CHAPTER 7

Venue

**SECTION 15‑7‑10.** Actions which must be tried where subject matter situated.

 An action for the following causes must be tried in the county in which the subject of the action or some part of the property is situated, subject to the power of the court to change the place of trial in certain cases as provided in Section 15‑7‑100:

 (1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property;

 (2) for the partition of real property;

 (3) for the foreclosure of a mortgage of real property;

 (4) for the recovery of personal property distrained for any cause; and

 (5) for all matters between landlord and tenant pursuant to Chapters 33 through 40 of Title 27 including, but not limited to, an action for (a) possession of land, (b) payment or collection of rent including collection of rent by distraint on a tenant’s property, or (c) damage to or destruction of rental property.

HISTORY: 1962 Code Section 10‑301; 1952 Code Section 10‑301; 1942 Code Section 420; 1932 Code Section 420; Civ. P. ‘22 Section 376; Civ. P. ‘12 Section 172; Civ. P. ‘02 Section 144; 1870 (14) 453 Section 146; 1887 (19) 835; 1894 (21) 793; 2006 Act No. 354, Section 1, eff June 9, 2006.

Effect of Amendment

The 2006 amendment added item (5) relating to matters between landlord and tenant.

CROSS REFERENCES

Recovery of personal property, see Sections 15‑69‑10 et seq.

Recovery of real property, see Sections 15‑67‑10 et seq.

Venue for adoption, see Section 63‑9‑40.

Venue for proceedings under the South Carolina Probate Code, see Sections 62‑1‑303, 62‑3‑201.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

Venue of guardianship proceedings, see Sections 62‑5‑302, 62‑5‑403.

LIBRARY REFERENCES

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Venue 1.5 to 17.

C.J.S. Venue Sections 2 to 78.

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60 Am. Jur. Proof of Facts 3d 255, Optionee’s Timely Exercise of Option to Purchase Realty.

S.C. Jur. Action Section 6, Local and Transitory Actions.

S.C. Jur. Magistrates and Municipal Judges Section 36, Venue.

S.C. Jur. Products Liability Section 18, Statutory Provision and Standard, Generally.

S.C. Jur. Venue Section 3, Real Property.

S.C. Jur. Venue Section 4, Personal Property.

S.C. Jur. Venue Section 5, Contracts.

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Am. Jur. Pl. & Pr. Forms Venue Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: practice and procedure: venue. 29 S.C. L. Rev. 156.

United States Supreme Court Annotations

State venue provisions for civil actions as violating equal protection clause of Federal Constitution’s Fourteenth Amendment—Supreme court cases. 119 L Ed 2d 665.

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1. In general

Stated in Taylor v Wall, 231 SC 683, 100 SE2d 400 (1957). Thomas & Howard Co. v Marion Lumber Co., 232 SC 304, 101 SE2d 848 (1958). Burris Chem., Inc. v Daniel Constr. Co., 251 SC 483, 163 SE2d 618 (1968).

Applied in Connor v McCoy, 83 SC 165, 65 SE 257 (1909). Smith v Thomas, 184 SC 498, 193 SE 51 (1937). Bethea v Home Furniture Co., 185 SC 271, 194 SE 10 (1937). Mayer v Master Feed & Grain Co., 250 SC 275, 157 SE2d 413 (1967).

Cited in Shelton v. Southern Kraft Corp. (S.C. 1940) 195 S.C. 81, 10 S.E.2d 341, 129 A.L.R. 1280.

It would seem that this section [former Code 1962 Section 10‑301] and related sections, as to place of trial, were prescribed exclusively for the benefit of the parties to the suit, and that persons outside of the record have no rights in the matter. Trapier v. Waldo (S.C. 1881) 16 S.C. 276.

2. Venue under federal practice

Where, by state practice, an action must be brought in the county of the situs, in the Federal courts in a diversity case the action must be brought in the district and division of the situs. Big Robin Farms v. California Spray‑Chemical Corp., 1958, 161 F.Supp. 646. Federal Courts 2839

3. “Subject of the action”

The subject or subject matter of an action is the property or contract and its subject matter, or other thing involved in the dispute. Odell Hardware Co. v. Scarborough’s, Inc. (S.C. 1938) 186 S.C. 370, 195 S.E. 631. Action 1

“The cause of action” is a legal wrong threatened or committed against the complaining party; and the “object of the action” is to prevent or redress the wrong by obtaining some legal relief. The “subject of the action” is, clearly, neither of these; it is not the wrong which gives the plaintiff the right to ask the interposition of the court, nor is it that which the court is asked to do for him, but it must be the matter or thing, differing both from the wrong and the relief, in regard to which the controversy has arisen, concerning which the wrong has been done; and this is, ordinarily, the property, or the contract and its subject matter, or other thing involved in the dispute. Knight v. Fidelity & Cas. Co. of New York (S.C. 1937) 184 S.C. 362, 192 S.E. 558.

In all cases, legal or equitable, the “subject of the action” is the plaintiff’s main primary right which has been broken, and by means of whose breach a remedial right arises. Knight v. Fidelity & Cas. Co. of New York (S.C. 1937) 184 S.C. 362, 192 S.E. 558. Action 1

4. “Must be tried”

The words “must be tried” are imperative and cannot be disregarded. Trapier v Waldo, 16 SC 276 (1881). First Nat. Co. v Strak, 148 SC 410, 146 SE 240 (1929). Riddle v Reese, 53 SC 198, 31 SE 222 (1898). Ware v Henderson, 25 SC 385 (1886).

5. “Place of trial”

The place of trial is the place where the action is brought and where the record is preserved for the guidance of those who may be interested. Weathersbee v. Weathersbee (S.C. 1908) 82 S.C. 4, 62 S.E. 838.

6. Orders from other counties

As all orders of a court without jurisdiction are nullities, a temporary restraining order from a court in a county other than that in which the land lies in a condemnation case, is void and all the parties are not bound by it. Augusta Power Co. v. Savannah River Electric Co. (S.C. 1929) 152 S.C. 295, 149 S.E. 924.

An order holding that one court is without jurisdiction except to transfer a case in condemnation proceedings to the proper county does not prejudice in any way the rights of parties to apply to court of the proper county, or any judge thereof, for a restraining order or rule to show cause as they may be advised. Augusta Power Co. v. Savannah River Electric Co. (S.C. 1929) 152 S.C. 295, 149 S.E. 924.

7. Particular actions—In general

A proceeding by a receiver against a member of an insurance company to enforce an assessment secured by realty, if it be a separate suit, must be brought in the county in which the property is situated. See Wetmore v. Scalf (S.C. 1910) 85 S.C. 285, 67 S.E. 298. Venue 18; Venue 21

8. —— Recovery of real property or estate or interest therein; condemnation cases, particular actions

When a purchaser brings an action for specific performance of a land sales contract, the plaintiff is clearly seeking the property itself and is asking the court to determine his right in the property, and thus venue is proper in the county where the property is located. Truck South, Inc. v. Patel (S.C.App. 1998) 332 S.C. 222, 503 S.E.2d 774, rehearing denied, certiorari granted, reversed 339 S.C. 40, 528 S.E.2d 424. Venue 7.5(5)

A petition for a decree annulling a marriage for fraud and for judgment against defendant for sums paid her as alimony under Florida divorce decree, incorporating separation agreement, restraining defendant from enforcing a judgment for arrears of alimony and relieving petitioner from further payments, is not for any of the causes enumerated in this section [former Code 1962 Section 10‑301], and defendant was therefore entitled under former Code 1962 Section 10‑303 to have the matter transferred to the county of her residence. Melton v. Melton (S.C. 1955) 227 S.C. 183, 87 S.E.2d 485. Venue 2; Venue 21

Suit to set aside deed, being one “affecting title to real property,” held properly brought where land was situated, though based on fraud. Dickerson v. Oliphant (S.C. 1931) 160 S.C. 288, 158 S.E. 546. Venue 5.4

Under this section [former Code 1962 Section 10‑301] the venue of an action for specific performance of a contract, to convey land is the county where the land is located, notwithstanding the defendant was a resident of another county. Barrow v. Gowdy (S.C. 1920) 114 S.C. 122, 103 S.E. 477. Venue 5.1

A petition for the appointment of a trustee to succeed a deceased trustee in a deed of trust conveying both real and personal property in trust is not an action for the recovery of real estate so as to be governed by this section [former Code 1962 Section 10‑301]. Cone v. Cone (S.C. 1901) 61 S.C. 512, 39 S.E. 748.

An action to require one to account for the value of real estate brought by him at a sheriff’s sale under a judgment in favor of his trustee and sold by him to third persons at a large profit is an action purely personal and not within the scope of this section [former Code 1962 Section 10‑301]. Bell v. Fludd (S.C. 1888) 28 S.C. 313, 5 S.E. 810.

In condemnation cases the proper venue is the county in which the land lies, regardless of residence or principal place of business of the owner or of the condemning party. 10 RCL 206, cited with approval in Augusta Power Co. v. Savannah River Electric Co. (S.C. 1929) 152 S.C. 295, 149 S.E. 924.

An action against executrix, devisees, and others, to subject real estate devised or descended to the payment of the debts of the ancestor, and to vacate deeds of transfer made by the devisees and heirs to third parties, is an action “for the recovery of real property, or of an estate or interest therein, or for the determination of such right or interest,” and must be tried in the county where the lands are located; the circuit court of any other county is without jurisdiction. Bacot v. Lowndes (S.C. 1886) 24 S.C. 392. Venue 5.1

An action against an executor by creditors of the deceased testator to compel an accounting and to marshal the assets, for which purpose a sale of the testator’s lands is asked, is not an action to recover any real property, or any estate or interest therein, and therefore does not come under this section [former Code 1962 Section 10‑301]. Jordan v. Moses (S.C. 1879) 10 S.C. 431.

9. —— Injuries to real property, particular actions

An action for damages upon real property which would have been sufficient to sustain the old action of trespass quare clausum fregit must be tried in the county where the land lies, without regard to the residence of defendant. Henderson v Bennett, 58 SC 30, 36 SE 2 (1900). Pierce v Marion Lumber Co., 103 SC 261, 88 SE 135 (1916).

Damages to growing crops are an “injury to real estate” within this section [former Code 1962 Section 10‑301]. Pierce v Marion Lumber Co., 103 SC 261, 88 SE 135 (1916). Tittle v Kennedy, 71 SC 1, 50 SE 544 (1905).

Where the allegations of a complaint are that the defendant’s negligence directly and proximately resulted in the loss of a large number of plaintiff’s peach trees, with consequent loss of crops, this constitutes a cause of action for injury to real property and the action is a local action. Big Robin Farms v. California Spray‑Chemical Corp., 1958, 161 F.Supp. 646.

Where a complaint alleges injury to real estate and defendant sets up an easement, and therefore an interest, in the land, the case should be tried in the county where such land is situated, and an order granting a change of venue on the ground that defendant’s place of business is in another county is erroneous. Stuckey v. D.W. Alderman & Sons Co. (S.C. 1917) 107 S.C. 426, 93 S.E. 126. Venue 45

The wrongful taking of stumps affixed to the soil is an “injury to realty.” Stuckey v. D.W. Alderman & Sons Co. (S.C. 1917) 107 S.C. 426, 93 S.E. 126.

10. —— Partition of real property, particular actions

A decree rendered on a hearing for partition of land in the county wherein the land was situated, but signed in another county, conforms to this section [former Code 1962 Section 10‑301] and is valid. This practice is justified by necessity and the decisions. Weathersbee v. Weathersbee (S.C. 1908) 82 S.C. 4, 62 S.E. 838.

A circuit judge has jurisdiction to grant an order of sale in partition at chambers without the consent of the parties in interest in a proceeding in the county where the land lies. Woodward v. Elliott (S.C. 1887) 27 S.C. 368, 3 S.E. 477.

Though former Code 1962 Section 15‑233 contains no limitation on the powers of judges at chambers, such limitation is found in this section [former Code 1962 Section 10‑301], and a judge may not, while sitting in chambers in one county, grant an order of sale in partition of land situated in another county. Woodward v. Elliott (S.C. 1887) 27 S.C. 368, 3 S.E. 477.

11. —— Foreclosure of mortgage, particular actions

An action for foreclosure of a mortgage on land must be brought in the county in which the land is located, and the mortgagor cannot give the court of another county jurisdiction by consent to make a decree of foreclosure in a case commenced in such other county. Silcox v Jones, 80 SC 484, 61 SE 948 (1908). First Nat. Co. v Strak, 148 SC 410, 146 SE 240 (1929). Barrow v Gowdy, 114 SC 122, 103 SE 477 (1920). Stuckey v Alderman, 107 SC 426, 93 SE 126 (1917). Pierce v Marion Lumber Co., 103 SC 261, 88 SE 135 (1916). Ware v Henderson, 25 SC 385 (1886). Bacot v Lowndes, 24 SC 392 (1886). Steele v Exum, 22 SC 276 (1885).

Where in a foreclosure suit defendant claims that he is not the owner of the land, an order, on defendant’s motion, changing the place of trial from county in which land lies is erroneous in view of this section [former Code 1962 Section 10‑301], as the only way in which to determine defendant’s ownership is by a trial of this kind and not by ex parte showing in nature of an affidavit. First Nat. Co. v. Strak (S.C. 1929) 148 S.C. 410, 146 S.E. 240.

If the defendant should finally win out on his contention that there was no mortgage, the record of such finding ought to be in the county where the land lies so that anyone searching the record could ascertain without a trip to another county how this mortgage was disposed of; as in after years a prospective buyer or lender of money seeing the mortgage would naturally inquire the result of the foreclosure, and it would be a hardship and unnecessary expense to have to send to another county for this information, as the record would be in one county and the lot of land in another county. First Nat. Co. v. Strak (S.C. 1929) 148 S.C. 410, 146 S.E. 240.

If a person give a mortgage purporting to cover land in a certain county, he has only himself to blame if he has to meet the issue in that county, as he is presumed to know the law that a mortgage must be foreclosed in the county in which the land is located. First Nat. Co. v. Strak (S.C. 1929) 148 S.C. 410, 146 S.E. 240.

Former Code 1962 Section 15‑233, authorizing circuit judges to hear and determine at chambers actions for foreclosure, is limited by this section [former Code 1962 Section 10‑301] requiring such actions to be tried in county where land lies, so that a judge of one county is without jurisdiction to order a purchaser at a foreclosure sale in another county to show cause why he failed to comply with the terms of his bid. Kaminsky v. Trantham (S.C. 1895) 45 S.C. 8, 22 S.E. 746. Mortgages And Deeds Of Trust 1970(3)

An action to foreclose a mortgage brought in the county in which a part of the property is situated, and in which one of the defendants resides, gives the court jurisdiction of the whole matter, including a judgment for deficiency against a defendant residing and served in another county. Wagener v. Swygert (S.C. 1889) 30 S.C. 296, 9 S.E. 107. Mortgages And Deeds Of Trust 1777

The question of title to land lying in one county might be tried in another county when in both counties there are lands claimed by defendants in an action to subject these lands to the payment of a decedent’s debts. Barrett v. Watts (S.C. 1880) 13 S.C. 441.

12. —— Recovery of personal property, particular actions

Where no proof was offered as to the location of the property either at the time of commencement of the action or at the time when the motion for change of venue was argued, the motion was properly denied. Branham v. Boney Diesel Works Co. (S.C. 1958) 233 S.C. 226, 104 S.E.2d 290.

Foreclosure of a chattel mortgage is not an action “for the recovery of personal property distrained for any cause” as provided in subsection (4) of this section [former Code 1962 Section 10‑301], and venue is therefore properly had in the county in which the defendant resides. W. C. Caye & Co. v. Saul (S.C. 1956) 229 S.C. 306, 92 S.E.2d 696.

In an action for claim and delivery for possession of a horse, where the defendant, who had possession, resided in one county and the plaintiff and other defendant resided in the county where the action was brought, it was error to refuse a change of venue in the light of this section [Code 1962 Section 10‑301]. Williams v. Rollins (S.C. 1917) 107 S.C. 440, 93 S.E. 1.

While actions for claim and delivery must be brought in county in which property is situated, an action for conversion is not governed by this section [former Code 1962 Section 10‑301] but by former Code 1962 Section 10‑303, and may be brought in the county of any defendant regardless of place of the personal property. Williams v. Rollins (S.C. 1917) 107 S.C. 440, 93 S.E. 1.

Failure of a defendant residing in one county, personally served with summons before a magistrate of an adjoining county in an action for claim and delivery of personal property within the territorial jurisdiction of such magistrate, to appear and object to the jurisdiction of the magistrate waives want of jurisdiction over him, and a default judgment against him in such action is valid. Ex parte Townes (S.C. 1914) 97 S.C. 56, 81 S.E. 278. Justices Of The Peace 60

When an action for claim and delivery of personal property is brought in a county other than that in which the property is situated at the commencement, the venue should be changed to the proper county to conform to this section [former Code 1962 Section 10‑301], not by demurrer to the jurisdiction but by motion for an order to change the place of trial. All v. Williams (S.C. 1910) 87 S.C. 101, 68 S.E. 1041, Am.Ann.Cas. 1912B,837.

**SECTION 15‑7‑20.** Actions which must be tried where cause of action arose.

 Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial:

 (1) For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river or other stream of water situated in two or more counties the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed; and

 (2) Against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who by his command or in his aid shall do anything touching the duties of such officer.

HISTORY: 1962 Code Section 10‑302; 1952 Code Section 10‑302; 1942 Code Section 421; 1932 Code Section 421; Civ. P. ‘22 Section 377; Civ. P. ‘12 Section 173; Civ. P. ‘02 Section 145; 1870 (14) 453 Section 147.

CROSS REFERENCES

Jurisdiction and venue of actions affecting State boards, commissions, agencies and officials, see Section 15‑77‑50.

Place of trial of claims for penalty on freight claims, see Section 15‑7‑60.

Venue for proceedings under the South Carolina Probate Code, see Sections 62‑1‑303, 62‑3‑201.

Venue of guardianship proceedings, see Sections 62‑5‑302, 62‑5‑403.

LIBRARY REFERENCES

Westlaw Key Number Searches: 401k1.5 to 401k17.

Venue 1.5 to 17.

C.J.S. Venue Sections 2 to 78.

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S.C. Jur. Venue Section 6, Torts.

S.C. Jur. Venue Section 7, Penalties or Forfeitures.

S.C. Jur. Venue Section 11, Actions Against Public Officers and Others for Official Acts.

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1. In general

Cited in Ex parte Ware Furniture Co., 49 SC 20, 27 SE 9 (1897). Norris v Clinkscales, 59 SC 232, 37 SE 821 (1900). Silcox v Jones, 80 SC 484, 61 SE 948 (1908). Ex parte Townes, 97 SC 56, 81 SE 278 (1914). Bass v Products Corp., 124 SC 346, 117 SE 594 (1923). Town of West Greenville v Jones, 161 SC 186, 159 SE 551 (1931). Odell Hardware Co. v Scarborough’s Inc., 186 SC 370, 195 SE 631 (1938). Shelton v Southern Kraft Corporation, 195 SC 81, 10 SE2d 341 (1940). Gibbes v National Hospital Service, Inc., 202 SC 304, 24 SE2d 513 (1943). Melton v Melton, 227 SC 183, 87 SE2d 485 (1955).

The language used in this section [former Code 1962 Section 10‑302] is imperative and cannot be disregarded. Ware v Henderson, 25 SC 385 (1886). Riddle v Reese, 53 SC 198, 31 SE 222 (1898). Fishburne v Minott, 72 SC 572, 52 SE 646 (1905). Trapier v Waldo, 16 SC 276 (1881). Steele v Exum, 22 SC 276 (1885). Bacot v Lowndes, 24 SC 392 (1886).

Stated in Thomas & Howard Co. of Conway v. Marion Lumber Co. (S.C. 1958) 232 S.C. 304, 101 S.E.2d 848.

Quoted in Landrum v. South Carolina State Highway Department (S.C. 1932) 168 S.C. 139, 167 S.E. 164.

This section [former Code 1962 Section 10‑302] is an exception to the general rule that defendant has the right to be tried in his own county in a transitory action against him. Darby v. Southern Ry. Co. (S.C. 1917) 108 S.C. 145, 93 S.E. 716.

2. Construction with other statutes

The provisions of this section [former Code 1962 Section 10‑302] as to the venue of an action for statutory penalties are modified by former Code 1962 Section 10‑306 providing for place of trial of claims for penalty on freight claim. Darby v. Southern Ry. Co. (S.C. 1917) 108 S.C. 145, 93 S.E. 716.

A railroad company may be sued in any county in which it is a resident for loss or damage to freight, and for the penalty, and both causes of action against it may be united in the same complaint. Darby v. Southern Ry. Co. (S.C. 1917) 108 S.C. 145, 93 S.E. 716.

3. Construction and definition of statutory terms

A cause of action consists of a primary right of plaintiff, a corresponding duty of defendant, and a wrong by defendant in breach of such right and duty. Baldwin v. Board of Com’rs of Police Ins. and Annuity Fund of South Carolina (S.C. 1941) 196 S.C. 112, 12 S.E.2d 846.

“The cause of action” is a legal wrong threatened or committed against the complaining party; and the “object of the action” is to prevent or redress the wrong by obtaining some legal relief. The “subject of the action” is, clearly, neither of these; it is not the wrong which gives the plaintiff the right to ask the interposition of the court, nor is it that which the court is asked to do for him, but it must be the matter or thing, differing both from the wrong and the relief, in regard to which the controversy has arisen, concerning which the wrong has been done; and this is, ordinarily, the property, or the contract and its subject matter, or other thing involved in the dispute. Knight v. Fidelity & Cas. Co. of New York (S.C. 1937) 184 S.C. 362, 192 S.E. 558.

4. Recovery of penalty or forfeiture imposed by statute

Under this section [former Code 1962 Section 10‑302] an action to recover a penalty for receiving usurious interest on a contract for the lending of money should be instituted in the county where the loan was made and in which the land that was mortgaged to secure the loan was located. All v. British & American Mortgage Co. (S.C. 1916) 104 S.C. 239, 88 S.E. 529. Venue 9

This section [former Code 1962 Section 10‑302] as to venue of actions for penalty is a mere statutory requirement as to procedure, but it cannot be successfully contended that it constitutes the subject matter of the action. Jenkins v. Atlantic Coast Line R. Co. (S.C. 1909) 84 S.C. 343, 66 S.E. 409.

Where defendant R. R. Co. contested a case in the magistrate’s court on its merits in an action for damages and penalty for loss of goods, an objection that the magistrate was without jurisdiction because the action was not brought in the county where the cause of action arose, was waived. Jenkins v. Atlantic Coast Line R. Co. (S.C. 1909) 84 S.C. 343, 66 S.E. 409.

5. Actions against public officers—In general

In three consolidated negligence actions seeking damages from three doctors connected with the South Carolina State Hospital for damages arising out of the death of one person and the injury of his wife at the hands of an escaped mental patient, the doctors’ motions for a change of venue from Florence to Richland County was properly granted where Richland County was the official residence of the doctors and the place of their allegedly negligent conduct and where the surviving victim had neither alleged nor proved any infirmity which would make prosecution of the actions in Richland County unduly difficult or burdensome. Stalheim v. Doskocil (S.C. 1980) 275 S.C. 252, 269 S.E.2d 346.

Suits against the former State Board of Fisheries to require reinstatement of plaintiffs as county inspectors for the Board, and to require payment of their salaries, must be tried in the counties in which the causes of action arose. The court of common pleas for Jasper County had no jurisdiction of such suits brought by inspectors of other counties, and the failure of the defendants to move for change of venue was immaterial. Langford v. State Bd. of Fisheries (S.C. 1950) 217 S.C. 118, 60 S.E.2d 59.

The bond of a public officer is a contract and an action upon the bond alone is an action upon a contract. Being an action upon a contract, it is then, for the purpose of determining jurisdiction of the courts, a transitory action as contradistinguished from a local action. Chappell v. Fidelity & Deposit Co. of Maryland (S.C. 1940) 194 S.C. 124, 9 S.E.2d 592.

Acts of game warden held not to be done by virtue of his office and court denying change of venue, see Into v. Georgia Cypress Co. (S.C. 1937) 185 S.C. 437, 194 S.E. 336.

Members of State Board of Veterinary Examiners are public officers. A circuit court has jurisdiction of an action to compel State Board of Veterinary Examiners to issue a license, though none of Board resided in county where suit was brought. Gregory v. McInnis (S.C. 1926) 140 S.C. 52, 134 S.E. 527. Mandamus 142

An action to try the title to a State office does not come under subsection (2) of this section [Code 1962 Section 10‑302], but the place of trial is at the seat of the State government where the office is left. State v. Gibbes (S.C. 1918) 109 S.C. 135, 95 S.E. 346.

Residence of defendants immaterial. Under this section [Code 1962 Section 10‑302], providing for venue in actions against public officers, the fact that some of an officer’s codefendants live in a county other than the one in which the cause of action arose does not give the right to sue in such other county. Fishburne v. Minott (S.C. 1905) 72 S.C. 572, 52 S.E. 646.

6. —— Actions for disability benefits, actions against public officers

An action for disability benefits against the board of commissioners of police insurance and annuity fund being an action against a public officer or board, the venue thereof must be determined by the provisions of this section [former Code 1962 Section 10‑302] and not former Code 1962 Section 10‑303. Baldwin v. Board of Com’rs of Police Ins. and Annuity Fund of South Carolina (S.C. 1941) 196 S.C. 112, 12 S.E.2d 846. Venue 11

In an action by a former peace officer of Florence County for disability benefits, the board of commissioners of the police insurance and annuity fund contended the venue should be Richland County where the offices of the board were and that the cause of action arose there. It was held that, considering the question from the standpoint of the primary right of the plaintiff, the right was based upon his official status as a peace officer in Florence County and the performance by him in Florence County of his official duties as such peace officer. That official status, acquired and exercised by him in that county, constituted his “primary right” to the benefits which would legally accrue to him as a member of the police insurance and annuity fund. To that extent his cause of action arose in Florence County. Baldwin v. Board of Com’rs of Police Ins. and Annuity Fund of South Carolina (S.C. 1941) 196 S.C. 112, 12 S.E.2d 846.

7. —— Proceedings in mandamus, actions against public officers

This section [former Code 1962 Section 10‑302], relating to the place of trial of civil actions, does not directly apply to proceedings in mandamus. La Motte v Smith, 50 SC 558, 27 SE 933 (1897). State v Scarborough, 70 SC 288, 49 SE 860 (1904).

A circuit judge while holding court in a circuit other than his own, has no jurisdiction under this section [former Code 1962 Section 10‑302] to hear and determine at chambers, in such other circuit, an application for mandamus in a cause which arose in his circuit. State v. Smith (S.C. 1897) 50 S.C. 558, 27 S.E. 933. Mandamus 141

**SECTION 15‑7‑30.** Actions that must be tried in county where defendant resides; definitions; factors to consider in determining venue of actions against resident and nonresident individuals and domestic and foreign corporations.

 (A) As used in this section:

 (1) “Domestic corporation” means a “domestic corporation” as defined in Section 33‑1‑400.

 (2) “Domestic limited partnership” means a “domestic limited partnership” as defined in Section 33‑42‑20.

 (3) “Domestic limited liability company” means a “ domestic limited liability partnership” as defined in Section 33‑41‑1110 with its principal place of business within this State.

 (4) “Domestic limited liability partnership” means a “ domestic limited liability partnership” as defined in Section 33‑41‑1110 with its principal place of business within this State.

 (5) “Foreign corporation” means a “foreign corporation” as defined in Section 33‑1‑400.

 (6) “Foreign limited partnership” means a “foreign limited partnership” as defined in Section 33‑42‑20.

 (7) “Foreign limited liability company” means a “foreign limited liability partnership” as defined in Section 33‑41‑1150 with its principal place of business outside this State.

 (8) “Foreign limited liability partnership” means a “ foreign limited liability partnership” as defined in Section 33‑41‑1150 with its principal place of business outside this State.

 (9) “Nonresident individual” means a person who is not domiciled in this State.

 (10) “Principal place of business” means:

 (a) the corporation’s home office location within the State from which the corporation’s officers direct, control, or coordinate its activities;

 (b) the location of the corporation’s manufacturing, sales, or purchasing facility within the State if the corporation does not have a home office within the State; or

 (c) the location at which the majority of corporate activity takes place if the corporation has multiple offices, centers of manufacturing, sales, or purchasing located within the State if the corporation does not have a home office within the State and has more than one manufacturing, sales, or purchasing facility within the State. The following factors may be considered when determining the location at which the majority of corporate activity takes place:

 (i) the number of employees located in any one county;

 (ii) the authority of the employees located in any one county; or

 (iii) the tangible corporate assets that exist in any one county.

 (11) “Resident individual” means a person who is domiciled in this State.

 (B) In cases not provided for in Sections 15‑7‑10, 15‑7‑20, or 15‑78‑100, the action must be tried in the county where it properly may be brought and tried against the defendant according to the provisions of this section. If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section. This section is subject to the power of the court in the county where the action properly may be maintained according to this section to change the place of trial as provided in Section 15‑7‑100 or as otherwise provided by law.

 (C) A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the:

 (1) defendant resides at the time the cause of action arose; or

 (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

 (D) A civil action tried pursuant to this section against a nonresident individual defendant must be brought and tried in the county in which the:

 (1) most substantial part of the alleged act or omission giving rise to the cause of action occurred; or

 (2) plaintiff resides at the time the cause of action arose, or if the plaintiff is a domestic corporation, domestic limited partnership, domestic limited liability company, domestic limited liability partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership, at its principal place of business at the time the cause of action arose.

 (E) A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the:

 (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or

 (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

 (F) A civil action tried pursuant to this section against a foreign corporation required to possess and possessing a certificate of authority under the provisions of Section 33‑15‑101 et seq., a foreign limited partnership required to possess and possessing a certificate of authority under the provisions of Section 33‑15‑101 et seq., a foreign limited liability company required to possess and possessing a certificate of authority under the provisions of Section 33‑15‑101 et seq., or a foreign limited liability partnership required to possess and possessing a certificate of authority under the provisions of Section 33‑15‑101 et seq. must be brought and tried in the county in which the:

 (1) most substantial part of the alleged act or omission giving rise to the cause of action occurred; or

 (2) foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership has its principal place of business at the time the cause of action arose.

 (G) A civil action tried pursuant to this section against a foreign corporation, except a foreign corporation described in subsection (F); a foreign limited partnership, except a foreign limited partnership described in subsection (F); a foreign limited liability company, except a foreign limited liability company described in subsection (F); or a foreign limited liability partnership, except a foreign limited liability partnership described in subsection (F); must be brought and tried in the county in which the:

 (1) most substantial part of the alleged act or omission giving rise to the cause of action occurred;

 (2) plaintiff resides at the time the cause of action arose, or if the plaintiff is a domestic corporation, domestic limited partnership, domestic limited liability company, domestic limited liability partnership, foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership, at its principal place of business at the time the cause of action arose; or

 (3) foreign corporation, foreign limited partnership, foreign limited liability company, or foreign limited liability partnership has its principal place of business at the time the cause of action arose.

 (H) Owning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation for purposes of this section.

HISTORY: 1962 Code Section 10‑303; 1952 Code Section 10‑303; 1942 Code Section 422; 1932 Code Section 422; Civ. P. ‘22 Section 378; Civ. P. ‘12 Section 174; Civ. P. ‘02 Section 146; 1870 (14) 453 Section 148; 1875 (15) 913; 1898 (22) 687; 1905 (24) 848; 2005 Act No. 27, Section 3, eff July 1, 2005, applicable to causes of action arising on or after that date.

Effect of Amendment

The 2005 amendment, added subsection (A); designated the original text as subsection (B) and rewrote it; and added subsections (C) to (H).

CROSS REFERENCES

Grounds for changing place of trial, see Section 15‑7‑100.

Service on unincorporated associations, see Section 15‑9‑330.

Venue for proceedings under the South Carolina Probate Code, see Sections 62‑1‑303, 62‑3‑201.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 401k18 to 401k32.

Venue 18 to 32.

C.J.S. Venue Sections 6, 79 to 108, 116 to 126.

RESEARCH REFERENCES

ALR Library

42 ALR 5th 221 , Place Where Corporation is Doing Business for Purposes of State Venue Statute.

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 36, Venue.

S.C. Jur. Venue Section 5, Contracts.

S.C. Jur. Venue Section 13, Privileges of Defendants.

S.C. Jur. Venue Section 14, Privileges of Codefendant.

S.C. Jur. Venue Section 15, Rights of Plaintiff.

S.C. Jur. Venue Section 16, Actions Against Nonresidents.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Practice and Procedure: Venue. 33 S.C. L. Rev. 111, August 1981.

Nonresident Defendants Don’t Deserve Convenience or Justice in South Carolina. 55 SC Law Rev 443 (Spring 2004).

A One‑Two Punch to Forum Shopping: Recent Judicial and Legislative Amendments to South Carolina’s Corporate Venue Jurisprudence, 57 S.C. L. Rev. 465 (Spring 2006).

Symposium: Leflar on Conflicts. 31 S.C. L. Rev. 409.

Attorney General’s Opinions

Under the provisions of Section 22‑3‑10, 15‑7‑30, Code of Laws of S.C., 1976, and the case law generally, it is not proper in civil cases for a magistrate to endorse for service Summons and Complaints from foreign counties which claim jurisdiction. 1976‑77 Op Atty Gen, No 77‑379, p 303.

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1. In general

Cited in Silcox & Co. v Jones, 80 SC 484, 61 SE 948 (1908). Taylor v News, etc., Co., 156 SC 537, 153 SE 571 (1930). Weatherford v Radcliffe, 63 F Supp 107 (1945). Griffin v Rice, 216 SC 160, 57 SE2d 69 (1949). Reynolds v Atlantic Coast Line R. Co., 217 SC 16, 59 SE2d 344 (1950), dis op of Oxner, J. McKinney v Noland Co., 227 SC 27, 86 SE2d 607 (1955). Gibbs v Young, 242 SC 217, 130 SE2d 484 (1963). Jackson v H & S Oil Co., 261 SC 214, 199 SE2d 71 (1973).

Stated in Steele v Exum, 22 SC 276 (1885). Thomas v Thomas, 218 SC 235, 62 SE2d 307 (1950), con op of Oxner, J. Taylor v Wall, 231 SC 683, 100 SE2d 400 (1957). Whitley v Lineberger Bros., 233 SC 182, 104 SE2d 70 (1958).

Applied in Bridge v Orange Crush Bottlers, 164 SC 351, 162 SE 325 (1932). Lillard v Searson, 170 SC 304, 170 SE 449 (1933). American Agricultural Chemical Co. v Smith, 173 SC 158, 175 SE 275 (1934). Warren v Smith, 190 SC 8, 1 SE2d 900 (1939). Crawford v Cooper River Fed. Sav., etc., Ass’n, 203 SC 347, 27 SE2d 460 (1943). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Melton v Melton, 227 SC 183, 87 SE2d 485 (1955).

The language in this section [former Code 1962 Section 10‑303] is imperative and not to be disregarded. It clearly implies that a case cannot be tried elsewhere than in the place appointed for the purpose, unless the place of trial be changed under former Code 1962 Section 10‑310, and if tried elsewhere the trial and judgment entered therein are nullities for want of jurisdiction. Ware v Henderson, 25 SC 385 (1886). Riddle v Reese, 53 SC 198, 31 SE 222 (1898). Blakely v Frazier, 11 SC 122 (1878). Trapier v Waldo, 16 SC 276 (1881). Bacot v Lowndes, 24 SC 392 (1886).

The question of jurisdiction may be first raised in Supreme Court. McGrath v Piedmont Mut. Ins. Co., 74 SC 69, 54 SE 218 (1906). Riddle v Reese, 53 SC 198, 31 SE 222 (1898). Bell v Fludd, 28 SC 313, 5 SE 810 (1888). Ware v Henderson, 25 SC 385 (1886). State v Penny, 19 SC 218 (1883).

Section 15‑7‑30, which provides that certain actions shall be tried in the county in which the defendant resides, does not apply to summary judgment since a motion for summary judgment is not “tried” but is decided as a matter of law. Royster Co. v. Eastern Distribution, Inc. (S.C.App. 1989) 298 S.C. 51, 378 S.E.2d 71, reversed 301 S.C. 18, 389 S.E.2d 863. Venue 21

This section [former Code 1962 Section 10‑303] fixes the venue of actions, generally, in the county of defendant’s residence. Clinkscales v. Clinkscales (S.C. 1963) 243 S.C. 377, 134 S.E.2d 216.

In order to overcome the right of a defendant in a civil action to a trial in the county of its residence. The plaintiff must show that changing the place of trial would promote not only the convenience of witnesses, but also the ends of justice [former Code 1962 Section 10‑310]. Basha v. Waccamaw Lumber & Supply Co. (S.C. 1962) 240 S.C. 140, 124 S.E.2d 912. Venue 21; Venue 51

This section [former Code 1962 Section 10‑303] clearly has reference to personal defendants residing in different counties, and a court of a given county cannot acquire jurisdiction of the owner or driver of a truck in question by reason of the same being attached, seized, and held in the county where an alleged injury occurred. Mahon v. Burkett (S.C. 1931) 160 S.C. 48, 158 S.E. 141.

Where no facts are alleged showing plaintiff’s remedy at law inadequate, equity will not assume jurisdiction on theory of existence of an equitable lien enforceable in a county other than that in which legal rights of parties would be adjudicated if alleged equitable remedy is not implied in view of this section [former Code 1962 Section 10‑303]. Georgia‑Carolina Gravel Co. v. Blassingame (S.C. 1924) 129 S.C. 18, 123 S.E. 324. Equity 46

Jurisdiction once established cannot be directed by any subsequent event arising out of acts or omissions of the parties, but it can be so directed by subsequent acts of law provided no constitutional limitations are transgressed. Riddle v. Reese (S.C. 1898) 53 S.C. 198, 31 S.E. 222.

2. Construction and definition of statutory terms

The clause “if none of the parties shall reside in the State,” includes parties defendant only and does not mean all parties, plaintiff and defendant. Courtney v. Meyer (S.C. 1943) 202 S.C. 437, 25 S.E.2d 481.

3. Construction with other statutes

Motorcyclist’s action against Department of Transportation under Tort Claims Act was appropriately commenced in county where accident occurred, and thus, third‑party defendant motorist did not have right to transfer venue to county where driver resided based on claim of improper venue. Jeter v. South Carolina Dept. of Transp. (S.C. 2006) 369 S.C. 433, 633 S.E.2d 143, rehearing denied. Venue 8.2; Venue 40

Sections 62‑1‑303 and 62‑3‑201 would continue to govern the venue of a suit brought in probate court to construe a trust created by a will and transferred to the Circuit Court pursuant to Section 62‑1‑302, rather than the venue provisions of Section 15‑7‑30, where the action remained primarily one governed by the Probate Code. Waddell v. Kahdy (S.C. 1992) 309 S.C. 1, 419 S.E.2d 783, rehearing denied. Venue 45

A driver was entitled to a change of venue for a property damage claim filed by a motorcyclist following a collision with the driver where the motorcyclist filed his claim for arbitration in Hampton County, the arbitration panel awarded the motorcyclist $2,201, and the driver appealed for a de novo trial in Circuit Court under Section 15‑7‑30 alleging that his own county of residence was the proper county of venue; nothing in Section 38‑77‑770 diminishes a defendant’s right to have the action tried in the county of his residence. Blizzard v. Miller (S.C. 1991) 306 S.C. 373, 412 S.E.2d 406.

Section 38‑77‑180, which states that as to an unknown defendant, “service of process may be made by delivery . . . to the clerk of the court in which the action is brought,” does not operate to nullify the substantial right of a known defendant to be tried in the county of his or her residence. Thus, in an action arising out of an automobile accident involving a vehicle driven by either a known defendant or an unknown defendant whose residence was unknown, the trial court erred in denying the only known defendant’s motion for change of venue to his county of residence, and in interpreting Section 38‑77‑180 so as to nullify the defendant’s substantial right to be tried in the county in which he resided. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707.

When a motion to change venue is brought pursuant to Section 15‑7‑30 and the facts concerning the defendant’s residence are uncontradicted, the trial court must change the venue to the county where the defendant resides. If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he or she may make such motion to the trial judge in the county of the defendant’s residence; this motion brought pursuant to Section 15‑7‑100 would be addressed to the discretion of the court. The 2 statutes may not be read together to allow one court to take all relevant factors into consideration at one time. Chestnut v. Reid (S.C. 1989) 299 S.C. 305, 384 S.E.2d 713. Venue 40; Venue 51; Venue 52(1)

Considering principle that different statutes in pari materia, though enacted at different times and not referring to each other, are to be taken and construed together as one system and as explanatory of each other, it is logical to interpret “resides” as used in Section 15‑7‑30 to include, for purpose of determining proper venue, those counties in which any corporate defendant “shall own property and transact business” as provided in Section 15‑9‑210. In re Asbestosis Cases 78‑CP‑06‑105 (S.C. 1980) 274 S.C. 421, 266 S.E.2d 773.

When a corporation moves for a change of venue on the ground that it is not a resident of the county in which it was sued, such motion is made under Code 1962 Section 10‑303 [Code 1976 Section 15‑7‑30], and the discretionary provisions of Code 1962 Section 10‑310 [Code 1976 Section 15‑7‑100] do not apply; thus, if it is uncontroverted that the corporation is a resident of another county, the court must, as a matter of law, transfer the case to the county of residence. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

Former Code 1962 Section 10‑429, relating to service of process on an unincorporated association, must be construed with this section [former Code 1962 Section 10‑303]. Therefore, an action against an unincorporated association is not limited to the county where process is served. Edgar v. Southern Ry. Co. (S.C. 1948) 213 S.C. 445, 49 S.E.2d 841.

This section [former Code 1962 Section 10‑303] is expressly subject to the imperative provisions of former Code 1962 Section 10‑302. Fishburne v. Minott (S.C. 1905) 72 S.C. 572, 52 S.E. 646.

4. Substantial right of resident defendant to trial in county of his residence—In general

The right of a defendant in a civil action to trial in the county of his residence is a substantial right. Holden v Beach, 228 SC 234, 89 SE2d 433 (1955). McCauley v McLeod, 230 SC 380, 95 SE2d 611 (1956). Dison v Wimbly, 230 SC 187, 94 SE2d 877 (1956). Perdue v Southern Ry. Co., 232 SC 78, 101 SE2d 47 (1957). Thomas & Howard Co. v Marion Lumber Co., 232 SC 304, 101 SE2d 848 (1958). Lee v Neal, 233 SC 206, 104 SE2d 291 (1958). Graham v Beverly, 235 SC 222, 100 SE2d 923 (1959). Sanders v Allis Chalmers Mfg. Co., 235 SC 259, 111 SE2d 201 (1959). Garrett v Charleston & Western Carolina Ry. Co., 236 SC 75, 113 SE2d 256 (1960). Deese v Williams, 236 SC 292, 113 SE2d 823 (1960). McMillan v B.L. Montague Co., 238 SC 512, 121 SE2d 13 (1961). Basha v Waccamaw Lumber & Supply Co., 240 SC 140, 124 SE2d 912 (1962). Peeples v Orkin Exterminating Co., 244 SC 173, 135 SE2d 845 (1964). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Oswald v Southern Farm Bureau Cas. Ins. Co., 248 SC 433, 150 SE2d 612 (1966).

The right of a resident to be sued in his own county has long been held to be a valuable one. Fordham v Fordham, 223 SC 401, 76 SE2d 299 (1953). Royal Crown Bottling Co. v Chandler, 228 SC 412, 90 SE2d 489 (1955).

The right of a defendant to have a case against him tried in the county in which he resides is a substantial right, and the party asserting the right to maintain the action in a different county should at least “balance” the testimony showing such right. Shelton v Southern Kraft Corp., 195 SC 81, 10 SE2d 341 (1940). Moody v Burns, 222 SC 258, 72 SE2d 189 (1952).

The right of a resident defendant to a trial in the county of his residence, assured him under this section [former Code 1962 Section 10‑303], is a substantial right; and a plaintiff who seeks to defeat a defendant’s right to a trial in the county of the latter’s residence by the joinder as a defendant of a resident of the county in which plaintiff has laid his venue, must, when the issue of venue is raised, establish, not by a scintilla of evidence, but by at least a balance of the evidence, that he has a valid cause of action against the other defendant, and should he fail in this, it is the duty of the court to give the defendant seeking a change of venue a right of trial in the county of his residence. Dunbar v Evins, 198 SC 146, 17 SE2d 37 (1941); Wood v Lea, 219 SC 409, 65 SE2d 669 (1951).

Defendant’s right to be tried in the county of its residence is a substantial right. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 21

A defendant was entitled to have the venue of an action changed to the county in which he resided where an order consolidated separate actions against 3 separate defendants and venue was laid in a county where one of the other defendants resided; consolidation did not merge the parties and actions or create “multiple defendants” in a single action, as joinder under Rule 20, SCRCP would have. Ellis by Ellis v. Oliver (S.C. 1992) 307 S.C. 365, 415 S.E.2d 400.

The right of a defendant to be tried in the county of his or her residence is a substantial one and is not to be lightly denied. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707.

A party who asserts the right to sue a defendant in a county other than that of his or her residence has the burden of showing such right of departure. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707. Venue 68

The right of a defendant to have a case tried against him or her in the county in which he or she resides is a substantial right. Chestnut v. Reid (S.C. 1989) 299 S.C. 305, 384 S.E.2d 713.

The right of a defendant in a civil action to trial in the county of his residence is a substantial one. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

The language of this section [former Code 1962 Section 10‑303] is mandatory, and the right that it gives to the defendant is a valuable and substantial one, but it is within the power of the General Assembly, subject to constitutional limitations, to restrict that right, or even to abolish it. Deese v. Williams (S.C. 1960) 236 S.C. 292, 113 S.E.2d 823. Venue 18

The right of a resident defendant to trial in the county of his residence is a substantial right, and he who asserts the right to sue a defendant in a county other than that of his residence must at least balance the testimony showing such right of departure. Warren v. Padgett (S.C. 1954) 225 S.C. 447, 82 S.E.2d 810. Venue 22(3)

The right of a resident defendant to a trial in the county of his residence has been aptly described as a substantial and valuable right, and subject to defeat only when the requirements of the statute permitting such change have met with compliance. Wingard v. Sims (S.C. 1952) 222 S.C. 396, 73 S.E.2d 279. Venue 21

4.5. —— Multiple defendants, Substantial right of resident defendant to trial in county of his residence

Where there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action, and in such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought. Jeter v. South Carolina Dept. of Transp. (S.C. 2006) 369 S.C. 433, 633 S.E.2d 143, rehearing denied. Venue 31

5. —— Exceptions or qualifications, substantial right of resident defendant to trial in county of his residence

While the right of a defendant in a civil action to a trial in the county of his residence is a substantial one, it is within the sound discretion of the hearing judge to change the place of trial where it is shown that both the convenience of witnesses and the ends of justice would be promoted. Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Oswald v Southern Farm Bureau Cas. Ins. Co., 248 SC 433, 150 SE2d 612 (1966).

The right of a plaintiff, under this section [former Code 1962 Section 10‑303], to bring an action in any county he shall designate, where the defendants are nonresidents, is subject, under former Code 1962 Section 10‑310, to the power of the court to change the place of trial upon a proper showing that both the convenience of the witnesses and the ends of justice will be promoted by the change. Miller v. Miller (S.C. 1966) 248 S.C. 125, 149 S.E.2d 336. Venue 51; Venue 52(1)

The right to trial in the county where the defendant resides, granted in this section [former Code 1962 Section 10‑303], is a substantial right. However, the legislature did not intend that such rule was inflexible, for it enacted former Code 1962 Section 10‑310 which sets out when the place of trial may be changed. When it is affirmatively shown that the convenience of witnesses and the ends of justice would be promoted, the court is fully empowered to transfer the case to another county. Roof v. Tiller (S.C. 1940) 195 S.C. 132, 10 S.E.2d 333, 132 A.L.R. 500.

6. Promotion of justice by jury of vicinage passing upon credibility of witnesses

The Supreme Court has repeatedly held that a jury of the vicinage passing upon the credibility of witnesses is in itself a promotion of justice. Holden v Beach, 228 SC 234, 89 SE2d 433 (1955). Dison v Wimbly, 230 SC 187, 94 SE2d 877 (1956). McCauley v McLeod, 230 SC 380, 95 SE2d 611 (1956). Perdue v Southern Ry. Co., 232 SC 78, 101 SE2d 47 (1957).

It is promotive of the ends of justice to have the credibility of witnesses passed upon by jurors of the “vicinage,” which means the county in which the witnesses reside, but its importance to the promotion of the “ends of justice” must of necessity depend upon many collateral factors, e.g., the number of eligible jurors in the county, the diversity of their interests, and consequently the degree of knowledge or information that the members of the panel may likely have concerning the character of the witness—the nature of the testimony to be expected from the witness, and its relation to the issue of liability. Graham v. Beverly (S.C. 1959) 235 S.C. 222, 110 S.E.2d 923.

7. Waiver

Answer in an action does not constitute waiver of the right to move to transfer the case to the proper county for trial. Witherspoon v Spotts & Co., 227 SC 209, 87 SE2d 477 (1955). Lee v Neal, 233 SC 206, 104 SE2d 291 (1958). Brown v Palmetto Baking Co., 220 SC 38, 66 SE2d 417 (1951). Rosamond v Lucas‑Kidd Motor Co., 182 SC 331, 189 SE 641 (1937). Lee v Neal, 233 SC 206, 104 SE2d 291 (1958).

A party may waive the provisions of this section [former Code 1962 Section 10‑303] as to the place of trial. Jones v Postal Tel. Cable Co., 91 SC 273, 74 SE 492 (1912). Jenkins v Atlantic Coast Line R. Co., 84 SC 343, 66 SE 409 (1909). Hodge v Sovereign Camp, 134 SC 343, 132 SE 822 (1926).

When the jurisdiction depends on the residence of the defendant, the question relates to jurisdiction of the subject matter and cannot be waived. Nixon & Danforth v Piedmont Mut. Ins. Co., 74 SC 438, 54 SE 657 (1906). McGrath v Piedmont Mut. Ins. Co., 74 SC 69, 54 SE 218 (1906). Bell v Fludd, 28 SC 313, 5 SE 810 (1888). Ware v Henderson, 25 SC 385 (1886). Garrett v Herring Furniture Co., 69 SC 278, 48 SE 254 (1904). Baker v Irvine, 62 SC 293, 40 SE 672 (1902).

If the jurisdiction depends on service of summons, it relates to the jurisdiction of the person and may be waived, which may be done by a general appearance. Nixon & Danforth v Piedmont Mut. Ins. Co., 74 SC 438, 54 SE 657 (1906). Jenkins v Atlantic Coast Line R. Co., 84 SC 343, 66 SE 409 (1909). Riddle v Reese, 53 SC 198, 31 SE 222 (1898).

Although filing answer to action does not of itself constitute waiver of right to change of venue, right was waived by additional actions of counterclaiming, participating in extensive discovery procedures, successfully opposing motions for summary judgment, and moving to require election between causes of action. Landvest Associates v. Owens (S.C. 1980) 274 S.C. 334, 263 S.E.2d 646.

Right to be tried in county of one’s own residence does not constitute limitation on subject matter jurisdiction. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Venue 32(2)

Right to be tried in county of one’s residence, while it is substantial inviolable right, relates only to question of venue and can be waived. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Venue 32(2)

Confession of judgment on promissory note was properly enrolled in Richland County even though debtors were all Lexington County residents, since consent to confession of judgment was equivalent to voluntary appearance. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Judgment 16

Defendant can assert his right to file a counterclaim under former Code 1962 Section 10‑705 without waiving his right to a change of venue under this section [former Code 1962 Section 10‑303], which right had been expressly reserved. Harmon v. Graham (S.C. 1965) 247 S.C. 54, 145 S.E.2d 521.

A party who consents to have the issues of an action begun in his county tried in another county and procures an order, dismissing the action in his county and transferring the issues to the other county, waives the right to have the cause subsequently removed back to his county. Hodge v. Sovereign Camp, W.O.W. (S.C. 1926) 134 S.C. 343, 132 S.E. 822.

Where a defendant in a claim and delivery action in a magistrate’s court did not reside within the territorial jurisdiction of the court and did not appear, though duly notified, he waived the want of jurisdiction over him, and a default judgment was valid. Ex parte Townes (S.C. 1914) 97 S.C. 56, 81 S.E. 278. Justices Of The Peace 60

Where a defendant appears specially and answers to the merits to prevent default judgment, but subject to a motion previously made to have the case transferred to his own county as was his right under this section [former Code 1962 Section 10‑303], he does not submit to the jurisdiction or waive this right of transferring the case to his own county. Barfield v. Southern Cotton Oil Co. (S.C. 1910) 87 S.C. 322, 69 S.E. 603. Appearance 23

8. Change of venue or transfer of action—In general

When the facts concerning a defendant’s residence are uncontradicted, the trial court must, as a matter of law, change venue to the county where the defendant resides. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 40

Where facts concerning defendant’s residence are uncontradicted, trial court must, as matter of law under statute, change venue to county where defendant resides. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 72

Court has jurisdiction at chambers to order place of trial changed to proper county. Ex parte Jones (S.C. 1931) 160 S.C. 63, 158 S.E. 134, 77 A.L.R. 235. Venue 75

Although the language of this section [former Code 1962 Section 10‑303] is mandatory and places exclusive jurisdiction within the county of residence, a court is fully empowered under the provisions of former Code 1962 Section 10‑310 to change the place of trial, among other grounds, where the county designated in the complaint is not the proper county. Ex parte Jones (S.C. 1931) 160 S.C. 63, 158 S.E. 134, 77 A.L.R. 235.

9. —— Motions, change of venue or transfer of action

A motion for change of venue is addressed to discretion of judge who hears it. Graham v Beverly, 235 SC 222, 110 SE2d 923 (1959). Basha v Waccamaw Lumber & Supply Co., 240 SC 140, 124 SE2d 912 (1962). Miller v Miller, 248 SC 125, 149 SE2d 336 (1966).

Findings by judge who hears a motion to change venue will not be disturbed by Supreme Court unless they appear to be manifestly wrong. Warren v Padgett, 225 SC 447, 82 SE2d 810 (1954). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Miller v Miller, 248 SC 125, 149 SE2d 336 (1966).

Judge’s decision on motion for change of venue will not be disturbed on appeal except for manifest abuse of his discretion. Graham v Beverly, 235 SC 222, 110 SE2d 923 (1959). Basha v Waccamaw Lumber & Supply Co., 240 SC 140, 124 SE2d 912 (1962).

Motions for change of venue may be first made upon the call of calendar for the term of court for which the case is docketed for trial, upon dismissal of a resident defendant, and after appeal to the Supreme Court resulting in elimination of one of the defendants. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13. Venue 61

Where a motion is made for a change of venue on the ground that a named county is the residence of the defendant and the fact of the defendant’s residence in that county is not disputed, then a question of law is presented and the decision in the matter is not addressed to the discretion of the trial judge. Sanders v. Allis Chalmers Mfg. Co. (S.C. 1959) 235 S.C. 259, 111 S.E.2d 201.

If the motion to change the venue be predicated on the ground of convenience of witnesses and the promotion of justice, it might be said that the motion is addressed to the discretion of the court; but if the motion is based upon the ground that a particular county is the place of residence of the defendant and all the facts are admitted, then it is a question of law. Shelton v. Southern Kraft Corp. (S.C. 1940) 195 S.C. 81, 10 S.E.2d 341, 129 A.L.R. 1280. Venue 40; Venue 51; Venue 52(1)

The Supreme Court would not interfere with the trial court’s action in changing the place of trial from the county of defendant’s residence to the county of plaintiffs’ residence on the ground of convenience, in the absence of showing that the trial court’s action was opposed to sound discretion amounting to deprivation of legal rights of complaining party, in Griffin v. Owens (S.C. 1934) 171 S.C. 276, 172 S.E. 221. Appeal And Error 965

10. —— Time requirements, change of venue or transfer of action

Although this section [former Code 1962 Section 10‑303] fixes no specific time when the motion to transfer shall be made, the statute intends that when the summons is served on a defendant and he is appraised that an action is begun against him in another county than that of his residence, he will, before pleading to the action, take the necessary steps to have the case transferred; if he stands idle thereabout, pleads to the action in the county in which it is brought, then he will be held to have waived the question of residence. Rosamond v Lucas‑Kidd Motor Co., 182 SC 331, 189 SE 641 (1937). Brown v Palmetto Baking Co., 220 SC 38, 66 SE2d 417 (1951), which distinguishes the Rosamond case.

This section [former Code 1962 Section 10‑303] fixes no time at which a motion to change the place of trial shall be made. It only provides for such a change when certain facts are made to appear to the satisfaction of the circuit judge. Royal Crown Bottling Co. v. Chandler (S.C. 1955) 228 S.C. 412, 90 S.E.2d 489.

11. —— Transfer of suit to newly formed county, change of venue or transfer of action

The court of a new county has jurisdiction of an action against two defendants, one of which resided in the new county formed from a portion of an old county, as the act forming the new county provided for the transferring of all pending suits from old counties to dockets of such new county. Norris v. Clinkscales (S.C. 1901) 59 S.C. 232, 37 S.E. 821.

Where an act created a new county out of portions of old counties and provided for a transfer of all the pending suits in those portions to the new county, a court of one of the portions of the old county is deprived of jurisdiction of such an action, though defendant consents to trial by it. Riddle v. Reese (S.C. 1898) 53 S.C. 198, 31 S.E. 222.

12. Residence as question of fact; conclusiveness of determination

Residence of defendant moving for change of venue is a question of fact and depends upon intention as evidenced by his acts and declarations. Sample v Bedenbaugh, 158 SC 496, 155 SE 828 (1930). Barfield v Coker & Co., 73 SC 181, 53 SC 170 (1906). Riddle v Reese, 53 SC 198, 31 SE 222 (1898). LeHardy, Thesmar & Co. v Dibble, 80 SC 482, 61 SE 950 (1908). Miller v Miller, 248 SC 125, 149 SE2d 336 (1966).

The issue of residence under this section [former Code 1962 Section 10‑303] (“residence” here meaning domicile, as distinguished from temporary dwelling place) is a factual one. Ernandez v Miller, 232 SC 634, 103 SE2d 263 (1958). Sanders v Allis Chalmers Mfg. Co., 235 SC 259, 111 SE2d 201 (1959).

Question of where a defendant resides, for purposes of venue, is a question of law. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 32(1)

The question of a person’s place of residence is largely one of intent to be determined under the facts and circumstances of each case. Miller v. Miller (S.C. 1966) 248 S.C. 125, 149 S.E.2d 336. Domicile 1

Where the Supreme Court on a prior appeal ruled that the lower court had jurisdiction over one of the two defendants, an objection to the jurisdiction was properly overruled. Elms v. Southern Power Co. (S.C. 1908) 79 S.C. 502, 60 S.E. 1110.

Change of residence so as to affect jurisdiction is not shown by the mere fact of defendant’s arrest, imprisonment and escape. Riddle v. Reese (S.C. 1898) 53 S.C. 198, 31 S.E. 222. Venue 28

13. Legal and actual residence

A person may be a legal resident of one place and an actual resident of another. So a college student, whose parents’ home is in another county, may be sued in the county in which the college is located. Roof v. Tiller (S.C. 1940) 195 S.C. 132, 10 S.E.2d 333, 132 A.L.R. 500.

14. Resident and nonresident defendants; one or more defendants—In general

Where there is more than one defendant, so that the action may be tried in any county in which one or more of the defendants resides, the plaintiff ordinarily has the right to elect the county in which the action will be tried. However, the plaintiff’s right of election is secondary to the substantial right of a defendant to be tried in the county of his or her residence. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707.

Where there is a known defendant and an unknown defendant, whose residence is consequently also unknown, venue is proper in the county in which the known defendant resides. Carroll v. Guess (S.C. 1990) 302 S.C. 175, 394 S.E.2d 707.

If a foreign corporation is sued in a county where it has no agent or place of business, along with a codefendant who is a resident of the state, venue is in the county of the codefendant’s residence. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

Where there are codefendants who are residents of different counties, plaintiff may properly bring action in the county of the residence of either defendant; and the right of election as to the county in which an action will be brought in such cases is ordinarily that of the plaintiff. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50. Venue 22(1)

Where an action is brought against a nonresident and a resident of this State, in which the venue is laid in a county other than that of the resident, the action, on motion, should be transferred to the county of the resident for trial. Lee v. Neal (S.C. 1958) 233 S.C. 206, 104 S.E.2d 291. Venue 46

Resident defendant’s death before second trial of tort action, leaving a resident of another county the sole defendant, did not deprive court of jurisdiction. Halsey v. Minnesota‑South Carolina Land & Timber Co. (S.C. 1932) 168 S.C. 18, 166 S.E. 626. Courts 30

Writ of prohibition cannot be invoked on ground court lacked jurisdiction because defendant did not reside in county of suit. Ex parte Jones (S.C. 1931) 160 S.C. 63, 158 S.E. 134, 77 A.L.R. 235. Prohibition 10(1)

The court’s jurisdiction of the person of a defendant is not determined by the fact of his nonresidence, but by the fact of personal service of process within the State. Williams v. Simon (S.C. 1924) 128 S.C. 315, 122 S.E. 772. Courts 13.2; Courts 21

The fact appearing upon the face of the complaint that the defendant is a nonresident is not such affirmative showing that the court has no jurisdiction of the defendant’s person as will sustain a demurrer. Williams v. Simon (S.C. 1924) 128 S.C. 315, 122 S.E. 772. Courts 32.5(2)

An action for an accounting against a nonresident may be brought in the county where he resided prior to his leaving the State. Carolina Agency Co. v. Garlington (S.C. 1910) 85 S.C. 114, 67 S.E. 225.

15. —— Sham or immaterial defendant, resident and nonresident defendants; one or more defendants

The ability or inability of a defendant to respond to a monetary judgment has no value in determining the venue of a case except that it may be considered by the hearing judge in deciding the question of whether or not such defendant is a bona fide or mala fide defendant. Belger v Caldwell, 231 SC 335, 98 SE2d 758 (1957). Doss v Douglass Constr. Co., 232 SC 261, 101 SE2d 661 (1958).

In passing upon whether a defendant is immaterial and has been joined merely for the purpose of permitting an action to be tried in a county other than the county where the real defendant or defendants reside, the fact that the complaint states a cause of action against the challenged defendant, or that the same testimony given on the hearing of the case on its merits would require the issue of the liability of such defendant to be submitted to the jury, does not necessarily govern, because on a motion of this nature the judge before whom it is made sits both as judge and jury. Dunbar v Evins, 198 SC 146, 17 SE2d 37 (1941). Moody v Burns, 222 SC 258, 72 SE2d 189 (1952).

That part of this section [former Code 1962 Section 10‑303] which provides that an action may be tried in any county in which one or more of the defendants reside at the time of the commencement of the action, means a material and bona fide defendant against whom a cause of action has been stated. The mere joining of a party as a defendant for the purpose of laying venue in a county different from the residence county of the real defendant will not suffice and the court will inquire into facts of the case sufficiently to determine the probability of a defendant being material when venue is dependent upon such defendant. White v Nichols, 190 SC 45, 1 SE2d 916 (1939). Wood v Lea, 219 SC 409, 65 SE2d 669 (1951).

In an action by a named beneficiary to determine her right to insurance and retirement system benefits, since the codefendant insurance companies were mere stakeholders and were ready to deliver the proceeds to the party legally entitled thereto, they were not material defendants and a change of venue was proper to the county in which the remaining defendant had qualified as executor. Wade v. South Carolina Retirement System (S.C. 1974) 262 S.C. 539, 205 S.E.2d 835.

In an action for insurance and retirement benefits by named beneficiary against multiple defendants, life insurer and state retirement system were not material defendants, but mere stakeholders, thus executor entitled to change of venue. Wade v. South Carolina Retirement System (S.C. 1974) 262 S.C. 539, 205 S.E.2d 835.

And such right cannot be defeated by joinder of a sham or immaterial defendant. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

The fact that a complaint may state a cause of action against a sham or immaterial defendant is not ipso facto conclusive, and a defendant may be mala fide requiring granting of motion to change venue even though allegations and proof apparently available may be sufficient to submit case to jury. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

Where the issue of joinder of a sham or immaterial defendant is raised, the party asserting the right to maintain an action in a different county should at least “balance” the testimony showing such right. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13. Venue 68

In action against railroad and automobile driver for wrongful death of automobile passenger stemming from crossing collision, trial court did not abuse discretion in holding that driver was bona fide defendant and venue was proper in county of his residence, since the complaint stated cause of action against driver and railroad alleged in answer that collision was caused by driver’s sole negligence. Perdue v. Southern Ry. Co. (S.C. 1957) 232 S.C. 78, 101 S.E.2d 47.

In considering a motion for change of venue on ground that a defendant is immaterial, the court will inquire into the facts of the case sufficiently to determine the probability of the defendant’s being material when venue is dependent upon such defendant, and the judge before whom the motion is made sits as both judge and jury. Belger v. Caldwell (S.C. 1957) 231 S.C. 335, 98 S.E.2d 758. Venue 72

A finding by the judge that a defendant is a bona fide defendant will not be disturbed by Supreme Court unless it appears manifestly wrong under the circumstances. Belger v. Caldwell (S.C. 1957) 231 S.C. 335, 98 S.E.2d 758.

Where two defendants who reside in different counties are sued jointly, this section [former Code 1962 Section 10‑303] provides that the case may be tried in either of the two counties, and in ruling upon a motion for change of venue the lower court sits as judge and jury and may go beyond the pleadings to determine whether or not a defendant is material and bona fide. A defendant may be mala fide, so as to require the granting of a motion to change venue even though the allegations may be sufficient to submit the case to the jury. Peters v. Double Cola Bottling Co. of Columbia (S.C. 1954) 224 S.C. 437, 79 S.E.2d 710.

Where one defendant was not made a party defendant by lawful service of summons, other defendants who resided in a different county were entitled to change of venue. King v. Moore (S.C. 1953) 224 S.C. 400, 79 S.E.2d 460.

The driver of the third car involved in an automobile collision was not a material defendant in an action for wrongful death arising out of the collision where the evidence showed that any negligence of the driver of the third car was not the proximate cause of the collision. Moody v. Burns (S.C. 1952) 222 S.C. 258, 72 S.E.2d 189.

For a case which held that the plaintiff had not stated a cause of action against the codefendant and that the real defendant was entitled to a change of venue to the place of his residence, see Rogers v. Montgomery (S.C. 1938) 188 S.C. 244, 198 S.E. 380.

16. Application to particular actions, proceedings or defendants—In general

Proper venue for vendor’s cause of action against purchaser for specific performance of contract for sale of land was the county of purchaser’s residence, where object of vendor’s action was to recover purchase price of contract and did not directly operate to change title. Truck South, Inc. v. Patel (S.C.App. 1998) 332 S.C. 222, 503 S.E.2d 774, rehearing denied, certiorari granted, reversed 339 S.C. 40, 528 S.E.2d 424. Venue 7.5(5)

A hearing on a motion for summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure constitutes a “trial” within the meaning of Section 15‑7‑30, such that it must be held in the county of the defendant’s residence. Royster Co. v. Eastern Distribution, Inc. (S.C. 1990) 301 S.C. 18, 389 S.E.2d 863.

Under general statutes with respect to venue, and in the absence of some special statute to the contrary, a personal representative, such as an executor or administrator, may be sued in the county in which he resides, regardless of where the estate is pending settlement or where a decedent might have been sued, and he is entitled to have the suit brought in the county where he resides and was served. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

At common law the executor was sued, in transitory actions, where he resided. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

This section is applicable to a proceeding by a wife against her husband to enforce support of their children. Fordham v. Fordham (S.C. 1953) 223 S.C. 401, 76 S.E.2d 299.

Where an action was brought against a nonresident motorist under Section 437 of the 1942 Code (former Code 1962 Section 46‑104), venue was properly laid in the county of the residence of the plaintiff, in Courtney v. Meyer (S.C. 1943) 202 S.C. 437, 25 S.E.2d 481.

This section [former Code 1962 Section 10‑303] is not applicable to an action brought against the board of commissioners of police insurance and annuity fund for disability benefits; this being an action against a public officer or board, the venue thereof must be determined by the provisions of former Code 1962 Section 10‑302. Baldwin v. Board of Com’rs of Police Ins. and Annuity Fund of South Carolina (S.C. 1941) 196 S.C. 112, 12 S.E.2d 846. Venue 11

A proceeding by a receiver, appointed in an action against a mutual fire insurance company, against a member of the company, if regarded as a separate suit, must be brought in the county in which the member is a resident and in which the property alleged to be subject to a lien is situated. Wetmore v. Scalf (S.C. 1910) 85 S.C. 285, 67 S.E. 298. Venue 18; Venue 21

Proceedings in mandamus are triable in the county where respondent resides. State v. Smith (S.C. 1897) 50 S.C. 558, 27 S.E. 933.

A confession of a judgment can be entered only in the county in which the judgment could have been obtained by an action under this section [former Code 1962 Section 10‑303], namely, the county wherein the defendant resides. Ex parte Ware Furniture Co. (S.C. 1897) 49 S.C. 20, 27 S.E. 9.

An action to set aside a judgment and sale of property thereunder, and for an accounting, is a personal action, and under this section [former Code 1962 Section 10‑303] must be brought in the county where one or more of the defendants reside. Bell v. Fludd (S.C. 1888) 28 S.C. 313, 5 S.E. 810. Judgment 455

The provisions of this section [former Code 1962 Section 10‑303] are not applicable to an action removed from a State court to a Federal court. Williamson v. E.R. Squibb & Sons, 1939, 30 F.Supp. 629.

17. —— Child custody, application to particular actions, proceedings or defendants

Under Code former 1962 Section 20‑115 a divorce suit is pending for the purpose of an order as to the custody of children after as well as before final judgment. That section expressly vests in the divorce court the power to award the custody of children, and from time to time to modify or vacate its orders, and the necessary implication is that this jurisdiction is exclusive. Clinkscales v. Clinkscales (S.C. 1963) 243 S.C. 377, 134 S.E.2d 216.

The exclusive and continuing jurisdiction of the court granting the divorce under Code 1962 Section 20‑115 precludes another court of like jurisdiction from changing the custody previously adjudicated. Clinkscales v. Clinkscales (S.C. 1963) 243 S.C. 377, 134 S.E.2d 216.

18. —— Mortgage, notes, contracts, bonds and the like, application to particular actions, proceedings or defendants

A plaintiff should have been granted a change of venue to the county specified by written contract where (1) the action was based on the contract, (2) the contract provided that any dispute arising out of the contract would be tried in the specified county, and (3) even though the contract was prepared by the plaintiff and the venue term was included in small print on the back, the defendant did not demonstrate that he was ignorant or unwary, and thus should not have been excused for failing to read the document. Stanley Smith & Sons v. D.M.R. Inc. (S.C.App. 1992) 307 S.C. 413, 415 S.E.2d 428.

Confession of judgment on promissory note was properly enrolled in Richland County even though debtors were all Lexington County residents, since consent to confession of judgment was equivalent to voluntary appearance. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Judgment 16

Where an action is brought for the foreclosure of a chattel mortgage, the property embraced within such mortgage being in the possession of the person instituting the action for foreclosure, the case should be tried in the county of residence of the defendant. W. C. Caye & Co. v. Saul (S.C. 1956) 229 S.C. 306, 92 S.E.2d 696.

The bond of a public officer is a contract, and an action upon the bond alone is an action upon a contract. Being an action upon a contract, it is then, for the purpose of determining jurisdiction of the courts, a transitory action as contradistinguished from a local action. Chappell v. Fidelity & Deposit Co. of Maryland (S.C. 1940) 194 S.C. 124, 9 S.E.2d 592.

Action to recover on a promissory note is a transitory action, founded on contract, and under this section [former Code 1962 Section 10‑303] is properly triable in the county where the defendant resides. Odell Hardware Co. v. Scarborough’s, Inc. (S.C. 1938) 186 S.C. 370, 195 S.E. 631. Venue 7(2)

Where a complaint states a cause of action against a maker and an endorser of a note, and a cause of action against the guarantors who live in different counties, the circuit court of either county has jurisdiction under this section [former Code 1962 Section 10‑303] in the absence of demurrer for improper joinder of causes of action. Bank of Dillon v. Adams (S.C. 1923) 125 S.C. 210, 118 S.E. 417.

An action to foreclose a mortgage brought in the county of one defendant’s residence, which was also the county wherein a part of the property was situated, gives the court jurisdiction over another defendant residing elsewhere for a deficiency in payment. Wagener v. Swygert (S.C. 1889) 30 S.C. 296, 9 S.E. 107.

19. —— Partners, application to particular actions, proceedings or defendants

A justice of the county wherein resides a partner in a firm of three partners has jurisdiction under this section [former Code 1962 Section 10‑303] of an action against the three partners for the amount of a debt contracted by the partnership. Strickland v. Strickland (S.C. 1913) 95 S.C. 492, 79 S.E. 520.

The court of the county wherein resides one of the partners of a partnership has jurisdiction to try an action against the partnership and partners on a debt and to appoint a receiver for the partnership assets. Whilden v. Chapman (S.C. 1908) 80 S.C. 84, 61 S.E. 249.

20. —— Negligence actions, application to particular actions, proceedings or defendants

Action for damages, for negligent installation of a canopy structure to real property owned by the plaintiff, was not an action for injury to real property within the meaning and intent of the statute, but an action on a contract and thus plaintiff was entitled to a change of venue to his county of residence. Coastal Mall, Inc. v. Askins (S.C. 1975) 265 S.C. 307, 217 S.E.2d 725.

A personal codefendant in a tort action in which the State Highway Department is also a codefendant may not insist, as a matter of right, that the venue be laid originally in the county of his residence. Deese v. Williams (S.C. 1960) 236 S.C. 292, 113 S.E.2d 823. Venue 22(9); Venue 52(1)

Defendant in negligence action was not entitled to trial in county of residence where codefendant was liability insurer of State‑owned school bus and the action was properly brought pursuant to article 5 of chapter 16 of Title 21 in county where accident occurred. Thomas v. Nationwide Mut. Auto. Ins. Co. (S.C. 1958) 232 S.C. 358, 102 S.E.2d 266.

21. —— Corporations, application to particular actions, proceedings or defendants

In the absence of a statute confining residence to a particular county, a domestic corporation is a resident in any county in the State where it maintains an agent and conducts its corporate business and under this section [former Code 1962 Section 10‑303] must be sued in such county. Elms v Southern Power Co., 78 SC 323, 58 SE 809 (1907). McGrath v Piedmont Mut. Ins. Co., 74 SC 69, 54 SE 218 (1906). Nixon v Piedmont Mut. Ins. Co., 74 SC 438, 54 SE 657 (1906). Patterson v Orangeburg Fert. Co., 120 SC 478, 113 SE 318 (1922). Peeples v Orkin Exterminating Co., 244 SC 173, 135 SE2d 845 (1964).

The residence of a domestic corporation has been declared to be, and such corporation may be sued (1) in the county where its principal place of business is fixed by its charter, and (2) in any county where it has and maintains a place of business and an agent engaged in conducting and carrying on the business for which it exists. Morris v Peoples Bkg. Co., 191 SC 501, 5 SE2d 286 (1939). Gibbes v National Hospital Service, 202 SC 304, 24 SE2d 513 (1943).

A corporation chartered under the laws of this State, that is to say, a domestic corporation, is a resident in any county in the State where it maintains an agent and conducts its corporate business, and suit may be brought against it in any such county. Tucker v Ingram, 187 SC 525, 198 SE 25 (1938). Willis v Industrial Life, etc., Ins. Co., 192 SC 304, 6 SE2d 706 (1939). Miller v Boyle Constr. Co., 198 SC 166, 17 SE2d 312 (1941).

There is no specific legislation in this State upon the subject of the place of trials of actions against domestic corporations. Bass v American Products, etc., Corp., 124 SC 346, 117 SE 594 (1923). Tobin v Chester, etc., R. Co., 47 SC 387, 25 SE 283 (1896).

For purposes of venue, a defendant corporation resides in any county where it (1) maintains its principal place of business or (2) maintains an office and agent for the transaction of business. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 22(8)

Whether defendant corporation owns property or transacts business in county where action is brought is not a viable test for determining whether venue is proper; abrogating Miller v. Boyle Constr. Co., 198 S.C. 166, 17 S.E.2d 312, Lott v. Claussens, Inc., 251 S.C. 478, 163 S.E.2d 615, In re Asbestosis Cases, 274 S.C. 421, 266 S.E.2d 773, In re Asbestosis Cases, 276 S.C. 579, 281 S.E.2d 112, Thomas & Howard Co., Inc. v. Wetterau, Inc., 291 S.C. 237, 353 S.E.2d 141. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 22(8)

Railroad, which was a corporation, did not “reside,” for purposes of venue statute, in county in which locomotive engineer filed his action, which was brought under Federal Employer’s Liability Act (FELA) and federal Locomotive Inspection Act (LIA) and which arose from injuries that engineer allegedly suffered as result of exposure to excessive heat in locomotive cab; railroad did not maintain office and agent for transaction of business in county. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 22(8)

Defendant corporation resided in county for venue purposes, where it had contracts to supply 9 retail outlets, and those outlets accounted for approximately 5 percent of the defendant’s business in the state. Thomas & Howard Co., Inc. v. Wetterau Inc. (S.C. 1987) 291 S.C. 237, 353 S.E.2d 141. Corporations And Business Organizations 2528

For venue purposes, corporate defendant is deemed to reside in any county where the corporation owns property and transacts business. Thomas & Howard Co., Inc. v. Wetterau Inc. (S.C. 1987) 291 S.C. 237, 353 S.E.2d 141. Corporations And Business Organizations 2528

Contracts may be property rights for purposes of venue; however, where a corporation’s property rights are based solely on contract rights, the property right evidenced by the contract must be both substantial and continuous. Thomas & Howard Co., Inc. v. Wetterau Inc. (S.C. 1987) 291 S.C. 237, 353 S.E.2d 141. Venue 7(.5)

The residence of a domestic corporation is the county where its principal place of business is fixed by its charter, or any county where it has and maintains a place of business or an agent engaged in conducting and carrying on the business for which it exists. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

The residence of a corporate fiduciary should not be held to be only that county wherein it is appointed and qualifies as executor. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

An agent is one appointed by a principal as his representative and to whom the principal confides the management of some business to be transacted in the principal’s name, or on his account, and who brings about or effects legal relationships between the principal and third parties. Peeples v. Orkin Exterminating Co. (S.C. 1964) 244 S.C. 173, 135 S.E.2d 845. Principal And Agent 1

A person performing the function of an answering service is not an agent within the meaning of the venue statutes. Peeples v. Orkin Exterminating Co. (S.C. 1964) 244 S.C. 173, 135 S.E.2d 845. Corporations And Business Organizations 2528

Although no legislation specifies the place of trial of a transitory action against a corporation, this section [former Code 1962 Section 10‑303] is construed as applicable in such cases, and that for the purpose of venue a corporation is a resident not only of the county where its principal office is located, but also of any county in which it has an office and conducts its corporate business. Deese v. Williams (S.C. 1960) 236 S.C. 292, 113 S.E.2d 823.

If there be two defendants in a transitory action, one corporate and the other individual, resident in different counties, the plaintiff has the same choice of venue that would have been available to him had both defendants been natural persons. Deese v. Williams (S.C. 1960) 236 S.C. 292, 113 S.E.2d 823.

In an action against aa domestic corporation, venue was improper in county where defendant had no place of business, office, agent or property, and transacted no business except making occasional deliveries of lumber purchased from its plant in another county. Thomas & Howard Co. of Conway v. Marion Lumber Co. (S.C. 1958) 232 S.C. 304, 101 S.E.2d 848.

Where action was commenced against a domestic corporation in a county where it owned no property and had no agent, although the corporation did transact business in such county in that it delivered bakery products to customers there by means of a truck operated by its agent or employee, venue was properly transferred to the county of the corporation’s residence. Brown v. Palmetto Baking Co. (S.C. 1951) 220 S.C. 38, 66 S.E.2d 417. Corporations And Business Organizations 2530

The test as to residence in order to bring an action against a domestic corporation is not primarily the duration of the work in which the domestic corporation is engaged, or the length of residence, but rather whether the corporation has and maintains a place of business, or an agent engaged in conducting and carrying on the business for which it exists. Miller v. Boyle Const. Co. (S.C. 1941) 198 S.C. 166, 17 S.E.2d 312. Corporations And Business Organizations 2529

For a case where the facts presented were sufficient to sustain the findings of the trial judge that the defendant maintained an agent and was doing business within the county where suit was brought, see Willis v. Industrial Life & Health Ins. Co. of Atlanta, Ga. (S.C. 1939) 192 S.C. 304, 6 S.E.2d 706.

A railroad corporation is a resident of a county where its line is located, and where it maintains a public office and an agent upon whom process may be served. Tobin v. Chester & L. Narrow‑Gauge R. Co. (S.C. 1896) 47 S.C. 387, 25 S.E. 283, 58 Am.St.Rep. 890.

22. —— Foreign corporations, application to particular actions, proceedings or defendants

Under this section [former Code 1962 Section 10‑303] a plaintiff may elect in which county he will sue a foreign corporation. Dennis v Atlantic Coast Line Ry. Co., 86 SC 258, 68 SE 465 (1910). Sanders v Allis Chalmers Mfg. Co., 235 SC 259, 111 SE2d 201 (1959).

A foreign corporation establishes a residence for venue purposes by having an office and agent in the county for the transaction of business, notwithstanding a foreign corporation is ordinarily deemed a nonresident of the State. Tucker v Ingram, 187 SC 525, 198 SE 25 (1938). Shelton v Southern Kraft Corp., 195 SC 81, 10 SE2d 341 (1940).

If a foreign corporation, whether or not domesticated, having an agent and office for the transaction of business in a particular county, is sued in that county with a resident of another county of the State, the case may be properly tried in the county in which the action was brought; if the foreign corporation is sued in a county where it has no agent or place of business, along with a codefendant who is resident of another county of the State, the place of trial should be changed to the county of the residence of the codefendant. Campbell v Mutual Benefit Health, etc., Ass’n, 161 SC 49, 159 SE 490 (1931). Tucker v Ingram, 187 SC 525, 198 SE 25 (1938). Warren v Smith, 190 SC 8, 1 SE2d 900 (1939). Windham v Pace, 192 SC 271, 6 SE2d 270 (1939).

In cases of foreign corporations doing business within the State, the same may be sued in any county in the State where such corporation maintains an agent and transacts its business. Willis v Industrial Life, etc., Ins. Co., 192 SC 304, 6 SE2d 706 (1939). Elms v Southern Power Co., 78 SC 323, 58 SE 809 (1907).

Circuit Court lacks subject matter jurisdiction in wrongful death action brought by South Carolina resident as personal representative of deceased nonresident against foreign corporation, upon cause of action that did not arise or the subject matter of which was not situated, within South Carolina, since deceased could not have brought action herself, nor avoided Section 15‑5‑150 by assigning cause of action to resident. Nix v. Mercury Motor Exp., Inc. (S.C. 1978) 270 S.C. 477, 242 S.E.2d 683.

If a foreign corporation is sued in a county where it has no agent or place of business, along with a codefendant who is a resident of the state, venue should be changed to the county of the codefendant’s residence. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

A foreign corporation having a railroad running through a county and maintaining offices and agents therein is a resident thereof within this section [former Code 1962 Section 10‑303], and it is improper to transfer the cause to the county where another defendant resides. Hayes v. Seaboard Air Line Ry. (S.C. 1914) 98 S.C. 6, 81 S.E. 1102. Railroads 33(2)

A resident sued with a foreign corporation may, under this section [former Code 1962 Section 10‑303], compel the case to be transferred for trial to the county of his residence, if the venue is laid in any other county. Barfield v. Southern Cotton Oil Co. (S.C. 1910) 87 S.C. 322, 69 S.E. 603. Venue 22(8)

Under this section [former Code 1962 Section 10‑303] a court of common pleas would have jurisdiction of an action against a foreign fire insurance company, though the company had no agent in that county and the policy was issued in another county, where the insured property was located and in which plaintiff resided at the time of the loss. Berry v. Virginia State Ins. Co. (S.C. 1909) 83 S.C. 13, 64 S.E. 859.

An action against a foreign corporation may be brought in any county the plaintiff elects, and if the corporation appears and admits that it is a foreign corporation, the court acquires jurisdiction which cannot be overthrown by showing that defendant had become domesticated. Elms v. Southern Power Co. (S.C. 1907) 78 S.C. 323, 58 S.E. 809.

When a corporation appears and answers in a suit against it, admitting that it is a foreign corporation, it will be so considered for the purposes of jurisdiction under this section [former Code 1962 Section 10‑303], though it be shown afterwards that it had been domesticated. Elms v. Southern Power Co. (S.C. 1907) 78 S.C. 323, 58 S.E. 809.

**SECTION 15‑7‑40.** Suits against certain fiduciaries.

 Any administrator or administratrix appointed by any probate court of this State may be sued in the county where such administration has been granted. Any executor or executrix may likewise be sued in the county where the testator’s will has been proved or admitted to probate. Any guardian may likewise be sued in the county in which the letters of guardianship have been issued.

HISTORY: 1962 Code Section 10‑304; 1952 Code Section 10‑304; 1942 Code Section 422; 1932 Code Section 422; Civ. P. ‘22 Section 378; Civ. P. ‘12 Section 174; Civ. P. ‘02 Section 146; 1870 (14) 453 Section 148; 1875 (15) 913; 1898 (22) 687; 1905 (24) 848.

CROSS REFERENCES

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

Proof of service in Probate Court, see SC R PROB CT Rule 10.

Summons, publication, and personal service in Probate Court, see SC R PROB CT Rule 5.

Venue for proceedings under the South Carolina Probate Code, see Sections 62‑1‑303, 62‑3‑201.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

Venue of guardianship proceedings, see Sections 62‑5‑302, 62‑5‑403.

LIBRARY REFERENCES

Westlaw Key Number Search: 162k436.

Executors and Administrators 436.

C.J.S. Executors and Administrators Sections 745 to 746.

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S.C. Jur. Guardian and Conservator Section 42, Claims Against a Guardian.

S.C. Jur. Venue Section 9, Executor or Administrator.

S.C. Jur. Venue Section 10, Family Court.

NOTES OF DECISIONS

In general 1

1. In general

At common law the executor was sued, in transitory actions, where he resided. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

The provision, “Any executor or executrix may likewise be sued in the county where the testator’s will has been proved or admitted to probate” is simply a permissive one as opposed to a mandatory one. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

Under general statutes with respect to venue, and in the absence of some special statute to the contrary, a personal representative, such as an executor or administrator, may be sued in the county in which he resides, regardless of where the estate is pending settlement or where a decedent might have been sued, and he is entitled to have the suit brought in the county where he resides and was served. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

Under this section [former Code 1962 Section 10‑304] a party has the option of suing a bank in the county where the bank qualified as executor, regardless of its residence. Keller v. Bank of Orangeburg (S.C. 1969) 253 S.C. 66, 169 S.E.2d 99.

Where an action was brought against a defendant individually and in his capacity as executor, but the complaint stated no cause of action against the defendant in his capacity as executor, the defendant in his capacity as executor was not a material and bona fide defendant, and a motion for a change of venue from the county where defendant qualified as executor to the county of his residence should have been granted. Wood v. Lea (S.C. 1951) 219 S.C. 409, 65 S.E.2d 669.

**SECTION 15‑7‑50.** Hearing elsewhere by consent.

 Nothing in Sections 15‑7‑10, 15‑7‑30 or 15‑7‑40 contained shall be so construed as to prevent the hearing of any such action as is referred to in those sections by consent of the parties or their attorneys and of the guardian ad litem of any infant party to the action in a county other than that in which the action may have been brought and may be pending or other than that in which the property is situated.

HISTORY: 1962 Code Section 10‑305; 1952 Code Section 10‑305; 1942 Code Sections 420, 422; 1932 Code Sections 420, 422; Civ. P. ‘22 Sections 376, 378; Civ. P. ‘12 Sections 172, 174; Civ. P. ‘02 Sections 144, 146; 1870 (14) 453 Sections 146, 148; 1875 (15) 913; 1887 (19) 835; 1894 (21) 793; 1898 (22) 687; 1905 (24) 848.

CROSS REFERENCES

Requirement that consent must be in writing, see Circuit Ct Rule of Practice, Rule 14 and Probate Ct Rules of Practice, Rule 9.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 95k127(4).

Contracts 127(4).

C.J.S. Contracts Section 237.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Venue Section 10, Family Court.

NOTES OF DECISIONS

In general 1

1. In general

A plaintiff should have been granted a change of venue to the county specified by written contract where (1) the action was based on the contract, (2) the contract provided that any dispute arising out of the contract would be tried in the specified county, and (3) even though the contract was prepared by the plaintiff and the venue term was included in small print on the back, the defendant did not demonstrate that he was ignorant or unwary, and thus should not have been excused for failing to read the document. Stanley Smith & Sons v. D.M.R. Inc. (S.C.App. 1992) 307 S.C. 413, 415 S.E.2d 428.

This section [former Code 1962 Section 10‑305] which allows a trial out of the proper county by the consent of the parties does not require the consent to be in writing and the absence of such written consent will have no effect if the agreement is admitted or has been carried into effect. Pearson v. Breeden (S.C. 1908) 79 S.C. 302, 60 S.E. 706. Stipulations 6

**SECTION 15‑7‑60.** Suits for penalty on freight claims.

 Any action to recover a penalty against any common carrier for loss, delay or damage to freight may be brought before any court of competent jurisdiction in any county in this State in which the cause of action for the damage in such case may be brought.

HISTORY: 1962 Code Section 10‑306; 1952 Code Section 10‑306; 1942 Code Section 7170; 1932 Code Section 7170; Civ. C. ‘22 Section 3892; Civ. C. ‘12 Section 2576; 1909 (26) 22.

CROSS REFERENCES

Requirement that actions be tried where cause of action arose, see Section 15‑7‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 70k130.

Carriers 130.

C.J.S. Carriers Section 433.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Venue Section 8, Freight Claims.

**SECTION 15‑7‑70.** Suits against insurance companies.

 All suits brought against any and all fire, life or other insurance companies doing business in this State may be brought in the county where the loss occurs. But nothing herein contained shall be so construed as to prevent the court from changing the place of trial for any of the causes provided for in Section 15‑7‑100.

HISTORY: 1962 Code Section 10‑307; 1952 Code Section 10‑307; 1942 Code Section 423; 1932 Code Sections 423, 7997; Civ. P. ‘22 Section 379; Civ. P. ‘12 Section 175; Civ. C. ‘22 Section 4111; Civ. C. ‘12 Section 2732; 1906 (25) 111.

CROSS REFERENCES

Venue of actions against surety companies, see Section 38‑15‑100.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3559.

Insurance 3559.

C.J.S. Insurance Sections 1542 to 1543.

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1. In general

Cited in Darby v Southern Ry. Co., 108 SC 145, 93 SE 716 (1917). Ex parte Townes, 97 SC 56, 81 SE 278 (1914). Ross v American Income Life Ins. Co., 232 SC 433, 102 SE2d 743 (1958).

To sustain venue under this section [former Code 1962 Section 10‑307] it must appear (1) that the action is one for a loss under the policy, and (2) that such loss occurred in the county where suit is brought. Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

Stated in South Carolina Elec. & Gas Co. v. Aetna Ins. Co. (S.C. 1959) 235 S.C. 147, 110 S.E.2d 165.

2. “Where the loss occurs”

This section [former Code 1962 Section 10‑307] permits corporations doing business in this State to be sued, not only in the county of their residence, but also “in the county where the loss occurs.” Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

The phrase “where the loss occurs,” as used in this section [former Code 1962 Section 10‑307] contemplates loss from a casualty insured against under the terms of the policy. Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

The phrase “where the loss occurs” contemplates loss from a casualty insured against under the terms of an insurance policy and does not include damages resulting from alleged fraud, deceit and misrepresentation as to the coverage of the policy, and in such a case this section [former Code 1962 Section 10‑307] does not apply. Hodge v. Reserve Life Ins. Co. (S.C. 1956) 229 S.C. 326, 92 S.E.2d 849.

3. “Loss”

The word “loss” in connection with insurance, and under this section [former Code 1962 Section 10‑307], is a comprehensive term and means any injury, destruction or damage resulting from the occurrence of the contingency insured against. Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

4. Application in particular circumstances—In general

This section [former Code 1962 Section 10‑307] clearly authorizes the trial of an action against an insurance company in the county where the loss occurs, even though the insurance company has no office or agent in such county. Padgett v. Calvert Fire Ins. Co. (S.C. 1952) 221 S.C. 166, 69 S.E.2d 565. Insurance 3559

As applied to the court of common pleas, this section [former Code 1962 Section 10‑307] gives the plaintiff a choice of suing his claim either in the county of the defendant’s residence, or in the county where the loss occurs. Gibbes v. National Hospital Service (S.C. 1943) 202 S.C. 304, 24 S.E.2d 513.

In an action against a mutual benefit company for refusal to issue a policy pursuant to an agreement, this section [former Code 1962 Section 10‑307] was inapplicable, venue being determined by law applicable to other domestic corporations. Harrison v. Carolina Mut. Ben. Corp. of S. C. (S.C. 1934) 174 S.C. 338, 177 S.E. 395. Insurance 3559

The failure of plaintiff, suing a mutual benefit company for refusal to deliver a policy, to serve the company’s agent, if any, in county of forum, entitled the company to have the case transferred to the county wherein service was made on an officer of the company at its home office. Harrison v. Carolina Mut. Ben. Corp. of S. C. (S.C. 1934) 174 S.C. 338, 177 S.E. 395. Insurance 3559

5. —— Negligent failure to defend suit against insured, application in particular circumstances

The obligation on the part of an insurance company to defend an action brought against the plaintiff is just as much an integral part of the coverage afforded by the policy as is the obligation to pay within the policy limits any judgment obtained against the insured. The liability of the defendant to defend, therefore, arises directly from the provisions of the policy itself. When the defendant negligently failed to defend the insured and damage resulted to him by reason thereof, the insured sustained a loss as is contemplated by the provisions of this section [former Code 1962 Section 10‑307]. Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

Where suit is brought and liability adjudicated against an insurer under a policy of liability insurance which contains an agreement to defend and the liability of the insured results from a breach by the insurer of such policy provisions, a loss is sustained by the insured where the suit is brought and liability adjudicated. Smith v. Ramsey (S.C. 1964) 244 S.C. 168, 135 S.E.2d 849.

6. Obligation to defend

The determination of whether a liability insurance company is obligated to defend an action under its policy provisions is based on the allegations of the complaint. S.C. Farm Bureau Mut. Ins. Co. v. Oates (S.C.App. 2003) 356 S.C. 378, 588 S.E.2d 643. Insurance 2914

**SECTION 15‑7‑80.** Suits by certain mutual insurance companies against members.

 All suits instituted by any mutual life insurance company or mutual fire insurance company formed in this State against a member or former member of such company or any receiver of such company against any member or former member of such company shall be brought in the county in which such member resides.

HISTORY: 1962 Code Section 10‑308; 1952 Code Section 10‑308; 1942 Code Section 424; 1932 Code Section 424; Civ. P. ‘22 Section 380; 1912 (27) 776.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3559.

Insurance 3559.

C.J.S. Insurance Sections 1542 to 1543.

**SECTION 15‑7‑90.** Removal of suits by certain mutual insurance companies against members.

 Wherever any such suit or proceeding has been brought, either as an independent suit or an ancillary proceeding to a receivership suit, in any county other than the county where the member or former member resides the court where such proceeding is pending shall, upon motion of such member or former member sued, on affidavit showing that he resides in a different county, remove for trial such suit or proceeding to the county where such member or former member resides.

HISTORY: 1962 Code Section 10‑309; 1952 Code Section 10‑309; 1942 Code Section 425; 1932 Code Section 425; Civ. P. ‘22 Section 381; 1912 (27) 776.

CROSS REFERENCES

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 401k33 to 401k84.

Venue 33 to 84.

C.J.S. Trover and Conversion Section 719.

C.J.S. Venue Sections 127 to 316.

**SECTION 15‑7‑100.** Changing place of trial.

 (A) The court may change the place of trial if:

 (1) it is a court in a county designated for that purpose in the complaint, but the designated county is not the proper county pursuant to the provisions of Chapter 7 of Title 15 of the 1976 Code or other statutes providing for the venue of actions;

 (2) there is reason to believe that a fair and impartial trial cannot be had there; or

 (3) the convenience of witnesses and the ends of justice would be promoted by the change.

 (B) When the place of trial is changed, all other proceedings must be in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed or by order of the court. The pleadings and other papers must be filed or transferred accordingly.

HISTORY: 1962 Code Section 10‑310; 1952 Code Section 10‑310; 1942 Code Sections 35, 426; 1932 Code Sections 35, 426; Civ. P. ‘22 Sections 34, 382; Civ. P. ‘12 Section 176; Civ. P. ‘02 Section 147; Civ. C. ‘12 Section 3832; Civ. C. ‘02 Section 2735; G. S. 2114; R. S. 2246; 1870 (14) 339, 453 Section 149; 1879 (17) 14; 1896 (22) 12; 1905 (24) 845; 2005 Act No. 27, Section 4, eff July 1, 2005, applicable to causes of action arising on or after that date.

Effect of Amendment

The 2005 amendment designated subsections (A) and (B); rewrote subsection (A)(1); in subsection (B) in the second sentence substituted “The pleadings and other papers must” for “And the papers shall”; and made language changes throughout.

CROSS REFERENCES

Changing place of trial under South Carolina Rules of Civil Procedure, see Rule 72, SCRCP.

Constitutional provisions for change of venue upon proper showing supported by affidavit, see SC Const, Art 5, Section 23.

Powers of judges at chambers, see Section 14‑5‑350.

Procedure when fair and impartial trial cannot be had in county, see Section 15‑7‑110.

Publication and mailing of summons, see Section 15‑9‑740.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 401k33 to 401k84.

Venue 33 to 84.

C.J.S. Trover and Conversion Section 719.

C.J.S. Venue Sections 127 to 316.

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S.C. Jur. Venue Section 18, Power, Duty, and Discretion of Court.

S.C. Jur. Venue Section 19, Condition of Cause.

S.C. Jur. Venue Section 22, Local Prejudice.

S.C. Jur. Venue Section 23, Convenience of Witnesses and Promotion of Justice.

S.C. Jur. Venue Section 24, Motion by Party.

Forms

South Carolina Litigation Forms and Analysis Section 11:4 , Motion to Transfer Action.

South Carolina Litigation Forms and Analysis Section 11:6 , Order for Transfer Action.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: practice and procedure: venue. 29 S.C. L. Rev. 156.

Nonresident Defendants Don’t Deserve Convenience or Justice in South Carolina. 55 SC Law Rev 443 (Spring 2004).

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1. In general

Applied in Padgett v Calvert Fire Ins. Co., 221 SC 166, 69 SE2d 565 (1952). Mayer v Master Feed & Grain Co., 150 SC 275, 157 SE2d 413 (1967).

The right of a defendant in a civil action to a trial in the county of his residence, pursuant to statute, is a substantial one, and such right is sometimes described as a valuable right not to be lightly denied. Skinner v Santoro, 245 SC 35, 138 SE2d 645 (1964). Oswald v Southern Farm Bureau Cas. Ins. Co., 238 SC 433, 150 SE2d 612 (1966).

Cited in Riddle v Reese, 53 SC 198, 31 SE 222 (1898). Easterling v Odom, 98 SC 171, 82 SE 407 (1914). Ex parte Townes, 97 SC 56, 81 SE 278 (1914). State v Harvey, 128 SC 494, 122 SE 860 (1924). Mahon v Burkett, 160 SC 48, 158 SE 141 (1931). Willis v Industrial Life, etc., Ins. Co. 192 SC 304, 6 SE2d 706 (1939). Hancock v Southern Cotton Oil Co., 213 SC 506, 50 SE2d 187 (1948). Brown v Palmetto Baking Co., 221 SC 183, 69 SE2d 598 (1952). Leppard v Jordan’s Truck Line, 110 F Supp 811 (1953). Witherspoon v Spotts & Co., 227 SC 209, 87 SE2d 477 (1955). Whitley v Lineberger Bros., 233 SC 182, 104 SE2d 70 (1958). Green v Boney, 233 SE 49, 103 SE2d 732 (1958). Gibbs v Young, 242 SC 217, 130 SE2d 484 (1963).

Quoted in Landrum v State Highway Department, 168 SC 139, 167 SE 164 (1932). Shelton v Southern Kraft Corp., 195 SC 81, 10 SE2d 341 (1940).

The right of a plaintiff under Code 1962 Section 10‑303, to bring an action in any county he shall designate, where the defendants are nonresidents, is subject, under this section [Code 1962 Section 10‑310], to the power of the court to change the place of trial upon a proper showing that both the convenience of the witnesses and the ends of justice will be promoted by the change. Miller v. Miller (S.C. 1966) 248 S.C. 125, 149 S.E.2d 336. Venue 51; Venue 52(1)

Necessity of jury viewing scene of collision is not a separate ground for change of venue under this section [Code 1962 Section 10‑310] and may be considered only in connection with the other grounds properly put forth. Rice v. Hartness Bottling Works (S.C. 1955) 226 S.C. 532, 86 S.E.2d 67.

Defendant in an action for personal injuries has a right to be sued in the county of his residence, but that right is subject to the right of plaintiff to have the place of trial changed to another county, if both the convenience of the witnesses and the ends of justice will be promoted thereby. Stanton v. Sims (S.C. 1953) 223 S.C. 109, 74 S.E.2d 693. Venue 21; Venue 51; Venue 52(1)

State court may change place of trial of action under Federal Employers’ Liability Act. Smith v. Atlantic Coast Line R. Co. (S.C. 1951) 218 S.C. 481, 63 S.E.2d 311.

Section limits right to trial where defendant resides. The right to trial in the county where the defendant resides, granted in Code 1962 Section 10‑303, is a substantial right. However, the legislature did not intend that such rule was inflexible for it enacted this section [Code 1962 Section 10‑310] which sets out when the place of trial may be changed. Roof v. Tiller (S.C. 1940) 195 S.C. 132, 10 S.E.2d 333, 132 A.L.R. 500.

This statute provides a method, when the requirements are met, of changing the place of trial from the county of residence of a defendant, and is in derogation rather than in conflict with the statutory right of a defendant to the trial of a case in the county in which the defendant resides at the time of the commencement of an action. Johnston v. Belk‑McKnight Co. of Newberry (S.C. 1940) 194 S.C. 490, 10 S.E.2d 1.

Although the language of Code 1962 Section 10‑303 is mandatory, and places exclusive jurisdiction within the county of residence, a court is fully empowered under the provisions of this section [Code 1962 Section 10‑310] to change the place of trial, among other grounds, where the county designated in the complaint is not the proper county. Ex parte Jones (S.C. 1931) 160 S.C. 63, 158 S.E. 134, 77 A.L.R. 235.

This section [Code 1962 Section 10‑310] not affected by limitation of power in Code 1962 Section 10‑311. Code 1962 section 10‑311 relates only to a change of venue because a fair and impartial trial cannot be had in county of the venue, but it does not affect the court’s power to change the venue on the other grounds specified in this section [Code 1962 Section 10‑310]. Hanley v. Charleston Light & Water Co. (S.C. 1918) 110 S.C. 340, 96 S.E. 519. Venue 34

The provisions of this section [former Code 1962 Section 10‑310] exist unaffected by the provisions of former Code 1962 Section 10‑303 setting out place where action is to be tried. Williamson v. E.R. Squibb & Sons, 1939, 30 F.Supp. 629.

2. Motions; time requirements

Motions to change the place of trial are addressed to the discretion of the lower court, and its ruling will not be disturbed unless it appears from the facts presented that the court in the exercise of a sound judicial discretion committed manifest legal error. Frost v Protective Life Ins. Co., 199 SC 349, 19 SE2d 471 (1942). Gregory v Powell, 206 SC 261, 33 SE2d 629 (1945). Beard v Billups Petroleum Co., 228 SC 481, 90 SE2d 685 (1956). South Carolina Electric & Gas Co. v Aetna Ins. Co. 235 SC 147, 110 SE2d 165 (1959). Bryan v Ross, 236 SC 299, 114 SE2d 97 (1960). Basha v Waccamaw Lumber & Supply Co., 240 SC 140, 124 SE2d 912 (1962). Skinner v Santoro, 245 SC 35, 138 SE2d 645 (1964). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Gulledge v Young, 245 SC 88, 138 SE2d 833 (1964). Cavalier v Corley, 247 SC 509, 148 SE2d 372 (1966).

Either party may make a motion to change venue based on convenience of the witnesses and the ends of justice. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 59

A motion for a change of venue is addressed to the sound judicial discretion of the judge who hears it and his decision will not be disturbed by the Supreme Court except upon a clear showing of abuse of discretion amounting to manifest error of law. Oswald v. Southern Farm Bureau Cas. Ins. Co. (S.C. 1966) 248 S.C. 433, 150 S.E.2d 612. Appeal And Error 965; Venue 42

An application for a change of venue for convenience of witnesses and promotion of justice is addressed to the sound judicial discretion of the judge who hears it, and his discretion will not be disturbed except upon a clear showing of abuse thereof amounting to a manifest error of law. Miller v. Miller (S.C. 1966) 248 S.C. 125, 149 S.E.2d 336. Appeal And Error 965; Venue 42

If the only motion before the court had been that of the defendants to transfer the action to Charleston County the court would have been required to make the transfer to that county, since it could not have gone beyond the county designated in the motion before it. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50.

Where the circuit judge had before him motions to transfer the action from a county where neither defendant resided to Berkeley or Charleston County, either of which was a proper county for venue, neither the plaintiff nor the defendant had the absolute right to elect as to which county the action would be transferred, that decision was for the court to make. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50. Venue 74

There is no time prescribed in South Carolina statutes or rules for the making of a motion for a change of venue. Bryan v. Richardson (S.C. 1962) 240 S.C. 92, 124 S.E.2d 731. Venue 61

Motions for a change of venue may be first made upon the call of the calendar for the term of court for which the case is docketed for trial; upon dismissal of a resident defendant; or at successive terms of court; and after appeal to the Supreme Court resulting in elimination of one of the defendants. Bryan v. Richardson (S.C. 1962) 240 S.C. 92, 124 S.E.2d 731. Venue 61

Since this section [former Code 1962 Section 10‑310] fixes no time at which the motion to change the place of trial shall be made, there was no abuse of discretion in granting a change, even though not made until two years after the commencement of the action. Bryan v. Richardson (S.C. 1962) 240 S.C. 92, 124 S.E.2d 731.

This section [former Code 1962 Section 10‑310] fixes no time at which the motion to change the place of trial shall be made. It only provides for such a change when certain facts are made to appear to the satisfaction of the circuit judge. Royal Crown Bottling Co. v. Chandler (S.C. 1955) 228 S.C. 412, 90 S.E.2d 489.

On motions to change venue the facts are quite variant and no fixed rules can be laid down to cover each case; therefore, a great deal must be left to the discretion of the trial judge in deciding whether a proper showing has been made for a change. That discretion is judicial and must not be arbitrarily exercised. O’Shields v. Caldwell (S.C. 1946) 208 S.C. 245, 37 S.E.2d 665.

It is error to change the venue to a place of trial other than that stated in the motion. Coogler v. California Ins. Co. of San Francisco, Cal. (S.C. 1939) 192 S.C. 54, 5 S.E.2d 459.

Failure to docket case in county held not to deprive court of jurisdiction to hear motion to change venue. Dennis v. McKnight (S.C. 1931) 161 S.C. 213, 159 S.E. 557. Venue 60

This section [former Code 1962 Section 10‑310] fixes no time at which a motion for a change of venue shall be made, and the law thus being silent, the courts cannot say that it intended to say anything. Willoughby v. Northeastern R. Co. (S.C. 1896) 46 S.C. 317, 24 S.E. 308.

A plaintiff may move for change of venue after trial commenced. A party bringing an action in a certain county is not afterwards estopped from moving for a change of venue to another county. Willoughby v. Northeastern R. Co. (S.C. 1896) 46 S.C. 317, 24 S.E. 308. Venue 38

3. Appeals

Where change of venue has been granted, Supreme Court’s review is limited to deciding whether lower court made error of law so opposed to sound discretion as to amount to deprivation of legal rights of party opposing motion, keeping in mind rules of law that burden on moving party is formidable and that right of defendant in civil trial to be tried in county of residence is substantial one and should not lightly be ignored. Davenport v. Summer (S.C. 1977) 269 S.C. 382, 237 S.E.2d 494. Appeal And Error 965

On appeal from an order allowing or refusing a change of venue the appellate court does not try the issue anew, but decides whether or not the trial judge has abused his discretion by making a manifest error of law so opposed to sound discretion as to amount to a deprivation of the legal rights of the plaintiff. O’Shields v. Caldwell (S.C. 1946) 208 S.C. 245, 37 S.E.2d 665. Appeal And Error 965

4. Improper county designated—In general

Where an action is brought in the wrong county, the court may transfer it to a proper county on motion of either the plaintiff or defendant. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50. Venue 38; Venue 40

The mere fact that the plaintiff brought the action in the wrong county did not estop her from moving to transfer the action to a proper county. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50.

The mere fact that the plaintiff brought the action in the wrong county did not confer upon the defendants the absolute right to designate in which of the two proper counties the action would be tried. Mack v. Nationwide Mut. Ins. Co. (S.C. 1965) 245 S.C. 619, 142 S.E.2d 50. Venue 38

Where a domestic corporation entered into contracts with residents of a county, whereby upon an initial payment it treated buildings against termites and other pests and repaired such damage as had been caused by termites at that time, and upon the payment of an annual renewal fee, it agreed to make an annual inspection of the building and to continue to treat for termites and repair same when necessary, these contracts being a necessary part of its ordinary business, it was held that the rights, duties, and obligations of the parties to these contracts were not terminated upon initial treatment and repair of the buildings; but such obligations and duties, where the contract had been renewed, were continuous in nature, much the same as insurance contracts, upon payment of premiums, and not temporarily within the county. Thus, the trial court properly overruled a motion for a change of venue made on the ground that the defendant corporation owned no property in the county. Peeples v. Orkin Exterminating Co. (S.C. 1964) 244 S.C. 173, 135 S.E.2d 845.

Change of venue may be granted from a court of limited jurisdiction to a court of common pleas. Thomas & Howard Co. of Conway v. Marion Lumber Co. (S.C. 1958) 232 S.C. 304, 101 S.E.2d 848.

Under this section [former Code 1962 Section 10‑310], if the venue is laid in the wrong county, it must be changed to the proper county, regardless of whether that county is in the same or different circuit. Hanley v. Charleston Light & Water Co. (S.C. 1918) 110 S.C. 340, 96 S.E. 519. Venue 74

5. —— Court’s authority limited to changing venue to proper county, improper county designated

Where an action has been brought in a county where the court does not have jurisdiction of the subject matter or of the person, the cause cannot be dismissed but must be transferred to the proper county where the court does have jurisdiction. Brigman v One 1947 Ford Coupe, 213 SC 546, 50 SE2d 688 (1948). Taylor v Wall, 231 SC 683, 100 SE2d 400 (1957). Thomas & Howard Co. v Marion Lumber Co., 232 SC 304, 101 SE2d 848 (1958).

There may be a full jurisdiction or a limited jurisdiction in the courts, determined by the law which confers it. This section [former Code 1962 Section 10‑310] confers upon the courts of this State jurisdiction to the extent of changing the place of trial. Steele v Exum, 22 SC 276 (1885). Rafield v Atlantic Coast Line R. Co., 86 SC 324, 68 SE 631 (1910). All v Williams, 87 SC 101, 68 SE 1041 (1910).

A court in an action against a nonresident of the county may not dismiss the action for want of jurisdiction, but may remove the cause to the proper county for trial. Rafield v Atlantic Coast Line R. Co., 86 SC 324, 68 SE 631 (1910). Geiser v Sanders, 26 SC 70, 1 SE 159 (1887). Bell v Fludd, 28 SC 313, 5 SE 810 (1888). Steele v Exum, 22 SC 276 (1885). Ware v Henderson, 25 SC 385 (1886).

A court that is without proper venue to try a case on its merits nevertheless has statutory authority to change venue to the proper county and, upon a proper showing, it becomes the court’s imperative duty to do so. Whetstone v. South Carolina Dept. of Highways and Public Transp. (S.C. 1979) 272 S.C. 324, 252 S.E.2d 35. Venue 33

When a corporation moves for a change of venue on the ground that it is not a resident of the county in which it was sued, such motion is made under Code 1962 Section 10‑303 [Code 1976 Section 15‑7‑30], and the discretionary provisions of Code 1962 Section 10‑310 [Code 1976 Section 15‑7‑100] do not apply; thus, if it is uncontroverted that the corporation is a resident of another county, the court must, as a matter of law, transfer the case to the county of residence. Lucas v. Atlantic Greyhound Federal Credit Union (S.C. 1977) 268 S.C. 30, 231 S.E.2d 302.

A cause of action arose in one county whereby a resident of that county brought action in rem against an automobile. A writ of attachment was levied and the automobile was seized in another county where the owner resided. It was held that the court of the first county was correct in not dismissing the attachment and changing place of trial to the county of the owner’s residence. Brigman v. One 1947 Ford Convertible Coupe Auto., License No. D‑105,173 (S.C. 1948) 213 S.C. 546, 50 S.E.2d 688. Automobiles 250

Where a defendant is sued in the wrong county, the court has jurisdiction only to change the venue to the proper county under this section [former Code 1962 Section 10‑310]. Bridge v. Orange Crush Bottlers (S.C. 1932) 164 S.C. 351, 162 S.E. 325.

While a court has no jurisdiction to try a cause on its merits in the wrong county, even where no demand has been made for the removal of the cause to the proper county, it has jurisdiction at chambers to order the place of trial changed to the proper county, and it is its imperative duty to do so upon proper showing. Ex parte Jones (S.C. 1931) 160 S.C. 63, 158 S.E. 134, 77 A.L.R. 235.

Court has duty to order a removal to appropriate county. Blakely & Copeland v. Frazier (S.C. 1878) 11 S.C. 122.

6. —— Waiver, improper county designated

An answer in an action does not constitute waiver of right to move to transfer case to proper county for trial. Witherspoon v Spotts & Co., 227 SC 209, 87 SE2d 477 (1955). Lee v Neal, 233 SC 206, 104 SE2d 291 (1958). Brown v Palmetto Baking Co., 220 SC 38, 66 SE2d 417 (1951). Rosamond v Lucas‑Kidd Motor Co., 182 SC 331, 189 SE 641 (1937).

A right to a change of venue is not waived by an answer to the merits, where the jurisdiction of the court from which the change is made is defective, not as to the person, but as to the subject matter. Nixon & Danforth v Piedmont Mut. Ins. Co., 74 SC 438, 54 SE 657 (1906). Baker v Irvine, 62 SC 293, 40 SE 672 (1902). Garrett v Herring Furniture Co., 69 SC 278, 48 SE 254 (1904).

When a complaint alleges venue in the wrong county, it is incumbent on the defendant to show that venue is improper. In an action for breach of contract and fraud, where the defendant was given at least two opportunities to prove his residency, his failure to provide an affidavit as requested by the trial court was completely inconsistent with his assertion that the case should be tried in a different county and amounted to a waiver of his right to have the case heard there. Elders v. Parker (S.C.App. 1985) 286 S.C. 228, 332 S.E.2d 563.

Failure to make timely motion to change place of trial to county of defendant’s residence constitutes waiver of such defect. Taylor v. Wall (S.C. 1957) 231 S.C. 683, 100 S.E.2d 400.

In an action against a public officer, which was not brought in the county where the cause of action arose as required by former Code 1962 Section 10‑302, defendant could take the position that the trial court was without jurisdiction, notwithstanding his failure to make any motion for a change of venue to the proper county, since the question of jurisdiction of the subject matter may even be raised for the first time upon appeal. Langford v. State Bd. of Fisheries (S.C. 1950) 217 S.C. 118, 60 S.E.2d 59.

An appearance by defendant for the purpose of questioning the jurisdiction of the court and pleading only to such jurisdiction, alleging that it is a nonresident, is not a waiver of the right to object that the action was brought in the wrong county. Rafield v. Atlantic Coast Line R. Co. (S.C. 1910) 86 S.C. 324, 68 S.E. 631. Appearance 23

7. —— Appeal of court’s findings as to residence, improper county designated

The findings of the court on a motion to transfer a case on the ground that defendant is a nonresident of the county are not reviewable by the Supreme Court on appeal. Rafield v. Atlantic Coast Line R. Co. (S.C. 1910) 86 S.C. 324, 68 S.E. 631. Appeal And Error 1024.3

8. —— Appeal of court’s findings as to material or immaterial defendant, improper county designated

The hearing judge having found against the contention of one defendant that another defendant had been joined solely for the purpose of laying the venue in a particular county, his findings are binding upon the Supreme Court and will not be disturbed upon appeal unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law. Simmons v. Cohen (S.C. 1955) 227 S.C. 606, 88 S.E.2d 679. Appeal And Error 1010.1(17)

Court’s findings that one of defendants was immaterial would not be reversed, where it was not wholly unsupported by evidence or manifestly influenced or controlled by error of law. Witherspoon v. Spotts & Co. (S.C. 1955) 227 S.C. 209, 87 S.E.2d 477.

9. —— Actions involving real property, foreclosures and the like, improper county designated

In an action for failure to perform the terms of a contract to improve land situated in Aiken County, when defendant contended that the common pleas court of Aiken County, where the action was brought, was without jurisdiction for the reason that the complaint stated only a cause of action for breach of a contract and he was a resident of McCormick County, the proper remedy was for the defendant to move to change the place of trial pursuant to this section [Code 1962 Section 10‑310] and not to demur under Code 1962 Section 10‑642. Taylor v. Wall (S.C. 1957) 231 S.C. 683, 100 S.E.2d 400.

Affidavits to the effect that defendant was not the owner of the land subject to foreclosure in an action to foreclose a mortgage did not authorize a change of venue from the county in which the land was located under subsection (1) of this section [former Code 1962 Section 10‑310]. First Nat. Co. v. Strak (S.C. 1929) 148 S.C. 410, 146 S.E. 240.

10. —— Actions against corporations, improper county designated

A motion for change of venue was properly denied where defendant foreign corporation failed to establish that it maintained an office for the transaction of business in the county where it sought to have venue laid. Sanders v. Allis Chalmers Mfg. Co. (S.C. 1959) 235 S.C. 259, 111 S.E.2d 201.

11. —— Miscellaneous particular circumstances, improper county designated

A defendant whose principal place of business is in one county may be sued in another county in which it has an agent conducting its business, and is not entitled to a change of venue to the county of its principal business under subsection (1) of this section [former Code 1962 Section 10‑310]. Patterson v Orangeburg Fert. Co., 120 SC 478, 113 SE 318 (1922). Fair v Dorchester Lumber Co., 113 SC 460, 101 SE 845 (1920).

An action against certain defendants for damages in an alleged fraudulent sale of property, one of whom had no connection with the sale except as an agent of the plaintiffs but who was made a defendant to justify the venue in his county, was not brought in the proper county and may be transferred under subsection (1) of this section [former Code 1962 Section 10‑310]. Adams v. Fripp (S.C. 1917) 108 S.C. 234, 94 S.E. 109.

Where a complaint stated that defendant was a nonresident and owned the railroad through the county, the court of that county in which the action is brought must determine the issue of fact whether the company operated the line, or only the trains over the line, which the defendant claims is owned by another, so that on finding the complaint true, it would properly refuse to transfer the case. Rafield v. Atlantic Coast Line R. Co. (S.C. 1910) 86 S.C. 324, 68 S.E. 631.

12. Impossibility of fair and impartial trial

The trial court did not err in refusing a defendant’s motion for a change of venue in a criminal case where, although the defendant was the half‑brother of the well‑known minister and political figure Jesse Jackson, and was himself a well‑known member of the black community, only 3 potential jurors responded that they were influenced by hearing information about the case, the few jurors who acknowledged hearing any news accounts of the case all stated under oath that they could put the information aside, and the defendant failed to show any actual prejudice from the pretrial publicity. State v. Robinson (S.C. 1991) 305 S.C. 469, 409 S.E.2d 404, certiorari denied 112 S.Ct. 1477, 503 U.S. 937, 117 L.Ed.2d 620, grant of post‑conviction relief reversed 329 S.C. 65, 495 S.E.2d 433.

The trial court did not abuse its discretion in granting the plaintiff’s motion to transfer the venue of a medical malpractice action after trial where (1) of 46 jury panel members, 15 were excused for cause and 14 had a direct or indirect doctor‑patient relationship with the defendant doctor, (2) 8 of the jurors seated were either patients of, or had family members treated by, the doctor, (3) during trial it was discovered that 2 seated jurors had connections with the defendant hospital, and (4) the trial ended in a hung jury. Lancaster v. Fielder (S.C. 1991) 305 S.C. 418, 409 S.E.2d 375.

Normally, party’s popularity, influence, or reputation is not adequate basis, in and of itself, to justify change of venue. Stevens v. Sun News (S.C. 1976) 267 S.C. 63, 226 S.E.2d 236. Venue 50

Party who moves for change of venue based on unfair publicity or substantial influence of opponent which would deprive it of fair trial has formidable burden of persuading court of necessity to remove trial from local jury. Stevens v. Sun News (S.C. 1976) 267 S.C. 63, 226 S.E.2d 236. Venue 68

Where defendant in libel suit sought change of venue based upon inability to have fair and impartial trial but produced no affidavits of local residents averring that prejudice would exist because plaintiff was state senator and gave no explanation concerning inability to secure such affidavits, defendant failed to establish that prospective jurors would not exercise that degree of independence our common law system and their oath of office demands. Stevens v. Sun News (S.C. 1976) 267 S.C. 63, 226 S.E.2d 236. Venue 72

Trial judge committed no error in basing denial of defendant’s motion for change of venue upon his “experience,” even though he did not disclose nature of such experience. Stevens v. Sun News (S.C. 1976) 267 S.C. 63, 226 S.E.2d 236.

Introduction of four newspaper articles, all of which were printed a few days after alleged murder, accompanied with no affidavits other than one by a co‑defendant’s attorney regarding the victim’s popularity, did not constitute sufficient showing that jurors or the trial were infected by improper or prejudicial newspaper publicity, and trial court did not err in refusing to grant motion for change of venue. State v. Ingram (S.C. 1976) 266 S.C. 462, 224 S.E.2d 711.

The fact alone that a party to an action is popular, influential or enjoys a good reputation is ordinarily not sufficient to warrant a change of venue. South Carolina Elec. & Gas Co. v. Aetna Ins. Co. (S.C. 1959) 235 S.C. 147, 110 S.E.2d 165. Venue 50

It does not necessarily follow from the fact that one jury rendered a grossly excessive verdict that such prejudice exists throughout the county as to require a change of venue. South Carolina Elec. & Gas Co. v. Aetna Ins. Co. (S.C. 1959) 235 S.C. 147, 110 S.E.2d 165.

The provisions of subsection (2) are operative not only where there may exist prejudice against the applicant, but also where prejudice might exist in favor of the opposing litigant such as to prevent the applicant from receiving a fair and impartial trial. Johnston v. Belk‑McKnight Co. of Newberry (S.C. 1940) 194 S.C. 490, 10 S.E.2d 1. Venue 50

For an opinion holding that the lower court’s refusal to change the venue under subsection (2) was not an abuse of its discretion as applied to the facts therein, see State v. Bikle (S.C. 1936) 180 S.C. 400, 185 S.E. 753.

Judge’s finding as to possibility of impartial trial not reviewable on appeal. The finding of a circuit judge on motion for change of venue under subsection (2) of this section [Code 1962 Section 10‑310], because plaintiff, who sued as administrator, was clerk of the court for that county is not reviewable on appeal. McCown v. Northeastern R. Co. (S.C. 1899) 55 S.C. 384, 33 S.E. 506. Appeal And Error 106

13. Convenience of witnesses and ends of justice—In general

After transfer of venue to county where defendant resides, either party may make motion to change venue based on convenience of witnesses and promotion of justice. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 82

Statute allowing change of venue based on convenience of witnesses and promotion of justice, like other change of venue statutes, is in derogation of, rather than in conflict with, statutory right of defendant to trial of case in county in which defendant resides at time of commencement of action. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(1)

Even though right of defendant in civil action to trial in county of its residence is substantial, trial judge retains sound discretion to change place of trial if both convenience of witnesses and ends of justice would be served. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(1)

When motion for change of venue is predicated on grounds of convenience of witnesses and ends of justice, trial judge must resolve questions of fact; because facts often vary, no fixed rules can be laid down and a great deal must be left to trial judge’s discretion, and question is whether convenience of witnesses would be promoted, rather than degree to which it would be promoted. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(1); Venue 72

While precise definition of “ends of justice,” for purposes of determining whether ends of justice warrant change of venue, is elusive, ends of justice are promoted by having credibility of witnesses judged by jurors of vicinage, or county in which witnesses reside. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 45

The right of a plaintiff to bring an action against a licensed motor carrier in any county through which such carrier operates is, of course, subject to the power of the court to change the place of trial upon a showing that both the convenience of the witnesses and the ends of justice will be furthered by the change. Bouvy v. N. W. White & Co. (S.C. 1970) 254 S.C. 164, 174 S.E.2d 347. Automobiles 232

The convenience of members of a litigant’s family, in relation to a motion for change of venue, is somewhat analogous to that of the litigant’s employees; and in some jurisdictions, including the one which generally denies to members of the litigant’s immediate family the same consideration in regard to their convenience that is accorded to other witnesses in connection with change of venue, it is held that the convenience of witnesses who are employees of the litigant will not generally be given the same consideration, on such a motion, as is given to witnesses who are not so employed. This rule, with respect to the litigant’s employee‑witnesses, has been expressly rejected in South Carolina. Moulds v. Blitch (S.C. 1966) 248 S.C. 459, 150 S.E.2d 917.

Whether a prospective witness be a member of the litigant’s immediate family or more distantly related, a rule that discounts his convenience because of the mere fact of such relationship is unsound. Moulds v. Blitch (S.C. 1966) 248 S.C. 459, 150 S.E.2d 917.

The fact that several witnesses for a defendant corporation were employees thereof did not militate against the fact that such employees could more conveniently attend a trial of the case in the county of the residence of the corporation. Cleland v. Atlantic Coast Line R. Co. (S.C. 1965) 245 S.C. 478, 141 S.E.2d 339.

The ability or inability of a defendant to respond to a monetary judgment has no value in determining the venue of a case except that it may be considered by the hearing judge in deciding the question of whether or not such defendant is a bona fide or mala fide defendant. Doss v. Douglass Const. Co. (S.C. 1958) 232 S.C. 261, 101 S.E.2d 661. Venue 68

Contention that an earlier trial could be obtained in county where the action was instituted was not substantial enough to overcome strong prima facie showing by party moving for change of venue, even though the ends of justice may be promoted by speedy trial. Beard v. Billups Petroleum Co. of S. C. (S.C. 1956) 228 S.C. 481, 90 S.E.2d 685.

Dismissal of an action without prejudice upon plaintiff’s motion made in order to allow him to bring the action in another county for the convenience of his witnesses does not preclude defendant, in a subsequent suit, from resorting to the provisions of subsection (3) of this section [former Code 1962 Section 10‑310]. Brown v. Palmetto Baking Co. (S.C. 1952) 221 S.C. 183, 69 S.E.2d 598. Appeal And Error 1194(2)

Under subsection (3) a court may refuse to change the venue where to do so would inconvenience witnesses, even though it may have been proper for the action to have been brought in the county to which defendants desired to have it removed. Moore v. Arthur (S.C. 1919) 113 S.C. 112, 101 S.E. 640.

If the venue is changed under this subsection on account of the convenience of witnesses and to promote the ends of justice, the cause may be removed to another circuit. Hanley v. Charleston Light & Water Co. (S.C. 1918) 110 S.C. 340, 96 S.E. 519. Venue 74

14. —— Requirement that both conditions exist together, convenience of witnesses and ends of justice

Convenience of witnesses and promotion of ends of justice will not warrant a change of venue unless both appear together. Utsey v Charleston, etc., R. Co., 38 SC 399, 17 SE 141 (1893). Castles v Lancaster County, 74 SC 512, 55 SE 115 (1906). Sample v Bedenbaugh, 158 SC 496, 155 SE 828 (1930). Tucker v Ingram, 187 SC 525, 198 SE 25 (1938). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Perdue v Southern Ry. Co., 232 SC 78, 101 SE2d 47 (1957). Cleland v Atlantic Coast Line R.R., 245 SC 478, 141 SE2d 339.

To authorize a change of venue on the grounds stated in subsection (3), the burden is upon the moving party to show that both “the convenience of witnesses” and “the ends of justice” will be promoted by the change. Both requirements of this section [former Code 1962 Section 10‑310] must be met. Gregory v Powell, 206 SC 261, 33 SE2d 629 (1945). Doss v Douglass Constr. Co., 232 SC 261, 101 SE2d 661 (1958).

Both the convenience of witnesses and the ends of justice to be promoted by the change must be established. The burden in the first instance rests upon the moving party to make a prima facie showing of the fulfillment of both statutory requirements, and when this test has been successfully met, the burden shifts to the contesting party to defeat the showing made of at least one of these requirements. Brice v State Co., 193 SC 137, 7 SE2d 850 (1940). Gregory v Powell, 206 SC 261, 33 SE2d 629 (1945). Patterson v Charleston, etc., Ry. Co., 190 SC 66, 1 SE2d 920 (1939). Reynolds v Atlantic Coast Line R. Co., 217 SC 16, 59 SE2d 344 (1950). Smith v Atlantic Coast Line R. Co., 218 SC 481, 63 SE2d 311 (1951). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Haigler v Westbury, 223 SC 517, 77 SE2d 207 (1953). Bruner v Seaboard Air Line R. Co., 226 SC 177, 84 SE2d 557 (1954). McKinney v Noland Co., 227 SC 27, 86 SE2d 607 (1955).

In the case of Castles v Lancaster County, 74 SC 512, 55 SE 115 (1906), it was held that the meaning of the statute in coupling the “convenience of witnesses” and “the ends of justice” together as a single ground for change of venue, was to authorize a change on this ground only when both the “convenience of witnesses” and “the ends of justice” would be promoted. Dennis v McKnight, 161 SC 213, 159 SE 557 (1931). Patterson v Charleston & W. C. Ry. Co., 190 SC 66, 1 SE2d 920 (1939).

When making prima facie showing that both the convenience of the witnesses and the ends of justice would be promoted by changing venue, showing must be based on competent evidence, not mere beliefs, opinions, and conclusions of the witnesses. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 84

Railroad made prima facie showing that both the convenience of the witnesses and the ends of justice would be promoted by changing venue in locomotive engineer’s action, which was brought under Federal Employer’s Liability Act (FELA) and federal Locomotive Inspection Act (LIA) and which arose from injuries that engineer allegedly suffered as result of exposure to excessive heat in locomotive cab; almost every witness identified by each of the parties either lived in railroad’s requested county or in counties contiguous to that county, only one witness was resident of county in which action had been filed, and two of engineer’s treating physicians said that it would be inconvenient for them to travel to county in which case was filed from requested county. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 52(1)

Unlike the determination of residency, which is a question of law, it is within the trial judge’s discretion to determine whether to grant a motion to change venue based on the convenience of the witnesses and the ends of justice. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 52(1)

In addition to having personal jurisdiction over railroad, which was a foreign corporation, under long‑arm statute, trial court also had jurisdiction over railroad under statute allowing jurisdiction over person doing business in state, and thus trial court had discretionary authority to change venue based on convenience of witnesses and ends of justice in locomotive engineer’s action, which was brought under Federal Employer’s Liability Act (FELA) and federal Locomotive Inspection Act (LIA) and which arose from injuries that engineer allegedly suffered as result of exposure to excessive heat in locomotive cab; evidence indicated that railroad conducted business in state, owned property in state, and had agent for service of process in state. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Courts 13.5(1); Venue 52(1)

Court properly denied defendant’s motion for change of venue under South Carolina Code Annotated Section 15‑7‑100 on grounds of convenience of witnesses where affidavit submitted in support of motion did not state what particular witnesses named would testify to or that their testimony was material to defendant’s case, and absent explanation of materiality of testimony of witnesses on whose behalf change of venue is requested, neither trial court nor appeals court can consider their convenience in disposing of request for change of venue. Holly Hill Forest Industries, Inc. v. Cape Romain Contractors, Inc. (S.C.App. 1987) 292 S.C. 576, 357 S.E.2d 725.

Trial court’s denial of defendant’s motion for change of venue did not constitute abuse of discretion where defendant’s affidavits related only to convenience of witnesses and no showing was made that the ends of justice would be promoted by the change. Guardian Fidelity Corp. v. U. S. Fidelity & Guaranty Co. (S.C. 1976) 266 S.C. 595, 225 S.E.2d 655. Venue 58

The venue statute requires that both the convenience of witnesses and the ends of justice must be promoted before a change of venue will be granted. Varnadoe v. Hicks (S.C. 1975) 264 S.C. 216, 213 S.E.2d 736. Venue 51; Venue 52(1)

Where there is a showing of convenience of witnesses, such constitutes a prima facie showing that the ends of justice would be promoted by the change. Beard v. Billups Petroleum Co. of S. C. (S.C. 1956) 228 S.C. 481, 90 S.E.2d 685. Venue 51

It is essential to the support of a motion to change the place of trial for the convenience of witnesses and the promotion of the ends of justice, to establish by competent evidence the existence of both conditions. It is not sufficient to show that the mere convenience of the witnesses will be promoted by the change or the ends of justice will be thereby promoted, but the circuit judge should be controlled in the exercise of his judicial discretion by the plain words of subsection (3), and both requirements of such subsection must be met. Bohlen v. Allen (S.C. 1955) 228 S.C. 135, 89 S.E.2d 99.

Failure to establish to the satisfaction of the court either that a change of venue would serve the convenience of witnesses or that it would promote the ends of justice would suffice for refusal of the motion. Wilson v. Southern Furniture Co. (S.C. 1953) 224 S.C. 281, 78 S.E.2d 890.

Change of venue was allowed on the ground that it promoted ends of justice when it appeared that most of the witnesses would be inconvenienced by the change. Willoughby v. Northeastern R. Co. (S.C. 1896) 46 S.C. 317, 24 S.E. 308.

15. —— Evidence and burden of proof, convenience of witnesses and ends of justice

In order to prevail on a motion for a change of venue, the moving party must make a prima facie showing that both the convenience of the witnesses and the ends of justice would be promoted by the change; and upon such showing having been made, the burden shifts to the party resisting the motion to overcome it as to at least one of these requirements. Harper v Newark Ins. Co., 244 SC 282, 136 SE2d 711 (1964). Skinner v Santoro, 245 SC 35, 138 SE2d 645 (1964). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Cleland v Atlantic Coast Line R.R., 245 SC 478, 141 SE2d 339 (1965). Cantey v Coates, 262 SC 259, 203 SE2d 673 (1974).

One moving for change of venue for the convenience of witnesses cannot rely merely on the beliefs, opinions, and conclusions of the witnesses without disclosure of evidence. Sample v Bedenbaugh, 158 SC 496, 155 SE 828 (1930). Adams v Fripp, 108 SC 234, 94 SE 109 (1917). Mixson v Agricultural Helicopters, Inc., 260 SC 532, 197 SE2d 663 (1973). Cantey v Coates, 262 SC 259, 203 SE2d 673 (1974).

The movant has the burden of making a prima facie showing that both the convenience of witnesses and the ends of justice will be promoted. Simmons v Cohen, 227 SC 606, 88 SE2d 679 (1955). Holden v Beach, 228 SC 234, 89 SE2d 433 (1955). Beard v Billups Petroleum Co., 228 SC 481, 90 SE2d 685 (1956). Dison v Wimbly, 230 SC 187, 94 SE2d 877 (1956). McCauley v McLeod, 230 SC 380, 95 SE2d 611 (1956). King v Moore, 231 SC 421, 98 SE2d 849 (1957). South Carolina Electric & Gas Co. v Aetna Ins. Co., 235 SC 147, 110 SE2d 165 (1959). Graham v Beverly, 235 SC 222, 110 SE2d 923 (1959). Garrett v Charleston & Western Carolina Ry. Co., 236 SC 75, 113 SE2d 256 (1960). Bryan v Ross, 236 SC 299, 114 SE2d 97 (1960). Mixson v Agricultural Helicopters, Inc., 260 SC 532, 197 SE2d 663 (1973).

Once showing has been made that both the convenience of the witnesses and the ends of justice would be promoted by changing venue, the burden shifts to the party opposing the motion to overcome at least one of the two requirements. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 84

Party moving for change of venue has the burden of making a prima facie showing that both the convenience of the witnesses and the ends of justice would be promoted. Whaley v. CSX Transp., Inc. (S.C. 2005) 362 S.C. 456, 609 S.E.2d 286, rehearing denied. Venue 84

When motion for change of venue is predicated on grounds of convenience of witnesses and ends of justice, trial judge must resolve questions of fact; because facts often vary, no fixed rules can be laid down and a great deal must be left to trial judge’s discretion, and question is whether convenience of witnesses would be promoted, rather than degree to which it would be promoted. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(1); Venue 72

Movant for change of venue has burden of making prima facie showing that both convenience of witnesses and ends of justice would be promoted by change; although both requirements must be met, showing of convenience of witnesses can, depending on facts of case, bear on issue of promotion of justice. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 68

Once party moving for change of venue makes prima facie showing that venue change will serve both convenience of witnesses and ends of justice, burden shifts to party resisting motion to overcome at least one of those requirements. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 68

Court may not consider convenience of any witness in connection with motion for change of venue when materiality of witness’ testimony has not been shown. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(4)

Neither trial court nor Supreme Court can consider convenience of witnesses where materiality of their testimony is not shown. Guardian Fidelity Corp. v. U. S. Fidelity & Guaranty Co. (S.C. 1976) 266 S.C. 595, 225 S.E.2d 655. Venue 52(4)

Under venue statute, the weight to be accorded a showing of convenience of witnesses on the issue of promotion of justice depends upon the facts of the particular case, and where there are no other relevant factors the fact that the convenience of the witnesses would be served requires a finding that the change would also promote the ends of justice. Varnadoe v. Hicks (S.C. 1975) 264 S.C. 216, 213 S.E.2d 736.

Ordinarily the necessity to travel a greater distance would sustain an inference of inconvenience to the witnesses. Mixson v. Agricultural Helicopters, Inc. (S.C. 1973) 260 S.C. 532, 197 S.E.2d 663.

When a short distance is involved and with the quick facility of modern travel, the mere statement of the witnesses, without further explanation, that it would be more convenient for them to testify in one courthouse than in another courthouse, only 16 miles away, amounts to nothing more than a conclusion of the witnesses and is of no probative value in determining the issue of convenience under this section [former Code 1962 Section 10‑310]. Mixson v. Agricultural Helicopters, Inc. (S.C. 1973) 260 S.C. 532, 197 S.E.2d 663. Venue 42

The burden of showing manifest error, which amounts to an abuse of judicial discretion, is upon the appellant. Wallace v. Dickerson Const. Co. (S.C. 1953) 224 S.C. 396, 79 S.E.2d 371.

16. —— Court’s discretion, convenience of witnesses and ends of justice

An application for change of venue on the grounds set out in subsection (3) of this section [former Code 1962 Section 10‑310] is addressed to the discretion of the judge who hears it, and his action thereon will not be disturbed on appeal except upon a clear showing of abuse of discretion amounting to manifest error of law. Bouvy v N. W. White & Co., 254 SC 164, 174 SE2d 347 (1970). Cantey v Coates, 262 SC 259, 203 SE2d 673 (1974).

A motion for a change of venue, on the grounds of subsection (3) of this section [former Code 1962 Section 10‑310], is addressed to the sound judicial discretion of the judge who hears it, and his decision will not be disturbed except upon a clear showing of abuse of discretion amounting to a manifest error of law. Dimery v Bloom, 245 SC 367, 140 SE2d 600 (1965). Jackson v H & S Oil Co., 261 SC 214, 199 SE2d 71 (1973).

While the right of a defendant in a civil action to a trial in the county of its residence is a substantial one, it is within the sound discretion of the hearing judge to change the place of trial where it is shown that both the convenience of witnesses and the ends of justice would be promoted. Basha v Waccamaw Lumber & Supply Co., 240 SC 140, 124 SE2d 912 (1962). Skinner v Santoro, 245 SC 35, 138 SE2d 645 (1964). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Oswald v Southern Farm Bureau Cas. Ins. Co., 248 SC 433, 150 SE2d 612 (1966).

A motion for a change of venue is addressed to the sound judicial discretion of the judge who hears it and his decision will not be disturbed by the Supreme Court except upon a clear showing of abuse of discretion amounting to manifest error of law. Harper v Newark Ins. Co., 244 SC 282, 136 SE2d 711 (1964). Cleland v Atlantic Coast Line R.R., 245 SC 478, 141 SE2d 339 (1965).

Motion to change place of trial for convenience of witnesses and promotion of justice is addressed to circuit judge’s discretion and ruling will not be disturbed unless manifestly erroneous. Gower v Thomson, 6 SC 313 (1875). Barfield v Coker, 73 SC 181, 53 SE 170 (1906). Sample v Bedenbaugh, 158 SC 496, 155 SE 828 (1930). Wade v Southern Ry. Co., 186 SC 265, 195 SE 560 (1938). Tucker v Ingram, 187 SC 525, 198 SE 25 (1938). Patterson v Charleston & W. C. Ry. Co., 190 SC 66, 1 SE2d 920 (1939). Reynolds v Atlantic Coast Line R. Co., 217 SC 16, 59 SE2d 344 (1950). Smith v Atlantic Coast Line R. Co., 218 SC 481, 63 SE2d 311 (1951). Thompson v South Carolina State Highway Dept., 221 SC 250, 70 SE2d 241 (1952). Becker v Uhe, 221 SC 334, 70 SE2d 346 (1952). Webb v Southern Ry. Co., 221 SC 450, 71 SE2d 12 (1952). Wingard v Sims, 222 SC 396, 73 SE2d 279 (1952). Wilson v Southern Furniture Co., 224 SC 281, 78 SE2d 890 (1953). Wallace v Dickerson Const. Co., 224 SC 396, 79 SE2d 371 (1953). Rice v Hartness Bottling Works, Inc., 226 SC 532, 86 SE2d 67 (1955). McKinney v Noland Co., 227 SC 27, 86 SE2d 607 (1955). Simmons v Cohen, 227 SC 606, 88 SE2d 679 (1955). Holden v Beach, 228 SC 234, 89 SE2d 433 (1955). Dison v Wimbly, 230 SC 187, 94 SE2d 877 (1956). Jackson v Powers, 230 SC 371, 95 SE2d 624 (1956). McCauley v McLeod, 230 SC 380, 95 SE2d 611 (1956). Herndon v Huckabee Transport Co., 231 SC 364, 98 SE2d 833 (1957). King v Moore, 231 SC 421, 98 SE2d 849 (1957). Perdue v Southern Ry. Co., 232 SC 78, 101 SE2d 47 (1957). Doss v Douglass Constr. Co., 232 SC 261, 101 SE2d 661 (1958). Whitley v Lineberger Bros., 233 SC 182, 104 SE2d 70 (1958). Bryant v Aiken Petroleum Co., 234 SC 300, 108 SE2d 95 (1959). Graham v Beverly, 235 SC 222, 110 SE2d 923 (1959). Garrett v Charleston & Western Carolina Ry. Co., 236 SC 75, 113 SE2d 256 (1960).

Supreme Court would not interfere with the trial court’s action in changing the place of trial from the county of defendant’s residence to the county of plaintiffs’ residence on the ground of convenience, in the absence of showing that the trial court’s action was opposed to sound discretion amounting to a deprivation of the legal rights of the complaining party. Griffin v Owens, 171 SC 276, 172 SE 221 (1934). Wilson v Southern Furniture Co., 224 SC 281, 78 SE2d 890 (1953).

When motion for change of venue is predicated on grounds of convenience of witnesses and ends of justice, trial judge must resolve questions of fact; because facts often vary, no fixed rules can be laid down and a great deal must be left to trial judge’s discretion, and question is whether convenience of witnesses would be promoted, rather than degree to which it would be promoted. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Venue 52(1); Venue 72

The trial court applied the proper legal standard to determine that the venue of a medical malpractice action should be transferred after trial where (1) although the plaintiff exercised all her strikes, 8 members of the jury had a direct or indirect doctor‑patient relationship with the defendant doctor, (2) during trial it was discovered that 2 seated jurors had connections with the defendant hospital, and (3) the judge stated that he was of the opinion that the interest of justice “would be served by moving the venue to obtain a jury that would be free from any outside relationships or knowledge about the subject matter of this case.” Lancaster v. Fielder (S.C. 1991) 305 S.C. 418, 409 S.E.2d 375.

When a motion to change venue is brought pursuant to Section 15‑7‑30 and the facts concerning the defendant’s residence are uncontradicted, the trial court must change the venue to the county where the defendant resides. If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he or she may make such motion to the trial judge in the county of the defendant’s residence; this motion brought pursuant to Section 15‑7‑100 would be addressed to the discretion of the court. The 2 statutes may not be read together to allow one court to take all relevant factors into consideration at one time. Chestnut v. Reid (S.C. 1989) 299 S.C. 305, 384 S.E.2d 713. Venue 40; Venue 51; Venue 52(1)

A motion for change of venue on the grounds that both the convenience of witnesses and the ends of justice will be promoted thereby is addressed to the discretion of the judge who hears it. Varnadoe v. Hicks (S.C. 1975) 264 S.C. 216, 213 S.E.2d 736. Venue 51; Venue 52(1)

Where a motion to change venue is grounded upon the convenience of witnesses, it is within the discretion of judge as to postponement of a hearing on the motion so as to permit the motion’s opponent to depose the witnesses. Livingston v. Central Refrigeration Co., Inc. (S.C. 1973) 261 S.C. 147, 198 S.E.2d 799.

“Judicial discretion” as applied to the determination of a motion for change of venue is an elastic, relative term, and implies the absence of a hard and fast rule. Wingard v. Sims (S.C. 1952) 222 S.C. 396, 73 S.E.2d 279. Venue 42

Where the facts are not in dispute, and it clearly appears that both the convenience of witnesses and the ends of justice would be promoted by changing the place of trial, it becomes the duty of the Supreme Court to reverse the lower court and order that the place of trial be changed. Reynolds v. Atlantic Coast Line R. Co. (S.C. 1950) 217 S.C. 16, 59 S.E.2d 344.

As these sections fail to set out any requirements of an affidavit as necessary to have the place of trial changed, the circuit judge is empowered to make a change under subsection (3) of this section [former Code 1962 Section 10‑310], and only his judicial discretion need be satisfied by the affidavit. McFail v. Barnwell County (S.C. 1899) 54 S.C. 368, 32 S.E. 417.

17. —— Abuse of discretion, convenience of witnesses and ends of justice

For cases holding that refusal of the motion did not constitute a manifest abuse of discretion, see Thompson v South Carolina State Highway Dept., 221 SC 250, 70 SE2d 241 (1952). Wingard v Sims, 222 SC 396, 73 SE2d 279 (1952). Wilson v Southern Furniture Co., 224 SC 281, 78 SE2d 890 (1953). Perdue v Southern Ry. Co., 232 SC 78, 101 SE2d 47 (1957).

Discretion of judge was not abused in granting motion for change of venue for convenience of witnesses and promotion of ends of justice. Hayes v Clarkson, 224 SC 274, 78 SE2d 454 (1953). King v Moore, 231 SC 421, 98 SE2d 849 (1957).

For cases holding that the court below committed manifest legal error in refusing to change the venue on the ground of convenience of witnesses, see Smith v Atlantic Coast Line R. Co., 218 SC 481, 63 SE2d 311 (1951). Becker v Uhe, 221 SC 334, 70 SE2d 346 (1952).

Grant of motion brought by passenger who was injured when vehicle in which she was riding left roadway to change venue of her action against paving company which built roadway from county in which company resided to county in which passenger resided was not abuse of discretion; numerous witnesses resided closer to county in which passenger resided, making that county more convenient, and interests of justice warranted transfer as passenger’s severe injuries made travel to more distant county difficult. McKissick v. J.F. Cleckley & Co. (S.C.App. 1996) 325 S.C. 327, 479 S.E.2d 67. Corporations And Business Organizations 2530

In a personal injury action arising out of an automobile accident which took place in Colleton County, the trial court abused its discretion in denying the defendant’s motion to change venue from Hampton County to Colleton County where the only witness who resided in Hampton County whose convenience would be served by trial in that county was a physician who had examined the plaintiff only once, and where the affidavits of the defendant’s witnesses established that they would be inconvenienced by a trial in Hampton County. Allowing a jury from Colleton County to hear the case would promote the ends of justice as Colleton is a thinly populated rural county and jurors from that county would ordinarily have greater knowledge about the witnesses from the county than would a Hampton County jury; moreover, most of the crucial witnesses who would testify as to liability were either from Colleton County or lived closer to Walterboro than to Hampton. Turner v. Santee Cement Carriers, Inc. (S.C. 1981) 277 S.C. 91, 282 S.E.2d 858.

Court erred in granting change of venue for trial arising out of automobile collision where driver of one vehicle was coroner of county where accident occurred on basis that jury would be unable to lay aside parties’ respective identities, since such finding, without more, was insufficient to meet standard of statute that there be reason to believe fair and impartial trial cannot be had. Davenport v. Summer (S.C. 1977) 269 S.C. 382, 237 S.E.2d 494.

Denial of motion for change of venue which had been argued on the grounds of the convenience of witnesses and that the ends of justice would be promoted by the change, was not an abuse of discretion where none of the affidavits referred to the “ends of justice” being promoted by the change of venue. Garrett v. Packet Motor Exp. Co., Inc. (S.C. 1975) 263 S.C. 463, 210 S.E.2d 912.

Where there is a total absence of any factual showing that the convenience of a material witness would be promoted by the change in venue, the trial judge abused his discretion in granting the change of venue. Mixson v. Agricultural Helicopters, Inc. (S.C. 1973) 260 S.C. 532, 197 S.E.2d 663.

Where the affidavits of the defendants show that all of their witnesses reside in Horry County, the plaintiff resides in Horry County and the damaged property is located there, the plaintiff did not submit any affidavits disputing the contents of defendants’ affidavits and there is nothing in the record to overcome the strong prima facie showing made by the defendants that both the convenience of witnesses and the ends of justice would be promoted by changing the venue from Darlington County to Horry County, under these facts the court committed manifest legal error in refusing the defendant’s motion for a change of venue, because the defendants clearly met the requirements of the statute, both as to convenience of witnesses and promotion of the ends of justice, particularly in view of the fact that the plaintiff failed to rebut the prima facie showing made by the defendants. Harper v. Newark Ins. Co. (S.C. 1964) 244 S.C. 282, 136 S.E.2d 711.

For case holding that the court below erred as a matter of law in granting the motion, see Webb v. Southern Ry. Co. (S.C. 1952) 221 S.C. 450, 71 S.E.2d 12.

The court abused its discretion when it refused to change the place of trial as requested by the defendant, where the uncontroverted evidence showed that the witnesses would be convenienced and the ends of justice served by such change. Fouche v. Royal Indem. Co. of N. Y. (S.C. 1948) 212 S.C. 194, 47 S.E.2d 209.

18. —— Significance of jury of vicinage passing upon credibility of witnesses, convenience of witnesses and ends of justice

The ends of justice are promoted by having a jury from the same vicinage pass upon the credibility of witnesses. Simmons v Cohen, 227 SC 606, 88 SE2d 679 (1955). Beard v Billups Petroleum Co., 228 SC 481, 90 SE2d 685 (1956). Dison v Wimbly, 230 SC 187, 94 SE2d 877 (1956). King v Moore, 231 SC 421, 98 SE2d 849 (1957). Doss v Douglass Constr. Co., 232 SC 261, 101 SE2d 661 (1958). Garrett v Charleston & Western Carolina Ry. Co., 236 SC 75, 113 SE2d 256 (1960). Bryan v Ross, 236 SC 299, 114 SE2d 97 (1960). Harper v Newark Ins. Co., 244 SC 282, 136 SE2d 711 (1964). Skinner v Santoro, 245 SC 35, 138 SE2d 645 (1964). Oswald v Oswald, 245 SC 44, 138 SE2d 639 (1964). Cleland v Atlantic Coast Line R.R., 245 SC 478, 141 SE2d 339 (1965).

Sound as may be the view that the credibility of a witness is best judged, and his testimony therefore best evaluated, by a jury of his own county, its importance to the promotion of the “ends of justice” must of necessity depend upon many collateral factors, e.g., the number of eligible jurors in the county, the diversity of their interests, and consequently the degree of knowledge or information that the members of the panel may likely have concerning the character of the witness, the nature of the testimony to be expected from the witness, and its relation to the issue of liability. It is applicable no less to the witnesses of one party than to those of the other, and, like other factors bearing upon the issue under discussion, it is a matter addressed to the sound judicial discretion of the judge who hears the motion. It is not, in itself, a formula determinative of that issue. Bouvy v. N. W. White & Co. (S.C. 1970) 254 S.C. 164, 174 S.E.2d 347.

Having credibility of witnesses passed upon by jurors of the “vicinage” is applicable no less to the witnesses of one party than to those of the other, and, it is a matter addressed to the sound judicial discretion of the judge who hears the motion. Bryan v. Ross (S.C. 1960) 236 S.C. 299, 114 S.E.2d 97.

Sound as may be the view that the credibility of a witness is best judged, and his testimony therefore best evaluated, by a jury of his own county, its importance to the promotion of the “ends of justice” must of necessity depend upon many collateral factors, and it is not, in itself, a formula determinative of the issue. Bryan v. Ross (S.C. 1960) 236 S.C. 299, 114 S.E.2d 97.

And the fact that the greater number of witnesses reside in county to which removal is sought is not controlling. Bryan v. Ross (S.C. 1960) 236 S.C. 299, 114 S.E.2d 97. Venue 52(1)

**SECTION 15‑7‑110.** Procedure for changing place of trial when fair and impartial trial cannot be had in county.

 When the ground for a change of place of trial in a circuit court in a case in which such court has original jurisdiction is that a fair and impartial trial cannot be had in the county in which such action was commenced the application for removal must be made by some party interested to the judge sitting in regular term. Such application must be supported by an affidavit that a fair and impartial trial cannot be had in such county. Four days’ notice of such application shall be given to the adverse party, but such adverse party shall have the right to waive such notice. The circuit judge shall have the power, upon application made to him by either party and upon proper cause shown, to shorten or extend the time for the hearing of such application. If a change is ordered it shall be to a county in the same judicial circuit, and the judge shall order the record to be removed to such county.

HISTORY: 1962 Code Section 10‑311; 1952 Code Section 10‑311; 1942 Code Section 35; 1932 Code Section 35; Civ. P. ‘22 Section 34; Civ. C. ‘12 Section 3832; Civ. C. ‘02 Section 2735; G. S. 2114; R. S. 2246; 1870 (14) 339; 1896 (22) 12; 1905 (24) 845.

CROSS REFERENCES

Constitutional provisions as to change of venue, see SC Const Art 5, Section 23.

Venue of action under South Carolina Rules of Civil Procedure, see Rule 82, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 401k33 to 401k84.

Venue 33 to 84.

C.J.S. Trover and Conversion Section 719.

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S.C. Jur. Action Section 6, Local and Transitory Actions.

S.C. Jur. Venue Section 26, Persons Entitled to Apply.

S.C. Jur. Venue Section 28, Time for Application.

S.C. Jur. Venue Section 29, Notice of Application.

S.C. Jur. Venue Section 30, Objections and Exceptions, Estoppel and Waiver.

S.C. Jur. Venue Section 35, County or District to Which Change Can be Made.

LAW REVIEW AND JOURNAL COMMENTARIES

1978 Survey: practice and procedure: venue. 29 S.C. L. Rev. 156.

NOTES OF DECISIONS

In general 1

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1. In general

A judge at chambers has power to make an order for a change of venue. Utsey v Charleston S. & N. R. Co., 38 SC 399, 17 SE 141 (1893). Fishburne v Minott, 72 SC 572, 52 SE 646 (1905). Dennis v McKnight, 161 SC 213, 159 SE 557 (1931).

Cited in Patterson v Charleston & W. C. Ry. Co., 190 SC 66, 1 SE2d 920 (1939). Shelton v Southern Kraft Corp. 195 SC 81, 10 SE2d 341 (1940). Employers Mut. Liability Ins. Co. v Hendrix, 199 F2d 53 (1952).

Failure to docket case in county does not deprive court of jurisdiction to hear motion to change venue. Dennis v. McKnight (S.C. 1931) 161 S.C. 213, 159 S.E. 557. Venue 60

Where a change of venue was granted, a stay of proceedings in the original court followed as a necessary result without any motion therefor. Fishburne v. Minott (S.C. 1905) 72 S.C. 572, 52 S.E. 646. Venue 78

2. Construction with other statutes

This section [former Code 1962 Section 10‑311] provides a method, when the requirements are met, of changing the place of trial from the county of residence of a defendant, and is in derogation rather than in conflict with the statutory right of a defendant under former Code 1962 Section 10‑303 to the trial of a case in the county in which the defendant resides at the time of the commencement of an action. Johnston v. Belk‑McKnight Co. of Newberry (S.C. 1940) 194 S.C. 490, 10 S.E.2d 1.

This section [former Code 1962 Section 10‑311] relates only to a change of venue because a fair and impartial trial cannot be had in the county of the venue and the section does not give the courts power to change the venue on the other grounds specified in former Code 1962 Section 10‑310, subsections (1) and (3). Hanley v. Charleston Light & Water Co. (S.C. 1918) 110 S.C. 340, 96 S.E. 519. Venue 34

A judge at chambers has no power under this section [former Code 1962 Section 10‑311] to grant a change of venue on the ground that the end of justice would be promoted thereby. Castles v. Lancaster County (S.C. 1906) 74 S.C. 512, 55 S.E. 115. Criminal Law 131

This section [former Code 1962 Section 10‑311] was not intended, nor does it affect, the power of the court to remove causes for the reasons stated in subsections (1) and (3) of former Code 1962 Section 10‑310. Hanley v. Charleston Light & Water Co. (S.C. 1918) 110 S.C. 340, 96 S.E. 519.

3. Court’s discretion

The exercise of the power granted under this section [former Code 1962 Section 10‑311] must be for a good and sufficient cause shown. Taylor v Williamson, McMul. (16 SC Eq.) 348. Blakely v Frazier, 11 SC 122 (1878).

The power to change the venue as provided for under this section [former Code 1962 Section 10‑311] is discretionary. Taylor v Williamson, McMul. (16 SC Eq) 348. McFail v Barnwell County, 54 SC 368, 32 SE 417 (1899). Utsey v Charleston, etc., R. Co., 38 SC 399, 17 SE 141 (1893).

On motions to change venue the facts are quite variant and no fixed rules can be laid down to cover each case; Therefore a great deal must be left to the discretion of the trial judge in deciding whether a proper showing has been made for a change. That discretion is judicial and must not be arbitrarily exercised. O’Shields v. Caldwell (S.C. 1946) 208 S.C. 245, 37 S.E.2d 665.

4. Appeal from order allowing or refusing change of venue

Where there is no abuse of discretion shown in granting a change of venue, the Supreme Court will not consider whether a proper showing was made in the court below authorizing the granting of the motion. Carroll v Charleston & S. R. Co., 61 SC 251, 39 SE 364 (1901). Gower v Thomson, 6 SC 313 (1875). Parker v Grimes, 9 SC 284 (1878). Blakely v Frazier, 11 SC 122 (1878).

On an appeal from an order allowing or refusing a change of venue the appellate court does not try the issue anew, but decides whether or not the trial court has abused his discretion by making a manifest error of law so opposed to a sound discretion as to amount to a deprivation of the legal rights of the plaintiffs. O’Shields v. Caldwell (S.C. 1946) 208 S.C. 245, 37 S.E.2d 665. Appeal And Error 965

**SECTION 15‑7‑120.** Application of contract and arbitration agreements relative to venue of actions.

 (A) Notwithstanding a provision in a contract requiring a cause of action arising under it to be brought in a location other than as provided in this title and the South Carolina Rules of Civil Procedure for a similar cause of action, the cause of action alternatively may be brought in the manner provided in this title and the South Carolina Rules of Civil Procedure for such causes of action.

 (B) A provision in an arbitration agreement that arbitration proceedings must be held outside this State is not enforceable with respect to a cause of action, which, but for the arbitration agreement, is triable in the courts of this State. The enforceability of the remaining provisions of the arbitration agreement and the method of selecting a forum for the conduct of the arbitration proceedings is as provided in this title, the Federal Arbitration Act, and any applicable rules of arbitration.

 (C) This act applies to contracts entered into after the effective date of this section.

HISTORY: 1990 Act No. 397, Section 1.

LIBRARY REFERENCES

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Arbitration 2.2.

Contracts 127(4).

C.J.S. Arbitration Section 16.

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Encyclopedias

3 Am. Jur. Trials 611, Selecting the Forum‑Defendant’s Position.

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S.C. Jur. Contracts Section 4, Contracts Against Public Policy.

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LAW REVIEW AND JOURNAL COMMENTARIES

Albemarle Corp. v. AstraZeneca UK Ltd.; Annual Fourth Circuit survey. 62 S.C. L. Rev. 527 (Spring 2011).

Not open for business: A review of South Carolina’s arbitration venue statute, and a proposal for reform. Katherine H. Flynn, 66 S.C. L. Rev. 727 (Summer 2015).

NOTES OF DECISIONS

In general 1

Construction with federal policy 2

1. In general

Forum selection clause in field marketing agreement between insurer and South Carolina marketer, which required litigation in particular state district in Indiana, was unreasonable under South Carolina public policy, and thus action commenced by South Carolina marketer in South Carolina would not be dismissed pursuant to forum selection clause. Consolidated Insured Benefits, Inc. v. Conseco Medical Ins. Co., 2004, 370 F.Supp.2d 397, reconsideration denied 2006 WL 2864425. Contracts 127(4)

Forum selection clause in services contract between retailer and South Carolina maintenance contractor, calling for litigation of contractual disputes in Arkansas, was valid and enforceable; there was no evidence of fraud or overreaching, despite the parties’ alleged unequal bargaining power, holding the trial in Arkansas would not deprive contractor of its day in court, especially since at least one of its officers resided closer to Arkansas than to South Carolina, and enforcement of the clause was not against the strong public policy of South Carolina. Atlantic Floor Services, Inc. v. Wal‑Mart Stores, Inc., 2004, 334 F.Supp.2d 875. Contracts 127(4)

South Carolina statute allowing an action to be brought within the state despite a forum selection clause designating another forum embodied strong public policy of the state, rendering Indiana forum selection clause in contract between insurance agent marketing firm and life insurer unenforceable in firm’s action for breach of contract. Insurance Products Marketing, Inc. v. Indianapolis Life Ins. Co., 2001, 176 F.Supp.2d 544. Contracts 127(4)

South Carolina courts lacked subject matter jurisdiction to consider motion to review arbitration award issued in a proceeding conducted in New York pursuant to the parties’ written agreement. Ashley River Properties I, LLC v. Ashley River Properties II, LLC (S.C.App. 2007) 374 S.C. 271, 648 S.E.2d 295. Alternative Dispute Resolution 367

Forum selection clause in contract between Texas company and South Carolina corporation was sufficient to establish personal jurisdiction in Texas court over corporation. Minorplanet Systems USA Ltd. v. American Aire, Inc. (S.C. 2006) 368 S.C. 146, 628 S.E.2d 43. Contracts 206

New York forum selection clause in lease agreement for telephone marketing system did not prevent lessees from filing suit in South Carolina when lessees alleged that lessor induced lessees into entering the contract by misrepresenting or hiding pertinent information from lessees; lessees alleged several causes of action against lessor including conspiracy and breach of contract accompanied by a fraudulent act, and these actions related to events that took place prior to the signing of lease, and it would not make logical sense to allow forum selection clause to operate to prevent suit in South Carolina where the acts alleged occurred prior to execution of lease. Johnson v. Key Equipment Finance (S.C. 2006) 367 S.C. 665, 627 S.E.2d 740, rehearing denied. Contracts 98; Contracts 127(4)

In contract dispute involving interstate commerce, Federal Arbitration Act (FAA) preempted state statute that purported to preclude enforcement of arbitration agreements providing for arbitration proceedings outside of South Carolina. Tritech Elec., Inc. v. Frank M. Hall & Co. (S.C.App. 2000) 343 S.C. 396, 540 S.E.2d 864, rehearing denied. Alternative Dispute Resolution 117; States 18.15

Although Section 15‑7‑120 is in the venue chapter, and the title of the statute refers to venue, the text of the statute contains no limitation to venue; consequently, pursuant to Section 15‑7‑120, the trial court did not lack subject matter jurisdiction even though the defendant had signed a waiver agreement providing that the venue and jurisdiction of the action would be in Camden, New Jersey. Johnson v. Paraplane Corp. (S.C.App. 1995) 319 S.C. 247, 460 S.E.2d 398, rehearing denied, certiorari granted, opinion vacated 321 S.C. 316, 468 S.E.2d 620.

2. Construction with federal policy

South Carolina statute establishing that state’s venue rules trumped any contractual agreement selecting exclusive forum outside state did not manifest strong public policy of state, and thus statute did not override parties’ choice of English law in contract for purchase of di‑isopropyl‑phenol (DIP). Albemarle Corp. v. AstraZeneca UK Ltd. (C.A.4 (S.C.) 2010) 628 F.3d 643. Contracts 127(4)

English forum selection clause in contract between Virginia manufacturer and United Kingdom corporation, providing that contract was “subject to” jurisdiction of the English High Court, did not contravene strong public policy of forum state, namely, South Carolina’s statutory disfavor of forum selection clauses, and thus enforcement of clause was not unreasonable; federal law, rather than South Carolina law, regulated appropriate venue in cases filed in federal court, forum selection clauses enjoyed presumption of enforceability in federal court, and state’s statute did not manifest strong public policy of South Carolina. Albemarle Corp. v. AstraZeneca UK Ltd. (C.A.4 (S.C.) 2010) 628 F.3d 643. Contracts 127(4); Federal Courts 3026(1); Federal Courts 3078(4)

A state’s “disfavor” of forum selection clauses is not sufficient to rebut the strong federal policy in favor of forum selection clauses. Atlantic Floor Services, Inc. v. Wal‑Mart Stores, Inc., 2004, 334 F.Supp.2d 875. Contracts 141(1)