observe the witnesses, the Court found that it was in the best interest of the child that she be left with her mother, since the father was away a good bit of the time at work and with other interests, the child being a girl of tender years, the matter can be reviewed in the future under change of circumstances. The father was granted reasonable rights of visitation.

14. Cf. Long v. McMillin, 226 S. C. 598, 86 S. E. 2d 477 (1955), where a patrolman was orally instructed by a judge to retain a pistol pending an order of the court and it was held that an unrecorded oral instruction of the judge was not "order of court" and Commissioner of the State Highway Department and the captain were not in contempt for demoting and transferring the patrolman and his superior for not turning a pistol over to the highway department as required by the rules of the highway department.

The case of *Collins v. Collins*,[15] involves a third appeal by a husband unwilling to assume his proper familial responsibilities, and willing to go to any lengths to avoid the power of the court to enforce the rights of the wife and child.

The case was on appeal previously on a nonsupport conviction of the husband, *State v. Collins*,[16] and on a question of venue *Collins v. Collins*.[17] The battle continued in the instant case on two separate appeals from a circuit decree made February 2, 1961, which (1) adjudicated on its merits a divorce proceeding between the plaintiff wife and defendant husband and, (2) ordered that in the event of his defaulting in a payment directed by the decree to be made to or for the benefit of the plaintiff and the child or to her attorneys as their fee, such payments should be made by trustees from an alleged living trust agreement executed in 1942 by the father of the defendant husband for his benefit.

The appellant husband sought a reversal on the grounds (1) that the evidence was insufficient to support the holding of physical cruelty and constructive desertion; (2) the amounts awarded for support of the wife and child and for an attorney's fee are respectively excessive and, (3) the decree required the husband to pay medical and hospital bills incident to the birth and care and in that connection to reimburse the plaintiff's mother for expenditures made by her for such purpose.

The trustees appealed on grounds hereafter discussed. Finding that the evidence fully warranted the trial judges conclusion that the physical acts of violence visited upon the wife by the husband constituted such physical cruelty as to endanger her health and afford sufficient grounds to support a divorce decree in the wife's favor, the Court found that while the husband was a college student and had only part time employment, there was a family trust set up for his benefit and it was proper to require him to pay $200.00 per month to be equally divided between mother and child for alimony and support. Holding it error to require that the payments be increased January 1, 1962, immediately upon the husband's graduation from college, as subsidizing in speculation, the Court left the question open as to whether or not the amount should be increased at that time.

15. 239 S. C. 170, 122 S. E. 2d 1 (1961).
16. 235 S. C. 65, 110 S. E. 2d 270 (1959).
17. 237 S. C. 230, 116 S. E. 2d 839 (1960).

The trial court taking in to consideration the wife's financial inability to pay her attorney's fees fixed the fee for services at $3,000.00 for litigation which includes: 1. An action for divorce in the juvenile and domestic relations and special court of Kershaw County, dismissed for lack of jurisdiction. 2. A second action in that court in which defendant unsuccessfully attacked jurisdiction and thereafter served notice of intention to appeal. 3. Criminal prosecution of the defendant for non support, *State v. Collins, supra,* in which respondent's counsel collaberated with the solicitor both on trial and in the appeal. 4. An action for divorce in the court of common pleas for Horry County terminated by a consent order setting aside the attempted service of the summons and complaint, and 5. His services in this case.

The Court reduced the fee to $1,500.00 holding that it was an error to consider any litigation other than the instant case in fixing the services of counsel.

The Court pointed out that whether or not in the divorce proceeding the husband's financial status is a factor to be considered by the court in assessing fees for wife's counsel is a question that has been variously discussed in other jurisdictions and to which the Court would not attempt a categorical answer though it would seem to the court that the husband's wealth or poverty is a matter bearing not so much upon the value of such services as upon the collectibility of the award therefor. The Court pointed out the usual standards for fixing a fee and the fact that the husband may be unable to pay it affords no basis for denying such judgment.

The decree under appeal ordered the husband to pay all bills incurred and paid by the wife or her mother on behalf of the wife and child for the hospitalization, medical care and medicine incident to the birth of the child and for its care up to the date of the decree. The husband complained on appeal that no such relief was asked in the complaint; that his mother-in-law was not a party to the action, and that the evidence showed it was impossible for the appellant to make such payment.

Finding that the husband was not misled as to the proof of expenditures in question, since evidence of them was admitted without objection on his part and witnesses were cross examined without reservation concerning them, and finding no merit in the position that the wife's mother was

not a party to the action, since the abandonment of the wife and child by the husband cast upon the wife and her mother the necessity of paying and incuring such obligations, the Court held that the husband should only be protected against having to pay any such obligation more than once. The case was remanded to the trial court to the end that after reasonable notice to appellant through his counsel, to respondent and her mother, the amount of such obligation and by whom each was incurred or paid might be determined either upon direct hearing or after reference and holding that at such hearing or reference, the wife's mother may present a claim for reimbursement as she may be advised and upon so doing should be bound by the judgment of court thereabout; further that as to such sums paid by the wife, she should have judgment, holding for the benefit of the mother any portions thereof representing payments by the mother.

The Court reviewed the irrevocable inter vivos trust. One of the trustees, a South Carolina resident, was personally served. A copy was sent by mail to the other trustee who was a resident of North Carolina. The South Carolina trustee demurred and the North Carolina trustee appearing specially, moved to quash the attempted service as ineffectual to confer jurisdiction. The court below, holding that it had jurisdiction over the trust estate and that the demurrer must be overruled, did not expressly pass on the motion to quash and after granting the divorce and making provision for alimony, support and counsel fees as hereinabove discussed, ordered that in the event of default by the defendant husband of any of the payments so directed to be made by him, the trustees should make such payment out of the income or corpus of the trust estate.

On appeal the Court held that the trustee should have been allowed to answer after his demurrer was overruled and that it was error not to accord him that right, further that it was error not to afford the North Carolina trustee the opportunity to appear generally or answer or plead or contest upon the merits. Aside from these considerations the Court held that the wife's attempt to obtain relief at the hands of the trustee was futile and that the motion to quash by the North Carolina trustee should have been granted since the action was not in rem against the trust assets and manifestly could not be sustained as such because they were not within

the court's jurisdiction, so that such trustee was beyond the jurisdiction of the court except through service of the summons upon him within the jurisdiction or by a general appearance, neither of which took place.

The trust provides that after the defendant husband becomes 21 years of age the trustee had the sole discretion to pay to him or apply for his benefit or to pay over and deliver to him discharged of all trusts the whole or any part of either income or principal to the extent that the trustee determined that the beneficiary has habits of sobriety, thrift and economy and the trustee is satisfied as to his ability to manage and control such property at the time of payment or distribution.

The trust further provides that after the beneficiary attains the age of 28 years he should receive one-half the net income and the trustee shall have discretion and power to make additional payments to him upon the same conditions as were applicable prior to his attaining that age. The trust further provides for termination when the husband shall attain the age of 33 years, with a provision for handling an ultimate distribution if he should die prior to the termination.

At the time of the decision Charles A. Collins, the beneficiary, was 22 years old and according to the terms of the trust, will during the next six years, if he live so long, be entitled to only so much income or principal as the trustees in their sole discretion shall see fit to give him. During that period he cannot compel the trustees to pay any part of the trust and his creditors, who are in no better position, cannot reach it.

The complaint showing on its face that by the express provisions of the trust the defendant Collins would have no legal right prior to attaining the age of 28 years to compel payment of any part of the trust funds, and there being no allegation that he has reached that age, the complaint failed to state a cause of action with respect to the trustees. Holding the demurrer should have been sustained, the Court did not explore the other grounds.

The husband did not appeal from an award of the child's custody to the mother subject to reasonable visitation by him or from the portion of the decree impressing upon all income that he may hereafter receive from the trust estate a lien

to the extent and as security for the payment of any amounts then due by him for alimony, counsel fees and the support, medical care and hospitalization of the child. As modified the case was remanded for further proceedings.

Your reviewer has experienced no little difficulty in an impartial review of this decision. The child is afflicted, the acts of physical cruelty by the husband continued into the eighth month of pregnancy of the wife, whose sole support for herself and child was from her widowed mother. It is not surprising to learn that the husband was cited and confined on a contempt proceeding from which there was no appeal. This is merely one of a long line of decisions by the Court evincing a constant, growing, continuing willingness to protect the rights of those who by reason of financial, physical or other disability are unable to litigate family matters upon an equal basis.

Legislation

In its 1961 session the General Assembly passed several acts in the field of Domestic Relations:

Act No. 688 deleted from the statute relating to the renuciation of dower the requirement of an offical seal, and provided that the absence of a seal in renunciations heretofore or hereafter made shall not invalidate any renunciation of dower.

In its haste to correct its previous error the legislature eliminated the requirement for the offical seal of out of state notaries which is in direct conflict with Section 49-53 providing that commissioners of deeds shall take renunciation of dowers and certify same under the seal of such commissioner. It is respectfully submitted that the careful practitioner will still require the seal of a nonresident commissioner of deeds or notary.

Act No. 675 amends section 48-51 providing that an application for the change of name no longer need be made in open court.

Act No. 698 amended section 10-2551 of the S. C. Code (1952) to provide for the payment of a sum not exceeding $1,000.00 to a minor or other incompetent so as to eliminate the origin, source or nature of the assets.

Act No. 708 provides that a marriage license may be issued to an unmarried female and male under the age of 18 years who could otherwise enter into a marital contract, if the female be pregnant or has borne a child, under the following conditions:

(a) The fact of pregnancy or birth must be established by the report or certificate of at least one duly licensed physician. (b) She and the putative father must agree to marry. (c) Written consent to the marriage must be given by one of the parents of the female or by persons standing in *loco parentis*, or in the event of no such qualified person, with the superintendent of the Department of Public Welfare in the County in which either party resides. (d) Without regard to the age of the female and male. (e) Without any further requirement for further consent to the marriage of the male.

Act No. 751 amended Act No. 875 of 1960 relating to the York County Juvenile and Domestic Relations Court, so as to change the method of compensation of the Solicitor, the Clerk of Court; to increase the panel of petit jurors from 20 to 26; and to reduce the original jurisdiction concerning the welfare of any male child of age 18 to 16.

Act No. 789 amended Section 8-224 of the 1952 Code so as to provide that loans made to persons for purposes of obtaining higher education shall not be subject to the limitations imposed by Section 8-221 to 8-223 of the 1952 Code; to authorize minors to enter into contract for such loans, and to provide that lending agencies may proceed in civil actions against minors who obtained loans for higher education. The effect of this act is to emancipate a minor from the disability of infancy in regard to such loans.