DOMESTIC RELATIONS

By CHARLES L. CETTI*

Some of the cases submitted for discussion herein have been deferred to other articles or excluded because they involved well-established rules.

CASES

JURISDICTION

SERVICE OF PROCESS

Three cases decided during the survey period overturned final divorce decrees because of fatally defective service of process.

Dunn v. Dunn[1] illustrates the necessity for personal service of motions for new trials. If the service is merely by mail, the trial court has no jurisdiction, either to grant a new trial or to render a second decree of divorce pursuant thereto. Such a decree can be set aside at any time because the three year statute of limitations applicable to setting aside judgments does not apply to void judgments.

Where a divorce action is commenced against a non-resident, as it was in *Baker v. Baker,*[2] a copy of the newspaper in which notice of the plaintiff's suit is published must be filed with and mailed by the clerk of the court to the non-resident defendant within fifteen days after the order for publication is entered.[3] Failure to do so renders the judgment void for lack of jurisdiction and it can be set aside at any time.

Likewise, no jurisdiction can be obtained over the defendant in a contempt proceeding where a copy of the petition and process are served only upon the attorney who represented that defendant in a divorce action upon which the alleged contempt is founded.[4] Contempt proceedings to enforce the terms of a final decree of divorce are separate and independent from the divorce action[5] and the defendant must be personally served with a copy of the petition and process.[6]

WAIVER OF PROCESS

The only waiver of process case decided during the survey period[7] held that "the rule allowing waiver before filing is strictly limited to a specific

*LL.B., Walter F. George School of Law, Mercer University, 1965. Member of the Georgia, Florida and federal bars. Member, American Bar Association. Practicing attorney, Suite 22, Western Union Building, Tampa, Florida.

1. 221 Ga. 368, 144 S.E.2d 758 (1965).
2. 221 Ga. 332, 144 S.E.2d 529 (1965).
3. GA. CODE ANN. §81-207.2 (1956 Rev.).
4. Connell v. Connell, 221 Ga. 379, 144 S.E.2d 722 (1965).
5. See Bilbo v. Bilbo, 167 Ga. 602, 146 S.E. 446 (1928); Harris v. Harris, 205 Ga. 105, 52 S.E.2d 598 (1949).
6. GA. CODE ANN. §81-202 (1956 Rev.).
7. Adair v. Adair, 220 Ga. 852, 142 S.E.2d 251 (1965).

suit in the minds of both parties at the time and that is filed in due course and without unreasonable delay."[8] The waiver of process contained in a settlement agreement made in 1955 did not, therefore, amount to a waiver as to a suit filed in 1964.

CHILD CUSTODY

One case in this area has been deferred to CHILD CUSTODY AND VISITATION, *infra*,[9] for a more appropriate discussion therein.

Two of the remaining child custody cases under review dealt with domicile and residency.

Locke v. Locke[10] decided that where the final decree of divorce contains no inhibition against removing the children from the state, and the ex-spouse having custody of them does so, the Georgia courts have no jurisdiction to entertain a petition seeking to change the custody of the child.[11]

Likewise where the child is domiciled in and a resident of one county in Georgia, the juvenile court of another Georgia county does not have jurisdiction to determine a petition seeking a change in child custody.[12]

Ferguson v. Hunt[13] was a *habeas corpus* proceeding to obtain child custody. The court determined that the juvenile court's order therein was void for lack of jurisdiction because the order did not state the grounds of jurisdiction as required by GA. CODE ANN. section 24-2421 (1959 Rev.), and section 24-2408 (1959 Rev.).

MODIFICATION OF DECREE

A final divorce decree cannot be modified as to child custody even by the express written agreement of the parties, which agreement is signed by the trial judge, unless there is a material change in circumstances so as to authorize such modification.[14] This rule is jurisdictional. Even if there is such a change, if the decree is sought to be modified after the expiration of the term during which it is entered, a separate proceeding must be brought as required by GA. CODE ANN. section 74-107 (1964 Rev.).[15] This requirement is also jurisdictional and a *habeas corpus* action will lie to force its observance.[16]

ATTORNEYS FEES

Two cases decided under this topic should be noted by all attorneys.

8. *Id.* at 856, 142 S.E.2d at 254.
9. Wilbanks v. Wilbanks, 220 Ga. 665, 141 S.E.2d 161 (1965).
10. 221 Ga. 603, 146 S.E.2d 273 (1966).
11. The opinion relied upon Stallings v. Bass, 204 Ga. 3, 48 S.E.2d 822 (1948).
12. Ingle v. Rubenstein, 112 Ga. App. 767, 146 S.E.2d 367 (1966). See also, GA. CODE ANN. §24-2408 (1959 Rev.).
13. 221 Ga. 728, 146 S.E.2d 756 (1966).
14. Danner v. Robertson, 221 Ga. 516, 145 S.E.2d 554 (1965).
15. Thomas v. Thomas, 221 Ga. 652, 146 S.E.2d 724 (1966).
16. *Ibid.*

Jones v. Jones[17] and *Hewlett v. Hewlett*[18] held that after a final decree of divorce and alimony is rendered, the trial court has no jurisdiction to award the divorced wife additional attorney's fees unless the trial court has reserved jurisdiction for such purpose prior to rendering its final decree.

ATTACHMENT AND GARNISHMENT

One of the most complex cases appearing during the survey period was *Camp v. Aetna Life Ins. Co.*,[19] involving the question of what assets are subject to attachment and garnishment. In that case the trial court awarded to the wife, who had brought an *in rem* action for divorce against her nonresident husband and joined his insurance company as a party defendant *in personam,* the husband's alleged porperty rights in an annuity contract between the insurance company and the husband's employer, to which contract the husband was a third party beneficiary.

The court on appeal held that:

> We are of the opinion that the court was without jurisdiction to render an *in rem* judgment against the husband's property rights in the annuity contract. . . . Courts of this state have the authority to seize property of nonresident defendants located within the state. Jurisdiction in such cases is solely *in rem* jurisdiction which depends upon the existence within the state of the property, which must be capable of seizure in the proceeding, so that the court can obtain jurisdiction by having the property within its grasp.[20]

The court reasoned that because the contract was subject to various options on the husband's part as well as to circumstances over which he had no control, he had a mere expectancy and there was, consequently, no *res* over which the court could assert jurisdiction.[21]

It is submitted that the husband's interest in the annuity contract cannot be termed a mere expectancy. It was more than an expectancy because the husband had a vested right in the amount which he had contributed to the contract fund, which was approximately thirteen thousand dollars plus interest. This was a debt owed to him at the time of the divorce action which would be paid to him at some future time unless he died prior thereto, in which case it would be paid to his beneficiary. Such an interest is vested subject to divestment if the husband should die before its performance occurs. It can by no process of reasoning be termed an expectancy.[22]

This decision could more properly have been based upon the ground that

17. 221 Ga. 284, 144 S.E.2d 388 (1965).
18. 221 Ga. 349, 144 S.E.2d 512 (1965). See also, Hewlett v. Hewlett, 220 Ga. 656, 140 S.E.2d 898 (1965), noted *infra* under ALIMONY, CHILD SUPPORT AND ATTORNEYS' FEES.
19. 220 Ga. 832, 142 S.E.2d 248 (1965).
20. *Id.* at 833, 142 S.E.2d at 249.
21. *Supra* n. 19. Citing Annot., 44 A.L.R. 1184 (1926).
22. See Robinson v. Eagle-Picher Lead Co., 132 Kan. 860, 297 Pac. 697 (1931), in which the court stated that the essential element of an expectancy is that the alleged obligor be under no present legal obligation to the supposed recipient.

the terms of the contract between the insurance company and the husband's employer clearly indicated that the contract was personal to the husband and not available to satisfy a judgment.[23]

TEMPORARY ALIMONY AND ATTORNEYS' FEES

Hewlett v. Hewlett,[24] noted *supra* under ATTORNEYS' FEES is also discussed *infra* under ALIMONY, CHILD SUPPORT AND ATTORNEYS' FEES.

ALIMONY, CHILD SUPPORT AND ATTORNEYS' FEES

As usual, many cases during the survey period involved disputes over alimony, child support and attorneys' fees, usually with the ex-wife emerging the victor.

CONTEMPT

The divorced wife's favorite weapon was effectively employed in *Fambrough v. Cannon*.[25] The husband's excuse that he, although in good health and usually employed, had been out of work for three weeks immediately prior to the contempt proceeding, was held insufficient to discharge the burden of proving that he had exhausted all his resources and had made a diligent effort to comply with the terms of the final decree awarding child support.

Holland v. Holland[26] was an ineffectual attempt by the husband to set aside an order of contempt for non-payment of alimony to his former wife who had remarried. The divorce decree unfortunately did not specify that alimony would terminate upon the wife's remarriage. In light of a recent amendment, this case is now obsolete.[27]

VERDICTS IMPOSING CONDITIONS ON USE OF ALIMONY

The court in *Hardy v. Hardy*[28] held that a jury has no power to award alimony to the wife subject to the condition that she use it to discharge a note upon which she was co-signed with her husband. Alimony is support for the wife and can be used by her in any manner she sees fit.

23. *Supra* n. 19. The husband was prohibited "From assigning, pledging, encumbering, or disposing of his rights under the contract." While it is true that this provision does not state that a court is prohibited from seizing the husband's rights thereunder, it is a clear manifestation of the company's intent not to be bound to anyone but the husband or his designated benificiary.
24. 220 Ga. 656, 140 S.E.2d 898 (1965).
25. 221 Ga. 289, 144 S.E.2d 335 (1965).
26. 221 Ga. 418, 144 S.E.2d 753 (1965).
27. The husband's plight in these circumstances was finally recognized by the legislature in GA. LAWS, 1966, p. 160, wherein it is provided that unless the decree states otherwise, alimony automatically terminates upon the ex-wife's remarriage. Alas, however, for Mr. Holland who occupies the dubious distinction of being the last ex-husband in Georgia to be ordered by the Supreme Court to pay alimony to his re-married ex-wife under a divorce decree silent but deadly.
28. 221 Ga. 176, 144 S.E.2d 172 (1965).

INSTRUCTIONS RELATING TO ALIMONY

Two interesting cases arose in this area during 1965.

Tolbert v. Tolbert[29] affirmed the action of a trial judge in failing to answer a question posed to him by the jury: "What is permanent alimony and when does it stop."[30] The legislature has now answered this question for judge and jury in GA. LAWS, 1966, p. 160. Unless otherwise specified in the final decree, alimony automatically terminates upon the remarriage of the divorced wife.

An unsympathetic court reversed the husband's hard fought victory in *Hall v. Hall*.[31] The trial court had instructed the jury to consider, in determining the *amount* of alimony, whether the wife was blameless and the husband guilty of gross misconduct. The appellate court first held this erroneous instruction to be harmless error[32] as to the amount of alimony because the jury had determined that the wife was not entitled to alimony; then it reversed the case because the instruction probably confused the jury so much that they used the double standard in the court's instruction to decide the issue of the husband's liability for alimony.

This holding comes dangerously close to assuming that a jury cannot hear or think, which is not a permissible legal assumption though perhaps sometimes true in fact. The instruction was expressly confined to the issue of the amount of alimony and for that reason should not be presumed to have confused the jury in considering the issue of the husband's liability for alimony in the first instance.

AMOUNT OF ALIMONY AS BEING EXCESSIVE

In *Hearn v. Hearn*[33] the husband unsuccessfully attacked as excessive an award of fifty-five dollars per week for alimony and child support. The court stated that in view of the fact that the husband, who earned five hundred dollars per month, earned an undetermined amount of overtime, the award could not be held excessive, though the court termed it "somewhat exhorbitant."

This decision places an improper burden upon an appellant. While the judgment of the trial court comes into the appellate court with a presumption of correctness, that judgment must unquestionably be based upon competent, substantial evidence in the record. Where competent evidence essential to the propriety of the judgment is not in the record, as here, that presumption is rebutted and the appellant has thereby carried his burden. The court should therefore have reversed the case because the only com-

29. 221 Ga. 159, 143 S.E.2d 743 (1965).
30. *Id.* at 164, 143 S.E.2d at 747.
31. 220 Ga. 677, 141 S.E.2d 400 (1965).
32. Where the husband admits liability for alimony, it is reversible error for the court to instruct the jury to consider the misconduct of the parties in determining the amount thereof. Harper v. Harper, 220 Ga. 770, 141 S.E.2d 403 (1965).
33. 220 Ga. 577, 140 S.E.2d 861 (1965).

petent evidence in the record, namely that the husband earned five hundred dollars per month, was insufficient to support an award of fifty-five dollars per week. Considering the award in the light of such evidence, the husband was an economic disaster area. From five hundred dollars per month he was required to pay approximately two hundred thirty-eight dollars and thirty-four cents to his divorced wife, approximately seventy-two dollars and sixteen cents in 1965 federal income tax (assuming a standard deduction with himself as a dependent and no deduction for alimony and child support), plus an undetermined amount in social security and Georgia income tax. The husband, as a matter of record, was being required to live on less than one hunderd and eighty nine dollars and fifty cents per month.

TEMPORARY ALIMONY AND ATTORNEYS' FEES

Hewlett v. Hewlett[34] reaffirmed the rule that the trial court can award temporary alimony and child support prior to disposing of a jurisdictional issue raised by the defendant husband:

> As pointed out in *Legg v. Legg*,[35] "Temporary alimony is awarded, among other things, to the wife, for the purpose of enabling her to contest all of the issues between herself and her husband in a proceeding for divorce and alimony; and a plea to the jurisdiction in the present case is one of the issues raised and to be determined on final trial."[36]

The court did hold, however, that the portion of the trial court's order requiring the husband to pay (1) all bills then outstanding whether incurred by himself, his wife or his children; and (2) any bills subsequently incurred by any member of his family if the defendant allowed any one of the family to use the clubs to which he belonged, was too unlimited, indefinite and uncertain to be enforced.

DEFENSES TO PAYMENT OF

Of interest to all minors is *Wallace v. Wallace*,[37] which determined that alimony may be awarded if a child is born of a marriage, even if the minor husband is under the age of capacity to marry and repudiates the marraige before reaching the age of capacity.[38] Non-age is no defense under such circumstances.

Williams v. Williams[39] reiterated the rule that denial of visitation privileges is no defense to an action to enforce a court decree, foreign or domestic, for child support.

---

34. 220 Ga. 656, 140 S.E.2d 898 (1965).
35. 150 Ga. 133, 102 S.E. 829 (1920).
36. 220 Ga. 656, 140 S.E.2d 898 at 900 (1965).
37. 221 Ga. 510, 145 S.E.2d 546 (1965).
38. See GA. CODE ANN. §53-601 (1961 Rev.).
39. 111 Ga. App. 785, 143 S.E.2d 443 (1965).

SETTLEMENT AGREEMENTS

CONTEMPT

Robbins v. Robbins[40] is discussed under CONTEMPT, *infra.*

MISREPRESENTATION IN PROCUREMENT

The wife is not bound by a settlement agreement procurred by misprepresentations of her husband. The actions of the husband in such circumstances violate the confidential relationship existing between husband and wife.[41]

PROCEEDS OF INSURANCE POLICIES

Hudson v. Hudson[42] was a dispute between former spouses over the proceeds of an endowment life insurance policy which matured about eight years after the divorce of the parties. The policy was on the life of the former wife and was owned by her before the divorce; the premiums, however, were paid by the former husband before and after the divorce and the policy was kept in his possession without dispute from the wife until it matured. A settlement agreement provided that the husband would convey and release certain property to the wife in full settlement of any and all claims she had for alimony, support and attorneys' fees. In addition, the wife released and relinquished "all claims that she now has, or may have, to any and all other property of every kind and character not described in this contract nor claimed herein by [the wife] to [the husband]."[43] The endowment policy was not mentioned in this agreement, although two smaller policies transferred from the husband to the wife were specifically included therein.

On these facts the court held that the wife was entitled to the proceeds because, (1) the husband's payment of the premiums and possession of the policy after the divorce does not establish the ownership thereof; and, (2) the intent of the parties in the settlement agreement was not to make a conveyance from the wife to the husband of all property not specifically mentioned therein, especially in view of the fact that the wife obviously intended to keep her personal effects and clothing even though they were not mentioned in the agreement.

This decision seems erroneous for at least two reasons. First, while the court is certainly correct that mere possession of the policy and payment of premiums thereof does not establish ownership, such facts are, as pointed out in Chief Justice Duckworth's dissent, highly relevant in ascertaining the intent of the parties. The husband paid a total of seven hundred and twenty-nine dollars and twenty-eight cents in premiums and the wife did not claim any right to the policy prior to its maturing. Second, the settlement agreement clearly stated that all property not mentioned therein should become

40. 221 Ga. 627, 146 S.E.2d 628 (1966), *consolidated,* 146 S.E.2d 629 (1966).
41. Adair v. Adair, 220 Ga. 852, 142 S.E.2d 251 (1965).
42. 220 Ga. 730, 141 S.E.2d 453 (1965).
43. *Id.* at 733, 141 S.E.2d at 455. (Brackets by the court).

the property of the husband. Of course the agreement did not intend to uonvey the wife's clothing to the husband .This is part of her separate estate. The above-quoted terms of the agreement were intended to convey to the husband the wife's interest in all unmentioned property in which the parties had any mutual interest or estate during the marriage. The construction put upon these terms by the subsequent actions of the parties strongly indicates that the insurance policy was intended to pass thereunder. In addition, the facts that the husband paid the premiums and was named as beneficiary of the policy, while not giving rise to a legal interest, certainly indicate a sufficient mutual interest therein to come within the spirit of the settlement agreement under the above circumstances.

In light of this decision it seems mandatory for attorneys to specify in the agreement each item of property that is to pass thereunder.

CHILD CUSTODY AND VISITATION

CHANGE IN CONDITIONS

To authorize a change in the original award of custody on the ground of changed conditions, the change must be substantial and must materially affect the welfare of the child. The mere fact that the child has increased in age since the original award of custody does not fulfill these requirements.[44] Where, however, the former wife gives birth to an illegitimate child and "associates" with married men, a sufficient change in conditions substantially affecting the welfare of the child is shown.[45]

Where the parties made a settlement agreement which was incorporated into the final decree, providing in effect that the mother would have no visitation privileges, the facts that the father and his second wife work and leave the child with a maid during the day, and that they deny the mother visitation privileges, do not entitle the mother to such privileges on the theory of changed conditions affecting the interest and welfare of the child.[46]

JURISDICTION

If a petition seeking a change in child custody is filed in the superior court, that court, under GA. CODE ANN. section 24-2409 (2) (1959 Rev.), can transfer the case to the juvenile court with full jurisdiction over the subject matter to determine the question of child custody.[47] If the wife files a cross action therein, without objecting to the court's jurisdiction until after the verdict, she waives any objection to jurisdiction over her person.[48]

44. McJunkin v. McJunkin, 221 Ga. 625, 146 S.E.2d 638 (1966).
45. Wilbanks v. Wilbanks, 220 Ga. 665, 141 S.E.2d 161 (1965).
46. Haynes v. Howell, 220 Ga. 659, 140 S.E.2d 897 (1965).
47. *Supra* n. 44.
48. *Supra* n. 44.

SELECTION OF PARENT BY CHILD

Under GA. LAWS, 1962, p. 713,[49] a fourteen-year-old child may elect for any reason to cease living with the divorced parent to whom his custody had previously been awarded and, upon application to the court, be entrusted to the other parent, regardless of whether there has been a material change in conditions.[50] A material change in conditions was required prior to the passage of the 1962 law.

DIVORCE

SUFFICIENCY OF EVIDENCE

Where the plaintiff wife does not introduce sufficient evidence at the final hearing to establish that she left her husband with good cause,[51] the allegations of her verified petition can establish that fact.[52]

Similarly, where the wife alleges cruelty as a ground for divorce but fails to testify that the husband's acts put her in fear of life, limb or health, a divorce can still be granted her if other evidence establishes that fact.[53] This is true even if the parties cohabited after such cruelty where the husband breaches the condition that his cruelty will not be repeated.

DISSOLUTION OF PRIOR MARRIAGE

One of the most disturbing decisions dealing with this topic in recent years is *Cole v. Cole*.[54] The wife therein sued her alleged second husband for divorce in Georgia. She had been divorced from her first husband in Alabama but testified that she had never lived in Alabama. The court thereupon held that she could not maintain the action. Her own testimony showed that she had perpetrated a fraud upon the Alabama court, the Alabama decree was therefore void for lack of jurisdiction, and consequently the first marriage was still in existence.

The result in this case is unquestionably correct but the theory upon which it was based is undeniably erroneous. The court based its decision on the failure of the plaintiff to carry the burden of proving the dissolution of her first marriage.

Since the record in this case shows that the plaintiff Mrs. Cole had been previously married to Louis J. Petty, the burden was on her to show a valid dissolution of the marriage before she could legally contract again.[55]

49. Amending GA. CODE ANN. §30-127 (1952 Rev.), and §74-107 (1964 Rev.).
50. Froug v. Harper, 220 Ga. 582, 140 S.E.2d 844 (1965).
51. Hearn v. Hearn, 220 Ga. 577, 140 S.E.2d 861 (1965).
52. The court relied upon Moss v. Moss, 196 Ga. 340, 26 S.E.2d 629 (1943); and Hicks v. Portwood, 129 Ga. 307, 58 S.E. 837 (1907).
53. Tolbert v. Tolbert, 221 Ga. 159, 143 S.E.2d 743 (1965).
54. 221 Ga. 171, 143 S.E.2d 637 (1965).
55. *Id.* at 172, 143 S.E.2d at 638.

If the court means what it said in this quotation, it is not only going against the overwhelming weight of authority in this country but is also creating a clear conflict in its own decisions. It is well established that where two marriages of record appear, a presumption arises that the prior marriages was legally dissolved.[56] Previous Georgia authority so holds.[57] The plaintiff in such a case does not have to affirmatively prove the dissolution of the prior marriage; the burden is upon the defendant to dispell the presumption.

The court more properly could have reached the same result by holding that the presumption in favor of the validity of the second marriage and the termination of the prior marriage was rebutted by the wife's testimony. The use of the above-quoted language by the court is unfortunate and will undoubtedly be productive of unnecessary litigation.

LEGALITY OF VERDICTS

A verdict cannot give a divorce to the husband and grant alimony to the wife. Such a verdict is inconsistent and void.[58]

A verdict to be valid must also be received, published and recorded by the trial court and it cannot be modified in substance after the jury has been dispersed. In *Reagan v. Reagan*[59] the jury returned a verdict of divorce and awarded the defendant cross-petitioner wife twelve thousand five hundred dollars as alimony. The trial judge refused to accept the verdict because it failed to specify to whom the divorce was granted. The jury was then sent out again and returned with another verdict, this time specifying that both parties were entitled to a divorce and again awarding twelve thousand five hundred dollars to the wife as alimony. The court received, recorded and published this verdict and dispersed the jury. Plaintiff husband then moved to modify the alimony award on the ground that an award of alimony was improper since the jury had determined that he was entitled to a divorce; however, the trial court overruled this motion. The defendant then orally moved to set aside the second verdict and reinstate the first, which motion was granted by the trial judge.

On appeal, the Supreme Court affirmed the overruling of the motion to modify the second verdict since GA. CODE ANN. section 110-111 (1959 Rev.), and numerous decisions of the court had stated that a verdict may not be modified as to substance after it has been received, published and recorded and the jury dispersed.

56. Annot., 14 A.L.R.2d 7 at §9 (1950).
57. *E.g.*, Longstreet v. Longstreet, 205 Ga. 255, 53 S.E.2d 480 (1949); Reed v. Reed, 202 Ga. 508, 43 S.E.2d 539 (1947); Brown v. Parks, 173 Ga. 228, 160 S.E. 238 (1931). See also, Carr v. Walker, 205 Ga. 1, 52 S.E.2d 426 (1949); Nash v. Nash, 198 Ga. 527, 32 S.E.2d 379 (1944); Murchison v. Green, 128 Ga. 339, 57 S.E. 709 (1907).
58. Wilcox v. Wilcox, 221 Ga. 113, 143 S.E.2d 166 (1965); Hudson v. Hudson, 189 Ga. 410, 5 S.E.2d 912 (1939).
59. 220 Ga. 587, 140 S.E.2d 841 (1965).

The court reversed the order of the trial court setting aside the second verdict, however, and reinstated that verdict because the first verdict was never received, recorded or published. After considering the second verdict on its merits, the court then decided to reverse the entire case and order a new trial because the second verdict contained the inconsistent and diametrically opposed findings that both parties were entitled to a divorce. To this case I humbly apply a corruption of an old maxim: "Never have so few done so much—wrong."

CONTEMPT

Two cases herein[60] are discussed *supra* under ALIMONY, CHILD SUPPORT AND ATTORNEYS' FEES.

The remaining cases involved similar questions of law. Under the rules in *Robbins v. Robbins*,[61] *Jones v. Trussell*,[62] and *Adams v. Adams*,[63] a contempt action generally will not lie to enforce the terms of a settlement agreement where the court, although incorporating the agreement into the final decree, does not specifically order therein the performance of its terms. The sole exception to this rule is the obligation to pay alimony, which may be enforced by contempt proceedings regardless of whether the court orders performance of the agreement.[64]

LIABILITY OF PARENTS FOR TORTS OF CHILDREN

Vort v. Westbrook[65] held that GA. CODE ANN. section 105-113 (1959 Rev.), making parents liable for wilfull and wanton acts of "vandalism" by their children under seventeen years of age, only applies to acts intended to cause property damage and does not apply to acts intended to cause and in fact causing only personal injuries.[66] Duckworth, C. J., concurring specially, observed that this exclusion should be remedied by the legislature. The writer agrees.

The *Vort* case does not, of course, preclude parents from being otherwise liable for the torts of their children. For example, if a parent knowingly allows his young and inexperienced child to use a dangerous instrumentality without supervision, particularly if the parent furnishes it to the child in violation of law, the parent is liable for the resulting damages to third parties or their property.[67] This liability rests upon actual negligence,

60. Fambrough v. Cannon, 221 Ga. 289, 144 S.E.2d 335 (1965); Holland v. Holland, 221 Ga. 418, 144 S.E.2d 753 (1965).
61. 221 Ga. 627, 146 S.E.2d 628 (1966), *consolidated*, 146 S.E.2d 629 (1966).
62. 221 Ga. 271, 144 S.E.2d 344 (1965).
63. 221 Ga. 710, 146 S.E.2d 759 (1966).
64. *Supra* n. 60.
65. 221 Ga. 39, 142 S.E.2d 813 (1965).
66. *Accord*, Browder v. Sloan, 111 Ga. App. 693, 143 S.E.2d 13 (1965); Bell v. Adams, 111 Ga. App. 819, 143 S.E.2d 413 (1965).
67. Barlow v. Lord, 112 Ga. App. 352, 145 S.E.2d 272 (1965).

whereas the vicarious liability under the vandalism statute applies because of the parent-child relationship.

MISCELLANEOUS

ADOPTION

Brazell v. Anderson[68] held that although the natural mother had left her child in her aunt and uncle's custody for nine years and the father had signed a consent for adoption, the trial court could not grant the aunt and uncle's petition for adoption because the natural mother had not given her written consent and had not abandoned the child.

ABANDONMENT OF ILLEGITIMATE CHILDREN

The evidence as to lack of access by the husband authorized the jury in *Pope v. State*[69] to find that the husband did not sire two children of the complaining witness, that the defendant was their natural father, and that he had abandoned them by his failure to support.

STATUTES

DIVORCE AND ALIMONY

The most significant contribution to the law of domestic reations by the legislature in several years was an amendment to GA. CODE section 30-209 (1952 Rev.).[70] Under this amendment the separate estate and earning capacity of the wife is to be considered in fixing the amount of alimony to be awarded. In addition, the alimony shall cease upon her remarriage unless the decree of divorce provides otherwise.

ADOPTION

GA. CODE chapter 74-4 (1933), was amended[71] to provide for (1) an investigation and report to the superior court entertaining an adoption petition; (2) removal of the provisions relating to interlocutory hearings; and, (3) change of the waiting period prior to hearing on final adoption, as well as other changes.

68. 113 Ga. App. 15, 146 S.E.2d 921 (1966).
69. 112 Ga. App. 543, 145 S.E.2d 598 (1965).
70. GA. LAWS, 1966, p. 160.
71. GA. LAWS, 1966, p. 212.