DOMESTIC RELATIONS

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The General Assembly of Georgia during the 1956 regular session enacted six statutes dealing with divorce and domestic relations:

1. *Marriage Licenses*

Act No. 37[1] amends Code section 53-201 and specifies the persons authorized to issue marriage licenses and provides for issuance only between the hours of 8:00 a.m. and 12:00 p.m.

2. *Divorce—Finality*

Act No. 288[2] amends Code section 30-101 and eliminates the thirty day period before a divorce becomes final where no issuable defense is filed, or jury trial demanded by either party, before the call of the case for trial. All issues are decided by the court without a jury. Such divorces become final on the day granted by the court.

3. *Divorce—Relief from Disabilities*

Act. No. 367[3] amends Code section 30-123 relating to publication of a petition for relief from disabilities by providing for advertisement for four consecutive weeks instead of sixty days.

4. *Adoption*

Act No. 419[4] amends Code section 74-401 relating to adoption providing that the superior courts of the counties have exclusive jurisdiction in all matters of adoption except such jurisdiction as may be granted to the juvenile courts. This act also amends Code section 74-416 relating to annulment of adoption by adding to this section a provision for annulment if the child is seventeen years or older.

5. *Uniform Reciprocal Enforcement of Support Act*

Act No. 426[5] amends the Uniform Support of Dependents Law (Ga. Laws 1951, pp. 107 *et seq.*) and adopts what is known as the Uniform Reciprocal Enforcement Support Act, which improves and extends, by

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1. Ga. Laws, 1956, p. 43.
2. Ga. Laws, 1956, p. 405.
3. Ga. Laws, 1956, p. 572.
4. Ga. Laws, 1956, p. 695.
5. Ga. Laws, 1956, p. 703.

reciprocal legislation, the enforcement of duties of support, and makes uniform the law with respect thereto.

6. *Abandonment*

Act No. 476[6] amends Code section 74-9902, as amended, by providing that the crime of abandonment of minor children shall include illegitimate children as well as legitimate children.

Decisions

The case of *McCallum v. Bryant*[7] concerned a petition filed by a mother for loss of services of her minor daughter as a result of injury by a third party. The court of appeals held that a release, signed by the father of the child whereby the father purportedly reached an accord and satisfaction with the tort-feasor, did not affect the mother's cause of action for loss of the child's services, where the child's father had abandoned the family prior to the time the child was incapacitated by injury. On appeal, the supreme court affirmed the decision of the court of appeals, pointing out that since the father had abandoned his family, he was not the natural guardian of the child, and therefore, the compromise of the child's personal injury claim was void.[8]

The case of *Bell v. Proctor*[9] was an unusual case dealing with a suit between relatives for personal injuries received in an automobile collision. Plaintiff was injured in an automobile collision while an occupant of an automobile being driven by plaintiff's husband. Plaintiff's step-brother was the owner of the automobile, and was present in the automobile at the time of the injury. The court of appeals held that a cause of action was set out against plaintiff's step-brother, although the car was being driven by plaintiff's husband at the time. The court pointed out further that, although the husband is responsible generally for medical expenses incurred by the wife in connection with treatment of her injuries, the husband is not responsible therefor where such expenses are charged to the wife at her request, and she promises to pay such expenses herself.

During the past year, the supreme court decided two cases concerning grounds for divorce, and held that the petition must allege, and the evidence must show, that the cruel treatment complained of was wilful and intentional.[10] In another case, it was held that the verdict

6. Ga. Laws, 1956, p. 800.
7. 93 Ga. App. 214, 91 S.E.2d 194 (1956).
8. 212 Ga. 348, 92 S.E.2d 531 (1956).
9. 92 Ga. App. 759, 90 S.E.2d 84 (1955).
10. Ewing v. Ewing, 211 Ga. 803, 89 S.E.2d 180 (1955); Connor v. Connor, 212 Ga. 92, 90 S.E.2d 581 (1955).

and judgment granting the wife a divorce and awarding permanent alimony was sustained by the evidence.[11]

The doctrine of res judicata was urged in the case of *Brown v. Brown*.[12] The court explained the distinction between a plea of "res judicata" and a plea of "estoppel by judgment", and held that the wife was not precluded from filing a suit for divorce and alimony by reason of a previous suit for injunction, filed by her husband, in which suit, a final judgment was entered enjoining the defendant (wife) from interfering with the plaintiff (husband) in the management of his business, and decreed that the wife had no interest in his property or business, the questions of divorce and alimony not being at issue in the previous case.

Several cases were decided dealing with appellate procedure. In *Gordy v. Gordy*,[13] it was held that the contention of the wife, that the husband and wife were not legally separated when the husband commenced the divorce action and obtained the decree, was a matter of defense to be raised in the divorce action, and was not a valid ground of a motion to set aside or modify the divorce decree, and was not a good and sufficient ground, as required by Code section 30-101. In *Glosson v. Glosson*,[14] it was held that the trial judge, in passing on a motion to set aside a verdict and judgment for divorce and permanent alimony, was not authorized to exercise the broad discretion that he has in granting, or refusing, a motion for new trial; and he can modify, vacate, or set aside a verdict and judgment only where good and sufficient grounds are shown. In the case of *Tobin v. Tobin*,[15] the supreme court held that the motion to vacate and set aside a divorce decree, based upon lack of jurisdiction of the husband's divorce petition, was without merit, for the reason that the lack of jurisdiction did not appear in the record. Under these circumstances, a separate suit in equity to vacate the judgment on the ground of fraud, accident, or mistake would be the appropriate remedy. A similar situation was presented in the case of *Dixon v. Dixon*,[16] where there was a resumption of cohabitation after commencement of the divorce action by the husband, and the husband represented that the proceedings had been dismissed, and the husband thereafter obtained a divorce. The wife filed a motion to set aside the divorce decree on the ground of fraud, and filed the motion at the same term of court

11. Cone v. Cone, 211 Ga. 882, 89 S.E.2d 518 (1955).
12. 212 Ga. 202, 91 S.E.2d 495 (1956).
13. 212 Ga. 171, 91 S.E.2d 353 (1956).
14. 211 Ga. 878, 89 S.E.2d 516 (1955).
15. 212 Ga. 205, 91 S.E.2d 508 (1956).
16. 211 Ga. 869, 89 S.E.2d 473 (1955).

at which the judgment was entered. The court ruled that this motion was sufficient, and that this motion was not such a motion as was referred to in Code section 30-101, but was a motion based on fraud alleged to have been perpetrated upon the court and upon the wife by the husband. The case of *West v. Manning*[17] was a petition filed by a wife to set aside a divorce decree, which had been rendered approximately three years previously. The petition alleged that plaintiff's husband was dead, and that the estate was unrepresented. She did not name any particular person or any representative of the estate of her deceased husband as a party defendant. The supreme court dismissed the petition on the ground that the legal representative of the estate of the deceased husband was a necessary and indispensable party defendant, and that the petition was a complete nullity.

The case of *Tobin v. Tobin*[18] is an interesting case dealing with the full faith and credit clause of the constitution holding that a final divorce decree obtained by a husband in Georgia, which decree did not refer to alimony, could not affect a prior permanent alimony decree entered in a proceeding brought by the wife in California. The court ruled that the alimony decree of California was entitled to full faith and credit, and was enforceable in Georgia as to payments due and unpaid at the time of judgment thereon in Georgia. The court also pointed out that the court of appeals could not take judicial notice of any California statute which might make the English common law prevail in California, for the reason that California was not one of the original thirteen states of the union or carved out of territory of one of such original states, but was part of the Spanish possessions of this continent before becoming part of the union.

In *Wallack v. Wallack*,[19] the supreme court applied the community property law of Texas in an action by a former wife against her divorced husband filed in the court in Georgia to recover one-half of the community property acquired by them during marriage in Texas. The supreme court, in an interesting decision, applied the law of Texas which allows a wife to sue for and recover her one-half interest in community property, where a Texas divorce decree did not adjudicate questions of title or interest of the husband and wife in the community property, and that the wife was not precluded by reason of res judicata or estoppel from asserting her claim to the property in a Georgia court, after both parties became residents of Georgia.

17. 212 Ga. 298, 92 S.E.2d 4 (1956).
18. 93 Ga. App. 568, 92 S.E.2d 304 (1956).
19. 211 Ga. 745, 88 S.E.2d 154 (1955).

The court, in *Watts v. Roberts*,[20] held that a wife was entitled to a money judgment for one-half of the reasonable market value of property in a suit against the vendor, where the wife and her husband contracted with the vendor to purchase the property together, and the vendor breached the contract of sale by executing the warranty deed to the husband alone.

In one case, the supreme court held that the wife could maintain a suit for cancellation of a deed made by a husband with the intent to defeat her recovery of alimony.[21] In another case, concerning an action brought by a wife to cancel certain deeds made by her husband, the supreme court affirmed the ruling of the trial court sustaining the demurrer of one defendant, on the ground that the petition failed to show that the purchaser knew of the fraud, and failed to allege sufficient facts to rebut, or negate, the presumption that the grantee was a bona fide purchaser for value. It also pointed out that, for notice of certain facts known to an attorney to be chargeable to the client, it must be shown that the attorney-client relationship existed, and that such notice, or knowledge, came to the attorney in and about the subject matter of his employment with his client.[22]

During the past year, the appellate courts decided several cases dealing with the award of alimony and the enforcement of such awards.

In *Eagan v. First National Bank*,[23] it was held that where the jury granted a divorce to the wife, but did not provide for any alimony, the court did not have jurisdiction, in rendering the final decree of divorce, to award permanent alimony.

In one case, the principle that temporary alimony continues until a final judgment has been entered was reaffirmed.[24]

The case of *Anthony v. Penn*[25] construed Code section 102-104,[26] as applying to an act passed by the General Assembly of Georgia in 1955.[27] The court held that this act, providing for modification of permanent alimony judgments every two years, cannot operate retroactively, so as to affect alimony judgments rendered prior to the passage of the act.

20. 93 Ga. App. 699, 92 S.E.2d 605 (1956).
21. Wood v. McGahee, 211 Ga. 913, 89 S.E.2d 634 (1955).
22. Mathis v. Blanks, 212 Ga. 226, 91 S.E.2d 509 (1956).
23. 212 Ga. 212, 91 S.E.2d 499 (1956).
24. McKay v. McKay, 93 Ga. App. 42, 90 S.E.2d 627 (1955).
25. 212 Ga. 292, 92 S.E.2d 14 (1956).
26. GA. CODE § 102-104 (1933).
27. Ga. Laws, 1955, p. 630, GA. CODE ANN. § 30-220-223 (Supp. 1955).

In one case, it was held that the evidence supported the finding of the trial court holding the husband in contempt for refusing to comply with the temporary alimony award.[28]

In *Edwards v. Edwards*,[29] the supreme court held that the issue between the parties, concerning enforcement of the alimony award by contempt, became moot, where it appeared that the parties had settled, by agreement, the past due alimony after the husband was held in contempt by the trial court and while the case was on appeal to the supreme court.

The supreme court held in the case of *Woods v. Woods*[30] that the husband was not in contempt of court for non-payment of alimony, where a previous alimony award to the wife in a suit brought by her for permanent alimony alone provided that it would continue as long as the parties should be husband and wife, and thereafter a divorce was granted in a separate case, and no provision made for alimony.

Hathcock v. Hathcock [31]was an interesting case dealing with the effect of an alimony agreement which was made the judgment of the court in the divorce suit. Subsequent thereto the wife filed a motion to modify, vacate and set aside the divorce decree within the thirty day period, which was granted. It was held that the wife still had a right to sue in the Civil Court of Fulton County for a breach of contract; the court ruled that the alimony agreement was not abrogated by reason of the final divorce decree being set aside.

In the case of *McClung v. McClung*,[32] it was held that the wife could maintain a petition against her husband for contempt, for non-payment of alimony, and for judgment against both the husband as the principal and the sureties on a bond which was executed to insure compliance with the alimony decree. The court held that the bond created a continuing liability enforceable by summary judgment in the same proceedings brought for contempt against the husband.

In numerous cases the appellate courts held that a decree awarding custody of a child is conclusive between the parties to such a decree, unless a change of circumstances subsequent to the rendition of said decree affecting the welfare of the child is shown.[33] It was held in

28. Dickens v. Dickens, 211 Ga. 796, 89 S.E.2d 161 (1955).
29. 212 Ga. 291, 92 S.E.2d 17 (1956).
30. 212 Ga. 70, 90 S.E.2d 412 (1955).
31. 92 Ga. App. 629, 89 S.E.2d 571 (1955).
32. 93 Ga. App. 274, 91 S.E.2d 377 (1956).
33. Askew v. Askew, 212 Ga. 46, 90 S.E.2d 409 (1955);
Johnson v. Johnson, 211 Ga. 791, 89 S.E.2d 166 (1955);
Holmes v. Holmes, 211 Ga. 827, 89 S.E.2d 194 (1955);
Anthony v. Anthony, 212 Ga. 356, 92 S.E.2d 857 (1956);
Broome v. Broome, 212 Ga. 132, 91 S.E.2d 18 (1956).

two cases, that the attempts of the court to retain jurisdiction in the matter of custody of a child, after a final judgment, is invalid; and further, that any attempt of the court to prohibit removal of the child beyond the jurisdiction of the court is also invalid.[34]

In the case of *Connor v. Connor*,[35] it was held that where a divorce was not lawfully granted and was modified and set aside, any award of custody of the minor children was illegal. The final disposition of the children of the parties was considered incident to the divorce proceedings.

In one habeas corpus proceeding by a mother for custody of a minor child, it was held that under the evidence, the mother had not abandoned the minor child.[36] In another case, it was held that the trial court, in a habeas corpus proceeding by a mother to obtain custody of minor children from the grandparents, must consider the evidence in the case as to whether or not the mother has abandoned the child and has lost her parental control.[37] In another case concerning custody, it was held that the prima facie right of custody of a minor child automatically vested in the mother where the father voluntarily released the child to third parties.[38] In *Davis v. Davis*,[39] it was held that a contract, by which it is alleged that the father has relinquished his parental right to custody and control of his minor child to a third person, must be established by strong and clear evidence.

The supreme court decided two cases dealing with guardians and wards. In *Bennet v. Bennet*,[40] it was held that a suit for divorce must be brought in the county of the domicile of the guardian for the mentally incompetent wife. In *Lipton v. Lipton*,[41] the court decided that in absence of a showing that the divorced wife had mismanaged the funds or property of the minor child of whom she had custody, or that the wife was not properly caring for said child, that the husband was not entitled to appointment as guardian of the child's property.

During the past year, the court of appeals decided one case, *Bennett v. Day*,[42] dealing with legitimation of a child. It was held that a peti-

34. Evans v. Allen, 212 Ga. 193, 91 S.E.2d 518 (1956); Goodloe v. Goodloe, 211 Ga. 894, 89 S.E.2d 654 (1955).
35. 212 Ga. 92, 90 S.E.2d 581 (1955).
36. Boge v. McCollum, 212 Ga. 214, 91 S.E.2d 619 (1956).
37. Morrison v. Morrison, 212 Ga. 48, 90 S.E.2d 402 (1955).
38. Hansen v. Carpenter, 211 Ga. 785, 89 S.E.2d 196 (1955).
39. 212 Ga. 217, 91 S.E.2d 487 (1956).
40. 212 Ga. 292, 92 S.E.2d 11 (1956).
41. 93 Ga. App. 244, 91 S.E.2d 526 (1956).
42. 92 Ga. App. 680, 89 S.E.2d 674 (1955).

tion to legitimatize an illegitimate child must be brought by the father in the superior court of the county of residence of the father.

In the case of *Wheeler v. Howard*,[43] concerning the question of adoption, the court of appeals reaffirmed the principle that the natural parents of a child may, without cause, withdraw their consent to the adoption at any time before final award. In another adoption case, it was held that the appellate court was required to affirm the judgment of the lower court, denying the petition for adoption, on the ground that the evidence authorized the general judgment denying the petition for adoption.[44]

During the past year, the court of appeals decided one criminal case dealing with abandonment of a minor child, holding that the evidence was sufficient to convict the defendant of the charge.[45]

The doctrine of presumption of marriage was involved in two cases arising out of claims concerning Workmen's Compensation. In both cases, it was held that marriage, once established, is presumed to continue until it is shown to have been dissolved by death or divorce. However, where it is shown that one party to the second marriage has previously married another person, the presumption as to validity of the second marriage is stronger than the presumption as to continuance of the first marriage and will overcome or rebut presumption favoring first marriage.[46]

One case was decided dealing with the principle that a married woman cannot be surety for her husband, or any other person; however, where it appears that the wife signed a note as principal, the burden is on the wife to prove that she signed as a surety only.[47]

The case of *Yancey v. Munda*[48] dealt with the "family purpose doctrine" of liability of a father for the negligence of his son in driving a family automobile. In this case, it was held that the petition must show affirmatively that the motor vehicle was maintained and provided for the comfort and pleasure of his family, and that the father had either expressly or impliedly authorized its use by his minor son.

43. 92 Ga. App. 547, 88 S.E.2d 699 (1955).
44. Sacks v. Yasaitis, 92 Ga. App. 778, 90 S.E.2d 49 (1955).
45. Hunt v. State, 93 Ga. App. 84, 91 S.E.2d 133 (1955).
46. Woodum v. Amer. Mut. Liab. Ins. Co., 212 Ga. 386, 93 S.E.2d 12 (1956); Grooms v. Globe Indemnity Co., 92 Ga. App. 387, 88 S.E.2d 504 (1955).
47. Lingo v. Bland, 93 Ga. App. 780, 92 S.E.2d 837 (1956).
48. 93 Ga. App. 230, 91 S.E.2d 204 (1956).