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NOTES AND COMMENTS

Jurisdiction—Resident Judge and Regular Judge at Chambers or on Vacation

Is the jurisdiction of a resident judge at chambers concurrent with that of the regular term judge at chambers? Two recent North Carolina cases have thrown a shadow across this question. In the first of these cases, *Hill v. Stansbury*,¹ the plaintiffs sued Guilford County Commissioners for an accounting of public funds unlawfully expended and at that time disclaimed any right personally to participate in the recovery. Judgment was awarded to the plaintiff. Both sides noted an appeal and then later entered a consent judgment before the resident judge of the 12th Judicial district at chambers. The amount of the judgment was paid to the clerk of Guilford County. The plaintiff then filed petition before the same resident judge asking for reimbursement for expenses and counsel fees, and this petition was granted. On appeal the Supreme Court held that the resident judge had no jurisdiction over the petition for expenses; also the court questioned the right of the resident judge to enter the consent judgment by saying, "His jurisdiction over the matter, *if at any time he had any (Italics supplied.)*, ended with the signing of the consent judgment dismissing the appeals."² In the second case, *State Distributing Corp. v. Travelers Indemnity Co.*,³ involving the validity and extent of an insurance binder, a resident judge entered judgment at chambers upon an agreed statement of facts. In the Supreme Court the majority entirely omitted any reference to the jurisdictional phase but reversed the lower court's decision on another ground. Justice Barnhill⁴ voted to affirm the lower court's decision, but primarily argued that there had been no jurisdiction in the lower court. The jurisdictional argument was based on two points: (1) Although G. S. 7-65^{5*} apparently confers concurrent jurisdiction on a resident judge in those matters of which the Superior Court has jurisdiction out of term, actions pending on the civil issue

¹ 224 N. C. 356, 30 S. E. (2d) 150 (1944).

² *Hill v. Stansbury*, 224 N. C. 356, 357, 30 S. E. (2d) 150, 151 (1944), cited *supra* note 1.

³ 224 N. C. 370, 30 S. E. (2d) 377 (1944).

⁴ Justices Seawell and Devin concurred in the dissent.

^{5*} N. C. GEN. STAT. ANN. (Michie, Sublett, & Stedman, 1943) §7-65. "In all cases where the superior court in vacation has jurisdiction, and all of the parties unite in the proceedings, they may apply for relief to the superior court in vacation, or in term time, at their election. The resident judge of the judicial district and the judge regularly presiding over the courts of the district, shall have concurrent jurisdiction in all matters and proceedings where the superior court has jurisdiction out of term."

docket are not included. In support of this Justice Barnhill pointed to the dictum of the *Stansbury* case as controlling. (2) Since this was a controversy without action under G. S. 1-250,^{6*} only the judge who would have had jurisdiction *had the cause been submitted to a jury* (*Italics supplied.*) had authority to hear it at term or, by consent, out of term.

Often there are two or more judges of the Superior Court in the same district at the same time, *i.e.*, the resident judge of the district and the judge holding the regular terms of court.^{7*} In some instances this situation leads to confusion, well illustrated by the two instant cases, as to which judge has jurisdiction. "It may be generally stated that the judge holding the courts of the district in regular succession is the only proper judge, and has sole jurisdiction in civil actions in such district during the six months of his assignment. The resident judge has no more authority than any other judge, except when holding the courts of his district, unless specially authorized by statute."⁸ However, G. S. 7-65⁹ literally gives the resident judge of the judicial district and the judge regularly presiding over the courts of that district concurrent jurisdiction in all matters of which the Superior Court has jurisdiction "out of term." According to McIntosh, ". . . 'term time' means the time while the court is actually in session; that is, from the day of the opening of the court to the day of the adjournment when the judge finally leaves the bench. 'Vacation' is the period of time between two terms of court in a county, and it may also refer to the time during a term when the court is not actually in session, as during a recess."¹⁰ The latter half of this statement refers to what is called "chambers business." Further substantiating the synonymy of these phrases, McIntosh says, "Hearings before a judge outside of the courthouse, or out of the regular session of the court at which business is to be done, are said to be at chambers and are called 'chambers business.'"¹¹ "In a case of motions,

^{6*} *Id.* §1-250. "Parties to a question in difference which might be the subject of a civil action may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The judge shall hear and determine the case, and render judgment thereon as if an action were pending."

^{7*} The North Carolina Superior Court system is divided into two divisions, the east and the west, which are further subdivided into districts whose number is determined by the legislature. Each district elects a judge of the Superior Court who resides in that district and who rotates from district to district within his division for terms of court. The districts include a number of counties, and a judge holding a term of court in a district spends some time in each county. N. C. GEN. STAT. ANN. (Michie, Sublett, & Stedman, 1943) §§7-68, 7-69; MCINTOSH, NORTH CAROLINA PRACTICE AND PROCEDURE IN CIVIL CASES (1929) §§26, 27, 41-46.

⁸ MCINTOSH, *op. cit. supra* note 9, §49.

¹⁰ MCINTOSH, *op. cit. supra* note 9, §50.

⁹ See note 5 *supra*.

¹¹ *Id.* at §51.

orders and other proceedings which may be heard by the judge out of term, that is, in vacation or at chambers, the court is always open. . . ."¹² Syllogizing, it would appear that the jurisdiction of the regular judge of the district out of term, that is to say, of the business conducted between two terms of court *or* in chambers in recess of a session, would be concurrent with the jurisdiction of a resident judge who likewise is in vacation or at chambers. Case examination leads to a confused picture of this situation.

The term "regular" judge will be used hereafter to designate the judge who at that time is holding a regular term of court in order to distinguish him from the "resident" judge.^{13*} The first phase of the problem to be discussed is the jurisdiction of the regular judge at chambers or in vacation.

An early North Carolina case, *Bynum v. Powe*, laid down a set of rules as to what may be done out of term: ". . . all ordinary civil actions must be brought to and proceeded in to their regular determination at regular terms of the Superior Courts. This is the general course and extent of procedure, and there is no authority of the court or judge to grant orders, judgments, or take any action in such action out of term, except in respects specially provided for, such as provisional remedies, proceedings supplementary to execution, submitting a controversy without action, confessing judgments without action, applications for mandamus and the like."¹⁴ Two cases prior to the *Bynum* case allowed the regular judge out of term to amend the records,¹⁵ and to appoint a receiver and amend an order made at term.¹⁶ There is another situation when there may be jurisdiction out of term. In addition to what is strictly chambers business as set out in the *Bynum* case, the regular judge may hear matters or motions outside of the courtroom with the consent of the parties.¹⁷ Such consent has been given in cases involving a judgment settling dower rights given after a term of court expired;¹⁸ a judgment rendered in vacation in another county than where the action was pending;¹⁹ a judgment given out of term in an action for damages for trespass;²⁰ an action for dissolution and settlement of a corporation;²¹ and a petition by a stockholder for appoint-

¹² *Id.* at §40.

^{13*} This comment does not include, in scope, a discussion of the jurisdiction of special judges.

¹⁴ 97 N. C. 374, 382, 2 S. E. 170, 173 (1887).

¹⁵ *Falkner v. Hunt*, 68 N. C. 476 (1873).

¹⁶ *Coates Bros. v. Wilkes*, 94 N. C. 174 (1886).

¹⁷ *State v. McLeod*, 222 N. C. 142, 22 S. E. (2d) 223 (1942); *DeLafield v. Lewis Mercer Construction Co.*, 115 N. C. 21, 20 S. E. 167 (1894).

¹⁸ *Shackelford v. Miller*, 91 N. C. 181 (1884).

¹⁹ *McDowell v. McDowell*, 92 N. C. 228 (1885).

²⁰ *Hawkins v. Richmond Cedar Works*, 122 N. C. 87, 30 S. E. 13 (1898).

²¹ *Clark v. Eugenia Mfg. Co.*, 150 N. C. 372, 64 S. E. 178 (1909).

ment of a receiver of a corporation.²² An interesting fact situation is found in *Bank v. Gilmer*²³ where the plaintiff sued on a note, and the defendant filed no answer. The plaintiff consented not to enter judgment by default on the condition that if any other creditor of the defendant entered a judgment, the plaintiff's judgment by default could be signed by another judge in vacation in another county. Such out of term signing was upheld. In *Cogburn v. Henson*,²⁴ the trial ended on a Saturday, and since the judge wanted to catch a train, both parties agreed that the jury might return a verdict and that the judgment might be signed out of term and out of county. This case was upheld even though the judge did not sign a verdict consistent with the jury's findings, the Supreme Court refusing to read into the agreement any words limiting the judge's signing of the judgment to that which the jury decided.

On the other hand, an early case refused jurisdiction at chambers to a regular judge of an action of *mandamus* to compel the state auditor to collect a tax. This case turned on a strict interpretation of a statute whereby *mandamus* must be made by summons and complaint, and the summons "shall be returnable to the regular term of the Superior Court."²⁵ In a case of a *mandamus* action to enforce a money demand, the court refused jurisdiction to a judge at chambers because a statute made service for *mandamus* for a money demand returnable only at term time; but applications for writs to enforce other demands could be returnable at chambers.²⁶ Where a receiver for an insolvent corporation was appointed and property ordered sold and an interpleader was entered for a prior lien on the property, on which interpleader the parties joined issues, it was held reversible error for a regular judge at chambers to decide the merits of the interpleader.²⁷ In a case where a judgment by default was entered in a civil action to require the defendant to deliver a tax deed, it was decided that the judge, who at his home after the term of court ended signed an order vacating the judgment by default, had no authority to do this.²⁸ A judge who signed a judgment while standing in front of his boarding-house after he left the courtroom was found to have no jurisdiction.²⁹ A similar case ruled that a judge had no authority to amend a judgment, after a session of court, in his hotel room without the consent of the opposing counsel.³⁰

²² *Killian v. Maiden Chair Co.*, 202 N. C. 23, 161 S. E. 546 (1931).

²³ 118 N. C. 668, 24 S. E. 423 (1896).

²⁴ 179 N. C. 631, 103 S. E. 377 (1920).

²⁵ *Belmont v. Reilly*, 71 N. C. 260, 262 (1874).

²⁶ *Rodgers v. Jenkins*, 98 N. C. 129, 3 S. E. 821 (1887).

²⁷ *N. C. Bessemer Co. v. Piedmont Hardware Co.*, 171 N. C. 728, 88 S. E. 867 (1916).

²⁸ *Dunn v. Taylor*, 187 N. C. 385, 121 S. E. 659 (1924).

²⁹ *May v. Nat. Fire Ins. Co.*, 172 N. C. 795, 90 S. E. 890 (1916).

³⁰ *Hinton v. Life Ins. Co. of Va.*, 116 N. C. 22, 21 S. E. 201 (1895).

In a bastardy proceeding the court decreed that a judge at chambers could not decide an appeal without the consent of the prosecutrix.³¹

Since an examination of those cases which have denied jurisdiction to a regular judge at chambers or in vacation has revealed nothing which would preclude a regular judge from hearing matters, other than strictly chambers business, out of term by consent of the parties, it would seem that in the *Stansbury* case consent judgment could have been heard adequately out of term. But the *Stansbury* case had one further point in that the consent judgment was entered not only out of term, but by a resident judge instead of by the regular judge who would have heard the case had it come up on the civil issue docket. It is this point that Justice Barnhill in the *Indemnity Co.* case stresses so strongly. Based upon the previous inference drawn from a literal interpretation of the G. S. 7-65, it would seem that if the jurisdiction of the resident judge and the regular judge at chambers are concurrent in proceedings where such consent had been given for the judgment to be rendered out of term, it would not matter if it were heard before a resident judge or the regular judge before whom it might have been heard according to the civil issue docket.

The conclusion that there should be no difference in jurisdiction between a regular judge at chambers and a resident judge at chambers despite the fact that the case was pending on a civil issue docket seems to have some foundation in the case of *City of Reidsville v. Slade*.³² Here the defendant obtained a restraining order from the regular judge of the 10th Judicial district to prevent the plaintiff from taking his land by eminent domain. The plaintiff then had the injunction dissolved before the resident judge of the 12th Judicial district at chambers while he was holding courts of the 21st district, and the jurisdiction of the resident judge at chambers was upheld. Concededly, this verdict may have been substantially justified by the injunction statute in question, G. S. 1-498, but it seems to be some authority also for a resident judge deciding an issue which was pending on a civil issue docket in another district. In *Edmundson v. Edmundson*,³³ there is found a case somewhat parallel with the fact situation in the *Stansbury* case. In the *Edmundson* case the question turned on whether a resident judge had jurisdiction at chambers to sign a consent judgment out of the county and out of the district in which the cause was pending when at that time by the law of rotation he was holding the courts of another district. The Supreme Court held that he had such jurisdiction. It is to be noted however, that the resident judges, in both of these cases, were holding courts in districts other than that of their residence al-

³¹ *State v. Parsons*, 115 N. C. 730, 20 S. E. 511 (1894).

³² 224 N. C. 49, 29 S. E. (2d) 215 (1944).

³³ 222 N. C. 181, 22 S. E. (2d) 424 (1942).

though both decisions were rendered when the courts were not in session but at chambers. It could be argued that they rendered the decisions in the capacity of resident judges of their home districts.

Nothing more is to be found in the *Stansbury* case to substantiate the idea that the resident judge could not have rendered the consent judgment which was pending on the civil issue docket other than the slight doubt cast by the court as to the jurisdiction of the judge who signed a subsequent petition—"if at any time he had any." It would appear that the *Edmundson* case at least would support the jurisdiction of the resident judge on this point and be in accord with the conclusion drawn from G. S. 7-65.

Yet jurisdiction of a resident judge has been restricted in two cases before the *Edmundson* case. In *Moore v. Moore*³⁴ the plaintiff appealed from a judgment reducing alimony in a divorce action pending in A. county, which was rendered by a resident judge of the 13th district at chambers who at that time was assigned to duty in the 15th district. The court in granting the appeal said that the judge of the district who was assigned under the rotation system had sole jurisdiction except in those cases otherwise specially provided by statute, and those exceptions in civil cases are restricted to restraining orders, injunctions, appointment of receivers and *habeas corpus* proceedings. In *Ward v. Agrillo*³⁵ a resident judge was refused jurisdiction to hear and determine an appeal from a judgment of a Superior Court clerk of any county in his district because he was not at any time holding courts of his district under assignment or by exchange or under special commission.

Whether the decision of the *Edmundson* case in effect overruled these earlier cases was a question avoided by the court in deciding the *Stansbury* case. The court in the latter case only hinted at the fatality of the jurisdiction of the resident judge to render a consent judgment in a case pending on a civil issue docket. It would seem that Justice Barnhill in his dissent to the *Indemnity Co.* case perhaps placed more reliance on the *Stansbury* case than was justified.

The *Indemnity Co.* case involved a controversy without action which was submitted to the jurisdiction of a resident judge while pending on the civil issue docket. There are numerous cases where controversies without action have been submitted to regular judges at chambers for decision.³⁶ In each of these however, the judge was judge of the

³⁴ 131 N. C. 371, 42 S. E. 822 (1902).

³⁵ 194 N. C. 321, 139 S. E. 451 (1927); *accord*, *Howard v. Queen City Coach Co.*, 211 N. C. 329, 190 S. E. 478 (1937).

³⁶ *Consolidated Realty Co. v. Koon*, 216 N. C. 295, 4 S. E. (2d) 850 (1939); *Privott v. Graham*, 214 N. C. 199, 198 S. E. 635 (1938); *General Realty Co. v. Lewis*, 212 N. C. 45, 192 S. E. 902 (1937); *Swain County v. Welsh*, 208 N. C. 439, 181 S. E. 321 (1935); *Webb v. Port Commission*, 205 N. C. 633, 172 S. E.

district, presiding out of term or at chambers by consent of the parties. The question of a resident judge's jurisdiction to decide at chambers a controversy without action seems to be a new problem. A somewhat analogous situation arose in the case of *Greene v. Stadiem* where it was held that a special judge had no jurisdiction to decide at chambers a controversy without action when he was not holding a term of court. This decision was based on a narrow interpretation of G. S. 1-250. It is this same interpretation that Justice Barnhill argued for in the dissent of the *Indemnity Co.* case. G. S. 1-250 allows a controversy without action to be brought before any court which would have had jurisdiction if an action had been brought. Since G. S. 7-65 confers concurrent jurisdiction on the resident judge only in those matters of which the Superior Court has jurisdiction out of term, and since controversies without action may be submitted before the regular judge of a district at chambers or out of term by the consent of the parties, it would seem that the resident judge would have concurrent jurisdiction; and, apparently, the majority of the court in the *Indemnity Co.* case so thought—as nothing whatsoever was mentioned in the opinion as to the jurisdictional question. However, Justice Barnhill seems to have read G. S. 1-250 as a limitation on G. S. 7-65 so as to leave only the judge who would have had jurisdiction had the cause been submitted to a jury the authority to hear it out of term by the consent of the parties.

Justice Barnhill concluded his dissent on the jurisdictional phase with the thought that the resident judge should be given concurrent jurisdiction in all matters not requiring the intervention of a jury or in which trial by jury has been waived. It is submitted that perhaps that authority is already established, as the majority in the *Indemnity Co.* case seemed to think, by a literal reading of G. S. 7-65; but it is agreed that legislative action definitely settling this problem of overlapping jurisdiction would be welcomed by the legal profession.

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Damages—Personal Injuries—Reduction to “Present Value” for Future Injury—Instructions—Appeal and Error

In a recent case¹ the plaintiff was injured by the negligence of the defendant's truck driver at Pope Field, Fort Bragg, N. C. The following charge was submitted by the trial court relative to the measure of damages: “. . . if you come to consider that question (damages) you have a right to take into consideration the age of the plaintiff at

377 (1934); *Mitchell v. Board of Education*, 201 N. C. 55, 158 S. E. 850 (1931); *City of Charlotte v. Shepard*, 120 N. C. 411, 27 S. E. 90 (1897); *Arnold v. Porter*, 119 N. C. 123, 25 S. E. 785 (1896); *Brem v. Lockhart*, 93 N. C. 191 (1885); *Harrell v. Peebles*, 79 N. C. 26 (1878); *Hervey v. Edmunds*, 68 N. C. 243 (1873).

¹ *Daugherty v. Cline*, 224 N. C. 381, 30 S. E. (2d) 322 (1944).