CHAPTER 67

Recovery of Real Property

ARTICLE 1

General Provisions

**SECTION 15‑67‑10.** Persons who may bring action to determine adverse claim.

Any person in possession of real property, by himself or his tenant, or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

HISTORY: 1962 Code Section 10‑2401; 1952 Code Section 10‑2401; 1942 Code Section 878; 1932 Code Section 878; Civ. P. ‘22 Section 826; 1916 (29) 928.

CROSS REFERENCES

Compensation of defendant for improvements, see Sections 27‑27‑10 et seq.

Cost of former suit under South Carolina Rules of Civil Procedure, see Rule 41, SCRCP.

Intervention under South Carolina Rules of Civil Procedure, see Rule 24, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k10.

Adverse Possession 10.

C.J.S. Adverse Possession Sections 21 to 24, 331.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 2, History.

S.C. Jur. Equity Section 21, Action to Quiet Title.

S.C. Jur. Lis Pendens Section 26, Recovery of Real Property.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive Adverse Possession under Color of Title in South Carolina. 10 SC LQ 279.

South Carolina Law on Boundary Disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

Complaint 3

Construction 2

Jury question 5

Particular actions 6

Parties 4

1. In general

This section [former Code 1962 Section 10‑2401] does not create new substantive rights in land. It merely authorizes the bringing of suit to clear title Ayers v. Ackerman (D.C.S.C. 1971) 324 F.Supp. 814.

The remedy provided by statutes such as Section 15‑67‑10 is broader and more comprehensive than that formerly provided by a court of equity. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied. Quieting Title 1

The purpose and effect of statutes like Section 15‑67‑10 is to enlarge the power of the court to determine adverse claims to land so as to authorize the quieting of title in cases where an action would not lie under the strict rules of equity practice. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied. Quieting Title 1

Statutes like Section 15‑67‑10 are designed to afford an easy and expeditious mode of quieting title to real estate. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied.

A duly instituted partition action under Section 15‑61‑10 cannot be bootstrapped into an adverse claims action under Section 15‑67‑10 absent compliance with all the statutory provisions applicable to the latter. Bultman v. Barber (S.C. 1981) 277 S.C. 5, 281 S.E.2d 791. Adverse Possession 10

The fact that plaintiff’s possession was subject to an easement in favor of defendant did not preclude plaintiff from maintaining the action to quiet title. Kunkle v. South Carolina Elec. & Gas Co. (S.C. 1968) 251 S.C. 138, 161 S.E.2d 163. Quieting Title 12(7)

This section [former Code 1962 Section 10‑2401] and Code 1962 Sections 10‑2403 to 10‑2411 [see now Sections 15‑67‑40 to 15‑67‑100] extend the scope of the ancient suit to quiet title, resulting in a judgment of a declaratory nature. Waller v. Waller (S.C. 1951) 220 S.C. 212, 66 S.E.2d 876.

The purpose and effect of this section [former Code 1962 Section 10‑2401] is to enlarge the power of the court to determine adverse claims to land so as to authorize the quieting of title in cases where an action would not lie under the strict rules of equity practice. Tolbert v. Greenwood Cotton Mill (S.C. 1948) 213 S.C. 43, 48 S.E.2d 599.

Applied in Forshur Timber Co. v. Santee River Cypress Lumber Co. (S.C. 1934) 203 S.C. 225, 178 S.E. 329, certiorari denied 55 S.Ct. 655, 295 U.S. 743, 79 L.Ed. 1689.

2. Construction

This section [former Code 1962 Section 10‑2401] is remedial and should be liberally construed. Ayers v. Ackerman (D.C.S.C. 1971) 324 F.Supp. 814.

Statutes such as Section 15‑67‑10, being of a remedial nature, should be liberally construed and be held to embrace all cases coming fairly within their scope. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied. Quieting Title 1

This section [former Code 1962 Section 10‑2401], being of remedial nature, should be liberally construed and held to embrace all cases coming fairly within its scope. Tolbert v. Greenwood Cotton Mill (S.C. 1948) 213 S.C. 43, 48 S.E.2d 599.

3. Complaint

In actions to quiet title based up Section 15‑67‑10, it is not essential to the cause of action that there has been a trespass on the property or any showing of damage; where, from the allegation in the complaint, the adverse claim sought to be determined cannot be classified as imaginary or speculative, the complaint states a cause of action under the statute. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied. Quieting Title 1; Quieting Title 3

In an action to quiet title based on the defendant’s lien on the property, the complaint did not state a cause of action pursuant to Section 15‑67‑10 where it attacked the judgment on which the lien was based on the grounds that it was void and therefore unenforceable, rather than on the ground that the judgment was invalid. Benson v. United Guar. Residential Ins. of Iowa (S.C.App. 1994) 315 S.C. 504, 445 S.E.2d 647, rehearing denied, certiorari denied.

4. Parties

Former owner of real estate was neither necessary nor proper party defendant in action brought to establish boundary line, where he had parted with any interest in, or claim to property adverse to plaintiff’s and retained interest only in sense of potential liability to grantee. Shaw v. Hardy (S.C. 1978) 270 S.C. 298, 241 S.E.2d 906.

5. Jury question

An action to remove a cloud on and quiet title to land is one in equity. However, when the defendant’s answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff’s action, it is the duty of the court to submit to a jury the issue of title as raised by the pleadings. Bryan v. Freeman (S.C. 1969) 253 S.C. 50, 168 S.E.2d 793. Jury 13(8)

6. Particular actions

The wording of this section [former Code 1962 Section 10‑2401] is sufficiently broad to encompass an action by the landlord against the tenant. Ayers v. Ackerman (D.C.S.C. 1971) 324 F.Supp. 814.

An action to cancel an instrument based upon fraud will lie under this section irrespective of the Federal laws. Miller v. Long, 1945, 71 F.Supp. 603.

Evidence was sufficient to support trial court’s finding that adjacent property owners acquiesced that dike was the boundary between the two properties, in declaratory judgment action brought by one property owner against the other; witnesses from both sides testified that the owners of both properties operated as if the dike were the boundary from the time the Department of Transportation created it. Jordan v. Judy (S.C.App. 2015) 413 S.C. 341, 776 S.E.2d 96. Boundaries 37(5)

Where there was testimony to the effect that plaintiff went into possession of woodland property when he purchased it by cutting timber on the land, posting “No trespassing” signs, pasturing cattle there, and renting the land to others for several years, the evidence amply sustained a finding that plaintiff’s possession was sufficient to maintain an action under this section [Code 1962 Section 10‑2401]. Kunkle v. South Carolina Elec. & Gas Co. (S.C. 1968) 251 S.C. 138, 161 S.E.2d 163.

A complaint alleging that defendant asserted a claim against plaintiff’s property, which also alleged that because of such claim plaintiff was unable to sell the timber on the land, stated a cause of action authorized by this section [former Code 1962 Section 10‑2401]. Tolbert v. Greenwood Cotton Mill (S.C. 1948) 213 S.C. 43, 48 S.E.2d 599.

**SECTION 15‑67‑20.** Plaintiff limited to one action for recovery of real property.

The plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to one action for recovery.

HISTORY: 1962 Code Section 10‑2402; 1952 Code Section 10‑2402; 1942 Code Section 374; 1932 Code Section 374; Civ. P. ‘22 Section 317; Civ. P. ‘12 Section 123; Civ. P. ‘02 Section 98; 1879 (17) 76; 1913 (27) 36; 1988 Act No. 553, Section 2.

CROSS REFERENCES

Costs, generally, see Sections 15‑37‑10 et seq.

Security for costs under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

Ten‑year limitation on bringing of action, see Section 15‑3‑340.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k10.

Adverse Possession 10.

C.J.S. Adverse Possession Sections 21 to 24, 331.

NOTES OF DECISIONS

In general 1

Action to recover real estate 8‑13

In general 8

Effect of new parties 9

Miscellaneous particular actions 13

Possession by defendant 10

Suits by trustees 11

Suits for partition 12

Compliance mandatory, statutory requirements 6

Costs, statutory requirements 7

Effect of new parties, action to recover real estate 9

Exception to common‑law principles 2‑3

In general 2

Res judicata 3

Miscellaneous particular actions, action to recover real estate 13

Possession by defendant, action to recover real estate 10

Res judicata, exception to common‑law principles 3

Restriction to as opposed to right to bring two actions 4

Statutory requirements 5‑7

In general 5

Compliance mandatory 6

Costs 7

Suits by trustees, action to recover real estate 11

Suits for partition, action to recover real estate 12

1. In general

For related cases, see Geiger v. Kaigler (S.C. 1881) 15 S.C. 262.

2. Exception to common‑law principles—In general

At common law there was no limit to the number of actions of ejectment which a plaintiff might bring for the recovery of the same real property, and, as each was based upon the fiction of a different lease, entry, and ouster, they were not within the principles of res judicata, because the parties were not the same and the cause of action was different. Carr v Mouzon, 93 SC 161, 76 SE 201 (1912). Columbia Water‑Power Co. v Columbia Land & Inv. Co. 42 SC 488, 20 SE 378, 540 (1894). Walsh v Evans, 112 SC 131, 99 SE 546 (1919). Tompkins v Augusta & K. R. Co. 30 SC 479, 9 SE 521 (1889). Ladd v DuPre, 247 SC 328, 147 SE2d 253 (1966).

A statute allowing a second action for recovery of real estate changes the common law and limits the number of actions a party may bring for recovery of real property; it does not grant the right to bring two actions. Winn v. Grantham (S.C. 1974) 263 S.C. 368, 210 S.E.2d 602.

Under the common‑law rule, one out of possession could bring successive actions to recover possession. Ladd v. DuPre (S.C. 1966) 247 S.C. 328, 147 S.E.2d 253.

This section [former Code 1962 Section 10‑2402] was clearly designed to limit the common‑law rule. Ladd v. DuPre (S.C. 1966) 247 S.C. 328, 147 S.E.2d 253.

As a result of the great inconvenience and injustice which resulted to a party in possession of real property from an unlimited right of action on the part of claimants and as changes were made in legal procedure, the reasons for the adoption of the common‑law rule largely disappeared and caused the enactment of the present statute limiting the number of such actions on the part of the plaintiff to two. Ladd v. DuPre (S.C. 1966) 247 S.C. 328, 147 S.E.2d 253.

When this section [former Code 1962 Section 10‑2402] was adopted, radical changes had been made in legal procedure. The technical pleadings of the common law and feigned issues had been abolished. John Doe and Richard Roe could no longer sue and defend; but actions (with few exceptions) had to be prosecuted and defended by the real parties in interest. The action for “recovery of real property” had been substituted for the common‑law action of ejectment. This section must be construed in the light of these changes. Carr v. Mouzon (S.C. 1912) 93 S.C. 161, 76 S.E. 201, Am.Ann.Cas. 1914C,731.

3. —— Res judicata, exception to common‑law principles

The statute allowing a party to bring a second action for recovery of real estate is an exception to the law of res judicata. Winn v. Grantham (S.C. 1974) 263 S.C. 368, 210 S.E.2d 602. Judgment 747(.5)

This section [former Code 1962 Section 10‑2402] means that a party out of possession, who loses his first action, shall have a second action, but otherwise it was never intended to modify the doctrine of res judicata. Hence, one in possession who is ousted under a final judgment has no right to bring another action involving the identical issues to regain such lost possession. Ladd v. DuPre (S.C. 1966) 247 S.C. 328, 147 S.E.2d 253.

Under the general doctrine of res judicata a party would be prohibited from instituting a second action against the same defendant upon the same cause of action. In other words, the general rule is that the first action is res judicata of the second, where the same parties and the same issues are involved. This section [former Code 1962 Section 10‑2402], however, constitutes an exception to the doctrine of res judicata, and by this statute a second action, which otherwise would be prohibited, is expressly permitted. Williams v. Wannamaker (S.C. 1923) 122 S.C. 368, 115 S.E. 637.

In order for the statutory exception to apply, the case in question must of course fall within this section [former Code 1962 Section 10‑2402]. A judgment in partition is not within this section, and is therefore a complete bar to a second action for the same cause between the same parties. Williams v. Wannamaker (S.C. 1923) 122 S.C. 368, 115 S.E. 637.

Where a second action in ejectment is brought after payment of costs of the first and within the time specified, the judgment in the first action is not res judicata of the second. Carr v. Mouzon (S.C. 1912) 93 S.C. 161, 76 S.E. 201, Am.Ann.Cas. 1914C,731.

4. Restriction to as opposed to right to bring two actions

This section [former Code 1962 Section 10‑2402] was enacted, not only to limit the right of a person to two actions for the recovery of real estate, but it was intended also to protect a person in possession of, and claiming title to, real estate. Such person has a right sometime to be relieved of continued attacks on his title by the same person, or those claiming under him. It is a statute of repose, and should be so construed. Logan v Jones, 155 SC 258, 152 SE 518 (1930). Ladd v DuPre, 247 SC 328, 147 SE2d 253 (1966).

This section [former Code 1962 Section 10‑2402] was enacted not to give two actions to a person who might sue to recover real property, but to “limit” such a person to two actions. Walsh v Evans, 112 SC 131, 99 SE 546 (1919). Tompkins v Augusta & K. R. Co. 30 SC 479, 9 SE 521 (1889).

A statute allowing a second action for recovery of real estate changes the common law and limits the number of actions a party may bring for recovery of real property; it does not grant the right to bring two actions. Winn v. Grantham (S.C. 1974) 263 S.C. 368, 210 S.E.2d 602.

This section [former Code 1962 Section 10‑2402] relates to the individual bringing an action, and to the class of property sought to be recovered in that action, and is clearly a restriction on what otherwise would be the right of that individual in reference to his legal status as to that property. In the absence of the statute, he could bring as many actions as he chose for the recovery of the same real estate. Logan v. Jones (S.C. 1930) 155 S.C. 258, 152 S.E. 518.

This section [former Code 1962 Section 10‑2402] forbids the bringing of more than two actions, but does not apply to a defense. Dent v. Bolar (S.C. 1923) 125 S.C. 63, 118 S.E. 26. Ejectment 23

This section [former Code 1962 Section 10‑2402] authorizes plaintiff in ejectment to bring the same action twice, and does not mean that plaintiff’s right is limited to the bringing of two different actions to recover the same amount, or two actions based on different facts. Carr v. Mouzon (S.C. 1912) 93 S.C. 161, 76 S.E. 201, Am.Ann.Cas. 1914C,731.

5. Statutory requirements—In general

Before a second action can be brought for the recovery of real property, two conditions must be complied with: (1) The costs of the previous action must “be first paid” and (2) the second action must be brought within two years from the termination of the first action, either by the “rendition of the verdict or judgment in the first action” or “the granting of a nonsuit or discontinuance therein.” If either or both of these conditions be not first complied with, then there is no authority for the bringing of a second action, and it must, therefore, necessarily fail. Columbia Water‑Power Co. v Columbia Land & Inv. Co. 42 SC 488, 20 SE 378, 540 (1894). Logan v Jones, 155 SC 258, 152 SE 518 (1930). Stewart‑Jones Co. v Hankins, 155 SC 234, 152 SE 430 (1930).

6. —— Compliance mandatory, statutory requirements

The defendant does not waive plaintiff’s failure to comply with this section [former Code 1962 Section 10‑2402] by failing to have the costs regularly taxed, or by failing to claim or demand payment of the costs, or by going to trial, knowing that the costs have not been paid. Columbia Water‑Power Co. v Columbia Land & Inv. Co. 42 SC 488, 20 SE 378, 540 (1894). Stewart‑Jones Co. v Hankins, 155 SC 234, 152 SE 430 (1930).

This section [former Code 1962 Section 10‑2402] and the second paragraph of former Code 1962 Section 10‑124 [see now Section 15‑3‑340] were not intended only as a benefit to the defendant, but they fix a condition precedent to the privilege accorded to the plaintiff. Peterman v. Pope (S.C. 1906) 74 S.C. 296, 54 S.E. 569.

A provision in an order of discontinuance that the plaintiff desires to let his action fall “for the purpose of bringing a new action,” does not and cannot dispense with the requirements of this section [former Code 1962 Section 10‑2402]. Columbia Water Power Co. v. Columbia Land & Inv. Co. (S.C. 1894) 42 S.C. 488, 20 S.E. 378, rehearing denied 42 S.C. 488, 20 S.E. 540.

7. —— Costs, statutory requirements

It is the duty of plaintiff to allege in his complaint the performance of the requirement as to the payment of the cost of the first action in order to show his right to maintain the second action. Peterman v. Pope (S.C. 1906) 74 S.C. 296, 54 S.E. 569.

If the plaintiff does not affirmatively show payment of costs, as he should do, then the defendant may be permitted to amend his answer before trial so as to allege such nonpayment. Peterman v. Pope (S.C. 1906) 74 S.C. 296, 54 S.E. 569.

If there be a defect appearing on the face of the complaint, the objection is not waived by answer, without stating the objection, but may be urged on the trial if the defendant give five days’ notice in writing to the opposite party of the grounds of such objection. Peterman v. Pope (S.C. 1906) 74 S.C. 296, 54 S.E. 569.

Costs for witnesses may be paid directly to witnesses. In a suit for possession of land, the prevailing party taxed costs for his witnesses individually on the subpoena tickets and their affidavits of attendance. The losing party paid the costs as taxed by the clerk, but did not pay them to the defendant or to the clerk, but directly to the witnesses themselves, taking their individual receipts, and filing the same with the clerk of court. In the second action, based upon the same cause of action the prevailing party could not allege that the losing party had not paid the costs, as required by this section [former Code 1962 Section 10‑2402], before bringing such second action, though the prevailing party had previously paid the witnesses part of their fees. Mitchell v. Barrs (S.C. 1902) 64 S.C. 197, 41 S.E. 962. New Trial 186

Dismissal for nonpayment of costs constitutes second action. Under this section [Code 1962 Section 10‑2402] the dismissal of a second action for failure to pay the costs of the first action precludes the plaintiff from bringing another action for the recovery of the land. In other words, such proceeding, though dismissed, constitutes the second action referred to in this section [Code 1962 Section 10‑2402]. Columbia Water Power Co. v. Columbia Land & Inv. Co. (S.C. 1896) 47 S.C. 117, 25 S.E. 48.

Otherwise it is assumed that there are unpaid costs. The contention has been made that until the costs of the previous action have been paid, it cannot be assumed that there were any such costs. But this position is said to be untenable. Columbia Water Power Co. v. Columbia Land & Inv. Co. (S.C. 1894) 42 S.C. 488, 20 S.E. 378, rehearing denied 42 S.C. 488, 20 S.E. 540.

Payment under court order, without objection, estops plaintiff to deny existence of costs. Where plaintiff, on the second trial, under an order of court, and without objection, pays into court the amount stated by the clerk to be due for the costs of the first trial, he is estopped to claim on appeal that, as the costs were never taxed, there never had been any legal costs. Columbia Water Power Co. v. Columbia Land & Inv. Co. (S.C. 1894) 42 S.C. 488, 20 S.E. 378, rehearing denied 42 S.C. 488, 20 S.E. 540.

8. Action to recover real estate—In general

This section [former Code 1962 Section 10‑2402], in view of former Code 1962 Section 10‑701 [see now SCRCP, Rule 18], which permits the joinder of several causes of action, legal or equitable, or both, in the same suit, is not limited in its application to actions in which the sole relief sought is the recovery of real estate or possession thereof, but applies as well to actions in which two causes are joined. Southern Cotton Oil Co. v. Shelton, 1914, 220 F. 247, 136 C.C.A. 509.

Under this section [former Code 1962 Section 10‑2402], both the first and the second action must be to “recover” the land in question in order to bar the institution of a third suit. Foster v. Foster (S.C. 1908) 81 S.C. 307, 62 S.E. 320.

9. —— Effect of new parties, action to recover real estate

Where two actions for the recovery of the same real estate against the same defendant have been brought and dismissed, a third action cannot be brought and sustained by the same parties merely by adding other parties as plaintiffs. The result that would follow if such procedure were permitted, is clearly stated by the court in the following language: “If (such procedure were permitted) then a party may bring his action for the recovery of real estate, and dismiss and pay costs, bring his second within two years, dismiss and pay costs, add some other party, real or fictitious, and bring another action despite the fact that he has had two actions dismissed, and so on ad infinitum. The statute would be a nullity because it could be evaded by merely adding new parties as plaintiffs.” (Parenthesis supplied.) Logan v. Jones (S.C. 1930) 155 S.C. 258, 152 S.E. 518.

The question whether or not the newly added parties plaintiff could bring an action against the defendant for any alleged interest they might have, if they did not claim title through or from the same common source as the parties who brought the first two actions, and were therefore barred from a third, was raised but was not decided in Logan v. Jones (S.C. 1930) 155 S.C. 258, 152 S.E. 518.

10. —— Possession by defendant, action to recover real estate

An action “for recovery of real property” presupposes that the defendant therein is in possession of the land in dispute, and it is predicated upon his refusal to surrender the possession thereof to the plaintiff. Therefore a second action for the same land must be for the same cause. Carr v Mouzon, 93 SC 161, 76 SE 201 (1912). Ladd v DuPre, 247 SC 328, 147 SE2d 253 (1966).

11. —— Suits by trustees, action to recover real estate

A suit, brought by a trustee, to determine whether land then in possession of defendant in such action is subject to the trust deed, is not an action for the recovery of real estate within the meaning of this section [former Code 1962 Section 10‑2402]. Martin v. Ragsdale (S.C. 1905) 71 S.C. 67, 50 S.E. 671.

This section [former Code 1962 Section 10‑2402] applies to suits brought by a trustee for an infant cestui que trust. Benbow v. Levi (S.C. 1897) 50 S.C. 120, 27 S.E. 655.

12. —— Suits for partition, action to recover real estate

A partition suit involving the issue of whether defendant’s title is paramount to that of plaintiff, is an “action for recovery of real property” within the meaning of this section [former Code 1962 Section 10‑2402], holding that two such partition suits previously instituted, bar the plaintiff’s right to institute another suit seeking to recover possession of the property. Walsh v Evans, 112 SC 131, 99 SE 546 (1919). Foster v Foster, 81 SC 307, 62 SE 320 (1908) and Elmore v Davis, 49 SC 1, 26 SE 898 (1897).

A complaint, which purports to seek partition, does not state a cause of action in partition where it is alleged that the whole title is in other parties to the action than the defendant in possession. Such allegations in effect demand recovery against the defendant in possession and really constitute an action of ejectment, so that if two actions for the recovery of the same land have previously been instituted, then the present action, though styled a partition suit, must fail. Mitchum v. Shaw (S.C. 1914) 98 S.C. 175, 82 S.E. 401.

Where two actions for recovery of land were discontinued, a subsequent action against the same defendant in possession by the same plaintiffs for partition, though defendant has no interest in the land, is in effect an action for the recovery of the land and is not maintainable under this section [former Code 1962 Section 10‑2402]. Mitchum v. Shaw (S.C. 1914) 98 S.C. 175, 82 S.E. 401. Ejectment 31

13. —— Miscellaneous particular actions, action to recover real estate

There are forms of action by which the title to real property may be brought in issue and determined, as, for instance, an action for damages for trespass in the nature of common‑law action of trespass quare clausum fregit, an action for rents and profits, and actions for foreclosure of mortgage or partition in which a defendant sets up an independent legal title in himself, but none of these are actions “for recovery of real property,” and therefore they do not fall within the provisions of this section [former Code 1962 Section 10‑2402]. Carr v Mouzon, 93 SC 161, 76 SE 201 (1912). Tompkins v Augusta & K. R. Co., 30 SC 479, 9 SE 521 (1889). Elmore v Davis, 49 SC 1, 26 SE 898 (1897). Foster v Foster, 81 SC 307, 62 SE 320 (1908). Frederick v Chapman, 144 SC 137, 142 SE 247 (1928).

An action to enjoin a railroad company from appropriating land for its road, and for damages for such appropriation, is not an action “for the recovery of real property, or the recovery of the possession thereof,” within the meaning of this section [former Code 1962 Section 10‑2402]. Tompkins v. Augusta & K.R. Co. (S.C. 1889) 30 S.C. 479, 9 S.E. 521. New Trial 182

**SECTION 15‑67‑30.** Propriety of service by publication; personal service out of State shall be sufficient.

When any action is commenced to determine adverse claims, publication of the summons may be made and service upon parties outside of the State and unknown claimants obtained in the following manner. When the sheriff of the county in which the action is brought shall have duly determined that the defendant cannot be found therein, and an affidavit of the plaintiff or his attorney shall have been filed with the clerk stating that a cause of action exists to determine adverse claims to certain property within the county, and that he believes the defendant or defendants, naming them, is not a resident of the State or cannot be found therein and either (a) that he has mailed a copy of the summons, by registered mail, to the defendant at his place of residence or (b) that such residence is not known to him, service of the summons may be made upon the defendant by three weeks’ public notice thereof in the manner provided by law for publication of summons in civil actions. Personal service of such summons without the State, made after order for publication, proved by the affidavit of the person making such service made before an authorized officer having a seal, shall have the same effect as the publication of the summons herein provided.

HISTORY: 1962 Code Section 10‑2403; 1952 Code Section 10‑2403; 1942 Code Section 879; 1932 Code Section 879; Civ. P. ‘22 Section 827; 1916 (29) 928.

CROSS REFERENCES

Judgment after service by publication, affidavit and undertaking under South Carolina Rules of Civil Procedure, see Rule 55, SCRCP.

Service by publication or out of State, see Sections 15‑9‑710 et seq.

Summons, publication and personal service, see Probate Ct Rules of Practice, Rule 5.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k48 to 313k68; 313k84 to 313k111.

Process 48 to 68, 84 to 111.

C.J.S. Process Sections 26, 33 to 49, 58 to 73, 76.

Attorney General’s Opinions

Since both the Star Reporter and Osceola are published in Richland County, they meet the requirements of Code 1962 Sections 10‑452, 2403‑2404 [Code 1976 Sections 15‑9‑720, 15‑67‑30, 15‑67‑40]; State and county officials are prohibited from placing legal advertisements in The State or any other newspapers refusing to publish legal advertisements at the legal rate. Therefore, effective service by publication may be had only by advertising in newspapers subscribing to the legal rates; by naming a particular newspaper in an order of publication, the officer before whom application for such order is made necessarily has made the determination that the named paper is the one most likely to give notice to the person to be served. Consequently, the officer issuing the order of publication may include such an express finding, but where a particular newspaper is designated, no such finding is required; Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100] appears to be mandatory only where all newspapers in any particular county refuse to insert such advertisements at the rate allowed in Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100]. 1974‑75 Op Atty Gen, No 4144.

NOTES OF DECISIONS

In general 1

1. In general

Tolling statute, Section 15‑3‑30, is inapplicable in cases in which problem which the statute was meant to address is not present; thus, in adverse possession action brought by Indian tribe against landowners for claim and title, Section 15‑3‑30 was inapplicable since the problem that Section 15‑3‑30 was meant to address, namely difficulty in locating out‑of‑state defendant before expiration of statute of limitations under Section 15‑3‑340, was not present by virtue of fact that separate statute, Section 15‑67‑30, authorizes summons and service by publication on out‑of‑state parties in actions to determine adverse claim, thereby obviating the need to locate out‑of‑state defendants in adverse possession cases. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1992) 978 F.2d 1334, certiorari denied 113 S.Ct. 1415, 507 U.S. 972, 122 L.Ed.2d 785.

**SECTION 15‑67‑40.** Service on unknown parties; notice of lis pendens.

In any action brought to determine adverse claims to real property within this State the plaintiff may insert in the title thereof, in addition to the names of such persons as are known or appear of record to have some right, title, interest, estate or lien in or on the real property in controversy, the following: “Also all other persons unknown, claiming any right, title, estate, interest in or lien upon the real estate described in the complaint herein.” Service of the summons may be had upon all such unknown persons defendant by publication in the same manner as against nonresident defendants, upon the filing of an affidavit of the plaintiff, his agent or attorney, stating the existence of a cause of action to try adverse claims within this State. The plaintiff shall before commencement of such publication file with the clerk of the court a notice of the pendency of the action, a copy of which shall be published in the same newspaper with and immediately following the summons.

HISTORY: 1962 Code Section 10‑2404; 1952 Code Section 10‑2404; 1942 Code Section 880; 1932 Code Section 880; Civ. P. ‘22 Section 828; 1916 (29) 929.

CROSS REFERENCES

Motion to amend pleadings under South Carolina Rules of Civil Procedure, see Rule 15, SCRCP.

Notice of lis pendens generally, see Sections 15‑11‑10 et seq.

Service by publication or out of State, see Sections 15‑9‑710 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 242k12; 313k69 to 313k75.

Lis Pendens 12.

Process 69 to 75.

C.J.S. Lis Pendens Section 14.

C.J.S. Process Sections 50 to 51, 56 to 57.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 3, Defined.

S.C. Jur. Lis Pendens Section 12, Publication.

S.C. Jur. Lis Pendens Section 26, Recovery of Real Property.

Attorney General’s Opinions

Since both the Star Reporter and Osceola are published in Richland County, they meet the requirements of Code 1962 Sections 10‑452, 2403‑2404 [Code 1976 Sections 15‑9‑720, 15‑67‑30, 15‑67‑40]; State and county officials are prohibited from placing legal advertisements in The State or any other newspapers refusing to publish legal advertisements at the legal rate. Therefore, effective service by publication may be had only by advertising in newspapers subscribing to the legal rates; by naming a particular newspaper in an order of publication, the officer before whom application for such order is made necessarily has made the determination that the named paper is the one most likely to give notice to the person to be served. Consequently, the officer issuing the order of publication may include such an express finding, but where a particular newspaper is designated, no such finding is required; Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100] appears to be mandatory only where all newspapers in any particular county refuse to insert such advertisements at the rate allowed in Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100]. 1974‑75 Op Atty Gen, No 4144.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Caine v. Griffin (S.C. 1958) 232 S.C. 562, 103 S.E.2d 37.

**SECTION 15‑67‑50.** Appearance of unknown parties; subsequent defense by minors.

All such unknown persons so served shall have the same right to appear and defend before and after judgment as would named defendants upon whom service is made by publication, and any order or judgment in the action shall be binding upon those who have been served or who shall appear and defend, whether they be of age or minors, and, if they be minors when judgment is rendered, they may be allowed to defend at any time within three years after coming of age.

HISTORY: 1962 Code Section 10‑2405; 1952 Code Section 10‑2405; 1942 Code Section 880; 1932 Code Section 880; Civ. P. ‘22 Section 828; 1916 (29) 929.

CROSS REFERENCES

Judgment after service by publication, affidavit and undertaking under South Carolina Rules of Civil Procedure, see Rule 55, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 31k2.

Appearance 2.

C.J.S. Appearances Sections 5, 9 to 12.

**SECTION 15‑67‑60.** Reference to master; determining claims of nonresidents or minors.

In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff’s claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents. If it shall appear to the court or judge that there probably exists a bona fide claim or lien on the part of any such nonresident or minor, whose name and whereabouts can be ascertained, no decree adjudicating the rights of such minor or affecting or quieting the title as against him or her shall be rendered unless personal service upon him or her outside of the State after order for publication shall first be made and proved as provided in Section 15‑67‑30.

HISTORY: 1962 Code Section 10‑2406; 1952 Code Section 10‑2406; 1942 Code Section 880; 1932 Code Section 880; Civ. P. ‘22 Section 828; 1916 (29) 929.

CROSS REFERENCES

Reference to title where no defense is interposed under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Submitting to nonsuit or dismissal before master or referee under South Carolina Rules of Civil Procedure, see Rule 53, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 327k1 to 327k34.

Reference 1 to 34.

C.J.S. References Sections 2 to 39.

Notes of Decisions

In general 1

1. In general

Master‑in‑equity was not precluded from determining the rightful owner of disputed 6.2‑acre lot on the basis such a decision required a determination of intestate heirs, allegedly within the exclusive jurisdiction of the probate court, where estate brought action in circuit court for the purpose of quieting and confirming title to the 6.2‑acre lot, and master was not required to make a determination of heirs to establish rightful ownership of the property. Major v. Penn Community Services, Inc. (S.C.App. 2011) 395 S.C. 175, 717 S.E.2d 70, rehearing denied. Quieting Title 28

**SECTION 15‑67‑70.** Effect of judgment; persons bound.

Any judgment entered in an action to try adverse claims shall be binding upon all of the defendants joined in the action. When unknown owners and claimants are joined as defendants it shall be binding upon any and all persons or parties having or claiming, or who might or could claim, an interest in or lien upon the property adverse to the plaintiff who have been served or who shall appear and defend, whether residents of this State or nonresidents.

HISTORY: 1962 Code Section 10‑2407; 1952 Code Section 10‑2407; 1942 Code Section 882; 1932 Code Section 882; Civ. P. ‘22 Section 830; 1916 (29) 930.

CROSS REFERENCES

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Judgment after service by publication, affidavit for an undertaking under South Carolina Rules of Civil Procedure, see Rule 55, SCRCP.

Judgments constituting lien on real estate for 10 years, see Section 15‑35‑810.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k117.

Adverse Possession 117.

C.J.S. Adverse Possession Sections 316, 342.

**SECTION 15‑67‑80.** Costs.

If the defendant in his answer disclaim any interest in the property or suffer judgment to be taken against him without answer the plaintiff cannot recover costs. But if the summons has been served upon the defendant personally and it is made to appear that, after the accrual of the cause of action and before commencement thereof, the plaintiff demanded in writing of the defendant and the defendant neglected to execute within a reasonable time thereafter a good and sufficient quitclaim deed of the property described in the complaint, upon tender of such deed ready for execution, the plaintiff shall nevertheless recover his costs.

HISTORY: 1962 Code Section 10‑2408; 1952 Code Section 10‑2408; 1942 Code Section 881; 1932 Code Section 881; Civ. P. ‘22 Section 829; 1916 (29) 930.

CROSS REFERENCES

Costs, generally, see Section 15‑37‑10.

Cost of former suits under South Carolina Rules of Civil Procedure, see Rule 41, SCRCP.

Security for costs under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k2.

Costs 2.

C.J.S. Costs Sections 2 to 3, 8 to 9.

**SECTION 15‑67‑90.** Time limitation upon reopening matter.

No judgment or decree quieting title to land or determining the title thereto, or adverse claims therein, shall be adjudged invalid or set aside for any reason, unless the action or proceeding to vacate or set aside such judgment or decree shall be commenced or application for leave to defend be made within three years from the time of filing for record a certified copy of such judgment or decree in the office of the clerk of court of the county in which the lands affected by such judgment or decree are situated or, in case of minors, within three years after coming of age.

HISTORY: 1962 Code Section 10‑2409; 1952 Code Section 10‑2409; 1942 Code Section 883; 1932 Code Section 883; Civ. P. ‘22 Section 831; 1916 (29) 930.

LIBRARY REFERENCES

Westlaw Key Number Searches: 20k117; 228k386; 318k52.

Adverse Possession 117.

Judgment 386.

Quieting Title 52.

C.J.S. Adverse Possession Sections 316, 342.

C.J.S. Judgments Sections 335 to 336.

C.J.S. Quieting Title Sections 90 to 93.

NOTES OF DECISIONS

In general 1

1. In general

Doctrine of laches precluded alleged heirs of former property owner from seeking to set aside judgment in quiet title action so as to assert ownership claims to property, even if the judgment was procured through extrinsic fraud; the heirs waited 39 years to challenge the quiet title action and the current property owner would be undoubtedly prejudiced if the claim was not barred by laches given she purchased her lot for significant consideration and had been in possession of it for nine years. Robinson v. Estate of Harris (S.C. 2010) 388 S.C. 645, 698 S.E.2d 229. Judgment 456(1)

Statute of limitations purporting to bar all actions to set aside a judgment quieting title to land unless the action was filed within three years of the judgment did not limit court’s inherent authority to set aside a judgment for extrinsic fraud. Robinson v. Estate of Harris (S.C. 2010) 388 S.C. 645, 698 S.E.2d 229. Judgment 456(1)

Doctrine of laches precluded alleged heirs of former property owner from seeking to set aside judgment in quiet title action so as to assert ownership claims to property, even if the judgment was procured through extrinsic fraud; the heirs waited 39 years to challenge the quiet title action and the current property owner would be undoubtedly prejudiced if the claim was not barred by laches given she purchased her lot for significant consideration and had been in possession of it for nine years. Robinson v. Estate of Harris (S.C. 2010) 388 S.C. 630, 698 S.E.2d 222. Judgment 456(1)

Doctrine of laches precluded alleged heirs of former property owner from seeking to set aside judgment in quiet title action so as to assert ownership claims to property, even if the judgment was procured through extrinsic fraud; the heirs waited 39 years to challenge the quiet title action and the current property owner would be undoubtedly prejudiced if the claim was not barred by laches given she purchased her lot for significant consideration and had been in possession of it for nine years. Robinson v. Estate of Harris (S.C. 2010) 388 S.C. 616, 698 S.E.2d 214. Judgment 456(1)

An action to vacate a judgment quieting title to approximately 10 acres of land, based on the claim that the judgment was procured through extrinsic fraud, was barred by Section 15‑67‑90, where the action was commenced more than 3 years after the judgment, and a title clearance action brought by the plaintiff one year after the quiet title judgment, regarding 23 acres of land, demonstrated an awareness that the disputed 10 acres might have been included in the property she was claiming. Yarbrough v. Collins (S.C.App. 1990) 301 S.C. 339, 391 S.E.2d 873. Judgment 386(8)

**SECTION 15‑67‑100.** Right to jury trial unchanged.

Nothing in this article shall be construed or held to change the existing law in reference to trials by jury in all actions of trespass to try titles, trespass quare clausum fregit or ejectment or other action to recover possession of real estate.

HISTORY: 1962 Code Section 10‑2411; 1952 Code Section 10‑2411; 1942 Code Section 884; 1932 Code Section 884; Civ. P. ‘22 Section 832; 1916 (29) 930.

CROSS REFERENCES

Issues in equity cases under South Carolina Rules of Civil Procedure, see Rule 39, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 230k14(2); 230k14(9).

Jury 14(2, 9).

C.J.S. Juries Sections 50, 53 to 54, 58, 60, 62, 66, 102, 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Declaratory Judgments Section 2, History.

S.C. Jur. Equity Section 21, Action to Quiet Title.

ARTICLE 3

Possession and Adverse Possession

**SECTION 15‑67‑210.** Presumption of possession; when occupation deemed under legal title.

In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.

HISTORY: 1962 Code Section 10‑2421; 1952 Code Section 10‑2421; 1942 Code Section 377; 1932 Code Section 377; Civ. C. ‘22 Section 320; Civ. P. ‘12 Section 126; Civ. P. ‘02 Section 101; 1870 (14) 445 Section 104; 1873 (15) 496.

CROSS REFERENCES

Limitation of actions for the recovery of real property, see Sections 15‑3‑310 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k112.

Adverse Possession 112.

C.J.S. Adverse Possession Sections 263, 266 to 267, 269, 274, 276 to 278, 341.

RESEARCH REFERENCES

ALR Library

73 ALR, Federal 2nd Series 221 , Construction and Application of Non‑Intercourse Act, Codified at 25 U.S.C.A. S177, and Predecessor Enactments Barring Conveyances of Tribal Land to Non‑Indians Unless Made or Ratified by...

Encyclopedias

S.C. Jur. Adverse Possession Section 18, Interruptions of Occupancy.

S.C. Jur. Adverse Possession Section 19, “Tacking” of Periods of Possession.

S.C. Jur. Adverse Possession Section 53, Adverse Claimant Has Burden of Proof.

S.C. Jur. Adverse Possession Section 56, Statutory Presumption of Superiority of Legal Title.

S.C. Jur. Cotenancies Section 24, Adverse Possession by a Cotenant.

S.C. Jur. Cotenancies Section 33, Tax Sales and Tax Titles.

S.C. Jur. Easements Section 10, Prescriptive Easement.

S.C. Jur. Easements Section 33, Prescription by Servient Tenement.

S.C. Jur. Lis Pendens Section 26, Recovery of Real Property.

Forms

South Carolina Litigation Forms and Analysis Section 1:5 , Lis Pendens (Adverse Possession).

Treatises and Practice Aids

Restatement (3d) of Property (Servitudes) Section 2.17, Servitudes Created by Prescription: Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, property law. 40 S.C. L. Rev. 216 (Autumn 1988).

Annual survey of South Carolina law, property law. 41 S.C. L. Rev. 174 (Autumn 1989).

Annual survey of South Carolina law, property law. 42 S.C. L. Rev. 217 (Autumn 1990).

Constructive Adverse Possession Under Color of Title in South Carolina. 10 SC LQ 279.

Shirley we can figure this out: The continued confusion surrounding prescriptive easements. Ethan B. Clark, 68 S.C. L. Rev. 795 (Spring 2017).

South Carolina Law on Boundary Disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

Acts constituting adverse possession, elements of adverse possession 6

Adverse possession prior to enactment of 10‑year provision 2

Continuous period, elements of adverse possession 8

Cotenants, particular applications 12

Easement by prescription 10.5

Elements of adverse possession 5‑10

In general 5

Acts constituting adverse possession 6

Continuous period 8

Hostile holding 10

Proof and evidence of adverse possession 7

Tacking 9

Hostile holding, elements of adverse possession 10

Life estates, particular applications 16

Municipalities, particular applications 17

Ouster, particular applications 13

Particular applications 11‑18

In general 11

Cotenants 12

Life estates 16

Municipalities 17

Ouster 13

Presumption of ouster 14

State 18

Trusts 15

Prescriptive easement 19

Presumption of ouster, particular applications 14

Presumption of possession 4

Proof and evidence of adverse possession, elements of adverse possession 7

Required proof 3

Review 21

State, particular applications 18

Summary judgment 20

Tacking, elements of adverse possession 9

Trusts, particular applications 15

1. In general

The issue of title by adverse possession being one of law, factual review of it by the Supreme Court is limited to determination of whether there was any evidence reasonably sustaining the judgment of the lower court. Seagle v Montgomery, 227 SC 436, 88 SE2d 357 (1955). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

For additional related cases, as to adverse possession, (claiming title under common ancestor) see Lloyd v Rawl, 63 SC 219, 41 SE 312 (1902). Langston v Cothran, 78 SC 23, 58 SE 956 (1907).

Cited in Woodside Mills v. U.S. (C.A.4 (S.C.) 1958) 260 F.2d 935.

In an action for rescission of a sales contract for real property based on defects in title, the trial court erred in finding that the seller had acquired by adverse possession the title to the portion of the property which allegedly encroached on a railroad’s right‑of‑way where the railroad had not been joined in the action, and was not otherwise before the court. Gibbs v. G.K.H., Inc. (S.C.App. 1993) 311 S.C. 103, 427 S.E.2d 701.

Once title has been acquired by adverse possession or presumption of grant, a subsequent break in occupancy or possession has no effect on the title so acquired unless the title is defeated by one of the following methods: (1) a grant from the state or the proprietor; (2) tracing the title back to a common source existing between the parties; (3) a presumption of grant which is the occupancy of the subject property continually, hostilely, openly, adversely, notoriously and exclusively for a period of 20 years; or (4) adverse possession for a period of 10 years with the necessary elements of adverse possession. Johnson v. Pritchard (S.C.App. 1990) 302 S.C. 437, 395 S.E.2d 191.

Applied in Fogle v. Void (S.C. 1953) 223 S.C. 83, 74 S.E.2d 358.

A person who has been in adverse possession of land for the statutory period has a good and valid title by virtue of such adverse possession, which may be affirmatively asserted against one not protected by some disability. The statute of limitations has a double aspect: Besides offering a shield of defense, it may, under certain circumstances, give title capable of being asserted actively. Lyles v. Fellers (S.C. 1926) 138 S.C. 31, 136 S.E. 13.

2. Adverse possession prior to enactment of 10‑year provision

An adverse possession commencing prior to the insertion in this section [former Code 1962 Section 10‑2421] of the ten‑year limitation provision, must have continued for the full twenty‑year period before it could ripen into a right. Hodge v Hodge, 56 SC 263, 34 SE 517 (1899). Lyles v Roach, 30 SC 291, 9 SE 334 (1889). Rehkopf v Kuhland, 30 SC 234, 9 SE 99 (1889).

Prior to 1873 when this section [former Code 1962 Section 10‑2421] was adopted, a twenty‑year limitation applied to the cases herein mentioned, instead of the ten‑year limitation now provided for. See Sudduth v. Sumeral (S.C. 1901) 61 S.C. 276, 39 S.E. 534, 85 Am.St.Rep. 883.

3. Required proof

In order to constitute adverse possession which results in obtaining title to property, the possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. Claimant’s possession must be such as to indicate his exclusive ownership of the property. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, but it must be hostile thereto and to the whole world. Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). Gregg v Moore, 226 SC 366, 85 SE2d 279 (1954). Lynch v Lynch, 236 SC 612, 115 SE2d 301 (1960).

Ordinarily the question of adverse possession is one of fact for the jury and only becomes one of law for the court when the evidence is undisputed and susceptible of but one inference. Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). McIntosh v Kolb, 112 SC 1, 99 SE 356 (1919). Atlantic Coast Line R. Co. v Searson, 137 SC 468, 135 SE 567 (1926). Lynch v Lynch, 236 SC 612, 115 SE2d 301 (1960).

To constitute adverse possession or presumption of grant, which results in obtaining title to disputed property, possession must be continuous, hostile, open, actual, notorious, and exclusive for requisite period, and possession must be hostile not only to true owner but also to rest of world so as to indicate claimant’s exclusive ownership of property. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 13; Adverse Possession 58

No facts supported a jury’s finding that the plaintiffs in an action of trespass to try title met their burden of proving perfect legal paper title to a disputed tract where the plaintiffs were the daughters and granddaughter of the grantor of a deed conveying the tract, the deed contained a derivation indicating the tract had belonged to the grantor’s father and had been purchased by the grantor 3 years earlier, neither probate records for the grantor’s father nor the deed of record for the purchase showed title to the tract, and thus the deed conveying the tract to the plaintiffs was the only deed of record purporting to convey the tract. Cummings v. Varn (S.C. 1992) 307 S.C. 37, 413 S.E.2d 829, rehearing denied.

Proof of adverse possession requires a showing that the possession of the property is actual, open, notorious, exclusive, continuous, and hostile for the entire statutory period of ten years. Lusk v. Callaham (S.C.App. 1986) 287 S.C. 459, 339 S.E.2d 156. Adverse Possession 13

Evidence of public character of road, together with maintenance of road by county, held sufficient to support finding that public had acquired easement by implied dedication. Darlington County v. Perkins (S.C. 1977) 269 S.C. 572, 239 S.E.2d 69. Dedication 44

Claim of title by adverse possession requires proof of actual, open, notorious, hostile, continuous and exclusive possession by claimant, or by one or more persons through whom he claimed, for the full statutory period of ten years, without tacking of possession except by descent cast. Crotwell v. Whitney (S.C. 1956) 229 S.C. 213, 92 S.E.2d 473. Adverse Possession 13

4. Presumption of possession

This section [former Code 1962 Section 10‑2421] has been construed several times to mean that, where a person proves legal title to real property, the person so proving the legal title is presumed to have been in possession of the premises for ten years. Love v Turner, 71 SC 322, 51 SE 101 (1905). Dickson v Epps, 104 SC 381, 89 SE 354 (1916). Atlantic Coast Line R. Co. v Baker, 143 SC 445, 141 SE 688 (1927). Moseley v Hankinson, 25 SC 519 (1886). Lynch v Lynch, 236 SC 612, 115 SE2d 301 (1960).

In an action to recover land, where plaintiffs have proved a good legal title in themselves from their ancestor, thus raising the presumption mentioned in this section [former Code 1962 Section 10‑2421], the burden is on the defendant to show that his possession was adverse. Stokes v Murray, 102 SC 395, 87 SE 71 (1915). Lynch v Lynch, 236 SC 612, 115 SE2d 301 (1960). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). Dickson v Epps, 104 SC 381, 89 SE 354 (1916).

The allegation of ownership in fee simple carries with it the allegation of possession, for the possession is presumed to follow the legal title. Shute v Shute, 79 SC 420, 60 SE 961 (1908). Stokes v Murray, 102 SC 395, 87 SE 71 (1915).

The presumption stated in this section [former Code 1962 Section 10‑2421] holds good unless and until someone else goes on the land and occupies it adversely for ten years. Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923). Love v Turner, 71 SC 322, 51 SE 101 (1905).

Indian tribe’s claim to legal title for purpose of invoking presumption of possession provided in Section 15‑67‑210 is not defeated by lack of recording in Registry of Mesne Conveyances, nor by fact that Indian title cannot be alienated except by Act of Congress. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1989) 865 F.2d 1444, certiorari denied 109 S.Ct. 3190, 491 U.S. 906, 105 L.Ed.2d 699.

The Supreme Court approved a charge to the jury which stated the law to be that the presumption mentioned in this section [former Code 1962 Section 10‑2421] was effective if the party shows title, even though he may never have seen the land in question, in Haithcock v. Haithcock (S.C. 1923) 123 S.C. 61, 115 S.E. 727.

Adverse possession gives no right until the expiration of ten years. Ellen v. Ellen (S.C. 1881) 16 S.C. 132.

5. Elements of adverse possession—In general

Where a woman married before the Constitution of 1868 did not have the right to the possession of her land acquired before that time until the death of her husband, statute did not commence to run against her until her husband’s death. Garrett v Weinberg, 48 SC 28, 26 SE 3 (1896). Rawles v Johns, 54 SC 394, 32 SE 451 (1899). Boykin v Ancrum, 28 SC 486, 6 SE 305 (1888). Moseley v Hankinson, 25 SC 519 (1886). Covar v Cantelou, 25 SC 35 (1886). Banister v Bull, 16 SC 220 (1881). Bell v Talbird, Rich (9 SC Eq) 361. Joyce v Gunnels, 2 Rich (19 SC Eq) 259.

The character of the possession is a question for the jury. Cantey v Platt, 2 McC (13 SCL) 260. Hill V Saunders, 6 Rich (40 SCL) 62; Abel v Hutto, 8 Rich (42 SCL) 42; Lynch v Lynch, 236 SC 612, 115 SE2d 301 (1960).

Where one claims title to lands by adverse possession, the question whether such possession is, in fact, adverse is for the determination of the jury. Harrington v Wilkins, 2 McC (13 SCL) 289, approved in Lyles v Fellers, 138 SC 31, 136 SE 13 (1926). Stokes v Murray, 95 SC 120, 78 SE 741 (1912).

The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time. Taylor v. Heirs of William Taylor (S.C.App. 2017) 419 S.C. 639, 799 S.E.2d 919, rehearing denied. Adverse Possession 13

In order to establish a claim of adverse possession, the claimant must prove by clear and convincing evidence that possession of the property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period. Dawkins v. Mozie (S.C.App. 2012) 399 S.C. 290, 731 S.E.2d 342. Adverse Possession 13; Adverse Possession 114(1)

Since, in order to constitute adverse possession, the possession must be continuous, hostile, open, actual, notorious and exclusive for the entire 10 year statutory period, a party who used real property with the knowledge and permission of the owner could not establish title thereto by adverse possession. Davis v. Monteith (S.C. 1986) 289 S.C. 176, 345 S.E.2d 724.

One claiming title to land by adverse possession has the burden of proving adverse possession by clear and convincing evidence. Lusk v. Callaham (S.C.App. 1986) 287 S.C. 459, 339 S.E.2d 156.

To be adverse, possession must be actual, open, notorious, exclusive, hostile, continuous, and uninterrupted. Parties who do not take actual possession of disputed land must rely on constructive possession under color of title to establish ownership by adverse possession. Kirkland v. Gross (S.C.App. 1985) 286 S.C. 193, 332 S.E.2d 546.

Continuous and widespread public usage of road for at least 50 years, without charge or interference from previous owners and present landowners, clearly established public character of road. Darlington County v. Perkins (S.C. 1977) 269 S.C. 572, 239 S.E.2d 69.

The word “possession” denotes a group of facts. Hence, when we say of a man that he has possession, we affirm directly that all the facts of a certain group are true of him, and we convey indirectly or by implication that the law will give him the advantage of the situation. Dickson v. Epps (S.C. 1916) 104 S.C. 381, 89 S.E. 354.

Where a person’s possession commenced under a legal title, so that he and others were cotenants, the continuance of the possession was, under this section [former Code 1962 Section 10‑2421], presumptively under the legal title. Sibley v. Sibley (S.C. 1911) 88 S.C. 184, 70 S.E. 615, Am.Ann.Cas. 1912C,1170. Adverse Possession 85(1)

In an action by tenants in common for twenty years in the face of notorious and exclusive possession, the use and exercise of authority incident to exclusive and adverse ownership is sufficient to rebut the presumption that the possession was subordinate to the legal title, and is sufficient to establish the presumption of a grant. Powers v. Smith (S.C. 1908) 80 S.C. 110, 61 S.E. 222. Tenancy In Common 15(3)

Under an instruction in a suit for partition, in which defendants set up exclusive title to the premises, the fact that a tenant is not bound to give actual notice to his cotenant of ouster, but he may do so by conduct, and that holding exclusively, adversely, and openly are the highest acts in the power of a disseisor to indicate his intention, and that the law presumes possession unexplained to be adverse, is sufficient. Powers v. Smith (S.C. 1908) 80 S.C. 110, 61 S.E. 222.

Possession by one cotenant constituting the possession of all cotenants ceases when the exclusive possession of a cotenant becomes adverse to the right of possession by the other cotenant or cotenants; but the hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence, and while the possessor need not give express notice of the hostility of his possession to the other or others, the nature of it must be brought home to the other owner or owners. Fender v. Heirs at Law of Smashum (S.C.App. 2003) 354 S.C. 504, 581 S.E.2d 853, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 361 S.C. 606, 606 S.E.2d 484. Tenancy In Common 15(2); Tenancy In Common 15(10)

6. —— Acts constituting adverse possession, elements of adverse possession

As a general rule, the law presumes that the exclusive possession of land by one who is a stranger to the holder of the legal title is adverse. Knight v Hilton, 224 SC 452, 79 SE2d 871 (1954). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

Alleged owners failed to preserve for appellate review assertion that adverse possessor’s adverse possession action was barred by res judicata, where alleged owners failed to plead this issue in their answer and counterclaim and failed to raise this issue during the hearing before the special referee, and no ruling was ever made on the issue. Dawkins v. Mozie (S.C.App. 2012) 399 S.C. 290, 731 S.E.2d 342. Appeal and Error 220

Residents’ possession of lot continued for at least 10 years before they conveyed the property to their daughter and son‑in‑law, and thus residents had already acquired the property prior to the conveyance and the conveyance did not interrupt their period of adverse possession. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 54

Nature and location of land and appropriate uses for which it is suited should be considered in determining whether adverse possession has been established. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 16(1)

To support claim of adverse possession, acts of ownership with regard to open, wild, unfenced lands not capable of cultivation are only required to be exercised in way that is consistent with use to which such lands may be put, even without actual residency or occupancy. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 16(3)

Acts of adverse possession with regard to open, wild, unfenced lands not capable of cultivation are only required to be exercised in such way and in such manner as is consistent with the use to which the lands may be put, and the situation of the property admits of, without actual residence or occupancy. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61. Adverse Possession 16(3)

A mere trespass is insufficient. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661. Remainders 14

In view of this section [former Code 1962 Section 10‑2421], and the four sections immediately following, an occupancy which is a mere trespass without claim of title cannot ripen into a good title however long continued. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

On an issue whether the possession of the person under whom plaintiff claimed was adverse or permissive, it was proper to charge that permissive possession could not avail against a paper title. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

7. —— Proof and evidence of adverse possession, elements of adverse possession

A person in order to prove title by adverse possession does not have to show the payment of taxes on the land that he claims. However, the failure to pay taxes may be regarded as a circumstance that weakens a claim of ownership, or as evidence that no claim was made. Harrelson v Reaves, 219 SC 394, 65 SE2d 478 (1951). Terwilliger v White, 222 SC 176, 72 SE2d 169 (1952).

Where the question is whether a party has acquired title to real estate by adverse possession for a period of ten years, within the meaning of this section [former Code 1962 Section 10‑2421], such possession must be clearly proved and shown. Stokes v Murray, 95 SC 120, 78 SE 741 (1912). Ellen v Ellen, 16 SC 132 (1881).

Clear and convincing evidence existed to support defendant family members’ claim that they acquired disputed tract of land by adverse possession; defendants’ possession of the tract was under color of title, which designated the extent of their claim, they testified that they believed they owned the tract, that they had paid taxes on the tract for more than 50 years, and had raised cattle on the tract, which satisfied both the ten year, and the open and notorious requirements for adverse possession. Taylor v. Heirs of William Taylor (S.C.App. 2017) 419 S.C. 639, 799 S.E.2d 919, rehearing denied. Adverse Possession 114(1)

Evidence was sufficient to support finding in record owner’s quiet title action that residents actually possessed the land and acquired it by adverse possession under color of title; resident testified that they posted landscape stakes at the corners of the lot, bush‑hogged and landscaped the lot, graded a driveway leading onto the lot, placed “No Trespassing” signs throughout the lot, raised a mesh wire fence along the back of the lot, stored business supplies on the lot, paid taxes on the lot, and cut down timber on the lot, and there was evidence that a septic tank, a well, and wood privacy fences were installed on the lot. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 114(1)

Special Referee appropriately applied clear and convincing evidence standard when finding that defendant residents had acquired title to lot by adverse possession, although Special Referee used term “ample evidence”; Special Referee recited the correct “clear and convincing” standard in the opening of the “conclusions of law” section of the order, and word “ample” was merely an adjective to describe the evidence provided that sufficiently met the clear and convincing standard. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 114(1)

Testimony on possession of property was susceptible of more than one inference and thus created question for jury on issue of adverse possession under 20‑year period for presumption of grant. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 115(1)

A jury question was presented as to the accuracy of a survey prepared for the plaintiffs in a quiet title action, even though the survey was more carefully prepared than the survey for the defendants, where inferences were presented that the original grantors of the property may have intended to establish a boundary line other than the location at which the plaintiff’s plat placed it. Garrett v. Locke (S.C.App. 1992) 309 S.C. 94, 419 S.E.2d 842. Boundaries 40(1)

Sufficient evidence supported a referee’s finding, in an action for trespass to try title, that the adverse possessor proved actual, open, notorious, hostile, continuous, and exclusive possession for the full statutory period where the possessor (1) paid the mortgages on the property, (2) paid taxes on the property, (3) marked the boundary lines, and (4) sold timber cut from the property. Miller v. Leaird (S.C. 1992) 307 S.C. 56, 413 S.E.2d 841, rehearing denied.

Court did not err in admitting into evidence contents of journals and diaries of private persons and old newspaper clippings to show history of public usage of landing area alleged to be private property. Darlington County v. Perkins (S.C. 1977) 269 S.C. 572, 239 S.E.2d 69. Evidence 324(1)

Possession will be sufficient if by his acts and conduct it is apparent to men of ordinary prudence that claimant is asserting and exercising ownership over the property; and for this purpose it is necessary to take into consideration the nature, character, and location of the property and the uses for which it is fitted or to which it has been put. Smith v. Southern Ry.‑Carolina Division (S.C. 1961) 237 S.C. 597, 118 S.E.2d 440.

The payment of taxes does not confer title, but it may be an important factor with reference to adverse possession, and also ouster by a cotenant, for it shows that the claimant from the beginning claimed title to the land in severability, having returned it in his own name, and having paid the taxes thereon. Brevard v. Fortune (S.C. 1952) 221 S.C. 117, 69 S.E.2d 355.

“Adverse possession” means such possession as evidences or shows to the jury the right of the claim to the ownership of the land. Haithcock v. Haithcock (S.C. 1923) 123 S.C. 61, 115 S.E. 727.

A witness in a suit which is being defended on the ground of adverse possession may relate acts of possession or ownership, but the witness cannot say who has been in possession. Dickson v. Epps (S.C. 1916) 104 S.C. 381, 89 S.E. 354. Evidence 471(27)

A party defending under claim of adverse possession may show that he gave a mortgage and an option for the timber on the land, as evidence of the character of his possession. Dickson v. Epps (S.C. 1916) 104 S.C. 381, 89 S.E. 354.

Where there is any competent, relevant testimony to go to the jury on the question of the statute of limitations or adverse possession, a nonsuit cannot be granted. Stokes v. Murray (S.C. 1913) 95 S.C. 120, 78 S.E. 741.

The giving of a deed or mortgage by one in possession of land is ordinarily evidence of assertion of title. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661. Adverse Possession 85(3)

Where the plaintiff in an action to recover real estate does not claim title from the same source as defendant, and fails to show title in himself or in those from whom he claims, either by grant or length of possession sufficient to authorize the presumption of a grant, or adverse possession, he should be nonsuited, giving a detailed discussion of what the plaintiff must show in order to recover in such an action. Hodge v. Hodge (S.C. 1899) 56 S.C. 263, 34 S.E. 517. Ejectment 108

Tax receipts evidencing payment of taxes are admissible to show claim of ownership of land, but they do not sustain such claim where the taxes are paid under contract with the real owner. Ellen v. Ellen (S.C. 1881) 16 S.C. 132. Ejectment 90(1)

8. —— Continuous period, elements of adverse possession

Occasional entries on land to cut a small amount of timber do not constitute a sufficiently continuous use to establish adverse possession. Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). Bailey v Irby, 11 SCL (2 Nott & McC) 343.

The possession must be continuous—not a possession now and a possession some other time—not a sporadic possession, but the continuous possession for ten years in order to ripen such a possession into a title. Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

Actual possession, once taken, will continue, though the party taking such possession should not continue to rest with his foot upon the soil, until such party is disseised or until he does some act which amounts to a voluntary abandonment of the possession. Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). Cathcart v Matthews, 105 SC 329, 89 SE 1021 (1916).

There must be such continuity of possession as will furnish a cause of action for every day during the whole period required to perfect title by adverse possession. Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961). Cathcart v Matthews, 105 SC 329, 89 SE 1021 (1916).

Trial court could consider evidence of record owner’s non‑use of lot when considering residents’ affirmative defense of adverse possession in record owner’s quiet title action; court did not require record owner to produce evidence of affirmative acts of ownership, and fact that record owner did not make use of the property was relevant to issue of whether residents’ use was exclusive for purposes of adverse possession. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 38

Residents’ adverse possession of lot was continuous rather than temporary and transient, although resident kept timber, cement blocks, and trailer on lot merely for storage and items were not stored on the lot for very long, where resident used lot as storage for his landscaping business supplies, which changed frequently, and resident also seasonally bush‑hogged the lot, burned brush on the lot, put up a mesh wire fence, and installed “No Trespassing” signs on the lot. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 24

Landowner’s use of portion of old plantation road running through adjacent landowner’s property was not uninterrupted and, thus, landowner had not enjoyed continuous and uninterrupted adverse use of old roadway for the twenty‑year period necessary to establish a private prescriptive easement; adjacent landowner made repeated attempts to prevent landowner from using roadway, including plowing roadway under and setting posts and bolting cables across it, which landowner ignored or destroyed, and these repeated attempts constituted interruptions, however brief, in the landowner’s adverse use and enjoyment of old roadway. Pittman v. Lowther (S.C.App. 2003) 355 S.C. 536, 586 S.E.2d 149, rehearing denied, affirmed 363 S.C. 47, 610 S.E.2d 479. Easements 7(6)

Occasional and temporary use or occupation does not constitute adverse possession. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 24

Once the statutory period for adverse possession is activated, the subsequent creation of a life estate and remainder neither negated nor suspended the running of the period. Miller v. Leaird (S.C. 1992) 307 S.C. 56, 413 S.E.2d 841, rehearing denied. Limitation Of Actions 44(1)

Continuity of possession will be sufficient if by his acts and conduct it is apparent to men of ordinary prudence that claimant is asserting and exercising ownership over the property; and for this purpose it is necessary to take into consideration the nature, character, and location of the property and the uses for which it is fitted or to which it has been put. Smith v. Southern Ry.‑Carolina Division (S.C. 1961) 237 S.C. 597, 118 S.E.2d 440.

The moment possession is broken it ceases to be effectual, because the law immediately restores the constructive possession of the owner. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

In determining when possession is broken, the nature and location of the land should be considered and whether the use to which the same has been put comports with the usual management of such property. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61. Adverse Possession 17; Adverse Possession 46.1

The possession of a landlord through successive tenants is deemed continuous. Mahoney v. Southern Ry., Carolina Division (S.C. 1909) 82 S.C. 215, 64 S.E. 228.

9. —— Tacking, elements of adverse possession

Possession of the heir may be tacked to that of ancestor. Bardin v Commercial Ins. & Trust Co., 82 SC 358, 64 SE 165 (1909). Powers v Smith, 80 SC 110, 61 SE 222 (1908). Brucke v Hubbard, 74 SC 144, 54 SE 249 (1906). Epperson v Stansill, 64 SC 485, 42 SE 426 (1902). Terwilliger v Daniels, 222 SC 191, 72 SE2d 167 (1952). Terwilliger v White, 222 SC 176, 72 SE2d 169 (1952).

The period of limitation mentioned in this section [former Code 1962 Section 10‑2421] must be continuous, and the tacking of several separate possessions is not permitted to make up the required ten year period. See Hodge v Hodge, 56 SC 263, 34 SE 517 (1899). Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923).

Grantee of disseisor may not unite his possession with that of disseisor. Epperson v Stansill, 64 SC 485, 42 SE 426 (1902). Pegues v Warley, 14 SC 180 (1880). Ellen v Ellen, 16 SC 132 (1881). Burnett v Crawford, 50 SC 161, 27 SE 645 (1897).

South Carolina courts would allow tacking by successive adverse occupants of land to make out title by adverse possession when change in possession occurs by operation of law. It follows that when a transfer in possession occurs other than by operation of law, South Carolina courts would not allow tacking. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1992) 978 F.2d 1334, certiorari denied 113 S.Ct. 1415, 507 U.S. 972, 122 L.Ed.2d 785. Adverse Possession 43(2)

The general rule in South Carolina is that even though there is privity by deed or devise between successive adverse occupants of land, the possession of such occupants cannot be tacked to make out title by adverse possession under the statute of limitations. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1992) 978 F.2d 1334, certiorari denied 113 S.Ct. 1415, 507 U.S. 972, 122 L.Ed.2d 785.

Tacking doctrine precludes tribe whose constitution was revoked in 1962 and who brought suit in 1980 from prevailing against person who owns property that has been held adversely for 10 years in relevant period of time without tacking except by inheritance, but person who must rely on prohibited tacking cannot prevail against tribe, which has presumption of possession. Catawba Indian Tribe of South Carolina v. State of S.C. (C.A.4 (S.C.) 1989) 865 F.2d 1444, certiorari denied 109 S.Ct. 3190, 491 U.S. 906, 105 L.Ed.2d 699.

Adverse possessors’ daughter and son‑in‑law, who moved onto the subject property and later acquired it through conveyance from possessors, were not possessors’ “heirs” for tacking purposes. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 43(6)

During the ten year period required to establish adverse possession, tacking is not allowed between successive occupants; if the claimant’s period of adverse possession is interrupted, constructive possession is restored to the owner. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 43(1); Adverse Possession 46.1

A person claiming adverse possession must have personally held the property for ten years, and tacking is allowed only between ancestor and heir. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 43(1); Adverse Possession 43(6)

Person claiming adverse possession must have personally held property for 10‑year statutory limitations period, and tacking is allowed only between ancestor and heir. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 40; Adverse Possession 43(6)

In addition to the 10‑year statute of limitation for adverse possession, common law recognizes 20‑year presumption of grant under which time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish 20‑year period. Getsinger v. Midlands Orthopaedic Profit Sharing Plan (S.C.App. 1997) 327 S.C. 424, 489 S.E.2d 223, rehearing denied, certiorari denied. Adverse Possession 43(2); Adverse Possession 57

To permit the heir of an alleged beneficiary of a secret trust, where the trustee has been in possession of land under color of title in himself individually, to establish adverse possession by tacking his alleged beneficial interest to that of his ancestor, would open wide the door to fraud. Crotwell v. Whitney (S.C. 1956) 229 S.C. 213, 92 S.E.2d 473. Adverse Possession 43(8)

Where one of two or more heirs continues the occupation he had maintained under his ancestor who was an adverse holder, it will be presumed, nothing appearing to the contrary, that the possession of this heir is for the benefit of all the estate and in the right of the other heirs as well. And if the heir claims against a third party solely in his own right, his possession can be tacked to that of the ancestor, provided the evidence tends either to sustain an ouster of his cotenant, or that his possession was also the possession of the other heirs, as cotenants and equally for their benefit. Terwilliger v. Marion (S.C. 1952) 222 S.C. 185, 72 S.E.2d 165. Adverse Possession 57

The possession of the grantor cannot be tacked on to that of the grantee so as to defeat the title of the true owner. Adams v. Adams (S.C. 1951) 220 S.C. 131, 66 S.E.2d 809.

When possession is cast by operation of law from ancestor to heir in possession, there is no break in the continuity of possession, whereas, in the case of disseisor and grantee, there is a new entry and a break in the continuity of possession. Epperson v. Stansill (S.C. 1902) 64 S.C. 485, 42 S.E. 426.

Possession of successive purchasers may not be united. Pegues v. Warley (S.C. 1880) 14 S.C. 180.

10. —— Hostile holding, elements of adverse possession

An entry under a parol gift of land, though permissive and friendly in the popular sense, is hostile and adverse to the paper title in the legal sense, because there is an assertion of ownership in the occupant. Harrelson v Reaves, 219 SC 394, 65 SE2d 478 (1951). Brevard v Fortune, 221 SC 117, 69 SE2d 355 (1952).

The use of a railroad right of way by an adjacent landowner for agricultural purposes, such as grazing and cultivation, is ordinarily not inconsistent with the enjoyment of the easement and forms no basis for a claim of hostile possession. Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961). Atlantic Coast Line R. Co. v Little, 195 SC 455, 12 SE2d 7 (1940).

A right of way of a railroad cannot be lost by prescriptive use or adverse possession, unless by the erection of a permanent structure, accompanied by notice to the railroad company of an intention to claim adversely to its right. Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961). Atlanta & Charlotte Air Line R. Co. v Limestone Globe Land Co., 109 SC 444, 96 SE 188 (1918).

The occasional intrusion of a trespasser will not interrupt the continuity of adverse possession. Love v Turner, 78 SC 513, 59 SE 529 (1907). Carr v Mouzon, 86 SC 461, 68 SE 661 (1910).

Merely enclosing part of railroad right of way by a fence is not sufficient to put the company on notice of a claim of adverse possession. Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961). Atlantic Coast Line R. Co. v Epperson, 85 SC 134, 67 SE 235 (1910).

If an adjacent landowner, under a claim of ownership, encloses a portion of a right of way by a substantial fence and refuses upon demand to remove it, such an assertion of right to exclusive occupancy of the land is not compatible with the right of easement belonging to the railroad company and may form the basis of a claim of adverse possession. Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961). Southern Ry. Co. v Beaudrot, 63 SC 266, 41 SE 299, 300 (1902).

Purchasers of the interest of a life tenant cannot be regarded as trespassers upon the rights of remaindermen until the life estate terminates. Moseley v Hankinson, 25 SC 519 (1886). Sutton v Clark, 59 SC 440, 38 SE 150 (1901). Massey v Duren, 3 SC 34 (1871).

The “mistaken belief rule,” which requires the possessor to be aware he does not have title and intend to dispossess the true owner, is not applicable in disputes over entire tracts of land; thus, for the possession to be hostile when an entire tract of land is at issue, the adverse claimant need not show a conscious intent to dispossess the true owner, but rather, may establish hostile possession by showing he occupied the property without the title owner’s consent even if he occupied the property under the mistaken belief that it belonged to him. Taylor v. Heirs of William Taylor (S.C.App. 2017) 419 S.C. 639, 799 S.E.2d 919, rehearing denied. Adverse Possession 65(.5)

Parish had constructive notice of the trust deed that was properly recorded in 1767 and remained on record from that time. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina (S.C.App. 2004) 358 S.C. 209, 595 S.E.2d 253, rehearing denied, certiorari denied, on subsequent appeal 385 S.C. 428, 685 S.E.2d 163, certiorari dismissed 130 S.Ct. 2088, 176 L.Ed.2d 580. Trusts 23

Genuine issue of material fact as to whether parish fulfilled hostility requirement for adverse possession precluded summary judgment in favor of descendants and against diocese and national church, which claimed real property was owned by parish subject to canons of diocese and national church, in action to determine ownership of property. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina (S.C.App. 2004) 358 S.C. 209, 595 S.E.2d 253, rehearing denied, certiorari denied, on subsequent appeal 385 S.C. 428, 685 S.E.2d 163, certiorari dismissed 130 S.Ct. 2088, 176 L.Ed.2d 580. Judgment 181(15.1); Judgment 181(34)

While Section 15‑67‑210 in effect provides that possession is presumed when a person owns paper title, open, hostile and notorious possession is required where the true owner is without actual knowledge of the hostile claim. Johnson v. Pritchard (S.C.App. 1990) 302 S.C. 437, 395 S.E.2d 191. Adverse Possession 28; Adverse Possession 58

A claim of ownership of property primarily by virtue of chain of title was insufficient to establish adverse possession where the land was possessed under the mistaken belief of ownership, which is insufficient to establish hostility. Cook v. Eller (S.C.App. 1989) 298 S.C. 395, 380 S.E.2d 853, writ dismissed 302 S.C. 160, 394 S.E.2d 327. Adverse Possession 65(.5)

The possession of land based on the mistaken belief of ownership did not prevent the possession from being hostile. Wigfall v. Fobbs (S.C. 1988) 295 S.C. 59, 367 S.E.2d 156.

Where owner of property and occupier are both in possession, possession of legal owner prevails to exclusion of other occupier; exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with owner or with agents of owner; evidence that owner and son had used land several times each year to hunt and continued to use it for that purpose until time of trial supported master’s conclusion that occupier had not occupied land exclusively; acts of ownership of open land need only be exercised in way consistent with use to which land may be put and which situation of property permits without actual residency or occupancy. Butler v. Lindsey (S.C.App. 1987) 293 S.C. 466, 361 S.E.2d 621.

Summary judgment was proper on issue of acquiescence in ownership of land in dispute where evidence relied upon to establish acquiescence showed only that persons claiming title by adverse possession realized there was conflict as to ownership, but there was no evidence that such persons recognized adjoining landowner’s ownership of such property. Gardner v. Mozingo (S.C. 1987) 293 S.C. 23, 358 S.E.2d 390.

Summary judgment was appropriate where evidence of adverse possession was insufficient to raise dispute as to any issue of fact. Gardner v. Mozingo (S.C. 1987) 293 S.C. 23, 358 S.E.2d 390.

Document releasing track of land to son, executed by mother, signed in presence of witnesses, although not complying with legal requirements for recording deed of conveyance, document nevertheless constituted color of title under adverse possession statutes, and son’s occupancy of property exclusively claiming it has his own and openly exercising all indicia of ownership for almost 5 years, well not itself sufficient to vest title by adverse possession, is nevertheless sufficient to characterize occupancy as hostile. Woods v. Bivens (S.C. 1987) 292 S.C. 76, 354 S.E.2d 909. Adverse Possession 71(2)

Possession under a mistaken belief that property is one’s own and with no intent to claim against the property’s true owner cannot constitute hostile possession. Lusk v. Callaham (S.C.App. 1986) 287 S.C. 459, 339 S.E.2d 156. Adverse Possession 65(.5)

Where one enters land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party. Young v. Nix (S.C.App. 1985) 286 S.C. 134, 332 S.E.2d 773. Adverse Possession 60(4)

In view of the use made of a railroad right of way, acts ordinarily deemed hostile in other cases may not bear that character where adverse title is claimed against a railroad company. Smith v. Southern Ry.‑Carolina Division (S.C. 1961) 237 S.C. 597, 118 S.E.2d 440.

A claim of adverse possession against a railroad right of way was strengthened by the fact that the railroad had fee simple to such right of way, rather than a mere easement. Smith v. Southern Ry.‑Carolina Division (S.C. 1961) 237 S.C. 597, 118 S.E.2d 440.

Occupancy of land beyond the true boundary line by an encroaching owner, does not form a basis for adverse possession unless the encroachment is made with an intention to claim and hold adversely. Lynch v. Lynch (S.C. 1960) 236 S.C. 612, 115 S.E.2d 301. Adverse Possession 100(4)

In order to constitute an adverse possession there must be a hostile holding, a holding claiming the land as the holder’s own, a claiming that he has a right to hold it against the world. Haithcock v. Haithcock (S.C. 1923) 123 S.C. 61, 115 S.E. 727.

Adverse possession necessarily presupposes a trespass upon the rights of the lawful owner. Moseley v. Hankinson (S.C. 1886) 25 S.C. 519.

10.5. Easement by prescription

Evidence was sufficient to support special referee’s finding that claimant’s use of disputed road to access his property was permissive, and thus, defeated claimant’s acquisition of a permissive easement by adverse use; during hunting season, claimant’s use of the property was with the permission of the lessor, who allowed the public to hunt on the property, making claimant’s use no different from the rights that could be asserted by the general public, and at times other than hunting season, claimant used the property with the permission of lessor as he was given a key to unlock cable that blocked road, and after property owner purchased the property, property owner gave claimant permission to construct a gate on the property in the same location as the cable. Bundy v. Shirley (S.C. 2015) 412 S.C. 292, 772 S.E.2d 163. Easements 8(2)

Property owners purchased their land subject to electric and gas company’s prescriptive easement to maintain power lines over property owners’ land, despite property owners’ contention that they never requested electrical service from electric and gas company; marks of easement, which were poles and power lines, were open and visible, and property owners admitted to making inspections of property and to actual knowledge of power lines prior to property’s purchase. Loftis v. South Carolina Elec. and Gas Co. (S.C.App. 2004) 361 S.C. 434, 604 S.E.2d 714. Electricity 9(1)

Evidence was sufficient to support finding that electric and gas company used land under claim of right so as to establish prescriptive easement to maintain power lines over property owners’ land; company used and maintained power lines for more than 70 years pursuant to belief they had valid right‑of‑way, company searched but could not find documents that they believed to exist proving filed right‑of‑way on property, and company presented several versions of their general service conditions, which stated that customer, in requesting or accepting service, granted company necessary rights‑of‑way and trimming and clearing privileges for its power lines. Loftis v. South Carolina Elec. and Gas Co. (S.C.App. 2004) 361 S.C. 434, 604 S.E.2d 714. Electricity 9(1)

In order to establish an easement by prescription a party must show: (1) the continued and uninterrupted use or enjoyment of a right for a full period of 20 years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under claim of right. Loftis v. South Carolina Elec. and Gas Co. (S.C.App. 2004) 361 S.C. 434, 604 S.E.2d 714. Easements 5

11. Particular applications—In general

The right of way of a railroad, having been acquired for a public purpose, cannot be lost by a prescriptive use or adverse possession, unless by the erection of a permanent structure, accompanied by notice to the railroad company of an intention to claim adversely to its rights. Southern Ry. Carolina Division v Horne Investment Co., 233 SC 440, 105 SE2d 527 (1958). Atlantic Coast Line R. Co. v Searson, 137 SC 468, 135 SE 567 (1926). Smith v Southern Ry. Carolina Division, 237 SC 597, 118 SE2d 440 (1961).

By the execution and delivery of a deed of land, the entire legal interest in the premises vests in the grantee, and, if the grantor continues in possession afterward, his possession will be that either of tenant or trustee of the grantee. He will be regarded as holding the premises in subserviency to the grantee, and nothing short of an explicit disclaimer of such relation, and a notorious assertion of right in himself, will be sufficient to change the character of his possession and render it adverse to the grantee. Love v Turner, 78 SC 513, 59 SE 529 (1906). Griggs v Griggs, 199 SC 295, 19 SE2d 477 (1942). Terwilliger v White, 222 SC 176, 72 SE2d 169 (1952).

Mere possession for ten years by purchaser from a mortgagor of part of mortgaged lands, after the condition is broken, is no bar to a foreclosure against the mortgagor and the purchaser. Norton v Lewis, 3 SC 25 (1871). Wright v Eaves, 5 Rich (26 SC Eq) 81. Lynch v Hancock, 14 SC 66 (1880). Clark v Smith, 13 SC 585 (1880). Goldsmith v Jacobs, 14 SC 624 (1880).

Once defendant family members met the elements of adverse possession, they acquired perfect title to the disputed parcel, and could not subsequently lose title by abandonment, and even if abandonment could have defeated their adverse possession claim, they did not abandon the parcel, when they continued to pay taxes on the parcel, and continued rent out a house located on the parcel until it was damaged by fire. Taylor v. Heirs of William Taylor (S.C.App. 2017) 419 S.C. 639, 799 S.E.2d 919, rehearing denied. Adverse Possession 106(3); Adverse Possession 109

Title was not acquired by adverse possession where the possessors and their predecessors in interest believed the land belonged to them and to no one else and were honest, mistaken entrants on the land and not intentional wrongdoers until a survey of the land showed otherwise in the same year when the action to establish title by adverse possession was instituted. Lusk v. Callaham (S.C.App. 1986) 287 S.C. 459, 339 S.E.2d 156. Adverse Possession 85(3)

Although right of way by prescription does not arise from mere use of unenclosed and unimproved woodland, where road to landing area has long been established as public road, land encompassing landing is improved land and subject to public acquisition of prescriptive rights. Darlington County v. Perkins (S.C. 1977) 269 S.C. 572, 239 S.E.2d 69.

A boundary line dividing the land of adjoining owners may be established by a parol agreement of such owners, and becomes conclusive against the owners and those claiming under them. Lynch v. Lynch (S.C. 1960) 236 S.C. 612, 115 S.E.2d 301. Boundaries 46(1); Boundaries 46(2)

Evidence insufficient to show title by adverse possession. Phillips v. Du Bose (S.C. 1953) 223 S.C. 224, 75 S.E.2d 56.

A private easement may be lost by adverse possession. Outlaw v. Moise (S.C. 1952) 222 S.C. 24, 71 S.E.2d 509. Easements 32

The occupancy of a licensee is manifestly that of the licensor. Brevard v. Fortune (S.C. 1952) 221 S.C. 117, 69 S.E.2d 355.

A guardian cannot assert adverse possession against his ward. Scaife v. Thomson (S.C. 1881) 15 S.C. 337.

12. —— Cotenants, particular applications

The general rule is that the possession of one cotenant is the possession of all, which is a variation of the rule that unexplained possession raises a presumption of adverse possession. Knotts v Joiner, 217 SC 99, 59 SE2d 850 (1950). Watson v Little, 224 SC 359, 79 SE2d 384 (1953).

The minority of one tenant in common will protect the entire property held in common from the operation of the statute of limitations in favor of an adverse claimant in possession. Garrett v Weinberg, 48 SC 28, 26 SE 3 (1896). Adams v Adams, 220 SC 131, 66 SE2d 809 (1951). Watson v Little, 224 SC 359, 79 SE2d 384 (1953).

Where, under a deed from tenant in common purporting to convey the entire fee, the grantee goes into possession after recording the deed and holds the lands adversely as his own, it amounts to an ouster of the other tenants in common and gives such holder, after ten years, title by adverse possession against the tenants in common. Sudduth v Sumeral, 61 SC 276, 39 SE 534 (1901). Knotts v Joiner, 217 SC 99, 59 SE2d 850 (1950).

There can be no adverse claim against any cotenants unless the claim is adverse to all the cotenants. Scaife v Thomson, 15 SC 337 (1881). Green v Cannady, 71 SC 317, 51 SE 92 (1905).

A co‑tenant’s suspicion that another co‑tenant has vandalized jointly‑owned property does not permit the suspicious co‑tenant to take the law into his own hands and commit ouster and forcibly exclude his co‑tenant. Parker v. Shecut (S.C. 2002) 349 S.C. 226, 562 S.E.2d 620. Tenancy In Common 14

Possession of all cotenants ceases when the exclusive possession of a cotenant becomes adverse to the right of possession by the other cotenant or cotenants. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384.

Payment of taxes by a cotenant ordinarily entitles him only to proportionate contribution from the other cotenant or cotenants. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384.

If a conveyance purports to be, not of the entire interest in the property, but of the interest of the grantor merely, the possession of the grantee is prima facie like that of his grantor, that of a cotenant only, and not adverse to the other cotenant, and the latter is justified in assuming this to be the case. Knotts v. Joiner (S.C. 1950) 217 S.C. 99, 59 S.E.2d 850.

13. —— Ouster, particular applications

While a physical ouster, or “turning out by the heels,” as some of the judges have termed it, is not necessary in establishing title in a tenant in common by adverse possession, nevertheless an actual ouster and an exclusion of the other tenants from possession must be shown. The acts relied on to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. Brevard v Fortune, 221 SC 117, 69 SE2d 355 (1952). Wells v Coursey, 197 SC 483, 15 SE2d 752 (1941). Horne v Cox, 237 SC 41, 115 SE2d 513 (1960).

In order that one of several cotenants may acquire title by adverse possession as against the others, his possession must be of such actual, open, notorious, exclusive and hostile character as to amount to an ouster of the other cotenants. Wells v Coursey, 197 SC 483, 15 SE2d 752 (1941). Brevard v Fortune, 221 SC 117, 69 SE2d 355 (1952). Terwilliger v Marion, 222 SC 185, 72 SE2d 165 (1952).

Proof of ouster is necessary to claim of adverse possession between cotenants. Mole v Folk, 45 SC 265, 22 SE 882 (1895). Stone v Fitts, 38 SC 393, 17 SE 136 (1893).

Joint tenant was ousted from beach house by co‑tenant, where co‑tenant changed the locks to the beach house, he did not give joint tenant a working key, and he did not have any intention of giving her a key unless he was ordered by the court to do so. Parker v. Shecut (S.C. 2002) 349 S.C. 226, 562 S.E.2d 620. Tenancy In Common 14

Title by ten years’ adverse possession by a cotenant against another may be acquired only after actual ouster of which the latter has notice, or should have in the exercise of reasonable diligence and vigilance. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384. Tenancy In Common 15(7); Tenancy In Common 15(10)

The hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence. While the possessor need not give express notice of the hostility of his possession to the other or others, the nature of it must be brought home to the other owner or owners. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384.

The statute must operate prospectively from the time of ouster, whenceforward the possession of the claiming cotenant must conform to the requirements of adverse possession in order to ripen title in him. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384.

A parol partition between tenants in common, and exclusive possession of one of the cotenants thereunder, is evidence of ouster from which adverse possession of the tenant who holds under such partition may begin against the others and ripen into title. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661. Tenancy In Common 15(3)

Actual “ouster” of a tenant in common by a cotenant in possession occurs when the possession is attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other tenants to participate in the profits. Fender v. Heirs at Law of Smashum (S.C.App. 2003) 354 S.C. 504, 581 S.E.2d 853, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 361 S.C. 606, 606 S.E.2d 484. Tenancy In Common 14

14. —— Presumption of ouster, particular applications

Only in rare cases has it been held that ouster of the other cotenants was implied from exclusive possession, collection of the rents and improvement of the property by one cotenant. Watson v Little, 224 SC 359, 79 SE2d 384 (1953). Horne v Cox, 237 SC 41, 115 SE2d 513 (1960).

The open, notorious, continuous, hostile and exclusive possession by one tenant in common with the use and exercise of authority incident to exclusive and adverse ownership for a period of twenty years presumes ouster, and to acquire such possession an heir may tack his possession to that of his ancestor. Wells v Coursey, 197 SC 483, 15 SE2d 752 (1941). Brevard v Fortune, 221 SC 117, 69 SE2d 355 (1952).

Proof of exclusive possession for 20 years raises a presumption of ouster by a cotenant. Powers v Smith, 80 SC 110, 61 SE 222 (1908). Knotts v Joiner, 217 SC 99, 59 SE2d 850 (1950).

Only in rare, extreme cases will ouster by one co‑tenant of other co‑tenants be implied from exclusive possession and dealings with property, such as collection of rents and improvement of property. Parker v. Shecut (S.C. 2002) 349 S.C. 226, 562 S.E.2d 620. Tenancy In Common 14

Where one co‑tenant has ousted the other co‑tenant, and kept them out by force, he is liable as a trespasser for the rental value of the property beyond his ownership share. Parker v. Shecut (S.C. 2002) 349 S.C. 226, 562 S.E.2d 620. Tenancy In Common 28(3)

Ouster is presumed from possession only if it is continued for a period of twenty years. Watson v. Little (S.C. 1953) 224 S.C. 359, 79 S.E.2d 384.

Ouster is presumed from possession only if it is continued for a period of 20 years; title by ten years’ adverse possession by a cotenant against another may be acquired only after actual ouster of which the latter has notice, or should have in the exercise of a reasonable diligence and vigilance. Fender v. Heirs at Law of Smashum (S.C.App. 2003) 354 S.C. 504, 581 S.E.2d 853, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 361 S.C. 606, 606 S.E.2d 484. Tenancy In Common 15(2); Tenancy In Common 15(10)

15. —— Trusts, particular applications

Adverse possession and presumption of title will run against the legal title in a trustee and the right thereunder of beneficiaries. Young v McNeill, 78 SC 143, 59 SE 986 (1907). Pope v Patterson, 78 SC 334, 58 SE 945 (1907). Few v Keller, 63 SC 154, 41 SE 85 (1902). Benbow v Levi, 50 SC 120, 27 SE 655 (1897). Trustees v Jennings, 40 SC 168, 18 SE 257, 891 (1893).

In a claim for adverse possession, where one’s possession was begun in privity with or in subservience to the title of another, adverse possession cannot begin until the trust is openly repudiated by a clear, positive, and continued disclaimer of the title and the adverse claim is brought home to the other party. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina (S.C.App. 2004) 358 S.C. 209, 595 S.E.2d 253, rehearing denied, certiorari denied, on subsequent appeal 385 S.C. 428, 685 S.E.2d 163, certiorari dismissed 130 S.Ct. 2088, 176 L.Ed.2d 580. Adverse Possession 60(4)

Genuine issue of material fact as to whether laches barred claims of descendants of trustees, which were not asserted for more than 200 years after trust was established and during time that parish leased property for uses not mentioned in trust and mortgaged property based on claim that it held property in fee simple, precluded summary judgment in favor of descendants and against diocese and national church, which claimed real property was owned by parish subject to canons of diocese and national church, in action to determine ownership of property. All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina (S.C.App. 2004) 358 S.C. 209, 595 S.E.2d 253, rehearing denied, certiorari denied, on subsequent appeal 385 S.C. 428, 685 S.E.2d 163, certiorari dismissed 130 S.Ct. 2088, 176 L.Ed.2d 580. Judgment 181(6)

Possession as trustee is the possession of the cestuis que trust, and it cannot be adverse without an open disavowal of the trust. But this rule does not always apply to implied trusts. Brunson v. Sports (S.C. 1961) 239 S.C. 58, 121 S.E.2d 294.

16. —— Life estates, particular applications

Possession adverse to title of remaindermen cannot begin until the death of the life tenant. Crotwell v. Whitney (S.C. 1956) 229 S.C. 213, 92 S.E.2d 473.

A remainderman is not affected by adverse possession against life tenant. Mitchell v. Cleveland (S.C. 1907) 76 S.C. 432, 57 S.E. 33. Remainders 17(1)

17. —— Municipalities, particular applications

In a suit against the city by a landowner seeking title to property, the fact that the city had not maintained the property in question as a street for a number of years preceding the commencement the suit was immaterial; if the city had a fee simple title as opposed to a mere right of way, the city was in legal possession regardless of actual physical possession. Hoogenboom v. City of Beaufort (S.C.App. 1992) 315 S.C. 306, 433 S.E.2d 875, rehearing granted, adhered to on rehearing, certiorari granted, certiorari dismissed as improvidently granted 317 S.C. 12, 451 S.E.2d 393, rehearing denied. Municipal Corporations 657(7)

No rights in a street can be acquired against a municipality by adverse possession. City of Myrtle Beach v. Parker (S.C. 1973) 260 S.C. 475, 197 S.E.2d 290. Adverse Possession 8(2)

Adverse possession cannot give title to a town. Crocker v. Collins (S.C. 1892) 37 S.C. 327, 15 S.E. 951, 34 Am.St.Rep. 752.

18. —— State, particular applications

Equitable estoppel found not to exist even though Department of Highways failed to object to location and use of concrete island in gasoline pumps constructed within highway right of way in 1930, because state’s easement was reported in index, where contract of sale to present owner acknowledged that controversy existed concerning right of way, and where record did not reveal any action on part of state tending to misrepresent actual state of facts or evidencing intent to abandon portion of right of way. South Carolina State Highway Dept. v. Metts (S.C. 1978) 270 S.C. 73, 240 S.E.2d 816.

Title to property dedicated to and used by the public for streets and highways cannot be acquired by prescription or adverse possession as against the State or any of its political subdivisions. Outlaw v. Moise (S.C. 1952) 222 S.C. 24, 71 S.E.2d 509. Adverse Possession 8(2)

Title will not ripen as against State unless the State has actually or presumptively parted with title. Epperson v. Stansill (S.C. 1902) 64 S.C. 485, 42 S.E. 426.

Title will not ripen as against State. Kolb v. Jones (S.C. 1901) 62 S.C. 193, 40 S.E. 168.

19. Prescriptive easement

To establish an easement by prescription, one need only establish either a justifiable claim of right or adverse and hostile use; the party claiming a prescriptive easement bears the burden of proving all of the elements. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Easements 8(1); Easements 9(1); Easements 36(1)

To establish a prescriptive easement the party asserting the right must show: (1) continued and uninterrupted use of the right for twenty years; (2) the identity of the thing enjoyed; and (3) use which is either adverse or under a claim of right. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Easements 5

A “prescriptive easement” is not implied by law but is established by the conduct of the dominant tenement owner. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Easements 5

20. Summary judgment

Property owner’s summary judgment evidence in the form of plats that purported to show that not all of electric utility’s power lines had existed over property owner’s land for the 20 year period necessary to establish a prescriptive easement, were insufficient to contradict utility company’s employee affidavits; property owner did not state in his summary judgment affidavit that the lines were not there for the requisite period based on his own personal knowledge, the plats were not of property owner’s land, and did not purport to establish the location of all power lines. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Judgment 185.1(3); Judgment 185.3(17)

Water utility’s summary judgment evidence was insufficient to establish that utility had an express easement to install water main or water lines on property owner’s land, even though the issue was argued by the parties at summary judgment hearing; utility presented no evidence and did not argue that it had been given an express easement. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Judgment 185.3(17)

Undisputed summary judgment affidavit of water utility’s engineer was sufficient to demonstrate that a water main had been in place on property owner’s land for the requisite 20‑year period for a prescriptive easement, and that it was installed under a claim of right. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Judgment 185.3(17)

A genuine issue of material fact as to what water lines, besides the water main, were on property owner’s land, and how long they might have been there, precluded summary judgment as to water utility with regard to property owner’s claim that utility trespassed on his property with additional water lines. Simmons v. Berkeley Elec. Co‑op. Inc. (S.C.App. 2013) 404 S.C. 172, 744 S.E.2d 580, certiorari granted, affirmed in part, reversed in part 419 S.C. 223, 797 S.E.2d 387, rehearing denied. Judgment 181(15.1)

21. Review

Issue of claimant’s permissive use of road as a bar to a prescriptive easement was properly preserved for appeal by property owner, where claimant acknowledged in his appellate brief that property owner raised the defense, the special referee expressly stated that permission does not defeat an easement by prescription based on a claim of right and ruled that claimant proved his use was adverse despite evidence of permissive use, and where property owner challenged that ruling in his post‑trial motion. Bundy v. Shirley (S.C. 2015) 412 S.C. 292, 772 S.E.2d 163. Appeal and Error 173(2)

**SECTION 15‑67‑220.** Effect of occupation under written instrument or court decree or judgment.

Whenever it shall appear (a)that the occupant or those under whom he claims entered into the possession of premises under claim of title, exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question or upon the decree or judgment of a competent court and (b) that there has been a continued occupation and possession of the premises, or of some part of such premises, included in such instrument, decree or judgment under such claim for ten years, the premises so included shall be deemed to have been held adversely, except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

HISTORY: 1962 Code Section 10‑2422; 1952 Code Section 10‑2422; 1942 Code Section 378; 1932 Code Section 378; Civ. P. ‘22 Section 321; Civ. P. ‘12 Section 127; Civ. P. ‘02 Section 102; 1870 (14) 445 Section 105; 1873 (15) 496.

CROSS REFERENCES

Estates and construction of documents creating estates, see Sections 27‑5‑10 et seq.

Form and execution of conveyances, see Sections 27‑7‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k112.

Adverse Possession 112.

C.J.S. Adverse Possession Sections 263, 266 to 267, 269, 274, 276 to 278, 341.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adverse Possession Section 6, Sources of Color of Title.

S.C. Jur. Adverse Possession Section 19, “Tacking” of Periods of Possession.

S.C. Jur. Adverse Possession Section 31, Extent of Actual Possession “Under Color of Title”.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive Adverse Possession Under Color of Title in South Carolina. 10 SC LQ 279.

South Carolina Law on Boundary Disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

Color of title, generally 2

Defective instrument, operation of statute 9

Description of land, written instrument 4

Effect of legal disability, operation of statute 12

Effect of occupancy of part of land not under color of title, operation of statute 10

Effect of occupancy of part of land under color of title, operation of statute 8

Evidential acts of ownership, operation of statute 11

Operation of statute 7‑12

In general 7

Defective instrument 9

Effect of legal disability 12

Effect of occupancy of part of land not under color of title 10

Effect of occupancy of part of land under color of title 8

Evidential acts of ownership 11

Particular instruments, written instrument 6

Sufficiency of description, written instrument 5

Written instrument 3‑6

In general 3

Description of land 4

Particular instruments 6

Sufficiency of description 5

1. In general

This section [former Code 1962 Section 10‑2422] and former Code 1962 Sections 10‑2423 to 10‑2425 [see now Sections 15‑67‑230 to 15‑67‑250] do not deal with the characteristics of adverse possession; they merely delimit the area to which title by adverse possession extends and to some extent the manner in which the claimed right of possession must be asserted and exercised. Klapman v. Hook (S.C. 1945) 206 S.C. 51, 32 S.E.2d 882.

Cited in Macedonia Baptist Church v. City of Columbia (S.C. 1940) 195 S.C. 59, 10 S.E.2d 350.

For additional related case, as to adverse possession by son entering under permission of father, see McCutchen v. McCutchen (S.C. 1907) 77 S.C. 129, 57 S.E. 678.

2. Color of title, generally

The object of color of title is not to pass title, but to define the extent of the claim, and extend the possession beyond the actual occupancy to the whole property described in the instrument. Fore v Berry, 94 SC 71, 78 SE 706 (1913). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

A notation on a tax book that the plaintiff’s ancestor had purchased the property in dispute, an affidavit of the previous owner’s widow that her husband had purchased the disputed property for the plaintiff’s ancestor and later conveyed it to him, and the fact that the deed into the previous owner was of record, taken together, constituted color of title. Johnson v. Pritchard (S.C.App. 1990) 302 S.C. 437, 395 S.E.2d 191. Adverse Possession 70

As a basis for adverse possession, “color of title” need not have as its object the passing of title. Johnson v. Pritchard (S.C.App. 1990) 302 S.C. 437, 395 S.E.2d 191. Adverse Possession 70

Color of title means any semblance of title by which the extent of a man’s possession can be ascertained. It is anything which shows the extent of occupant’s claim. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

There can be no constructive possession without color of title. Lyles v. Fellers (S.C. 1926) 138 S.C. 31, 136 S.E. 13. Adverse Possession 97

The provisions of this section [former Code 1962 Section 10‑2422] constitute a basis for the holding that an occupancy that is a mere trespass without claim of title, cannot ripen into a good title, however long continued. Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

Adverse possession may be founded on what we sometimes call a color of title, as a deed of conveyance or a decree of the court; or a party may enter upon land without any paper title at all. Sudduth v. Sumeral (S.C. 1901) 61 S.C. 276, 39 S.E. 534, 85 Am.St.Rep. 883.

3. Written instrument—In general

The extent of the occupant’s claim founded on an instrument of writing is not dependent upon the validity of such instrument. Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961). Frady v Ivester, 129 SC 536, 125 SE 134 (1923).

A deed may be color of title although the grantor was without interest or title in the land conveyed. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

Under this section [former Code 1962 Section 10‑2422], it is clear that color of title may consist only of a written instrument or a decree or judgment of a court. Lyles v. Fellers (S.C. 1926) 138 S.C. 31, 136 S.E. 13.

4. —— Description of land, written instrument

The primary function of the written instrument required by this section [former Code 1962 Section 10‑2422] as a condition to extending the benefit of constructive possession to a claimant under such instrument, is to indicate and define the extent of the claim, and identify the land so claimed. Frady v. Ivester (S.C. 1924) 129 S.C. 536, 125 S.E. 134.

Where possession is taken under a written instrument which an occupant repudiates as a mortgage, and claims to be a conveyance, and where adverse possession is proved by evidence other than the instrument, the writing may be looked to, to define the extent of claimant’s possession under this section [Code 1962 Section 10‑2422]. Frady v. Ivester (S.C. 1924) 129 S.C. 536, 125 S.E. 134. Mortgages And Deeds Of Trust 967

The writing must designate the particular piece of property upon which the writing is intended to operate so that it can be found. Fore v. Berry (S.C. 1913) 94 S.C. 71, 78 S.E. 706.

It is perfectly well settled that the instrument under which a party holds adversely by color of title must define the extent of the claim. Garvin v. Garvin (S.C. 1894) 40 S.C. 435, 19 S.E. 79.

5. —— Sufficiency of description, written instrument

No minute description of the land is necessary, and all that appears to be necessary is that there be such a designation that the land may be identified by the description. Fore v Berry, 94 SC 71, 78 SE 706 (1913). Kirkland v Way, 3 Rich (37 SCL) 4.

A description which only designates the number of acres in the land as “a 300 acre tract,” is not a sufficient description. Humbert v Brisbane, 25 SC 506 (1886). Fore v Berry, 94 SC 71, 78 SE 706 (1913).

A description as “a 300 acre tract of land in dispute between Willis Fore and E.B. Berry on January 4, 1886,” was held sufficient. Fore v. Berry (S.C. 1913) 94 S.C. 71, 78 S.E. 706.

After a description is ascertained and determined to be sufficient, parol evidence may be resorted to, to identify the land. Fore v. Berry (S.C. 1913) 94 S.C. 71, 78 S.E. 706.

The fact that there is a variance of a few acres between the deed conveying a large tract of land and the lines marked on the ground is immaterial and does not prevent such deed from being color of title. Witcover v. Grant (S.C. 1912) 93 S.C. 190, 76 S.E. 274.

6. —— Particular instruments, written instrument

Where a railroad charter does not give the railroad company a presumptive grant of lands occupied, and specifically provides that where an agreement cannot be reached with the landowner the lands must be acquired by condemnation, then such charter provisions cannot be considered color of title upon which to base adverse possession of a right of way. Willard v Southern Ry. Co., 158 SC 522, 155 SE 833 (1930). Atlantic Coast Line R. Co. v Baker, 143 SC 445, 141 SE 688 (1927).

A written agreement to submit a dispute as to the title to land to arbitration, which did not designate the arbitrators, and on which persons, not shown to have been the arbitrators, indorsed a decision in favor of one of the parties, was a sufficient written instrument to constitute color of title under this section [former Code 1962 Section 10‑2422]. Fore v. Berry (S.C. 1913) 94 S.C. 71, 78 S.E. 706. Alternative Dispute Resolution 383

7. Operation of statute—In general

The burden of proof of adverse possession is on him relying thereon. Lyles v Fellers, 138 SC 31, 136 SE 13 (1926). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

If a person goes into possession of a tract of land as a tenant in common with another, no length of such possession can give him a title by the statute of limitations against his cotenant, for the very obvious reason that his possession cannot be adverse to his cotenant until an ouster is established. But where a person goes into possession of land under a deed from a third person which purports on its face to convey to him an absolute and exclusive title to the entire interest in the land, and such deed is spread upon the public records, this is notice to the world that he is claiming the entire and exclusive interest in the land, and his possession may be adverse to all the world from the time of its commencement. Sudduth v Sumeral, 61 SC 276, 39 SE 534 (1901). Dickson v Epps, 104 SC 381, 89 SE 354 (1916).

Adverse possession cannot ordinarily be claimed against one under whom defendant entered into possession, but this does not apply where there has been an adverse holding for a sufficient length of time to presume a grant. Mitchell v Allen, 81 SC 340, 61 SE 1087, 62 SE 399 (1908). McCutchen v McCutchen, 77 SC 129, 57 SE 678 (1907).

Where the plaintiff and defendant each claim property under color of title, but do not claim from a common source, it is immaterial which of the paper titles bears the earlier date, holding that a paper title beginning in 1836 is of equal force and effect as the one under which the opposite party claimed, and beginning a century before. Dickson v. Epps (S.C. 1916) 104 S.C. 381, 89 S.E. 354.

Where there has been an entry under color of title and an occupancy of the land for the statutory period, then the presumption created by this section [former Code 1962 Section 10‑2422] can only be overcome by showing adverse occupancy and possession for ten years before the action to recover the property was commenced. Dickson v. Epps (S.C. 1916) 104 S.C. 381, 89 S.E. 354.

Devisee’s possession of devised lands under will in order to be adverse can only have starting point where right of action accrues in favor of creditor. Brock v. Kirkpatrick (S.C. 1904) 69 S.C. 231, 48 S.E. 72.

8. —— Effect of occupancy of part of land under color of title, operation of statute

If one is in possession of a part of a tract of land, under what is in law called a color of title, that is, under a deed, or under a will, or under a decree of the court, or even holding it under a plat and survey, or having marked it out and fenced it, or something of that kind, if he is in possession of a small part of that land, that is, if he claims he holds under a color of title, his title may not be good, his deed may be defective, he may not have perfect legal title; still, if he holds under color of title and occupies a small part, a mere little corner of that land, that occupation would extend to the limits of his claim under his deed or plat, or deed or will under which he may hold. So a possession under color of title extends the possession to the limits of the claim under which one holds, if he holds under a color of title. Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923). Witcover v Grant, 93 SC 190, 76 SE 274 (1912). Mullis v Winchester, 237 SC 487, 118 SE2d 61 (1961).

When one enters upon land under color of title, his actual possession of a portion of the property will be constructively extended to the boundaries defined by his color of title. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61. Adverse Possession 100(1)

This section [former Code 1962 Section 10‑2422], when taken alone, leaves some doubt whether the continuous occupation “of some part of the premises” means a certain definite part of the land or any of several parts that the holder may happen to occupy at different times. This section is clarified when read with former Code 1962 Section 10‑2423 [see now Section 15‑67‑230], and when so read, this section means that when the land is used for any of the purposes mentioned in Code 1962 Section 10‑2423 [see now Section 15‑67‑230], though the use be not continuously of any particular part, the use will be regarded as adverse possession of the whole. Mahoney v. Southern Ry., Carolina Division (S.C. 1909) 82 S.C. 215, 64 S.E. 228.

9. —— Defective instrument, operation of statute

The words “as being a conveyance of the premises,” used in this section [former Code 1962 Section 10‑2422] show that the extent of the occupant’s claim, founded on an instrument of writing, is not dependent upon the validity of such instrument; otherwise there would have been no necessity for this section. Kennedy v Kennedy, 86 SC 483, 68 SE 664 (1910). Frady v Ivester, 129 SC 536, 125 SE 134 (1924).

Marketable title was established by evidence that from 1935 until present, alleged owners and predecessors in title were in such open and notorious possession of subject property as to acquire title by adverse possession and presumptive grant. Sales Intern. Ltd. v. Black River Farms, Inc. (S.C. 1978) 270 S.C. 391, 242 S.E.2d 432. Adverse Possession 33

Under this section [former Code 1962 Section 10‑2422] an instruction that possession of a part of a tract of land under a claim made under an invalid deed would give possession of the whole, is correct. Kennedy v. Kennedy (S.C. 1910) 86 S.C. 483, 68 S.E. 664.

10. —— Effect of occupancy of part of land not under color of title, operation of statute

Where a man holds land not under a written instrument, not under a color of title, then his holding is confined to what he actually has in possession, what he has actually under use or cultivation, and a man may acquire title without any paper or decree of court, or will or deed or plat of any kind; but he only acquires in that case such as he has actually brought under his control, possession, and actual occupation. So where one holds land not under color of title, his possession is confined to such land as he has cleared up, or cultivated, in the usual manner, or improved, or which has been protected by a substantial enclosure, as required by Code 1962 Section 10‑2423 [see now Section 15‑67‑230]. Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923). Lyles v Fellers, 138 SC 31, 136 SE 13 (1926).

Occupancy for ten years of one of two adjoining parcels of land included within the lines of a plat held as color of title, does not confer title by adverse possession against the owner of the other parcel. Massey v. Duren (S.C. 1871) 3 S.C. 34. Adverse Possession 101

11. —— Evidential acts of ownership, operation of statute

The exercise of ownership of land upon which a party enters, and claims title thereto by virtue of this section [former Code 1962 Section 10‑2422], may be evidenced by such acts as (1) payment of taxes, (2) collection of rents, (3) making repairs and improvements, (4) advertising the land for sale under the description contained in the instrument under which entry was made, with the statement that the title was first class, and that such party would make a warranty deed to the purchaser. Godfrey v Burton Lumber Co., 88 SC 132, 70 SE 396 (1911). Carr v Mouzon, 86 SC 461, 68 SE 661 (1910).

There was sufficient evidence that stepmother’s possession of stepdaughter’s real property was under stepdaughter’s tacit permission, rather than being hostile, as required to support stepmother’s claim of adverse possession; stepdaughter testified she did not object to allowing stepmother to live on property while her father was alive, and did not request stepmother to vacate premises until year in which stepdaughter filed suit to assert her interest in property, and stepdaughter was aware of stepmother’s presence on property from time it was conveyed to her by her father. McDaniel v. Kendrick (S.C.App. 2009) 386 S.C. 437, 688 S.E.2d 852, rehearing denied. Adverse Possession 85(4)

Sufficient evidence supported a referee’s finding, in an action for trespass to try title, that the adverse possessor proved actual, open, notorious, hostile, continuous, and exclusive possession for the full statutory period where the possessor (1) paid the mortgages on the property, (2) paid taxes on the property, (3) marked the boundary lines, and (4) sold timber cut from the property. Miller v. Leaird (S.C. 1992) 307 S.C. 56, 413 S.E.2d 841, rehearing denied.

Once the statutory period for adverse possession is activated, the subsequent creation of a life estate and remainder neither negated nor suspended the running of the period. Miller v. Leaird (S.C. 1992) 307 S.C. 56, 413 S.E.2d 841, rehearing denied. Limitation Of Actions 44(1)

Document releasing track of land to son, executed by mother, signed in presence of witnesses, although not complying with legal requirements for recording deed of conveyance, document nevertheless constituted color of title under adverse possession statutes, and son’s occupancy of property exclusively claiming it has his own and openly exercising all indicia of ownership for almost 5 years, well not itself sufficient to vest title by adverse possession, is nevertheless sufficient to characterize occupancy as hostile. Woods v. Bivens (S.C. 1987) 292 S.C. 76, 354 S.E.2d 909. Adverse Possession 71(2)

Evidence that at the time a railroad company constructed a road, some of the trees were cut down and a right of way was cleared fifty feet from center of the track on each side, is not sufficient evidence to show an exclusive and notorious adverse possession, where there is also testimony showing that at that time a great part of land was already cleared and that for many years prior to institution of action of trespass to try title to real estate, the railroad and predecessors in interest exercised no acts of ownership over any part of the right of way except that occupied by the railroad track, side ditches, cuts, and fills. Willard v. Southern Ry. Co. (S.C. 1930) 158 S.C. 522, 155 S.E. 833.

12. —— Effect of legal disability, operation of statute

Adverse possession cannot avail against one laboring under any legal disability—such, for example, as infancy—until his possession continues for the prescribed time after the removal of such disability. Sudduth v Sumeral, 61 SC 276, 39 SE 534 (1901). Garrett v Weinberg, 48 SC 28, 26 SE 3 (1896).

Death of a person, against whom this section [former Code 1962 Section 10‑2422] had been running almost eight years, did not toll the section even though title passed to person under disability. Frady v. Ivester (S.C. 1924) 129 S.C. 536, 125 S.E. 134. Limitation Of Actions 76(1)

**SECTION 15‑67‑230.** What constitutes adverse possession under written instrument or court decree or judgment.

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

(1) When it has been usually cultivated or improved;

(2) When it has been protected by a substantial enclosure;

(3) When, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and

(4) When a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

HISTORY: 1962 Code Section 10‑2423; 1952 Code Section 10‑2423; 1942 Code Section 379; 1932 Code Section 379; Civ. P. ‘22 Section 322; Civ. P. ‘12 Section 128; Civ. P. ‘02 Section 103; 1870 (14) 446 Section 106.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k99.

Adverse Possession 99.

C.J.S. Adverse Possession Section 229.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adverse Possession Section 31, Extent of Actual Possession “Under Color of Title”.

S.C. Jur. Adverse Possession Section 34, Character of Property.

S.C. Jur. Adverse Possession Section 53, Adverse Claimant Has Burden of Proof.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive adverse possession under color of title in South Carolina. 10 SC LQ 279.

South Carolina law on boundary disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑2423] applies only where claim to land is made under color of title. And where there is no color of title, the claimant is confined to that portion of the land actually occupied, and protected by a substantial inclosure or usually cultivated and improved. Walker v Oswald, 156 SC 424, 153 SE 286 (1930). Witcover v Grant, 93 SC 190, 76 SE 274 (1912).

Residents’ possession of the property, which included regularly bush‑hogging the lot, installing a driveway and wire fence, cutting timber, installing “No Trespassing” signs and property stakes, and storing business supplies such as concrete blocks, timber, and a trailer on the lot, consisted of open and notorious acts for purposes of their adverse possession defense in record owner’s quiet title claim. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 29

Evidence was sufficient to support finding in record owner’s quiet title action that residents actually possessed the land and acquired it by adverse possession under color of title; resident testified that they posted landscape stakes at the corners of the lot, bush‑hogged and landscaped the lot, graded a driveway leading onto the lot, placed “No Trespassing” signs throughout the lot, raised a mesh wire fence along the back of the lot, stored business supplies on the lot, paid taxes on the lot, and cut down timber on the lot, and there was evidence that a septic tank, a well, and wood privacy fences were installed on the lot. Jones v. Leagan (S.C.App. 2009) 384 S.C. 1, 681 S.E.2d 6. Adverse Possession 114(1)

Document releasing tract of land to son, executed by mother, signed in presence of witnesses, although not complying with legal requirements for recording deed of conveyance, document nevertheless constituted color of title under adverse possession statutes, and son’s occupancy of property exclusively claiming it has his own and openly exercising all indicia of ownership for almost 5 years, while not itself sufficient to vest title by adverse possession, is nevertheless sufficient to characterize occupancy as hostile. Woods v. Bivens (S.C. 1987) 292 S.C. 76, 354 S.E.2d 909. Adverse Possession 71(2)

Possession during which all merchantable timber is cut is notice to the world that the person in possession claims the land and has a right of possession. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

Where claimant had entered upon land under color of title and possessed and occupied same for his ordinary use in obtaining timber therefrom and growing timber thereon, the correct conclusion was that claimant’s acts of adverse possession were sufficient to establish requisite continuity of possession. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

Occasional entries on land to cut small amount of timber do not constitute a sufficiently continuous use to establish adverse possession. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61.

Acts of adverse possession with regard to open, wild, unfenced lands not capable of cultivation, are only required to be exercised in such manner as is consistent with the use to which the lands may be put and the situation of the property admits of without actual residence or occupancy. Mullis v. Winchester (S.C. 1961) 237 S.C. 487, 118 S.E.2d 61. Adverse Possession 16(3)

If a party claims land under color of title and also shows that such land has been used for the purposes mentioned in subd. (3) of this section [former Code 1962 Section 10‑2423] (or where the case falls within any of the subdivisions), then such party is not limited to the land actually occupied, and an instruction to the contrary is erroneous. Battle v. DeVane (S.C. 1927) 140 S.C. 305, 138 S.E. 821.

The Supreme Court approved an instruction that where a known farm or a single lot, claim to which is made under color of title, has been partly improved, the portion left not cleared or not enclosed, according to the usual course and custom of the adjoining county is deemed to have been occupied for the same length of time as the part improved and cultivated, in Haithcock v. Haithcock (S.C. 1923) 123 S.C. 61, 115 S.E. 727.

Applied in Fore v. Berry (S.C. 1913) 94 S.C. 71, 78 S.E. 706.

For additional related case, see Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

In view of this section [former Code 1962 Section 10‑2423] and former Code 1962 Section 10‑2422 [see now Section 15‑67‑220], it is not necessary that possession and occupancy of a lot be continuous in one particular place for the statutory period. Mahoney v. Southern Ry., Carolina Division (S.C. 1909) 82 S.C. 215, 64 S.E. 228.

Under this section [former Code 1962 Section 10‑2423], possession is adverse and continuous where land, though not cultivated or enclosed, is continuously used for the supply of fuel and timber, the ordinary use for which the land is fitted. Bardin v. Commercial Ins. & Trust Co. (S.C. 1909) 82 S.C. 358, 64 S.E. 165.

Cited in Sudduth v. Sumeral (S.C. 1901) 61 S.C. 276, 39 S.E. 534, 85 Am.St.Rep. 883.

**SECTION 15‑67‑240.** Premises held adversely but not under written instrument or court judgment or decree.

When it shall appear that there has been an actual continued occupation of premises under a claim of title, exclusive of any other right but not founded upon a written instrument or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to have been held adversely.

HISTORY: 1962 Code Section 10‑2424; 1952 Code Section 10‑2424; 1942 Code Section 380; 1932 Code Section 380; Civ. P. ‘22 Section 323; Civ. P. ‘12 Section 129; Civ. P. ‘02 Section 104; 1870 (14) 446 Section 107.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k98.

Adverse Possession 98.

C.J.S. Adverse Possession Section 227.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive adverse possession under color of title in South Carolina. 10 SC LQ 279.

South Carolina law on boundary disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Sudduth v Sumeral, 61 SC 276, 39 SE 534 (1901). Witcover v Grant, 93 SC 190, 76 SE 274 (1912).

The following is a portion of an approved instruction, pertaining to this section [former Code 1962 Section 10‑2424]: “If he claims without claiming under color of title, then he can only hold such part of the land as has been protected by a substantial enclosure, or such part of the land as has been usually cultivated or improved, in the usual way that such lands of that particular character are used in the community in which the land may lie.” Haithcock v. Haithcock (S.C. 1923) 123 S.C. 61, 115 S.E. 727.

For additional related case, see Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

**SECTION 15‑67‑250.** What constitutes adverse possession under claim of title not under written instrument or court judgment or decree.

For the purpose of constituting an adverse possession by a person claiming title not founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed in the following cases only:

(1) When it has been protected by a substantial enclosure; and

(2) When it has been usually cultivated or improved.

HISTORY: 1962 Code Section 10‑2425; 1952 Code Section 10‑2425; 1942 Code Section 381; 1932 Code Section 381; Civ. P. ‘22 Section 324; Civ. P. ‘12 Section 130; Civ. P. ‘02 Section 105; 1870 (14) 446 Section 108.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k97.

Adverse Possession 97.

RESEARCH REFERENCES

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S.C. Jur. Adverse Possession Section 31, Extent of Actual Possession “Under Color of Title”.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive adverse possession under color of title in South Carolina. 10 SC LQ 279.

South Carolina law on boundary disputes. 12 SC LQ 418.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Sudduth v Sumeral, 61 SC 276, 39 SE 534 (1901). Haithcock v Haithcock, 123 SC 61, 115 SE 727 (1923). Witcover v Grant, 93 SC 190, 76 SE 274 (1912). Atlantic Coast Line R. Co. v Baker, 143 SC 445, 141 SE 688 (1927).

That a fence may have been erected by the adjoining landowner does not deprive plaintiffs claiming title by adverse possession of the benefit of this section [former Code 1962 Section 10‑2425]; on the contrary, such fact would emphasize his recognition of their claim. Seagle v. Montgomery (S.C. 1955) 227 S.C. 436, 88 S.E.2d 357.

This section [former Code 1962 Section 10‑2425] does not apply where title is founded on a written instrument, and therefore, the party so claiming title need not show enclosure and cultivation. Farmers’ & Merchants’ Bank v. Rivers (S.C. 1917) 107 S.C. 204, 92 S.E. 753.

For additional related case, see Carr v. Mouzon (S.C. 1910) 86 S.C. 461, 68 S.E. 661.

**SECTION 15‑67‑260.** Relation of landlord and tenant as affecting adverse possession.

Whenever the relation of landlord and tenant shall have existed between any persons the possession of the tenant shall be deemed the possession of the landlord until the expiration of ten years from the termination of the tenancy or, when there has been no written lease, until the expiration of ten years from the time of refusal to pay rent, notwithstanding that such tenant may have acquired another title or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited.

HISTORY: 1962 Code Section 10‑2426; 1952 Code Section 10‑2426; 1942 Code Section 382; 1932 Code Section 382; Civ. P. ‘22 Section 325; Civ. P. ‘12 Section 131; Civ. P. ‘02 Section 106; 1870 (14) 446 Section 109; 1873 (15) 496.

CROSS REFERENCES

Creation, construction and termination of leasehold estates, see Sections 27‑35‑10 et seq.

Landlord and tenant generally, see Sections 27‑33‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 20k112.

Adverse Possession 112.

C.J.S. Adverse Possession Sections 263, 266 to 267, 269, 274, 276 to 278, 341.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adverse Possession Section 57, Landlord’s Title Deemed Superior to Tenant’s Title.

S.C. Jur. Easements Section 10, Prescriptive Easement.

S.C. Jur. Easements Section 33, Prescription by Servient Tenement.

S.C. Jur. Landlord and Tenant Section 19, Possession of Tenant as Possession of Landlord.

S.C. Jur. Lis Pendens Section 26, Recovery of Real Property.

LAW REVIEW AND JOURNAL COMMENTARIES

Constructive adverse possession under color of title in South Carolina. 10 SC LQ 279.

Legal Aspects of Farm Tenancy and Sharecropping in South Carolina: 9 SC LQ 299.

South Carolina law on boundary disputes. 12 SC LQ 418.

**SECTION 15‑67‑270.** Petition for license to enter adjoining property to make improvements, repairs, or maintenance; good faith effort to obtain permission; evidentiary hearing; requirements and restrictions.

(A) When an owner or lessee of real property seeks to improve, repair, or maintain his property, and the property is so situated that it is impossible to perform the improvements, repairs, or maintenance without entering adjoining property and permission to enter the adjoining property has been denied, or unreasonable conditions have been placed upon the entry, the owner or lessee seeking to make the improvements, repairs, or maintenance may petition the circuit court for a license to enter the adjoining property for the purpose of performing the improvements, repairs, or maintenance. For the purpose of this section improvement, repair, or maintenance does not include new construction on a site without a preexisting structure.

The property owner over whose property a license is sought to be granted by the court shall be joined as a party respondent to the action seeking a license and the case shall be bound by the South Carolina rules of civil procedure and shall be heard by the court sitting in equity without a jury.

(B) The petition may not be filed until after a good faith effort to obtain permission to enter the adjoining property has been made. A good faith effort to obtain permission for entry is considered to have been made if the request describes the nature and manner of the requested improvements, repairs, or maintenance, solicits specific dates for entry, and:

(1) the petitioner can present evidence of an actual request and denial of entry, or the imposition of unreasonable conditions upon entry; or

(2) if the petitioner requests entry in writing and provides notice of the respective rights of parties under this section by certified mail, return receipt requested, to the owner of record according to the tax records for the county in which the adjoining property is located, a period of forty‑five days has expired since the written requests for entry was made, and the adjoining property owner has not responded to the request in writing. The court may waive the forty‑five day period if service upon the owner of record has been accomplished and if the court finds the petitioner’s property will suffer irreparable waste from imposition of the forty‑five day period.

(C) The petition must be accompanied by affidavits or other evidence setting forth the circumstances which make the entry necessary, the dates the entry is desired, and a description of the improvements, repairs, or maintenance which will be accomplished.

(D) After an evidentiary hearing based upon a motion for immediate relief, the license may be granted if the court finds that:

(1) the entry upon the adjoining property does not irreparably or unreasonably damage the adjoining property;

(2) the grant of license is not an unreasonable encroachment or burden upon the adjoining property; and

(3) the license is reasonably necessary for the improvement or preservation of the petitioner’s property.

(E) If the court grants the license, it shall specify:

(1) the nature of the improvements, repairs, or maintenance to be accomplished;

(2) the manner in which the improvements, repairs, or maintenance will be accomplished;

(3) the dates upon which the license begins and ends;

(4) the amount of compensation to be paid to the property owner over whose property the license is granted;

(5) that the owner or lessee seeking the license must provide to any person performing improvements, repairs, or maintenance a copy of the court order setting forth the specific conditions of the license; and

(6) any other terms and conditions the court considers appropriate to minimize disruption to the adjoining owner’s or lessee’s use and enjoyment of the property over which the license is granted.

(F) Once the authorized improvements, repairs, or maintenance are commenced, they shall proceed expeditiously. The license shall terminate upon the earlier of the completion of the improvements, repairs, or maintenance set forth in the license or the expiration of the license. The licensee shall in all respects restore the adjoining land to its condition prior to entry and is liable for actual damages occurring as a result of the entry including, but not limited to, physical damage to the adjoining property and loss of revenue.

(G) The court may require that an appropriate bond or other security be posted by the licensee and shall require the licensee to provide adequate liability and workers’ compensation insurance to indemnify the adjoining property owner and lessee against claims arising from the work authorized by the license.

(H) Except in the case of wilful, wanton, or reckless misconduct, the adjoining property owner or lessee upon whose property entry is authorized under this section is immune from liability from all suits, claims, and causes of action arising from the entry and work authorized by the license.

(I) The right of entry provided for in this section applies only to portions of the adjoining property including, but not limited to, driveways, patios, sidewalks, and other unimproved land. It does not authorize entry into any buildings on the adjoining property.

HISTORY: 1998 Act No. 348, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 15k1.

Westlaw Key Number Search: 15k8.

Adjoining Landowners 1, 8.

C.J.S. Adjoining Landowners Sections 2, 6 to 8, 39, 58 to 67.

RESEARCH REFERENCES

Encyclopedias

11 Am. Jur. Proof of Facts 3d 601, Easements‑Existence of Way of Necessity.

NOTES OF DECISIONS

In general 2

Unreasonable condition upon entry 3

Validity 1

1. Validity

Statute allowing a neighbor temporary access to adjoining landowner’s property to make necessary repairs did not authorize a Fifth Amendment taking, as character of state action was an exercise of police power to preserve property and prevent waste, not to acquire adjoining property, adjoining landowners were paid to compensate for intrusion, and there was no interference with investment backed expectations because adjoining landowners retained entire “bundle of rights” typically associated with property ownership. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Eminent Domain 2.2

Statute allowing court to issue a temporary license to an adjoining landowner to enter neighbor’s property to make necessary repairs when neighbor has imposed unreasonable conditions of entry does not leave “unreasonable conditions upon entry” completely undefined, as the statutory framework provides a general context from which reasonableness can be determined, and thus statute was not unconstitutionally vague. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Constitutional Law 4071; Licenses 43

2. In general

Statute allowing a neighbor temporary access to adjoining landowner’s property to make necessary repairs ensures that property does not fall into such disrepair as to threaten the health and safety of the public, and thus statute has a reasonable relation to the lawful purpose of property preservation and is a valid exercise of the legislature’s police power. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Adjoining Landowners 1

Statute allowing a neighbor temporary access to adjoining landowner’s property to make necessary repairs was not a taking under the State Constitution, as statute did not allow the state to take the adjoining land and turn it over to neighbor for his indefinite private use, case concerned a temporary license, and statute concerned the exercise of the state’s police power to preserve property for the public benefit. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Eminent Domain 2.2

Adjoining property owner did not obtain an easement under statute allowing him temporary access to neighbor’s land to improve his property, but obtained a temporary license, as adjoining property owner only received permission to enter the neighbors’ driveway for a specific period of time. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Easements 1; Licenses 44(3)

3. Unreasonable condition upon entry

For purposes of statute allowing court to issue a temporary license to an adjoining landowner to enter neighbor’s property to make necessary repairs when neighbor has imposed unreasonable conditions of entry, time allowed to perform the necessary improvements is an important criteria upon entry, and inadequate time equates to an unreasonable condition upon entry. Main v. Thomason (S.C. 2000) 342 S.C. 79, 535 S.E.2d 918, rehearing denied. Licenses 43

ARTICLE 5

Forcible Entry and Detainer

**SECTION 15‑67‑410.** Action may be had against person wrongfully disseizing.

If any person be put out or disseized of any lands or tenements in forcible manner or put out peaceably and be afterwards holden out with strong hand, or, after such entry, any feoffment or discontinuance in any wise thereof be made to defraud and take away the right of the possessor, the party grieved in this behalf shall have an action against such disseizor.

HISTORY: 1962 Code Section 10‑2431; 1952 Code Section 10‑2431; 1942 Code Section 889; 1932 Code Section 889; Civ. P. ‘22 Section 837; Civ. C. ‘12 Section 4068; Civ. C. ‘02 Section 2967; G. S. 2294; R. S. 2427; 1712 (2) 445.

CROSS REFERENCES

Intervention under South Carolina Rules of Civil Procedure, see Rule 24, SCRCP.

Limitation of action in action after entry of accrual of right of entry, see Section 15‑3‑360.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k1.

Forcible Entry and Detainer 1.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 14, Damages.

S.C. Jur. Forcible Entry and Detainer Section 19, Prosecutions; Indictment and Evidence.

Forms

Am. Jur. Pl. & Pr. Forms Forcible Entry & Detainer Section 1 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Pleading and practice 2

1. In general

An entry upon land for the purpose of cutting and removing timber merely, would be trespass, and not sufficient to sustain an action of forcible entry and detainer under this section [former Code 1962 Section 10‑2431]. Du Pre v Tilghman Lumber Co., 114 SC 269, 103 SE 526 (1920). Sease v Barnwell Lumber Co., 113 SC 105, 101 SE 567 (1919).

Sister’s actions towards sibling did not constitute ouster from jointly‑owned property, and thus sibling was not entitled to accounting of rents and profits, even though sister allegedly acquiesced in trespass warrant barring sibling from property; sister allowed sibling access to the property every time that sibling visited, and sibling called police officer, who ordered sibling to leave the property and issued the warrant, to the scene. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Tenancy In Common 28(3)

There has been no forcible entry and detainer under this section [former Code 1962 Section 10‑2431] where a railroad company breaks down a fence of the plaintiff in digging a well on its right of way. Brown v. Southern Ry. Co. (S.C. 1926) 136 S.C. 214, 131 S.E. 681.

An action of trespass may be maintained, under this section [former Code 1962 Section 10‑2431], in addition to an action for forcible entry and detainer. Vance v. Ferguson (S.C. 1915) 101 S.C. 125, 85 S.E. 241.

An action of forcible entry and detainer cannot be maintained under this section [former Code 1962 Section 10‑2431], where an entry is made to remove iron rails temporarily laid on the land of the plaintiff. This is so, for the plaintiff is in quiet possession of all his real estate, as the rails never became fixtures. De Laine v. Alderman (S.C. 1889) 31 S.C. 267, 9 S.E. 950.

2. Pleading and practice

Sibling’s claim for an accounting was barred by issue preclusion, in action for partition of property and an accounting; sibling had filed a petition in probate court that sought an accounting for expenses incurred and for rent from sister for the time sibling was allegedly denied access to property, the probate court action raised the same issues that sibling raised in the trial court, and the probate court dismissed the action with prejudice. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Judgment 640; Judgment 654; Judgment 715(2)

**SECTION 15‑67‑420.** Plaintiff’s right to treble damages.

If the party grieved recover in such action and it be found by verdict or in other manner by due form of law that the party defendant entered with force into the lands and tenements or, after his entry, did hold them with force, the plaintiff shall recover treble damages against the defendant.

HISTORY: 1962 Code Section 10‑2432; 1952 Code Section 10‑2432; 1942 Code Section 890; 1932 Code Section 890; Civ. P. ‘22 Section 838; Civ. C. ‘12 Section 4069; Civ. C. ‘02 Section 2968; G. S. 2295; R. S. 2428; 1712 (2) 445.

CROSS REFERENCES

How judgments are enforced, see Section 15‑35‑180.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k30.

Forcible Entry and Detainer 30.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 68, Real Property.

S.C. Jur. Forcible Entry and Detainer Section 14, Damages.

NOTES OF DECISIONS

In general 1

1. In general

Treble damages cannot, under this section [former Code 1962 Section 10‑2432], be recovered for timber cut on property of plaintiff, where entry was not made with force and plaintiff was in possession of real estate. Sease v Barnwell Lumber Co., 113 SC 105, 101 SE 567 (1919). Du Pre v Tilghman Lumber Co., 114 SC 269, 103 SE 526 (1920).

Statutes authorizing award of treble damages in circumstances in which one has forcibly entered and “disseized” property did not apply to sister’s action to partition property shared with her brother; brother was to be treated as a trespasser, liable for rental value of property beyond his ownership share, not as one who had forcibly entered and “disseized” the property. Parker v. Shecut (S.C. 2004) 359 S.C. 143, 597 S.E.2d 793. Forcible Entry And Detainer 30(5)

Damages suffered as a result of allowing landowner’s cattle to escape through fence broken by a railroad in repairing its right of way, cannot be recovered as treble damages, as this section [former Code 1962 Section 10‑2432] does not cover negligent acts. Brown v. Southern Ry. Co. (S.C. 1926) 136 S.C. 214, 131 S.E. 681.

Cited in Fleming v. Chappell (S.C. 1921) 118 S.C. 290, 110 S.E. 148.

This section [former Code 1962 Section 10‑2432] does not apply in ascertaining damages in an action for malicious trespass. Baxley v. Barnwell Lumber Co. (S.C. 1919) 113 S.C. 109, 101 S.E. 646.

Exemplary and treble damages both cannot be recovered. Vance v. Ferguson (S.C. 1915) 101 S.C. 125, 85 S.E. 241.

Damages cannot, under this section [former Code 1962 Section 10‑2432], be recovered for the detention of personal property. De Laine v. Alderman (S.C. 1889) 31 S.C. 267, 9 S.E. 950.

**SECTION 15‑67‑430.** Court of common pleas shall have jurisdiction.

The court of common pleas of the county wherein such lands and tenements may be situated may inquire by the people of the same county, as well of them that make forcible entries in lands and tenements as of them which hold such lands and tenements with force.

HISTORY: 1962 Code Section 10‑2433; 1952 Code Section 10‑2433; 1942 Code Section 886; 1932 Code Section 886; Civ. P. ‘22 Section 834; Civ. C. ‘12 Section 4065; Civ. C. ‘02 Section 2964; G. S. 2291; R. S. 2424; 8 H 6 c. 9; 1712 (2) 444; 1972 (57) 2535.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k16.

Forcible Entry and Detainer 16.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 7, Jurisdiction.

**SECTION 15‑67‑440.** Restitution of possession to tenants for years.

The court authorized and enabled upon inquiry to give restitution of possession unto tenants of any estate of freehold of their lands or tenements which shall be entered upon with force or from them withholden by force shall have the like and the same authority and ability, upon indictment of such forcible entries or forcible withholdings before them duly found, to give like restitution of possession unto tenants for terms of years of lands or tenements by them so holden which shall be entered upon by force or holden from them by force.

HISTORY: 1962 Code Section 10‑2434; 1952 Code Section 10‑2434; 1942 Code Section 892; 1932 Code Section 892; Civ. P. ‘22 Section 840; Civ. C. ‘12 Section 4071; Civ. C. ‘02 Section 2970; G. S. 2297; R. S. 2430; 21 J. 1 c. 15; 1712 (2) 445; 1972 (57) 2535.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k6.

Forcible Entry and Detainer 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 13, Remedies.

**SECTION 15‑67‑450.** Persons who have held by force three years are unaffected by this article.

They which keep their possessions with force in any lands and tenements whereof they or their ancestors or they whose estate they have in such lands and tenements have continued their possessions in such lands and tenements by three years or more shall not be endangered by force of this article.

HISTORY: 1962 Code Section 10‑2435; 1952 Code Section 10‑2435; 1942 Code Section 893; 1932 Code Section 893; Civ. P. ‘22 Section 841; Civ. C. ‘12 Section 4072; Civ. C. ‘02 Section 2971; G. S. 2298; R. S. 2431; 8 H 6 c. 1712 (2) 445.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k6.

Forcible Entry and Detainer 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 15, Limitation of Actions.

**SECTION 15‑67‑460.** Putting party ousted in possession.

If it be found before any of them that any do contrary to this article, then the court shall cause to be reseized the lands and tenements so entered or holden as stated in this article and shall put the party so put out in full possession of the same lands and tenements so entered or holden as before.

HISTORY: 1962 Code Section 10‑2436; 1952 Code Section 10‑2436; 1942 Code Section 887; 1932 Code Section 887; Civ. P. ‘22 Section 835; Civ. C. ‘12 Section 4066; Civ. C. ‘02 Section 2965; G. S. 2292; R. S. 2425; 1712 (2) 444; 1972 (57) 2536.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k6.

Forcible Entry and Detainer 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 13, Remedies.

NOTES OF DECISIONS

In general 1

1. In general

Sister’s actions towards sibling did not constitute ouster from jointly‑owned property, and thus sibling was not entitled to accounting of rents and profits, even though sister allegedly acquiesced in trespass warrant barring sibling from property; sister allowed sibling access to the property every time that sibling visited, and sibling called police officer, who ordered sibling to leave the property and issued the warrant, to the scene. Laughon v. O’Braitis (S.C.App. 2004) 360 S.C. 520, 602 S.E.2d 108, rehearing denied, certiorari denied. Tenancy In Common 28(3)

Restitution should not be made, under this section [former Code 1962 Section 10‑2436], until the issue as to the force, if made, is tried. State v. Dayley (S.C. 1819).

**SECTION 15‑67‑470.** Forms and proceedings in cases of forcible entry and detainer are same as for tenants holding over.

The forms and proceedings in cases of forcible entry and detainer shall be such as are prescribed by law in cases when tenants hold over after the expiration of their leases.

HISTORY: 1962 Code Section 10‑2437; 1952 Code Section 10‑2437; 1942 Code Section 891; 1932 Code Section 891; Civ. P. ‘22 Section 839; Civ. C. ‘12 Section 4070; Civ. C. ‘02 Section 2969; G. S. 2296; R. S. 2429; 1829 (6) 338; 1972 (57) 2557.

CROSS REFERENCES

Ejectment of tenants, see Sections 27‑37‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 179k1 to 179k48.

Forcible Entry and Detainer 1 to 48.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 6, Forms and Proceedings.

ARTICLE 7

Summary Ejectment of Trespassers

**SECTION 15‑67‑610.** Duty of magistrate in case of trespass.

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any magistrate to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such magistrate shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary.

HISTORY: 1962 Code Section 10‑2441; 1952 Code Section 10‑2441; 1942 Code Section 894; 1932 Code Section 894; Civ. P. ‘22 Section 842; Civ. C. ‘12 Section 4073; Civ. C. ‘02 Section 2972; R. S. 2432; 1883 (18) 556; 1912 (23) 577.

CROSS REFERENCES

Criminal offenses in the nature of trespass, see Sections 16‑11‑510 et seq.

LIBRARY REFERENCES

28 C.J.S., Ejectment Section 5.

Westlaw Key Number Search: 179k21(1).

Forcible Entry and Detainer 21(1).

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Forcible Entry and Detainer Section 5, Notice to Quit.

Forms

South Carolina Litigation Forms and Analysis Section 3:39 , Application for Ejectment Made to Magistrate.

NOTES OF DECISIONS

In general 1

1. In general

An order issued by a magistrate reciting an affidavit by plaintiff that defendant had gone into possession of certain lands of plaintiff without his consent or warrant of law, and had refused to yield possession, and requiring defendant to show cause at the magistrate’s office, at a time stated, why defendant should not be ejected from the premises, was a sufficient notice to quit, and the part as to showing cause was surplusage. Sires v Moseley, 60 SC 504, 39 SE 7 (1901). Lee v Chaplin, 70 SC 561, 50 SE 501 (1905). Cotton v Johnson, 71 SC 413, 51 SE 245 (1905).

Filing of an affidavit by the plaintiff with a magistrate showing that the land was plaintiff’s and was situated in the county of which the magistrate was a judicial officer, and was in possession of the defendant, was a sufficient description to give jurisdiction under this section [former Code 1962 Section 10‑2441]. Sires v Moseley, 60 SC 504, 39 SE 7 (1901). Lee v Chaplin, 70 SC 561, 50 SE 501 (1905). Cotton v Johnson, 71 SC 413, 51 SE 245 (1905).

An appearance by defendant to raise question of title as a defense, waives question as to service of notice to quit, and gives the magistrate jurisdiction, under this section [Code 1962 Section 10‑2441]. Lynch v Ball, 79 SC 243, 60 SE 691 (1908). Lee v Chaplin, 70 SC 561, 50 SE 501 (1905).

It is patent that the county court of Richland County was not given concurrent jurisdiction with magistrates under this section [Code 1962 Section 10‑2441]. Moore v. Moore (S.C. 1938) 187 S.C. 144, 197 S.E. 507. Courts 472.7

Mandamus will not be issued against a magistrate to compel him to issue a warrant of ejectment, under this section [former Code 1962 Section 10‑2441], where he has not made a decision on the question as to the ownership of the premises in dispute. Richland Drug Co. v. Moorman (S.C. 1905) 71 S.C. 236, 50 S.E. 792.

A notice to quit “within five days” is not required under this section [former Code 1962 Section 10‑2441]. Sires v. Moseley (S.C. 1901) 60 S.C. 504, 39 S.E. 7.

Under this section [former Code 1962 Section 10‑2441], an agent shown to have acted as such for many years in renting and managing the land for the owner, can recover its possession from trespassers. Bradley v. Bell (S.C. 1891) 34 S.C. 107, 12 S.E. 1071. Forcible Entry And Detainer 14

**SECTION 15‑67‑620.** When warrant shall not be issued.

If the person in possession shall, before the expiration of the five days, appear before such magistrate and satisfy him that he has a bona fide color of claim to the possession of such premises and enter into bond to the person claiming the land, with good and sufficient security, to be approved by the magistrate, conditioned for the payment of all such costs and expenses as the person claiming to be the owner of the land may incur in the successful establishment of his claim and also for any damages which the owner of the land may sustain by reason of the possession being withheld from him, by any of the modes of proceeding now provided by law, the magistrate shall not issue his warrant as provided in Section 15‑67‑610.

HISTORY: 1962 Code Section 10‑2442; 1952 Code Section 10‑2442; 1942 Code Section 894; 1932 Code Section 894; Civ. P. ‘22 Section 842; Civ. C. ‘12 Section 4073; Civ. C. ‘02 Section 2972; R. S. 2432; 1883 (18) 556; 1912 (23) 577.

CROSS REFERENCES

Bonds in judicial proceedings, see Sections 15‑1‑230 et seq.

Recovery of damages and breach of bond under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k21(1).

Forcible Entry and Detainer 21(1).

NOTES OF DECISIONS

In general 1

1. In general

Where trespasser appeared before magistrate before expiration of five days and claimed title and asked for a hearing, but refused to give bond, the plaintiff is not entitled under this section [former Code 1962 Section 10‑2442] to a writ of ejectment, as he must make such proof as should satisfy the magistrate the that case is one falling within the statute. Richland Drug Co. v. Moorman (S.C. 1905) 71 S.C. 236, 50 S.E. 792.

**SECTION 15‑67‑630.** Fee of magistrate and sheriff or constable.

The magistrate shall be entitled to demand and receive from the person applying for such warrant a fee of two dollars before issuing the warrant, and the sheriff or constable shall in like manner be entitled to demand and receive from such person a fee of two dollars and mileage before executing such warrant.

HISTORY: 1962 Code Section 10‑2443; 1952 Code Section 10‑2443; 1942 Code Section 895; 1932 Code Section 895; Civ. P. ‘22 Section 843; Civ. C. ‘12 Section 4074; Civ. C. ‘02 Section 2973; R. S. 2433; 1883 (18) 556.

Editor’s Note

Insofar as this section refers to magistrates or constables, it is superseded by Section 8‑21‑1080.

CROSS REFERENCES

Fee provisions applicable to magistrates, see Section 8‑21‑1010 et seq.

Fees of sheriff, generally, see Section 23‑19‑10.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k21(1).

Forcible Entry and Detainer 21(1).

**SECTION 15‑67‑640.** Right to appeal; injunction; time of issuing warrant.

Either party to these proceedings shall have the right of appeal. The magistrate shall not issue his warrant until the expiration of five days after he announces his decision, and in the meantime the defendant may apply for an injunction, as in other cases, upon giving the bond required by Section 15‑67‑620, restraining the execution of such warrant pending the determination of his appeal by the circuit court.

HISTORY: 1962 Code Section 10‑2444; 1952 Code Section 10‑2444; 1942 Code Section 896; 1932 Code Section 896; Civ. P. ‘22 Section 844; Civ. C. ‘12 Section 4075; Civ. C. ‘02 Section 2974; R. S. 2434; 1883 (18) 556; 1911 (27) 134.

CROSS REFERENCES

Appeals from magistrates in criminal cases, see Sections 18‑3‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 179k21(6).

Forcible Entry and Detainer 21(6).

LAW REVIEW AND JOURNAL COMMENTARIES

The Scope of Judicial Review: A Continuing Dialogue, 31 S.C. L. Rev. 171.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Moore v. Moore (S.C. 1938) 187 S.C. 144, 197 S.E. 507.

Cited in Richland Drug Co. v. Moorman (S.C. 1905) 71 S.C. 236, 50 S.E. 792.

In a proceeding under this section [former Code 1962 Section 10‑2444], an allegation in the complaint that the defendant is in possession of the premises without warrant or authority of law constitutes a charge that he is a trespasser, and entitles him to an appeal. Moultrie v. Dixon (S.C. 1887) 26 S.C. 296, 2 S.E. 24. Landlord And Tenant 1771(1)

ARTICLE 9

Determination Whether Life Tenant, etc., Be Alive or Dead

**SECTION 15‑67‑710.** Remaindermen and certain others may compel production of person whose death he believes is being concealed.

Any person who shall have any claim or demand in or to any remainder, reversion or expectance in or to any estate after the death of any other person may, once a year, make affidavit of his title, that he has cause to believe that such other person is dead and that his death is concealed by his guardian, trustee, husband or any other person and apply to the court of common pleas for an order requiring such guardian, trustee, husband or other person concealing, or suspected of concealing, the death of such other person, at such time and place as the court shall direct, on due service of such order, to produce and show such person whose death is suspected to such person or persons, not exceeding two, as shall, in such order, be named by the party prosecuting such order.

HISTORY: 1962 Code Section 10‑2451; 1952 Code Section 10‑2451; 1942 Code Section 870; 1932 Code Section 870; Civ. P. ‘22 Section 818; Civ. C. ‘12 Section 4056; Civ. C. ‘02 Section 2955; G. S. 2275; R. S. 2415; 1712 (2) 561.

CROSS REFERENCES

Effect of finding of presumed death under Federal Missing Persons Act, see Section 19‑5‑310.

Undertenants of life tenants, see Sections 27‑41‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

LAW REVIEW AND JOURNAL COMMENTARIES

The acceleration of remainders: manipulating the identity of the remaindermen. 42 S.C. L. Rev. 295 (Winter 1991).

**SECTION 15‑67‑720.** If such person is not produced, he is taken to be dead.

If the person proceeded against shall fail to produce such other person, according to the direction made, the court may appoint commissioners before whom such other person may be produced. If such other person cannot be produced or there should be other satisfactory proof before the commissioners of the death of such person, they shall make return of the fact on oath. Such person sought shall then be taken to be dead, and any lawful claimant of any estate held by or for such person shall be let into the possession of such estate.

HISTORY: 1962 Code Section 10‑2452; 1952 Code Section 10‑2452; 1942 Code Section 871; 1932 Code Section 871; Civ. P. ‘22 Section 819; Civ. C. ‘12 Section 4057; Civ. C. ‘02 Section 2956; G. S. 2276; R. S. 2416; 1712 (2) 561.

CROSS REFERENCES

Effect of finding of presumed death under Federal Missing Persons Act, see Section 19‑5‑310.

How commissions are executed and opened under South Carolina Rules of Civil Procedure, see Rule 28, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

**SECTION 15‑67‑730.** Proceedings on affidavit that such person is beyond limits of State.

Should it appear by affidavit that the person sought is, or lately was, at some certain place beyond the limits of this State, the court may direct the commissioners to make personal search at the place or places named if the person prosecuting such order shall provide the necessary expenses of such search. And upon return of the commissioners, duly made and filed, of their failure to view such person allegedly concealed or absent or other satisfactory proof of death, such person shall be taken to be dead and any lawful claimant of any estate held by or for such person shall be let into possession of it.

HISTORY: 1962 Code Section 10‑2453; 1952 Code Section 10‑2453; 1942 Code Section 872; 1932 Code Section 872; Civ. P. ‘22 Section 820; Civ. C. ‘12 Section 4058; Civ. C. ‘02 Section 2957; G. S. 2277; R. S. 2417; 1712 (2) 561.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

**SECTION 15‑67‑740.** Rights preserved when it afterwards appears that person sought is living.

In case it should afterwards appear that the person sought was living at the time proceedings under Sections 15‑67‑710 through 15‑67‑730 were had, such person or any person claiming title under or through such person concealed or absent may re‑enter upon his estate and may have an action of damages for the rents and profits during eviction.

HISTORY: 1962 Code Section 10‑2454; 1952 Code Section 10‑2454; 1942 Code Section 873; 1932 Code Section 873; Civ. P. ‘22 Section 821; Civ. C. ‘12 Section 4059; Civ. C. ‘02 Section 2958; G. S. 2278; R. S. 2418; 1712 (2) 561; 1956 (49) 1601.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

**SECTION 15‑67‑750.** Guardian, husband or trustee may prove that such person was alive.

Nothing contained in Sections 15‑67‑710 through 15‑67‑730 shall prevent any guardian, husband or trustee from showing by satisfactory proof that the person sought was actually living at the time proceedings for a view of such person were commenced.

HISTORY: 1962 Code Section 10‑2455; 1952 Code Section 10‑2455; 1942 Code Section 874; 1932 Code Section 874; Civ. P. ‘22 Section 822; Civ. C. ‘12 Section 4060; Civ. C. ‘02 Section 2959; G. S. 2279; R. S. 2419; 1712 (2) 561; 1956 (49) 1601.

CROSS REFERENCES

Appointment of guardian ad litem under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Duty of guardian ad litem, see Probate Ct Rules of Practice, Rule 4.

Guardian ad litem and decree against infants, see Probate Ct Rules of Practice, Rule 3.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

**SECTION 15‑67‑760.** Guardians and others holding estates after determination of life estate adjudged to be trespassers.

Every person who, as guardian or trustee for any infant and every other person having any estate determinable upon any life or lives who, after the determination of such particular estate or interests, without the express consent of him or them who are, or shall be, next and immediately entitled upon and after the determination of such particular estates or interests, shall hold over and continue in possession of any lands, tenements or hereditaments shall be, and are hereby, adjudged to be trespassers.

HISTORY: 1962 Code Section 10‑2456; 1952 Code Section 10‑2456; 1942 Code Section 875; 1932 Code Section 875; Civ. P. ‘22 Section 823; Civ. C. ‘12 Section 4061; Civ. C. ‘02 Section 2960; G. S. 2280; R. S. 2420; 1712 (2) 563.

LIBRARY REFERENCES

Westlaw Key Number Search: 333k11.

Remainders 11.

C.J.S. Estates Sections 83 to 84, 87.

**SECTION 15‑67‑770.** Recovery of damages.

Every person, his executors or administrators, who are, or shall be, entitled to any such lands, tenements and hereditaments, upon or after the determination of such particular estates or interests, shall be entitled to recover as damages for such unlawful holding the full value of the profits received during such wrongful possession, and such recovery may be had against the person holding over or his executors or administrators.

HISTORY: 1962 Code Section 10‑2457; 1952 Code Section 10‑2457; 1942 Code Section 876; 1932 Code Section 876; Civ. P. ‘22 Section 824; Civ. C. ‘12 Section 4062; Civ. C. ‘02 Section 2961; G. S. 2281; R. S. 2421; 1712 (2) 563; 1956 (49) 1601.

LIBRARY REFERENCES

Westlaw Key Number Searches: 333k11; 333k17.

Remainders 11, 17.

C.J.S. Estates Sections 83 to 84, 87, 94 to 96, 98 to 100, 153, 155 to 157.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 26, Recovery of Real Property.