CHAPTER 39

Executions and Judicial Sales Generally

ARTICLE 1

General Provisions

**SECTION 15‑39‑10.** Kinds of execution.

There shall be three kinds of executions, (a) against the property of the judgment debtor, (b) against his person and (c) for the delivery of the possession of real or personal property or such delivery with damages for withholding the property. They shall be deemed the process of the court.

HISTORY: 1962 Code Section 10‑1701; 1952 Code Section 10‑1701; 1942 Code Section 739; 1932 Code Section 739; Civ. P. ‘22 Section 606; Civ. P. ‘12 Section 344; Civ. P. ‘02 Section 305; 1870 (14) 490 Section 309.

CROSS REFERENCES

Arrest in civil actions, see Sections 15‑17‑10 et seq.

Constitutional provisions for exemptions, see SC Const Art 3, Section 28.

County property being exempt from levy and sale, see Section 4‑17‑30.

Enforcement of judgments against married women, see Section 15‑35‑160.

Enforcement of judgments against unincorporated associations, see Section 15‑35‑170.

Execution on judgments by confession, see Section 15‑35‑380.

Executions and judicial sales under South Carolina Rules of Civil Procedures, see Rule 69, SCRCP.

Foreclosure and partition under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Grounds for attachment, see Section 15‑19‑10.

Homestead and other exemptions generally, see Sections 15‑41‑10 et seq.

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

What judgment for sale of mortgaged premises should contain under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k1 to 161k19.

Execution 1 to 19.

C.J.S. Executions Sections 2 to 23, 212, 291.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

S.C. Jur. South Carolina Rules of Civil Procedure Section 69.1, Reporter’s Notes.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

Attorney General’s Opinions

The provisions of Section 15‑39‑10 of the 1976 Code of Laws concerning executions are not applicable to magistrate courts. 1979 Op Atty Gen, No 79‑80, p 104.

Act 674 of the Acts and Joint Resolutions of 1976 does not expressly limit the judgment creditor to the provisions of the Act as the sole means of enforcing its judgment. 1978 Op Atty Gen, No 78‑13, p 22.

**SECTION 15‑39‑20.** Executions of course within ten years.

Writs of execution for the enforcement of judgments shall conform to this Title. The party in whose favor judgment has been given and, in case of his death, his personal representatives duly appointed may at any time within ten years after the entry of judgment proceed to enforce such judgment as prescribed by this Title.

HISTORY: 1962 Code Section 10‑1702; 1952 Code Section 10‑1702; 1942 Code Section 737; 1932 Code Section 737; Civ. P. ‘22 Section 604; Civ. P. ‘12 Section 342; Civ. P. ‘02 Section 303; 1870 (14) 490 Section 306; 1873 (15) 498 Section 15; 1885 (19) 229.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k17.

Execution 17.

C.J.S. Executions Section 20.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

An execution may be issued without leave of the court at any time within ten years after entry of judgment, and with leave of the court upon motion at any time while the judgment remains unsatisfied. Lawrence v Grambling, 13 SC 120 (1880), decided prior to the 1946 amendment to Code 1962 Section 10‑1561 [now Section 15‑35‑810], which repealed provisions thereof authorizing renewal or revival of judments within the period of ten years. See United States Rubber Co. v McManus, 211 SC 342, 45 SE2d 335 (1947).

The provisions of this section [from Code 1962 Section 10‑1702] are expressly retrospective, and execution may be levied on property under a judgment rendered prior to enactment as well as subsequent to its enactment. Garvin v Garvin, 34 SC 388, 13 SE 625 (1891). Kennedy v Kennedy, 86 SC 483, 68 SE 664 (1910).

The court of common pleas has power to act directly upon property within its jurisdiction, and by its judgment to divest one party of legal title and vest it in another. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922.

Under the provisions of SC Const, Art 5, Section 15 (now Art 5, Section 7) and this section [former Code 1962 Section 10‑1702] and former Code 1962 Section 10‑1786 [now Section 15‑39‑830], the court of common pleas has power to compel specific performance of a contract of a nonresident to convey lands within the State and within the jurisdiction of the court. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922. Specific Performance 131

**SECTION 15‑39‑30.** Issuance of executions; effective period.

Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

HISTORY: 1962 Code Section 10‑1703; 1952 Code Section 10‑1703; 1942 Code Section 744; 1932 Code Section 774; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

CROSS REFERENCES

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

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Issuance of execution on judgments rendered in magistrates’ courts, see Section 22‑3‑310.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k1; 228k857.

Execution 1.

Judgment 857.

C.J.S. Executions Sections 2, 15.

C.J.S. Judgments Section 640.

RESEARCH REFERENCES

ALR Library

15 ALR 6th 241 , Assumption of Mortgage on Real Property as Consideration for Conveyance that is Attacked as Fraudulent.

Encyclopedias

S.C. Jur. Appeal and Error Section 82, Post‑Verdict and Post‑Trial Motions.

S.C. Jur. South Carolina Rules of Civil Procedure Section 8.2, Discussion.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

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1. In general

Cited in Dixon v Davis, 31 F Supp 912 (1940). Dixon v Cleveland, 31 F Supp 1010 (1940).

Having no retroactive effect, this section [former Code 1962 Section 10‑1703] of the Code relating to executions applies only to executions issued after its adoption. Warren, Wallace & Co. v Jones, 9 SC 288 (1878). Lauderdale v Mahon, 41 SC 97, 19 SE 294 (1894). Lawton v Perry, 40 SC 255, 18 SE 861 (1893). Cheraw, etc., R. Co. v Marshall, 40 SC 59, 18 SE 247 (1893).

Statute that allows executions upon final judgments or decrees at any time within ten years from the date of the original entry and states that judgments have active energy during such period is not a statute of limitations. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 345

Plaintiff lost status as judgment creditor when judgment became more than ten years old and, therefore, lacked standing to bring an action under the Statute of Elizabeth to void transfer of property. Carr v. Guerard (S.C. 2005) 365 S.C. 151, 616 S.E.2d 429. Fraudulent Conveyances 221

Fraudulent‑transfer action more than ten years after judgment was impermissible attempt to circumvent bar to executing on expired judgment. Carr v. Guerard (S.C. 2005) 365 S.C. 151, 616 S.E.2d 429. Creditors’ Remedies 345; Fraudulent Conveyances 239(2)

Judgment obtained in United States District Court for the District of South Carolina was subject to South Carolina’s statutory ten‑year enforcement period, even though judgment was a “foreign judgment” under Uniform Enforcement of Foreign Judgments Act (UEFJA); federal law incorporated law of applicable state when determining effective date of judgment lien as well as date of lien’s expiration. Home Port Rentals, Inc. v. Moore (S.C.App. 2004) 359 S.C. 230, 597 S.E.2d 810, rehearing denied, certiorari granted, affirmed as modified 369 S.C. 493, 632 S.E.2d 862. Judgment 829(3); Judgment 934(1)

Statutory ten‑year enforcement period for judgments cannot be tolled, and thus judgment is utterly extinguished ten years from date of judgment’s entry. Home Port Rentals, Inc. v. Moore (S.C.App. 2004) 359 S.C. 230, 597 S.E.2d 810, rehearing denied, certiorari granted, affirmed as modified 369 S.C. 493, 632 S.E.2d 862. Creditors’ Remedies 345; Judgment 866.1

Prior to the adoption of the Uniform Enforcement of Foreign Judgments Act, domestication of a foreign judgment was accomplished by the creditor bringing a suit in South Carolina and pleading the foreign judgment as the cause of action; by this process, the foreign judgment was recognized by a South Carolina court, and a South Carolina judgment was obtained. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Judgment 925

A South Carolina judgment entered upon the book of abstracts and duly indexed constitutes a lien upon the real estate of the judgment debtor located in the county where the judgment is indexed for a period of ten years. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Judgment 778

Judgment against debtor expired ten years after judgment was filed by judgment creditor; thus because judgment expired before the entry of master’s order compelling debtor to pay judgment, there was nothing upon which creditor could execute. LaRosa v. Johnston (S.C.App. 1997) 328 S.C. 293, 493 S.E.2d 100. Creditors’ Remedies 334; Judgment 795(1)

Judgment debtor’s bare consent to payment before judgment expired did not bar debtor, under doctrine of equitable estoppel, from challenging order compelling payment after judgment expired. LaRosa v. Johnston (S.C.App. 1997) 328 S.C. 293, 493 S.E.2d 100. Estoppel 83(1)

As to arrest of funds in hands of third party to satisfy a judgment, see Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

An order that a levy should continue in force pending an injunction restraining a sale thereunder renders a revival of the judgment unnecessary on the dissolution of the injunction, where the levy was made within the period of limitation, though the period had expired when the dissolution was ordered. Ex parte Graham (S.C. 1899) 54 S.C. 163, 32 S.E. 67. Judgment 859

2. Creation of lien

The lien upon real estate is created by the judgment, the execution being simply the means provided for enforcing the judgment. Charleston Heights Co. v. City Council of Charleston (S.C. 1926) 138 S.C. 187, 136 S.E. 393.

The lien of a judgment is sufficient for all purposes and it is superfluous to hold that a lien is created by a levy under an execution. Charleston Heights Co. v. City Council of Charleston (S.C. 1926) 138 S.C. 187, 136 S.E. 393.

It seems that no lien upon the execution debtor’s property, either real or personal, is given to a lodgment of an execution except by levy. Charleston Heights Co. v. City Council of Charleston (S.C. 1926) 138 S.C. 187, 136 S.E. 393.

In view of this section [former Code 1962 Section 10‑1703] a simple lodgment of execution for taxes due with the city sheriff in due time for collection and sale, if necessary, does not give a general lien on the property taxed in the absence of any levy. Charleston Heights Co. v. City Council of Charleston (S.C. 1926) 138 S.C. 187, 136 S.E. 393.

3. Commencement of enforcement period

Ten‑year enforcement period applicable to creditor’s action to execute domesticated judgment against debtor’s property ran from the date of entry of the South Carolina judgment as opposed to the date of entry of the original foreign judgement. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Creditors’ Remedies 345

4. Tolling

Because the statute setting forth a ten‑year period for execution on a judgment operates as a statute of limitations, it constitutes a matter of avoidance under rule governing the pleading of affirmative defenses, and must be raised in the trial court when the defense becomes available. Linda Mc Company, Inc. v. Shore (S.C.App. 2007) 375 S.C. 432, 653 S.E.2d 279, certiorari granted, affirmed as modified 390 S.C. 543, 703 S.E.2d 499. Appeal And Error 173(10); Creditors’ Remedies 358

Judgment debtor failed to preserve for appellate review defense to order for levy and execution that ten‑year judgment period expired before the order was entered by not raising it before the trial court, even though the order was entered only one day after expiration, where debtor should have filed a motion to amend the pleadings or to alter, amend, or vacate the order. Linda Mc Company, Inc. v. Shore (S.C.App. 2007) 375 S.C. 432, 653 S.E.2d 279, certiorari granted, affirmed as modified 390 S.C. 543, 703 S.E.2d 499. Appeal And Error 173(10)

The accrual of a cause of action to set aside a fraudulent conveyance is tolled until the aggrieved party discovers or should have discovered facts, which by the exercise of due diligence, would be sufficient to put the creditor on notice of the fraud. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Limitation Of Actions 100(3)

Ten‑year enforcement period applicable to creditor’s action to execute domesticated judgment against debtor’s property was not tolled until time that creditor was charged with facts to put it on notice of debtor’s fraudulent conveyance of property; strong public policy limited life of a judgment to ten years, and creditor did not plead elements of equitable estoppel. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Creditors’ Remedies 345

Ten‑year enforcement period applicable to creditor’s action to execute domesticated judgment against debtor’s property was not tolled during two‑year period that debtor was absent from state, absent evidence that debtor was beyond reach of long arm statute during alleged absence or that any attempt was made to commence action during creditor’s absence. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Creditors’ Remedies 345

A receiver’s action to recover assets from former officers of a corporation was properly dismissed where the suit was commenced more than 10 years after the date the judgment was entered since the 10‑year period during which a judgment is enforceable was not tolled by appeals taken by the corporation during the tenure of the action. Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton (S.C.App. 1989) 299 S.C. 19, 382 S.E.2d 14.

5. Revival of execution

For cases decided under former Code provisions as to the revival of judgments and executions, see Carrier v Thompson, 11 SC 79 (1878). Chester & C. R. Co. v Marshall, 40 SC 59, 18 SE 247 (1893). Ex parte Graham, 54 SC 163, 32 SE 67 (1899). McLaurin v Kelly, 40 SC 486, 19 SE 143 (1894). First Nat. Bank v Carolina Midland Warehouse Co., 98 SC 168, 82 SE 405 (1914).

6. Expiration of judgment

Expiration of judgment did not deprive circuit court of jurisdiction to proceed with either the supplemental proceedings or execution; running of the ten‑year period did not influence the power of the circuit court to hear disputes related to statute which allowed executions upon final judgments or decrees at any time within ten years from the date of the original entry and stated that judgments had active energy during such period. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 343; Creditors’ Remedies 952

7. Active energy

Judgment creditor’s fraudulent conveyance action against transferee was filed to aid in enforcing judgment within judgment’s ten‑year statutory period of active energy, and therefore, creditor could still obtain satisfaction of his judgment after expiration of the ten‑year period. Gordon v. Lancaster (S.C.App. 2016) 419 S.C. 48, 795 S.E.2d 857, rehearing denied. Creditors’ Remedies 123

Judgment had active energy, and thus execution could issue, although order to execute and levy upon judgment debtors’ assets was issued more than ten years after entry of judgment; order was the result of supplemental proceedings filed during the ten‑year period; overruling Garrison v. Owens, 258 S.C. 442, 189 S.E.2d 31 and LaRosa v. Johnston, 328 S.C. 293, 493 S.E.2d 100. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 345; Creditors’ Remedies 953

Judgment had active energy, and thus execution could issue, although order to execute and levy upon judgment debtors’ assets was issued more than ten years after entry of judgment; order was the result of supplemental proceedings filed during the ten‑year period; overruling Garrison v. Owens, 258 S.C. 442, 189 S.E.2d 31 and LaRosa v. Johnston, 328 S.C. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 345; Creditors’ Remedies 953

8. Execution of judgment

If a party takes action to enforce a judgment within the ten‑year statutory period of active energy for a judgment, the resulting order of execution will be effective even if issued after the ten‑year period has expired. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 345; Creditors’ Remedies 350

When a party seeking execution of a judgment has complied with the applicable statutes and is merely waiting on a court’s order regarding execution and levy, the ten‑year limitation found in statute for execution of a judgment is extended to when the court finally issues an order. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Creditors’ Remedies 345

**SECTION 15‑39‑40.** Counties to which execution may be issued.

When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in which the judgment is docketed by the clerk of court in which the judgment was originally entered up or by the clerk of court of any county in which the judgment is docketed or transcribed. When it requires the delivery of real or personal property it must be issued to the sheriff of the county in which the property or some part thereof is situated. Executions may be issued at the same time to different counties.

HISTORY: 1962 Code Section 10‑1704; 1952 Code Section 10‑1704; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

CROSS REFERENCES

Docketing judgments of magistrates, see Section 22‑3‑300.

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

Executions on magistrates’ judgments, see Sections 22‑3‑310, 22‑3‑320.

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Judgment roll, abstracts and filing or docketing, see Sections 15‑35‑510 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k64.

Execution 64.

C.J.S. Executions Section 69.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

**SECTION 15‑39‑50.** Execution against the person.

If the action be one in which the defendant might have been arrested, as provided in Section 15‑17‑20, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court after the return of an execution against his property unsatisfied in whole or in part. But no execution shall issue against the person of a judgment debtor unless an order of arrest has been served, as in this Code provided, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by Section 15‑17‑20.

HISTORY: 1962 Code Section 10‑1705; 1952 Code Section 10‑1705; 1942 Code Section 741; 1932 Code Section 741; Civ. P. ‘22 Section 608; Civ. P. ‘12 Section 346; Civ. P. ‘02 Section 307; 1870 (14) 491 Section 311.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Release from arrest on surrender of property, see Sections 15‑17‑410 et seq.

When plaintiff is liable for debtor’s maintenance in jail, see Section 15‑17‑810.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k421 to 161k453.

Execution 421 to 453.

C.J.S. Exchanges Sections 18, 24 to 26.

C.J.S. Executions Sections 18, 24 to 26, 159, 425 to 428.

NOTES OF DECISIONS

In general 1

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1. In general

Applied in Brown v Nix, 208 SC 230, 37 SE2d 579 (1946). Carter v Lynch, 429 F2d 154 (4th Cir 1970).

Proceedings for the arrest of a debtor in a civil case are closely analogous to attachment proceedings. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

This section [former Code 1962 Section 10‑1705] held constitutional. Blackmon v. Kirven (S.C. 1934) 173 S.C. 322, 175 S.E. 814.

2. Strict compliance with statute required

Statutes authorizing arrest in civil actions and execution against the person must be strictly followed when invoked. Ramantanin v Miller, 225 SC 77, 80 SE2d 925 (1954). Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876. Creditors’ Remedies 631

The subjection of a party to arrest and imprisonment on process for the recovery of a pecuniary demand confers on the creditor a large and dangerous power. The exercise of it should not be permitted without a strict compliance with the requirements of the statute, nor be permitted without restraint or responsibility. The least restraint should require that the complaint state the facts and circumstances showing the grounds of belief and the sources of information, and that the allegations be sufficiently specific so as to give the defendant notice that he must be prepared to contest with the plaintiff the facts involving the right of arrest as well as the alleged indebtedness. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

A creditor who seeks the benefit of a statute authorizing arrest or imprisonment in civil actions must fully comply with the requirements prescribed by the statute, and where the proceeding to obtain an order of arrest is purely statutory, the provisions of the statute by which it is authorized must be followed strictly because in derogation of personal liberty. The remedy is a drastic one, and should be granted only on a clear showing that plaintiff has brought himself within the provisions of the applicable statute. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602. Arrest 20

3. Complaint

There mere statement of the statutory ground of arrest in the language of the statute upon the belief of the affiant is not sufficient to support the order of arrest. Four County Agricultural Credit Corp. v Matthews, 199 SC 71, 18 SE2d 602 (1942). Baker Wholesale Co. v Fleming, 227 SC 312, 87 SE2d 876 (1955).

The allegations of the complaint, where arrest is sought, should be sufficiently specific so as to give the defendant notice that he must be prepared to contest with the plaintiff the facts involving the right of arrest as well as the alleged indebtedness. Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876.

Where party sought issuance of execution against debtor and record contained no complaint which might comply with this section [former Code 1962 Section 10‑1705], and it was otherwise apparent that original judgment had not been obtained in an action showing one or more of causes of arrest required by former Code 1962 Section 10‑802 [see now Section 15‑17‑20], such issuance could not be had. Ramantanin v. Miller (S.C. 1954) 225 S.C. 77, 80 S.E.2d 925.

In a proceeding for an execution against the person which is predicated upon and referred to in a portion of the complaint, the complaint must fully set out the ground on which the arrest is sought, and it is essential that it should allege the facts tending to show the existence of such ground or grounds. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602. Creditors’ Remedies 632

The verified complaint or the affidavit should set forth the grounds of arrest with positiveness and certainty, and all material circumstances attending it. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

And should be clear and explicit. The statement of facts in the verified complaint showing the cause of arrest must be as clear and explicit as if set forth in the affidavit required under Code 1962 Section 10‑805 as the basis for an order for arrest. In either case, where the allegations are made on information and belief, the sources of information and the grounds of belief should be stated. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602. Creditors’ Remedies 632

4. Execution on judgments in particular circumstances

Under the provisions of this section [former Code 1962 Section 10‑1705], an execution cannot issue against the person until an execution against defendant’s property has been returned unsatisfied. Martin v Hutto, 82 SC 432, 64 SE 421 (1909). Martin v Hodge, 87 SC 214, 69 SE 225 (1910).

Mandamus to require clerk of court to issue execution against the person. Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876.

Party who recovered judgment in action for assault, and who obtained appointment of receiver to recover property conveyed by judgment debtor to avoid payment of judgment, could proceed with execution against person of judgment debtor after return of execution against his property unsatisfied, as against contention that execution against person could not be had because of pendency of proceedings in execution against judgment debtor’s property. Blackmon v. Kirven (S.C. 1934) 173 S.C. 322, 175 S.E. 814. Creditors’ Remedies 631

An execution against the person, as set out in this section [former Code 1962 Section 10‑1705], on a judgment for a tort, resulting in that person’s imprisonment, was valid, and his constitutional right not to be imprisoned for debt, except for fraud, was not invaded, as a tort judgment was not a debt. Ex parte Berry (S.C. 1910) 85 S.C. 243, 67 S.E. 225, 20 Am.Ann.Cas. 1344.

An execution against a person, as set out here, may be issued without a rule to show cause, when defendant has notice of the cause of action and the relief asked by service of the complaint on him, and he has had an opportunity in the trial to show why the allegations of fraudulent misappropriation or embezzlement are not well founded, and why the relief asked should not be granted. Martin v. Hutto (S.C. 1909) 82 S.C. 432, 64 S.E. 421.

A debtor arrested on execution, as provided for in this section [former Code 1962 Section 10‑1705], is entitled to apply for discharge as an insolvent debtor under Code 1962 Sections 10‑841 to 10‑859 and 10‑882. Hurst v. Samuels (S.C. 1888) 29 S.C. 476, 7 S.E. 822.

An execution may be issued against the defendant’s person as set out here, if the execution against his property has been returned unsatisfied in a judgment obtained against him for damages for wrongfully causing plaintiff’s discharge from his employment. Castles v. South Carolina Law & Collection Agency (S.C. 1916) 104 S.C. 81, 88 S.E. 273.

**SECTION 15‑39‑60.** Execution against married woman.

An execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise.

HISTORY: 1962 Code Section 10‑1706; 1952 Code Section 10‑1706; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Property rights of married women, see Sections 20‑5‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k429.

Execution 429.

C.J.S. Executions Section 425.

NOTES OF DECISIONS

In general 1

1. In general

The provisions of this section [former Code 1962 Section 10‑1706] as to an execution against a married woman are merely directory and not necessary to validity of an execution, which, upon motion to set it aside, may be amended. Clinkscales v. Hall (S.C. 1881) 15 S.C. 602. Marriage And Cohabitation 555

**SECTION 15‑39‑70.** Executions may be taken out by administrators de bonis non.

When any judgment after a verdict shall be had by or in the name of any executor or administrator, an administrator de bonis non may take out execution upon such judgment.

HISTORY: 1962 Code Section 10‑1707; 1952 Code Section 10‑1707; 1942 Code Section 416; 1932 Code Section 416; Civ. P. ‘22 Section 372; Civ. C. ‘12 Section 3960; Civ. C. ‘02 Section 2856; G. S. 2188; R. S. 2320; 1712 (2) 521.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 162k120.

Executors and Administrators 120.

C.J.S. Executors and Administrators Sections 941 to 942, 946.

**SECTION 15‑39‑80.** Contents of executions.

The execution must be directed to the sheriff or to the coroner when the sheriff is a party or interested, must be attested by the clerk, subscribed by the party issuing it or his attorney and must intelligibly refer to the judgment, stating the court, the county in which the judgment roll or transcript is filed, the names of the parties, the amount of the judgment if it be for money, the amount actually due thereon and the time of docketing in the county to which the execution is issued. It shall require the officer, substantially, as follows:

(1) If it be against the property of the judgment debtor, to satisfy the judgment out of the personal property of such debtor and, if sufficient personal property cannot be found, out of the real property belonging to him;

(2) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, to satisfy the judgment out of such property;

(3) If it be against the person of the judgment debtor, to arrest such debtor and commit him to the jail of the county until he shall pay the judgment or be discharged according to law; or

(4) If it be for the delivery of the possession of real or personal property, to deliver the possession of such property, particularly describing it, to the party entitled thereto, and in such case it may, at the same time, require the officer to satisfy any costs, damages or rents or profits recovered by the judgment out of the personal property of the party against whom it was rendered and the value of the property for which the judgment was recovered, to be specified therein, or, if a delivery thereof cannot be had and if sufficient personal property cannot be found, then out of the real property belonging to him and it shall, in that respect, be deemed an execution against property.

HISTORY: 1962 Code Section 10‑1708; 1952 Code Section 10‑1708; 1942 Code Section 742; 1932 Code Section 742; Civ. P. ‘22 Section 609; Civ. P. ‘12 Section 347; Civ. P. ‘02 Section 308; 1870 (14) 491 Section 312.

CROSS REFERENCES

Coroner acting when sheriff disqualified, see Section 23‑15‑120.

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

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Judgment roll, abstracts, filing or docketing, see Sections 15‑35‑510 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k59 to 161k105.

Execution 59 to 105.

C.J.S. Executions Sections 57 to 99, 212.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 193, Creditors’ Remedies Against Beneficiary’s Interest.

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

Entry of judgment as prerequisite 2

1. In general

Cited in Hurst v Samuels, 29 SC 476, 7 SE 822 (1888). Martin v Hodge, 87 SC 214, 69 SE 225 (1910). Cayce Land Co. v Guignard, 135 SC 446, 134 SE 1 (1926). Calder v Maxwell, 99 SC 115, 82 SE 997 (1914).

Judgment for a truck or its value having been rendered in a claim and delivery action, the delivery of the truck to the sheriff, in an execution issued under subdivision (4) of this section [Code 1962 Section 10‑1708], released the sureties on defendant’s bond given to prevent delivery at the beginning of the action. Morris Motor Co. v. Alford (S.C. 1926) 137 S.C. 446, 135 S.E. 557.

Arrest of funds in hands of third party to satisfy a judgment, see Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

Under subdivision (3) of this section [former Code 1962 Section 10‑1708] a judgment finding plaintiff entitled to one third of a crop and stating its value, is not an ordinary money judgment, but is one that will authorize an execution against the person as a judgment debtor, as set out after the return of an execution against the property unsatisfied. Maxwell v. Horton (S.C. 1917) 107 S.C. 380, 93 S.E. 4.

For case decided under former Code provisions as to the revival of judgments and executions, see First Nat. Bank v. Carolina Midland Warehouse Co. (S.C. 1914) 98 S.C. 168, 82 S.E. 405.

This section [former Code 1962 Section 10‑1708] specifies terms on which executions against persons shall issue. Martin v. Hutto (S.C. 1909) 82 S.C. 432, 64 S.E. 421.

If a judgment cannot be enforced by execution, it still may be proved against the judgment debtor’s estate. See Ex parte Goldsmith (S.C. 1904) 68 S.C. 528, 47 S.E. 984. Executors And Administrators 213

2. Entry of judgment as prerequisite

A judgment obtained is not a lien upon personal property until execution is issued and levy made—and before execution can issue the judgment must be entered. Powers v. Fidelity & Deposit Co. of Maryland (S.C. 1936) 180 S.C. 501, 186 S.E. 523. Judgment 766.1

This section [former Code 1962 Section 10‑1708] and the other provisions of the Code relative to executions show that the law contemplates an entry of the judgment in the book entitled “abstract of judgments,” before the execution can properly be issued. Mason & Risch Vocalion Co. v. Killough Music Co. (S.C. 1895) 45 S.C. 11, 22 S.E. 755.

The failure of a judgment creditor to enter his judgment in the book of “abstract of judgments” before issuing execution to enforce the same is such an irregularity as to render the execution of no effect. Mason & Risch Vocalion Co. v. Killough Music Co. (S.C. 1895) 45 S.C. 11, 22 S.E. 755.

**SECTION 15‑39‑90.** Executions on judgments of inferior courts.

When judgment shall have been rendered in a court of a magistrate or other inferior court and docketed in the office of the clerk of the circuit court the application for leave to issue execution must be to the circuit court of the county in which the judgment was rendered.

HISTORY: 1962 Code Section 10‑1709; 1952 Code Section 10‑1709; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

CROSS REFERENCES

Civil procedure in magistrates’ courts, generally, see Sections 22‑3‑300 et seq.

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Proceedings in claim and delivery in magistrates’ courts, see Sections 22‑3‑1310 et seq.

Proceedings in magistrates’ courts when title to real property is involved, see Sections 22‑3‑1110 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k5.

Execution 5.

C.J.S. Executions Section 6.

NOTES OF DECISIONS

In general 1

1. In general

There is nothing in this section [former Code 1962 Section 10‑1709] indicative of an intention on the part of the legislature to forbid a plaintiff from issuing an execution to enforce a judgment originally obtained before a trial justice and afterwards transcripted to the circuit court, without leave of the court; but, on the contrary, the sole purpose of the language relied upon was to declare that when an application for leave to issue an execution on such a judgment becomes necessary such application must be made—not to the trial justice court, but to the circuit court. Amick v. Amick (S.C. 1900) 59 S.C. 70, 37 S.E. 39.

Cited in Rhoad v. Patrick (S.C. 1892) 37 S.C. 517, 16 S.E. 536.

**SECTION 15‑39‑100.** Execution constitutes no lien on personal property prior to levy.

Executions shall not bind the personal property of the debtor, but personal property shall only be bound by actual attachment or levy thereon for the period of four months from the date of such levy.

HISTORY: 1962 Code Section 10‑1711; 1952 Code Section 10‑1711; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

CROSS REFERENCES

Attachment, see Sections 15‑19‑10 et seq.

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Mechanics lien acquired by state or its political subdivisions for taxes, see Section 12‑49‑10.

Mechanics liens, in general, see Sections 29‑5‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k107.

Execution 107.

C.J.S. Executions Section 149.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 2, Statutory Nature.

NOTES OF DECISIONS

In general 1

Execution and levy 2

Tax liens 3

1. In general

The provisions of this section [former Code 1962 Section 10‑1711] as to executions on personal property show that the procedure prevailing prior to the adoption of the Code has been changed, and that it is now necessary to issue and levy the execution in order to create a lien. State v McCary, 120 SC 361, 113 SE 275 (1922). McManus v Bank of Greenwood, 171 SC 84, 171 SE 473 (1933).

Section does not abrogate lien of execution on personalty issued and lodged prior to Code. An execution issued and lodged with the sheriff prior to the adoption of the Code does not lose its lien upon personalty because of provisions of this section [Code 1962 Section 10‑1711] in reference to executions. Warren, Wallace & Co. v Jones, 9 SC 288 (1878). Carrier v Thompson, 11 SC 79 (1878).

Section inapplicable to lien acquired under Code 1962 Section 65‑2701. This section [Code 1962 Section 10‑1711] does not relate to the lien acquired by the State or its political subdivisions for taxes under Code 1962 Section 65‑2701. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274.

Permanent injunction obtained by judgment creditor preventing distribution, without court order, of inheritance to judgment debtor who had promised to pay judgment out of inheritance did not effectively attach debtor’s inheritance. LaRosa v. Johnston (S.C.App. 1997) 328 S.C. 293, 493 S.E.2d 100. Injunction 1173

“Attachment” is the act or process of taking, apprehending, or seizing persons or property, by virtue of writ, summons, or other judicial order, and bringing same into custody of the law. LaRosa v. Johnston (S.C.App. 1997) 328 S.C. 293, 493 S.E.2d 100. Creditors’ Remedies 141

Attachment is defined as “the act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law.” U.S. v. Southern Growth Industries, Inc. (S.C. 1968) 251 S.C. 404, 162 S.E.2d 849.

Levy is defined as “to assess; raise; execute; exact; collect; gather; take up; seize.” U.S. v. Southern Growth Industries, Inc. (S.C. 1968) 251 S.C. 404, 162 S.E.2d 849.

Quoted in Ex parte Roddey (S.C. 1934) 171 S.C. 489, 172 S.E. 866, 92 A.L.R. 1430.

This applies to magistrate’s judgments also. A magistrate’s judgment for the purchase money of personal property without execution and levy thereunder, as required by Code 1962 Section 43‑101 and this section [Code 1962 Section 10‑1711], does not create a lien sustaining a conviction for disposing of property subject to a lien. State v. McCary (S.C. 1922) 120 S.C. 361, 113 S.E. 275. Justices Of The Peace 131

A lien under an execution issued prior to the adoption of the Code attaches also to the personal property of execution debtor acquired after the adoption of the Code. Carrier v. Thompson (S.C. 1878) 11 S.C. 79. Creditors’ Remedies 415

2. Execution and levy

An execution becomes lien on personal property when levy is made. Charleston Heights Co. v City Council of Charleston, 138 SC 187, 13 SE 393 (1926). State v McCary, 120 SC 361, 113 SE 275 (1922). Kohn v Meyer, 19 SC 190, 200 (1883).

Judgment creditor does not obtain perfected lien upon personal property of judgment debtor by virtue of judicial order restraining debtor from disposing of property pending outcome of supplementary proceedings where judgment creditor has done nothing to attach or levy on any personal property of judgment debtor, either prior to appointment of trustee or since appointment, which reduced judgment debtor’s personal property to possession. Matter of Inter‑Pac, Inc. (Bkrtcy.D.S.C. 1980) 36 B.R. 486, affirmed 36 B.R. 488. Bankruptcy 2851

There can be no specific and perfected lien on personal property until it is bound by actual attachment or levy. U.S. v. Southern Growth Industries, Inc. (S.C. 1968) 251 S.C. 404, 162 S.E.2d 849.

Sheriff must reduce personalty of judgment debtor to possession or bring it within his immediate control to accomplish levy of execution. McManus v. Bank of Greenwood (S.C. 1933) 171 S.C. 84, 171 S.E. 473. Creditors’ Remedies 377

Where sheriff purported to levy execution on general bank deposit of judgment debtor by service of execution on bank, which refused to surrender anything but stated that it held deposit subject to judgment, and judgment debtor made no acknowledgment of levy but protested against bank’s statement, attempted levy was invalid. McManus v. Bank of Greenwood (S.C. 1933) 171 S.C. 84, 171 S.E. 473. Creditors’ Remedies 380

3. Tax liens

Code 1962 Sections 65‑2701 and 65‑2702 [see now Sections 12‑49‑10 and 12‑49‑20] specifically provide that a tax assessment shall constitute a lien on the taxpayer’s personalty, whereas this section specifically provides that a judgment shall not constitute such a lien. U. S. v. Clover Spinning Mills Co. (C.A.4 (S.C.) 1966) 373 F.2d 274.

**SECTION 15‑39‑110.** Sheriff may break into house in certain cases.

The sheriff or his deputy may break and enter any house after a request to be permitted to enter such house and a refusal of such request, in order to arrest the person or to seize the goods of anyone in such house, provided, such sheriff or his deputy have process requiring him to arrest such person or seize such goods.

HISTORY: 1962 Code Section 10‑1712; 1952 Code Section 10‑1712; 1942 Code Section 3527; 1932 Code Section 3527; Civ. C. ‘22 Section 2070; Civ. C. ‘12 Section 1177; Civ. C. ‘02 Section 852; G. S. 669; R. S. 732; 1839 (11) 43 Section 16.

CROSS REFERENCES

Arrest in civil actions, generally, see Sections 15‑17‑10 et seq.

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k124.

Execution 124.

C.J.S. Executions Section 105.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, see State v Thackam, 1 Bay (1 SCL) 358. Rowe v Cockrell, Bail (8 SC Eq) 126. Brian v Strait, Dud (23 SCL) 19.

**SECTION 15‑39‑120.** Sheriff to keep memorandum of levy; schedule.

The sheriff shall make a memorandum in writing of the date of every levy and specify the property upon which such levy has been made on the process or in a schedule thereunto annexed. If more than one process be levied on such property reference on each shall be made to such memorandum or schedule.

HISTORY: 1962 Code Section 10‑1713; 1952 Code Section 10‑1713; 1942 Code Section 9068; 1932 Code Section 9068; Civ. C. ‘22 Section 5477; Civ. C. ‘12 Section 3698; Civ. C. ‘02 Section 2614; G. S. 1985; R. S. 2114; 1839 (11) 50 Section 16.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 353k88.

Sheriffs and Constables 88.

C.J.S. Sheriffs and Constables Sections 80 to 92.

NOTES OF DECISIONS

In general 1

Description of property 2

Land 4

Personal property and money 3

Sale by sheriff 5

1. In general

The endorsement of the acknowledgment of levy by the defendant is sufficient. Weatherby v Covington, 3 Strob (34 SCL) 27. Rhame v McRoy, 7 Rich (41 SCL) 37.

The levy should not be made at an improper hour or in an improper manner. State v Thackam, 1 Bay (1 SCL) 358. DeGraffenreid v Mitchell, 3 McC (14 SCL) 506.

A levy is prima facie a satisfaction, and a second cannot be made until the sale shows the contrary. Davis v Barkley, 1 Bail (17 SCL) 140; Mazyck v Coil, 2 Bail (18 SCL) 101. Lawrence v Wofford, 17 SC 568 (1882). National Bank of Newberry v Kinard, 28 SC 101, 5 SE 464 (1888).

It is sufficient if the entry be made on a separate paper folded and filed with the execution. Kennedy v. Rountree (S.C. 1901) 59 S.C. 324, 37 S.E. 942, 82 Am.St.Rep. 841.

The physical annexing of the memorandum to the execution is immaterial. Tyler v. Williams (S.C. 1898) 53 S.C. 367, 31 S.E. 298.

A sheriff cannot levy an execution in which he is plaintiff. Singletary v. Carter (S.C. 1830) 21 Am.Dec. 480.

The levy cannot be made after the day of execution. Ross v. McCartan (S.C. 1805).

Where there is one levy and several entries, the sheriff can only charge for one levy. Thrower v. Vaughan (S.C. 1844) 1 Rich. 18.

A levy is good, though made under a satisfied execution, if there be unsatisfied ones. McKnight v. Gordon (S.C. 1867) 94 Am.Dec. 164.

Failure to enter the levy on all the executions except the oldest does not invalidate the sale. Maddox v. Sullivan (S.C. 1845) 44 Am.Dec. 234.

2. Description of property

The property must be specified; otherwise, the levy is void. Huger’s Adm’rs v. Osborne (S.C. 1793).

If the description is in general terms, the deed may describe accurately. Manning v. Dove (S.C. 1857) 10 Rich. 395.

3. Personal property and money

Personal property must be taken into possession or be within the power of the sheriff. Collins v Montgomery, 2 N & McC (11 SCL) 392. Moss v Moore, 3 Hill (21 SCL) 276. Brian v Strait, Dud (23 SCL) 19. Weatherby v Covington, 3 Strob (34 SCL) 27. Rhame v McRoy, 7 Rich (41 SCL) 37.

Money in the sheriff’s hands is leviable. Summers v Caldwell, 2 N & McC (11 SCL) 341. Means v Vance, 1 Bail (17 SCL) 39; Adams v Crimager, 1 McM (26 SCL) 309. Dupong v Watkins, 2 Rich (31 SCL) 328.

4. Land

In levying on land, the sheriff need not go upon it. Martin v. Bowie (S.C. 1892) 37 S.C. 102, 15 S.E. 736. Creditors’ Remedies 382

5. Sale by sheriff

Title vests in the sheriff for legal purposes only. Bates v Moore, 2 Bail (18 SCL) 614. Weatherby v Covington, 3 Strob (34 SCL) 27.

Under a levy made by one sheriff before the active energy of the execution has expired, he or his successor may sell. Toomer v Purkey, 1 Mill (8 SCL) 323. Gassaway v Hall, 3 Hill (21 SCL) 289. Leger v Doyle, 11 Rich (45 SCL) 109. Henderson v Trimmier, 32 SC 269, 11 SE 540 (1890).

Under a sale by one sheriff, his successor may convey. Martin v. Wilbourne (S.C. 1834) 27 Am.Dec. 393.

The title vests in the sheriff for all legal purposes. McClintock v. Graham (S.C. 1825).

**SECTION 15‑39‑130.** Returns.

The sheriff, coroner or other officer with whom final process shall be lodged shall, at each regular term of the court from which the execution or process was sued out, during the continuance of its active energy, until full execution thereof be returned, make a return to the office of the clerk of the court of common pleas of his actions and doings thereunder. If he shall have fully executed he shall return the process with the manner of its execution. If he shall have partially executed he shall return on oath to the clerk a statement in writing under his hand of such partial execution with the reason of his failure as to the remainder. If he shall have wholly failed to make execution he shall return on oath a statement in writing under his hand of his failure with the reasons. And in any event on the first day of the term at which the active energy of the process shall cease as provided by law he shall return the process, if it has not been before returned, as fully executed. The return of the officer made as aforesaid shall for all purposes have the same legal effect as if the process had been made returnable to the term succeeding its first lodgment and renewed after each subsequent regular term.

HISTORY: 1962 Code Section 10‑1714; 1952 Code Section 10‑1714; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k330 to 161k347.

Execution 330 to 347.

C.J.S. Executions Sections 320 to 334.

NOTES OF DECISIONS

In general 1

1. In general

A term of the court of common pleas held at the conclusion of a court of general sessions for determining matters not involving a jury trial, is not a “regular term” within the meaning of this section [Code 1962 Section 10‑1714]. McLaurin v. Kelly (S.C. 1894) 40 S.C. 486, 19 S.E. 143.

Whether or not the sheriff does his duty in respect to this section [former Code 1962 Section 10‑1714] dealing with returns, furnishes no reason why he should be held incompetent to prove that the endorsements appearing on the executions were made by him, or that he sold the property levied on, as they are independent facts. National Bank of Newberry v. Kinard (S.C. 1888) 28 S.C. 101, 5 S.E. 464.

It may be shown by parol testimony of the sheriff that he made certain entries appearing on the plaintiff’s execution, and that the property levied upon has not been sold, and such a return may be sufficient to enable plaintiff to commence an action to set aside a deed on the grounds of fraud upon creditors. National Bank of Newberry v. Kinard (S.C. 1888) 28 S.C. 101, 5 S.E. 464. Fraudulent Conveyances 241(5)

**SECTION 15‑39‑140.** Failure or neglect to make return.

For failure or neglect to make any of the returns mentioned in Section 15‑39‑130 or for any false return the sheriff or other officer as therein stated shall be subject to rule, attachment, action, penalty and all other consequences provided by law for neglect of duty by executive or judicial officers.

HISTORY: 1962 Code Section 10‑1715; 1952 Code Section 10‑1715; 1942 Code Section 744; 1932 Code Section 744; Civ. P. ‘22 Section 611; Civ. P. ‘12 Section 349; Civ. P. ‘02 Section 310; 1875 (15) 499; 1885 (19) 229.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Liability of sheriffs and deputy sheriffs, generally, see Sections 23‑17‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k347.

Execution 347.

C.J.S. Executions Section 321.

**SECTION 15‑39‑150.** Sheriff must give notice of money collected.

The sheriff, on the receipt of any money on account of any plaintiff in execution or other person entitled thereto, must within one month give notice in writing of the receipt of such money to such plaintiff or his attorney or other person entitled thereto by personal service or by mail. On failure to do so he shall be liable to pay interest for the money in his hands at the rate of five per cent per month until notice is given.

HISTORY: 1962 Code Section 10‑1716; 1952 Code Section 10‑1716; 1942 Code Section 3528; 1932 Code Section 3528; Civ. C. ‘22 Section 2071; Civ. C. ‘12 Section 1178; Civ. C. ‘02 Section 853; G. S. 670; R. S. 733; 1856 (12) 534.

CROSS REFERENCES

Executions under the South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 353k88; 353k99.

Sheriffs and Constables 88, 99.

C.J.S. Sheriffs and Constables Sections 80 to 92, 107 to 113.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 69.1, Reporter’s Notes.

ARTICLE 3

Discovery; Arrest; Garnishment; Receivers and the Like

**SECTION 15‑39‑310.** Order for discovery of property.

When an execution against property of the judgment debtor or any of the several debtors in the same judgment issued to the sheriff of the county in which he resides or has a place of business or, if he does not reside in the State, to the sheriff of the county in which a judgment roll is filed is returned unsatisfied in whole or in part the judgment creditor at any time after such return is made is entitled to an order from a judge of the circuit court requiring such judgment debtor to appear and answer concerning his property before such judge at a time and place specified in the order within the county to which the execution was issued. After the issuing of an execution against property and upon proof by affidavit of a party or otherwise, to the satisfaction of the court or a judge thereof, that any judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment such court or judge may by an order require the judgment debtor to appear at a specified time and place to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are provided upon the return of an execution.

HISTORY: 1962 Code Section 10‑1721; 1952 Code Section 10‑1721; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

CROSS REFERENCES

Attachment, see Sections 15‑19‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k378.

Execution 378.

C.J.S. Executions Sections 365, 375, 385.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 1 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 207 , Introductory Comments.

South Carolina Litigation Forms and Analysis Section 38:15 , Petition for Supplementary Proceedings.

South Carolina Litigation Forms and Analysis Section 38:16 , Order on Supplementary Proceedings.

South Carolina Litigation Forms and Analysis Section 38:18 , Order Appointing a Receiver.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 193, Creditors’ Remedies Against Beneficiary’s Interest.

NOTES OF DECISIONS

Affidavit, operation of statute 2

Operation of statute 1‑2

In general 1

Affidavit 2

Rights of creditor 3

Rights of debtor 4

1. Operation of statute—In general

In addition to their discovery functions, supplementary proceedings to discover a judgment debtor’s assets furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action. Katzburg v. Katzburg (S.C.App. 2014) 410 S.C. 184, 764 S.E.2d 3, rehearing denied. Creditors’ Remedies 52

If the return of an execution unsatisfied be a prerequisite to an order of the judge granting an application for an examination, the fact could be made to appear from the judgment roll and from an inspection of the execution with the sheriff’s return thereon endorsed. Phillips v. Bruton (S.C. 1924) 128 S.C. 369, 122 S.E. 514.

The sufficiency of the showing “that, judgment debtor has property which he unjustly refuses to apply to the satisfaction of the judgment” is within the discretion of the judge. Phillips v. Bruton (S.C. 1924) 128 S.C. 369, 122 S.E. 514. Creditors’ Remedies 1013

No stay of execution having been granted in a money judgment, an appeal from such judgment will not stay supplementary proceeding in view of this section [former Code 1962 Section 10‑1721] when the plaintiff files his bond in double amount as required by former Code 1962 Section 7‑412 [see now Section 18‑9‑130]. Phillips v. Bruton (S.C. 1924) 128 S.C. 369, 122 S.E. 514.

The absence of the court’s seal on the clerk’s certificate in copy‑order to appear before a referee in supplementary proceedings is no ground for dismissing the proceedings, nor, after appearance and examination, could the defendant object to the service of such copy‑order on him. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Creditors’ Remedies 962

A mortgagee of a judgment debtor is not a necessary party to supplementary proceedings when an order for such proceedings interferes in no way with the mortgaged property. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Creditors’ Remedies 962

After the return of an execution unsatisfied, the court may, under proper proceedings, require money in its hands, belonging to the defendant, to be applied to the payment of the debt. McDaniel v. Stokes (S.C. 1883) 19 S.C. 60. Creditors’ Remedies 83

2. —— Affidavit, operation of statute

This section [former Code 1962 Section 10‑1721] does not require the affidavit accompanying an application for examination in supplementary proceedings to show an unsatisfied execution against debtor’s property. Phillips v. Bruton (S.C. 1924) 128 S.C. 369, 122 S.E. 514. Creditors’ Remedies 1013

Under this section [former Code 1962 Section 10‑1721] an application for an examination may be granted on an affidavit alleging on information and belief that the judgment debtor has property which he unjustly refuses to apply towards satisfaction of a judgment. Phillips v. Bruton (S.C. 1924) 128 S.C. 369, 122 S.E. 514. Creditors’ Remedies 1013

3. Rights of creditor

In supplementary proceedings in search of assets to pay a judgment, the judgment creditor may, in view of this section [former Code 1962 Section 10‑1721], arrest funds in hands of third parties alleged to belong to judgment debtor and proved prima facie to so belong, and hold fund until issue of ownership shall be decided. Deer Island Lumber Co. v Virginia‑Carolina Chemical Co., 111 SC 299, 97 SE 833 (1919). Palmetto Bank & Trust Co. v McCown‑Clark Co., 143 SC 98, 141 SE 155 (1928).

The legislature has prescribed in this Article the procedure whereby a judgment creditor may have recourse against property of the judgment debtor in the hands of a third person, or against a debt allegedly due by such third person to the judgment debtor. John Deere Co. v. Cone (S.C. 1962) 239 S.C. 597, 124 S.E.2d 50.

Judgment creditor may arrest funds in the hands of third party, and it is immaterial that third party is a corporation. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

Under this section [former Code 1962 Section 10‑1721] a judgment creditor may have the examination after a return of nulla bona as a matter of right and without affidavit showing that the debtor has property which he unjustly refuses to apply to the satisfaction of the debt though such affidavit is prerequisite to examination before such return. Robinson v. McMaster (S.C. 1918) 109 S.C. 20, 95 S.E. 110. Creditors’ Remedies 1013

The right to institute supplementary proceedings is given to every judgment creditor who can make the required showing, without any limitation or qualifications whatsoever. Sparks v. Davis (S.C. 1886) 25 S.C. 381.

A creditor, who obtains his judgment after a receiver is appointed in a former proceeding, is entitled to an examination of the judgment debtor. Sparks v. Davis (S.C. 1886) 25 S.C. 381.

“The statute does not seem to provide that this remedy (examination of judgment debtor) is to be enforced by one judgment creditor only, or that the remedy is exhausted by being enforced in one action, and that subsequent judgment creditors have no right of discovery under it.” Sparks v. Davis (S.C. 1886) 25 S.C. 381.

4. Rights of debtor

A debtor may waive his right to be examined in his own county, and does waive it by submitting, without protest, a written statement which is accepted by the plaintiff as a sufficient compliance with the order. Union Bank v Northrop, 19 SC 473 (1883). Green v Bookhart, 19 SC 466 (1883).

A judgment debtor cannot be ordered to pay a judgment debt from money in his hands in the absence of evidence that he has such money, he having refused to testify on that point. Burdett v. McAllister (S.C. 1894) 42 S.C. 352, 20 S.E. 86. Creditors’ Remedies 936

A judgment debtor has the right in supplementary proceedings under this section [former Code 1962 Section 10‑1721] to have his examination conducted in his own county. Union Bank v. Northrop (S.C. 1883) 19 S.C. 473.

The right of a debtor to be examined in his own county extends no further than the examination and was given, probably, to relieve him from the inconvenience of being dragged to another county, possibly in a distant part of the State. Union Bank v. Northrop (S.C. 1883) 19 S.C. 473.

**SECTION 15‑39‑320.** Arrest in lieu of discovery order.

Instead of the order requiring the attendance of the judgment debtor the judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor’s leaving the State or concealing himself and that there is reason to believe that he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county in which such debtor may be to arrest him and bring him before such judge. Upon being brought before the judge he may be examined on oath and if it then appears that there is danger of the debtor’s leaving the State and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking, with one or more sureties, that he will from time to time attend before the judge as he shall direct and that he will not during the pendency of the proceedings dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to prison by warrant of the judge as for a contempt.

HISTORY: 1962 Code Section 10‑1722; 1952 Code Section 10‑1722; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

CROSS REFERENCES

Arrest in civil actions, see Sections 15‑17‑10 et seq.

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

Sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k381.

Execution 381.

C.J.S. Executions Section 378.

**SECTION 15‑39‑330.** Examination of witnesses and debtor.

On an examination under Sections 15‑39‑310 and 15‑39‑320 either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness.

No person shall on examination, pursuant to this article, be excused from answering any questions on the ground that his examination will tend to convict him of the commission of a fraud. But his answer shall not be used as evidence against him in any criminal proceeding or prosecution. Nor shall he be excused from answering any question on the ground that he has before the examination executed any conveyance, assignment or transfer of his property for any purpose. But his answer shall not be used as evidence against him in any criminal proceeding or prosecution.

HISTORY: 1962 Code Section 10‑1723; 1952 Code Section 10‑1723; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k394.1 to 161k400.

Execution 394.1 to 400.

C.J.S. Executions Sections 381, 383 to 388.

Attorney General’s Opinions

Incriminating testimony can only be forced from a witness during a supplementary proceeding if he or she is protected by a statutory grant of transactional immunity. S.C. Op.Atty.Gen. (March 11, 2015) 2015 WL 1382883.

**SECTION 15‑39‑340.** Debtor of execution debtor may pay debt to sheriff.

After the issuing of execution against property any person indebted to the judgment debtor may pay to the sheriff the amount of his debt or so much thereof as shall be necessary to satisfy the execution. The sheriff’s receipt shall be a sufficient discharge for the amount so paid.

HISTORY: 1962 Code Section 10‑1724; 1952 Code Section 10‑1724; 1942 Code Section 746; 1932 Code Section 746; Civ. P. ‘22 Section 613; Civ. P. ‘12 Section 351; Civ. P. ‘02 Section 312; 1870 (14) 492 Sections 318, 319; 1919 (31) 236.

LIBRARY REFERENCES

Westlaw Key Number Search: 294k8(1).

Payment 8(1).

C.J.S. Payment Section 9.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 403 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑1724] providing that a debtor of judgment debtor may pay his debt to the sheriff applies only to claims not reduced to judgment. Gray v. Putnam (S.C. 1897) 51 S.C. 97, 28 S.E. 149.

This section [former Code 1962 Section 10‑1724] providing for payment by debtor of judgment debtor of his debt to the sheriff was only designed to give those indebted to the execution debtor on claims not reduced to judgment the right to pay voluntarily the amount due the execution debtor to the sheriff, and to give the sheriff the right to receive and receipt for the same as if payment had been made to the debtor. Gray v. Putnam (S.C. 1897) 51 S.C. 97, 28 S.E. 149.

Defendant’s payment to a sheriff of an indebtedness to plaintiff to be applied to a junior execution against plaintiff which had lost its active energy was valid and discharged the defendants from further payment. Isbell v. Dunlap & Ward (S.C. 1882) 17 S.C. 581. Payment 8(1)

**SECTION 15‑39‑350.** Examination of debtors of judgment debtor.

After the issuing or return of an execution against property of the judgment debtor or of any one of several debtors in the same judgment and upon an affidavit that any person or corporation has property of such judgment debtor or is indebted to him in any amount exceeding ten dollars, the judge may by an order require such person or corporation, or any officer or member thereof, to appear at a specified time and place and answer concerning such property or indebtedness. The judge may also, in his discretion, require notice of such proceeding to be given to any party to the action in such manner as may seem to him proper.

HISTORY: 1962 Code Section 10‑1725; 1952 Code Section 10‑1725; 1942 Code Section 747; 1932 Code Section 747; Civ. P. ‘22 Section 614; Civ. P. ‘12 Section 352; Civ. P. ‘02 Section 314; 1870 (14) 493 Section 320.

CROSS REFERENCES

Discovering production of documents under South Carolina Rules of Civil Procedure, see Rule 34, SCRCP.

Master’s report under South Carolina Rules of Civil Procedure, see Rule 53, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 189k117 to 189k191.

Garnishment 117 to 191.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Deer Island Lumber Co. v Virginia‑Carolina Chemical Co., 111 SC 299, 97 SE 833 (1919). Palmetto Bank & Trust Co. v McCown‑Clark Co., 143 SC 98, 141 SE 155 (1928). DeLoach v Sarratt, 58 SC 117, 36 SE 532 (1900).

The ruling purpose behind this section [former Code 1962 Section 10‑1725] and the remedy of discovery is to assist and promote the administration of public justice in courts. Biltrite Bldg. Co. v. Adams (S.C. 1940) 193 S.C. 142, 7 S.E.2d 857.

A verified petition will take the place of the affidavit named in this section [Code 1962 Section 10‑1725]. Biltrite Bldg. Co. v. Adams (S.C. 1940) 193 S.C. 142, 7 S.E.2d 857.

Where the sufficiency of a petition was challenged on the ground that the allegations and verification thereof did not comply with the requirements of the verification necessary to a pleading, it was held that if the petition satisfies the trial jduge that there was merit in its prayer, he has the right to permit petitioners to show by competent proof that this was a case in which he could properly exercise his discretion and allow the examination prayed for to be made. Biltrite Bldg. Co. v. Adams (S.C. 1940) 193 S.C. 142, 7 S.E.2d 857. Creditors’ Remedies 1013

The courts do not look with favor upon a proceeding in the nature of “discovery” which is shown to be merely a “fishing expedition.” Biltrite Bldg. Co. v. Adams (S.C. 1940) 193 S.C. 142, 7 S.E.2d 857. Creditors’ Remedies 1016

**SECTION 15‑39‑360.** Proceedings against joint debtors.

The proceedings mentioned in Sections 15‑39‑310 to 15‑39‑350 may be taken upon the return of an execution unsatisfied issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors. All actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to like effect.

HISTORY: 1962 Code Section 10‑1726; 1952 Code Section 10‑1726; 1942 Code Section 747; 1932 Code Section 747; Civ. P. ‘22 Section 614; Civ. P. ‘12 Section 352; Civ. P. ‘02 Section 314; 1870 (14) Section 320.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k373.1 to 161k380.

Execution 373.1 to 380.

C.J.S. Executions Sections 359 to 361, 364 to 376, 381, 383 to 385.

**SECTION 15‑39‑370.** Witnesses may be required to testify.

Witnesses may be required to appear and testify on any proceedings under this article in the same manner as upon the trial of an issue.

HISTORY: 1962 Code Section 10‑1727; 1952 Code Section 10‑1727; 1942 Code Section 748; 1932 Code Section 748; Civ. P. ‘22 Section 615; Civ. P. ‘12 Section 353; Civ. P. ‘02 Section 315; 1870 (14) 494 Section 321.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k373.1.

Execution 373.1.

C.J.S. Executions Sections 381, 383 to 384.

**SECTION 15‑39‑380.** Compelling party or witnesses to attend.

The party or witness may be required to attend before the judge or a master.

HISTORY: 1962 Code Section 10‑1728; 1952 Code Section 10‑1728; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 17.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k385.1.

Execution 385.1.

C.J.S. Executions Sections 362 to 363.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 230 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

In supplementary proceedings separately taken by two creditors against the same defendant, the same referee being appointed in each case to take the examination might hear the two cases together. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Creditors’ Remedies 962

A referee, no matter how limited his powers, must sometimes necessarily decide questions of law arising in the progress of the inquiry he is ordered to take. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Reference 47

A circuit judge at his chambers in a county other than that in which the judgment debtor resides, may pass the final order in such proceedings, the examination of the defendant having been had in his own county before a referee appointed for that purpose. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Judges 27

**SECTION 15‑39‑390.** Master shall certify examination to judge.

If before the master the examination shall be taken by the master and certified to the judge.

HISTORY: 1962 Code Section 10‑1729; 1952 Code Section 10‑1729; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 18.

CROSS REFERENCES

Masters under South Carolina Rules of Civil Procedure, see Rule 53, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k373.1.

Execution 373.1.

C.J.S. Executions Sections 381, 383 to 384.

RESEARCH REFERENCES

Forms

South Carolina Litigation Forms and Analysis Section 38:18 , Order Appointing a Receiver.

**SECTION 15‑39‑400.** Examinations and answers shall be under oath.

All examinations and answers before a judge or master under this article shall be on oath, except that when a corporation answers the answer shall be on the oath of an officer.

HISTORY: 1962 Code Section 10‑1730; 1952 Code Section 10‑1730; 1942 Code Section 749; 1932 Code Section 749; Civ. P. ‘22 Section 616; Civ. P. ‘12 Section 354; Civ. P. ‘02 Section 316; 1870 (14) 494 Section 322; 1979 Act No. 164, Part II, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k373.1.

Execution 373.1.

C.J.S. Executions Sections 381, 383 to 384.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 276 , Introductory Comments.

**SECTION 15‑39‑410.** Property which may be ordered to be applied to execution.

The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

HISTORY: 1962 Code Section 10‑1731; 1952 Code Section 10‑1731; 1942 Code Section 750; 1932 Code Section 750; Civ. P. ‘22 Section 617; Civ. P. ‘12 Section 355; Civ. P. ‘02 Section 317; 1870 (14) 494 Section 323; 1960 (51) 1716; 1961 (52) 450; 1974 (58) 2879.

CROSS REFERENCES

Award from State Office of Victim Assistance as exempt from attachment, garnishment, or execution, see Section 16‑3‑1300.

Constitutional provisions in regard to exemptions, see SC Const, Art 3, Section 28.

Homestead and other exemptions, see Sections 15‑41‑10 et seq.

What property is subject to attachment, see Section 15‑19‑220.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k20 to 161k58.

Execution 20 to 58.

C.J.S. Exchanges Section 41.

C.J.S. Executions Sections 25 to 56.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Compensation Section 34:324, South Carolina; Ban as to Earnings for Personal Services, Payment on Consumer Credit Debts, and Payment on “Foreign” Debts.

Guide to Employment Law and Regulation 2d Section 16:23, State Garnishment Laws.

LAW REVIEW AND JOURNAL COMMENTARIES

“I Can’t Have My Wages Garnisheeed!”. 50 S.C. L. Rev. 525, Winter 1999.

Attorney General’s Opinions

Procedural steps for obtaining garnishee order. Lawful procedure to obtain a garnishee order applicable to salaries, wages, commissions, or fees includes suit, entry of judgment in the office of the clerk of court, execution by the sheriff, nulla bona return to the clerk, and hearing in supplementary proceedings before the circuit judge or county court judge. 1965‑66 Op Atty Gen, No 2053, p 140.

Exclusive jurisdiction. Circuit judges, or county court judges with concurrent jurisdiction, have exclusive jurisdiction to issue orders requiring the application of a judgment debtor’s wages to satisfaction of the judgment, notwithstanding that the original judgment was obtained in magistrate’s court. 1964‑65 Op Atty Gen, No 1881, p 157.

NOTES OF DECISIONS

In general 1

Exempt earnings 6

Funds in hands of third party 2

Issues of ownership 5

Judgment in favor of judgment debtor 3

Money or property held by court 4

1. In general

Proceedings supplementary to execution, in addition to providing for an examination of the judgment debtor for the purpose of discovering property out of which the judgment against him may be satisfied, furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution, such as choses in action. Lynn v. International Broth. of Firemen and Oilers (S.C. 1955) 228 S.C. 357, 90 S.E.2d 204. Creditors’ Remedies 52

Cited in De Loach v. Sarratt (S.C. 1900) 58 S.C. 117, 36 S.E. 532.

The sureties on a bond for the delivery of property levied on cannot be required to surrender to the judgment creditor the proceeds of the property placed in their hands to indemnify them, until it is shown that they have been relieved from liability. Cheatham v. Seawright (S.C. 1889) 30 S.C. 101, 8 S.E. 526. Principal And Surety 147(9)

An innocent assignee of a judgment from a judgment debtor, bought after an order in supplementary proceedings, will not be required to turn over the assignment under the order. Robertson, Taylor & Co. v. Segler (S.C. 1886) 24 S.C. 387.

It is not necessary for actual service of a rule and injunction, issued by a court to a judgment debtor to show cause why a judgment in his hands should not be applied to the payment of his judgment, to be made upon a party in order to make him amenable for its violation. Robertson, Taylor & Co. v. Segler (S.C. 1886) 24 S.C. 387.

A court of record has the right to enforce its orders for such application by attachment as for contempt. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Contempt 34

2. Funds in hands of third party

Funds proven prima facie to belong to a judgment debtor in the hands of a third party may be reached in supplementary proceedings. Lynn v. International Broth. of Firemen and Oilers (S.C. 1955) 228 S.C. 357, 90 S.E.2d 204.

Where the plaintiff held a judgment against a parent union, the payment of dues to the parent union by a local union was a “standing obligation,” a chose in action, and was the property of the parent union which could be ordered applied by its proper officers to the payment of the judgment. Lynn v. International Broth. of Firemen and Oilers (S.C. 1955) 228 S.C. 357, 90 S.E.2d 204.

3. Judgment in favor of judgment debtor

A judgment in favor of a judgment debtor may be reached in supplementary proceedings. Lynn v. International Broth. of Firemen and Oilers (S.C. 1955) 228 S.C. 357, 90 S.E.2d 204.

Intervention in supplementary proceedings is allowed third party when judgment creditor arrests funds in his hands after prima facie showing that such funds belong to the judgment debtor. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

Where an administrator is charged, on final settlement, with a judgment recovered by him as administrator, such judgment becomes his own property and may be reached by his creditors in supplementary proceedings. Rhodes v. Casey (S.C. 1884) 20 S.C. 491. Creditors’ Remedies 56

Where a judgment is rendered against an administrator, in favor of several distributees, two of whom institute supplementary proceedings against him, it would seem that the property thus reached should go to the moving creditors alone; but this is a matter of no interest to the debtor. Rhodes v. Casey (S.C. 1884) 20 S.C. 491. Executors And Administrators 314(11)

4. Money or property held by court

After return of execution unsatisfied, the court may require money in its hands, belonging to defendant, to be applied to the payment of the judgment. McDaniel v Stokes, 19 SC 60 (1883). Union Bank v Northrop, 19 SC 473 (1883).

In supplementary proceeding, court could not hold real estate conveyed to third party by judgment debtor applicable to payment of judgment. Wannamaker v. Bryant (S.C. 1932) 165 S.C. 107, 162 S.E. 779. Creditors’ Remedies 939

5. Issues of ownership

A third person claiming property rights which have not been passed upon in the original action under which the execution is issued should not be deprived either of his day in court or of the right of trial in the form prescribed by law for a regular judicial procedure. Palmetto Bank & Trust Co. v. McCown‑Clark Co. (S.C. 1928) 143 S.C. 98, 141 S.E. 155.

The court cannot in supplementary proceedings summarily dispose of issues of ownership or order the property claimed by third persons applied towards satisfaction of judgment. Palmetto Bank & Trust Co. v. McCown‑Clark Co. (S.C. 1928) 143 S.C. 98, 141 S.E. 155.

On a prima facie showing of ownership in judgment debtor, a court may in supplementary proceedings merely keep the property in its possession till determination of right thereto in proper action therefor by either of the interested parties. Palmetto Bank & Trust Co. v. McCown‑Clark Co. (S.C. 1928) 143 S.C. 98, 141 S.E. 155.

6. Exempt earnings

This section [former Code 1962 Section 10‑1731] provides certain restrictions on the amount of the judgment debtor’s earnings, derived from personal services, that may be applied to the satisfaction of the judgment. John Deere Co. v. Cone (S.C. 1962) 239 S.C. 597, 124 S.E.2d 50.

Permanent disability benefits from insurance policy are not “earnings of the debtor for his personal services” which are exempt from execution. Matthews v. Matthews (S.C. 1945) 207 S.C. 170, 35 S.E.2d 157. Exemptions 48(2)

An attorney’s fee from a litigation had more than sixty days next preceding an order of a judge is not an earning of a debtor so as to be exempt from the execution under this section [former Code 1962 Section 10‑1731]. Union Bank v. Northrop (S.C. 1883) 19 S.C. 473.

**SECTION 15‑39‑420.** Withholding of wages pursuant to foreign garnishment proceeding prohibited under certain circumstances.

(1) No employer in this State shall withhold any portion of the wages of any employee residing in this State as a result of any garnishment proceedings brought in any court outside of this State unless the creditor first obtains a judgment against such employee growing out of the same indebtedness for which the garnishment proceedings were instituted in a court of competent jurisdiction in South Carolina. The burden of proving the competent jurisdiction of the court shall rest upon the creditor.

(2) The provisions of this section shall not apply to any debt incurred outside the State of South Carolina by such employee nor shall there be any garnishment of earnings for personal services rendered by the employee regardless of where the debt was incurred.

(3) Any employer violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars.

HISTORY: 1962 Code Section 10‑1731.1; 1967 (55) 94; 1974 (58) 2879.

LIBRARY REFERENCES

Westlaw Key Number Searches: 189k174; 189k227 to 189k238.

Garnishment 174, 227 to 238.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Garnishment Section 3, Availability in South Carolina.

Treatises and Practice Aids

Employment Coordinator Compensation Section 34:324, South Carolina; Ban as to Earnings for Personal Services, Payment on Consumer Credit Debts, and Payment on “Foreign” Debts.

Employment Coordinator Compensation Section 42:491, South Carolina; Criminal Penalties for Foreign Garnishment Violations.

LAW REVIEW AND JOURNAL COMMENTARIES

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

**SECTION 15‑39‑430.** Judge may appoint receiver.

The judge may also, by order, appoint a receiver of the property of the judgment debtor in the same manner and with the like authority as if appointment was made by the court, according to Section 15‑65‑10. But before the appointment of such receiver the judge shall ascertain, if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if such proceedings are so pending the plaintiff therein shall have notice to appear before him and shall likewise have notice of all subsequent proceedings in relation to such receivership. No more than one receiver of the property of a judgment debtor shall be appointed.

HISTORY: 1962 Code Section 10‑1732; 1952 Code Section 10‑1732; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324.

CROSS REFERENCES

Receivership and other provisional remedies generally, see Sections 15‑65‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k404.

Execution 404.

C.J.S. Executions Section 397.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 5, Post‑Judgment.

Forms

South Carolina Litigation Forms and Analysis Section 38:18 , Order Appointing a Receiver.

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 193, Creditors’ Remedies Against Beneficiary’s Interest.

NOTES OF DECISIONS

In general 1

Bond 3

Nonresident Judgment debtor 4

Property subject to federal tax lien 2

1. In general

Cited in Palmetto Bank & Trust Co. v. McCown‑Clark Co. (S.C. 1928) 143 S.C. 98, 141 S.E. 155.

This section [former Code 1962 Section 10‑1732] is the warrant of a judge to appoint a receiver to secure the fruits of a judgment. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

When a sum of indebtedness due judgment debtor is claimed as exempt, but only a part is properly so claimed, a receiver may be appointed if the order of appointment directs that the proceeds of the debt be held subject to the order of the court. Globe Phosphate Co. v. Pinson (S.C. 1898) 52 S.C. 185, 29 S.E. 549.

A receiver may be appointed for an indebtedness due the judgment debtor, though the debt may be extinguished, when the order of appointment does not determine the amount due upon the claim or prevent the cancellation of the debt from being shown as a defense to an action to recover thereon. Globe Phosphate Co. v. Pinson (S.C. 1898) 52 S.C. 185, 29 S.E. 549. Creditors’ Remedies 976

Judgment creditors may, after a return of an execution unsatisfied, apply for the appointment of a receiver of the property of the judgment debtor when it appears that he has property, even in a small amount, which he refuses to apply to the debt. Burdett v. McAllister (S.C. 1894) 42 S.C. 352, 20 S.E. 86.

Though a creditor, who obtains his judgment after the appointment of a receiver for the judgment debtor in a former proceeding, is entitled to have an examination of the judgment debtor, there cannot be more than one appointment of a receiver. Sparks v. Davis (S.C. 1886) 25 S.C. 381.

A judge may, on hearing a referee’s report, appoint a receiver, without specific notice having been given that such appointment would then be applied for. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Creditors’ Remedies 977

An appointment may be made though judgment debtor has sufficient property. Though, on examination, property is found in debtor’s hands sufficient to pay the judgment, a receiver may nevertheless be appointed, and when appointed he should be the receiver of all the defendant’s property. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Creditors’ Remedies 971

2. Property subject to federal tax lien

The fact that the United States, which had filed income tax liens against the debtor’s property, was not a party did not deprive the court of jurisdiction to appoint a receiver under this section [former Code 1962 Section 10‑1732] to take possession of the defendant’s property, collect the rents, issues and profits and hold the same subject to the tax liens and the further orders of the court. Fagan v. Timmons (S.C. 1950) 217 S.C. 432, 60 S.E.2d 863, certiorari denied 71 S.Ct. 202, 340 U.S. 893, 95 L.Ed. 647, rehearing denied 71 S.Ct. 284, 340 U.S. 916, 95 L.Ed. 662. Creditors’ Remedies 976

3. Bond

It is the usual and better practice to require bond from receivers, but it is not essential. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Receivers 51

4. Nonresident Judgment debtor

Where judgment debtor, residing in another county, appeared without objection, and was examined in the county where the judgment was entered, and a receiver was appointed, he cannot afterwards object to such appointment. Green v. Bookhart (S.C. 1883) 19 S.C. 466.

**SECTION 15‑39‑440.** Prohibition of transfer or of interference with property.

The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith.

HISTORY: 1962 Code Section 10‑1733; 1952 Code Section 10‑1733; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324.

CROSS REFERENCES

Clerk’s responsibility to keep books under South Carolina Rules of Civil Procedure, see Rule 79, SCRCP.

How judgment roll is made up under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k74; 161k86.

Execution 74, 86.

C.J.S. Executions Sections 63, 88.

**SECTION 15‑39‑450.** Filing and effect of order appointing receiver.

Whenever the judge shall grant an order for the appointment of a receiver of the property of the judgment debtor the order shall be filed in the office of the clerk of the court of common pleas of the county in which the judgment roll in the action or the transcript from the magistrate’s judgment upon which the proceedings are taken is filed. The clerk shall record the order in a book, to be kept for that purpose in his office to be called “book of orders appointing receivers of judgment debtors” and shall note the time of the filing of such order therein. A certified copy of the order shall be delivered to the receiver named therein, and he shall be vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor shall be subject to the direction and control of the court in which the judgment was obtained or docketed upon which the proceedings are founded.

A certified copy of the order shall also be filed and recorded in the office of the register of deeds of the county in which any real estate of such judgment debtor sought to be affected by such order is situated and also in the office of the register of deeds of the county in which such judgment debtor resides.

HISTORY: 1962 Code Section 10‑1734; 1952 Code Section 10‑1734; 1942 Code Section 751; 1932 Code Section 751; Civ. P. ‘22 Section 618; Civ. P. ‘12 Section 356; Civ. P. ‘02 Section 318; 1870 (14) 494 Section 324; 1997 Act No. 34, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k406(1).

Execution 406(1).

C.J.S. Executions Sections 400 to 401.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 5, Post‑Judgment.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 403 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 461 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Generally, receiver appointed in proceedings supplementary to execution is not mere agent or representative of judgment debtor, but trustee for creditors, and may sue in his own name to set aside debtor’s fraudulent conveyances. Gardner v. Kirven (S.C. 1934) 173 S.C. 302, 175 S.E. 637. Creditors’ Remedies 982

In supplementary proceedings in search of assets to pay a judgment, if fund arrested is in truth the property of judgment debtor, all of it ought to go to his receiver. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833. Creditors’ Remedies 980

After paying the debts the receiver should return to the debtor all property remaining in his hands, but it is not error of law to omit such a direction from the order appointing the receiver. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Receivers 47

**SECTION 15‑39‑460.** Proceedings on claims of others to property or on denial of indebtedness.

If it appears that a person or corporation alleged to have property of the judgment debtor or indebted to him claims an interest in the property adverse to him or denies the debt such interest or debt shall be recoverable only in an action against such person or corporation by the receiver. But the judge may, by order, forbid a transfer or other disposition of such property or interest until a sufficient opportunity be given to the receiver to commence the action and prosecute it to judgment and execution. Such order may be modified or dissolved at any time by the judge granting it on such security as he shall direct.

HISTORY: 1962 Code Section 10‑1735; 1952 Code Section 10‑1735; 1942 Code Section 752; 1932 Code Section 752; Civ. P. ‘22 Section 619; Civ. P. ‘12 Section 357; Civ. P. ‘02 Section 319; 1870 (14) 495 Section 325.

LIBRARY REFERENCES

Westlaw Key Number Search: 189k122.

Garnishment 122.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 396 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 438 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Where judgment creditor of insured brought action against insurance company for negligent and bad faith refusal to settle claim within the policy limits, but creditor had not been assigned any claim nor had she been appointed a receiver pursuant to statute, she had no capacity to maintain the action. Whittington v. Nationwide Mut. Ins. Co. (S.C. 1974) 263 S.C. 141, 208 S.E.2d 529.

Stated in John Deere Co. v. Cone (S.C. 1962) 239 S.C. 597, 124 S.E.2d 50.

Payments may be temporarily restrained pending adjudication of rights to fund where the fund is held by a third party. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

An administrator, not denying the possession of or claiming any interest in a fund belonging to the estate of his deceased, is not entitled to an action making all claimants parties to settle the right to the fund, when judgment creditors of the deceased have instituted supplementary proceedings to subject this fund. De Loach v. Sarratt (S.C. 1900) 58 S.C. 117, 36 S.E. 532.

The provisions of this section [former Code 1962 Section 10‑1735] authorize an order in supplementary proceedings forbidding one not a party to the proceedings, but indebted to a judgment debtor, from paying the amount of indebtedness to anyone but the receiver. Globe Phosphate Co. v. Pinson (S.C. 1898) 52 S.C. 185, 29 S.E. 549.

An injunction forbidding a debtor of judgment debtor from paying his debt to anyone but the receiver cannot be appealed from by the judgment debtor because it was directed against one not a party to the proceedings, since he is not aggrieved. Globe Phosphate Co. v. Pinson (S.C. 1898) 52 S.C. 185, 29 S.E. 549. Appeal And Error 151(2)

**SECTION 15‑39‑480.** Costs of proceeding.

The judge may allow to the judgment creditor or to any party so examined, whether a party to the action or not, witness fees and disbursements and a fixed sum in addition, not exceeding thirty dollars, as costs.

HISTORY: 1962 Code Section 10‑1737; 1952 Code Section 10‑1737; 1942 Code Section 754; 1932 Code Section 754; Civ. P. ‘22 Section 621; Civ. P. ‘12 Section 359; Civ. P. ‘02 Section 321; 1870 (14) 495 Section 327.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Search: 161k415.

Execution 415.

C.J.S. Executions Sections 423 to 424.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 41, Costs Incident to Supplemental Proceedings.

NOTES OF DECISIONS

In general 1

Administrators 3

Attorneys’ fees 4

Judgment and execution for costs 5

Other costs 6

Persons entitled to costs 2

1. In general

The matter of costs, being statutory, a judge’s provision for costs will necessarily be set aside on a reversal of his order. Burdett v. McAllister (S.C. 1894) 42 S.C. 352, 20 S.E. 86.

“The judge” here means the judge before whom such supplementary proceedings are brought for confirmation or reversal of the referee’s report. Anderson v. Pilgram (S.C. 1894) 41 S.C. 423, 19 S.E. 1002, rehearing denied 41 S.C. 423, 20 S.E. 64.

No such allowance as here set out will be made when the proceedings go no further than the report of the referee. Anderson v. Pilgram (S.C. 1894) 41 S.C. 423, 19 S.E. 1002, rehearing denied 41 S.C. 423, 20 S.E. 64.

Technical sense of the words “costs” and “disbursements” subordinate to sense in which they are used. In the use of the words “costs” and “disbursements” regard must be had to the sense in which they are used more than to their strict technical meaning. Dauntless Mfg. Co. v. Davis (S.C. 1886) 24 S.C. 536.

But can be fixed by the judge only. The “fixed sum as costs” herein provided for must be fixed by the judge and not by the clerk of the court. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334. Creditors’ Remedies 966

2. Persons entitled to costs

Under the provisions of this section [former Code 1962 Section 10‑1737] a person examined as having property of the debtor in his possession is properly allowed witness fees and disbursements, and a fixed sum as costs, though that be not designated in the order as costs. Cheatham v. Seawright (S.C. 1889) 30 S.C. 101, 8 S.E. 526.

3. Administrators

Where administrators voluntarily place a fund belonging to their decedent’s estate out of their hands and beyond their control, they will be held liable for cost of proceeding supplementary to execution instituted by a judgment creditor of the decedent to subject such fund to the payment of his judgments. De Loach v. Sarratt (S.C. 1900) 58 S.C. 117, 36 S.E. 532. Executors And Administrators 456(3)

In case the cost for proceedings supplementary to execution against administrators for funds voluntarily placed beyond their control cannot be collected from them, the creditor may recover his cost from the fund before it is applied to his judgment. De Loach v. Sarratt (S.C. 1900) 58 S.C. 117, 36 S.E. 532.

4. Attorneys’ fees

This section [Code 1962 Section 10‑1737] does not authorize a fee to plaintiff’s attorney. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334.

5. Judgment and execution for costs

In view of former Code 1962 Section 10‑1738 [see now Section 15‑39‑490], a judgment and execution for costs, fees, etc., as set out here, are unauthorized. Cheatham v. Seawright (S.C. 1889) 30 S.C. 101, 8 S.E. 526.

A judge sitting at chambers has no power, unless expressly conferred, to render a judgment enforceable by execution; so he cannot render a judgment for the costs, fees, etc., as set out in this section [former Code 1962 Section 10‑1737], and grant leave to issue execution thereon. [As to power of circuit judges at chambers, see former Code 1962 Section 15‑233 (see now Section 14‑5‑350) and notes thereto]. Cheatham v. Seawright (S.C. 1889) 30 S.C. 101, 8 S.E. 526.

6. Other costs

In supplementary proceedings, a party may be allowed not only the sum provided for in this section [former Code 1962 Section 10‑1737] but also such other costs as may be provided for the several officers of the court, including attorneys, for any specific services in an action. Dauntless Mfg. Co. v. Davis (S.C. 1886) 24 S.C. 536.

**SECTION 15‑39‑490.** Punishment for contempt.

If any person, party or witness disobeys an order of the judge or master, duly served, such person, party or witness may be punished by the judge or master as for a contempt. In all cases of commitment under this chapter the person committed may, in case of inability to perform the act required or to endure the imprisonment, be discharged from imprisonment by the court or judge committing him or the court in which the judgment was rendered, on such terms as may be just.

HISTORY: 1962 Code Section 10‑1738; 1952 Code Section 10‑1738; 1942 Code Section 755; 1932 Code Section 755; Civ. P. ‘22 Section 622; Civ. P. ‘12 Section 360; Civ. P. ‘02 Section 322; 1870 (14) 495 Section 328; 1979 Act No. 164, Part II, Section 20.

CROSS REFERENCES

Punishment for contempt of circuit court, see Section 14‑5‑320.

LIBRARY REFERENCES

Westlaw Key Number Search: 93k19.

Contempt 19.

C.J.S. Contempt Section 14.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Latimer v. Trowbridge (S.C. 1898) 52 S.C. 193, 29 S.E. 634, 68 Am.St.Rep. 893.

This section [former Code 1962 Section 10‑1738] seems to imply that all orders made in supplementary proceedings are to be enforced, not by judgment and execution, but by attachment for contempt. Cheatham v. Seawright (S.C. 1889) 30 S.C. 101, 8 S.E. 526.

An order for imprisonment of defendant in case he refuses to surrender a sum of money adjudged to be due in supplementary proceedings does not violate the Constitution. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Contempt 72; Creditors’ Remedies 964

In an order in supplementary proceedings for the delivery of money by the judgment debtor to the receiver, it is error to incorporate a direction for imprisonment in case of refusal. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104. Creditors’ Remedies 939

The application for attachment on defendant’s refusal to surrender money in his hands as ordered by the court should be made after the time fixed for the execution of the order, and on rule to show cause. Kennesaw Mills Co. v. Walker (S.C. 1883) 19 S.C. 104.

An irregular and improperly granted order, which should be attacked by motion to set aside for irregularity, cannot be disregarded, and one who does so is subject to attachment for contempt. Earle v. Stokes (S.C. 1874) 5 S.C. 336.

Appeal from order and not habeas corpus is remedy for imprisonment. Anyone committed to imprisonment as a result of disobeying an order, as herein set out, must seek relief by appeal and not by habeas corpus. In re Stokes (S.C. 1874) 5 S.C. 71.

ARTICLE 5

Judicial Sales Generally

**SECTION 15‑39‑610.** Property taken under execution shall be sold.

When any sheriff or other officer shall take the lands, tenements, goods and chattels of any person whatsoever by virtue of any execution and the owner of such lands, tenements, goods and chattels shall not, within five days after such taking, satisfy the debt, damages and costs of the party issuing such execution, such sheriff or officer shall and may sell, by auction, the lands, tenements, goods and chattels so taken or so much thereof as shall be sufficient to satisfy the judgment for the best price that can be got for them.

HISTORY: 1962 Code Section 10‑1751; 1952 Code Section 10‑1751; 1942 Code Section 9069; 1932 Code Section 9069; Civ. C. ‘22 Section 5478; Civ. C. ‘12 Section 3699; Civ. C. ‘02 Section 2615; G. S. 1986; R. S. 2115; 1785 (7) 229.

CROSS REFERENCES

Charges for publishing advertisements of sale in newspapers, see Sections 15‑29‑80 et seq.

Collection against liens for past due child support, sale of seized property, see Sections 63‑17‑2710 et seq.

Duties of officer in case of seizure of property, see Section 15‑19‑270.

Executions under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

Length of time legal sales shall be advertised, see Section 15‑29‑60.

Sale of personal property likely to deteriorate or expensive to keep, see Section 15‑19‑280.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k213 to 161k329; 229k1 to 229k64.

Execution 213 to 329.

Judicial Sales 1 to 64.

C.J.S. Executions Sections 211 to 319.

C.J.S. Judicial Sales Sections 2 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

S.C. Jur. Mortgages Section 123, Sale of Property.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

Attorney General’s Opinions

Magistrates’ constables have jurisdiction to sell property taken under execution. However, the provisions of Sections 15‑39‑610 et seq. of the Code of Laws are inapplicable to sales conducted by a magistrate’s constable. 1979 Op Atty Gen, No 79‑80, p 104.

NOTES OF DECISIONS

In general 1

1. In general

A sale under junior judgment divests the lien of senior judgment. Matthews v Nance, 49 SC 389, 27 SE 408 (1987). Trumbo v Cumming, 20 SC 334 (1884). Agnew v Adams, 17 SC 364 (1882). Snipes v Sheriff, 1 Bay (1 SCL) 295; Greenwood v Naylor, 1 McC (12 SCL) 414; Gist v McJunkin, 1 McM (26 SCL) 342. Vance v Red, 2 Spear (29 SCL) 90. McKnight v Gordon, 13 Rich Eq (34 SC Eq) 222. In re Voorhies, 46 SC 114, 24 SE 170 (1896).

But personal property mortgaged is not liable to executions against the mortgagor. Reese v Lyon, 20 SC 17 (1883). McClendon v Wells, 20 SC 514 (1883). Levi v Legg & Bell, 23 SC 282 (1885). Williams v Dobson, 26 SC 110, 1 SE 421 (1887). Ex parte Knobeloch, 26 SC 331, 2 SE 612 (1887). National Bank of Newberry v Kinard, 28 SC 101, 5 SE 464 (1888). Ex parte Lorenz, 32 SC 365, 11 SE 206 (1890). Akers v Rowan, 33 SC 451, 12 SE 165 (1890).

A sheriff’s sale under an execution with no lien will be valid if there be at the time in his office an execution having lien. Agnew v Adams, 17 SC 364 (1882). Garvin v Garvin, 34 SC 388, 13 SE 625 (1890).

Prevention of competition among bidders will vitiate the sale. Farr v Sims, Rich Eq Cas (9 SC Eq) 122; Barrett v Bath Paper Co., 13 SC 128 (1880). Toole v Johnson, 61 SC 34, 39 SE 254 (1901).

There is no implied warranty at sheriff’s sales; the rule of caveat emptor applies. Thayer v Sheriff, 2 Bay (2 SCL) 169. Davis v Murray, 2 Mill (9 SCL) 143. Herbemont v Sharp, 2 McC (13 SCL) 264. Yates v Bond, 2 McC (13 SCL) 382. Davis v Hunt, 2 Bail (18 SCL) 412. Stoney v Schultz, 1 Hill (10 SC Eq) 465. Murphy v Higginbottom, 2 Hill (20 SCL) 397. Moore v Aikin, 2 Hill (20 SCL) 403. Perry v Williams, Dud (23 SCL) 44. Kilgore v Peden, 1 Strob (32 SCL) 18. Jones v Burr, 5 Strob (36 SCL) 147. Leger v Doyle, 11 Rich (45 SCL) 109. Wingo v Brown, 14 Rich (48 SCL) 103. Cox v Edwards, 8 SC 1 (1876). Charleston v Blohme, 15 SC 124 (1881). Norman v Norman, 26 SC 41, 11 SE 1096 (1886). Long v McKissick, 50 SC 218, 27 SE 636 (1897).

Real property is sold subject to mortgages upon it. Commissioners v Hart, 1 Brev (3 SCL) 492. Thayer v Sheriff, 2 Bay (2 SCL) 169. Ex parte Sheriff, 1 McC (12 SCL) 399. Yates v Bond, 2 McC (13 SCL) 382. McClure v Mounce, 2 McC (13 SCL) 423. Norman v Norman, 26 SC 41, 11 SE 1096 (1886).

This section [former Code 1962 Section 10‑1751] and other sections in this article cover tax executions and tax sales. Osborne v. Vallentine (S.C. 1941) 196 S.C. 90, 12 S.E.2d 856.

This section [former Code 1962 Section 10‑1751] and other sections in this article relate to execution and judicial sales, and have no application to a change in investment and other such matters which are inherent in the equitable jurisdiction of the court. Matheson v. McCormac (S.C. 1938) 186 S.C. 93, 195 S.E. 122.

The sale is invalid if enough has already been sold to pay the executions. Zylstra v. Keith (S.C. 1802).

Sheriff cannot purchase at his own sale. Lewis v. Brown (S.C. 1850).

**SECTION 15‑39‑620.** Estates held in trust may be sold.

All estate, real or personal, which is held in trust for him against whom execution is sued may be seized by the sheriff or officer to whom the writ is delivered and sold as the property of him that is entitled to the trust, in the same manner as if such property were held in his own name.

HISTORY: 1962 Code Section 10‑1752; 1952 Code Section 10‑1752; 1942 Code Section 9067; 1932 Code Section 9067; Civ. C. ‘22 Section 5476; Civ. C. ‘12 Section 3697; Civ. C. ‘02 Section 2613; G. S. 1984; R. S. 2113; 1712 (2) 527.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k41.

Execution 41.

C.J.S. Executions Section 46.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑1752] contemplates only a case where the trust is clear and simple one for the benefit of the debtor. Spann v Carson, 123 SC 371, 116 SE 427 (1923). White v Kavanagh, 8 Rich (42 SCL) 377.

This section does not contemplate trusts for debtor jointly with others. Rice v Burnett, Speers (17 SC Eq) 579. Bristow v McCall, 16 SC 545 (1882).

Section inapplicable to implied or resulting trusts. Harrison v Hollis, 2 N & McC (11 SCL) 578. Bauskett v Holsonback, 2 Rich (31 SCL) 624. Thomson v Peake, 7 Rich (41 SCL) 353; White v Kavanagh, 8 Rich (42 SCL) 377.

Section inapplicable to trusts for married women. Youmans v. Buckner (S.C. 1837).

**SECTION 15‑39‑630.** Where and by whom sales made.

Property adjudged to be sold must be sold in the county in which it lies, except as otherwise provided in this article, and in the manner herein provided. All sales of real estate under the orders of the probate court shall be made by the judge of probate. All sales under the order of the court when the title is to be made by the clerk of the circuit court shall be made by the clerk. In those counties in which the office of master exists the master shall make all sales ordered by the court in granting equitable relief, conformable to the practice of the circuit court or to the practice of the courts of equity in this State before such courts were abolished. And whenever real estate is adjudged to be sold by a master, such sale may take place by consent of the parties to the cause or their attorneys, or, when infants are parties, by consent of their guardians ad litem or their attorneys in any county which the court may direct. Whenever the court of common pleas in any county shall have acquired jurisdiction over real estate lying in another county the master for the county in which the action is brought may sell such real estate in the county in which the land is situated. But when such land is contained in one tract or adjoining tracts lying in more than one county the land may be sold in whatever county the court may fix, and the advertisement shall appear in the county or counties in which the land is situate and in which the land is to be sold. All other judicial sales shall be made by the sheriffs.

HISTORY: 1962 Code Section 10‑1753; 1952 Code Section 10‑1753; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052; 1958 (50) 1957.

CROSS REFERENCES

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

General powers and duties of sheriffs and deputy sheriffs, see Sections 23‑15‑20 et seq.

Judicial sales of real property by referee in counties which do not have master‑in‑equity, see Section 15‑39‑635.

Judicial sales under South Carolina Rules of Civil Procedure, see Rule 53, SCRCP.

Mortgage foreclosure under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k213 to 161k243; 229k7 to 229k64.

Execution 213 to 243.

Judicial Sales 7 to 64.

C.J.S. Executions Sections 211 to 241, 295.

C.J.S. Judicial Sales Sections 9 to 10, 12 to 100.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 10, Duties.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

Attorney General’s Opinions

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op Atty Gen, No 79‑81, p 107.

Anderson County. As to who has the authority in Anderson County to sell real estate in a foreclosure action, partition action and an action to sell real estate of a decedent in aid of assets, and make conveyance thereto, see 1966‑67 Op Atty Gen, No 2254, p 60.

NOTES OF DECISIONS

In general 1

Provisions as mandatory or directory 2

Sale by receiver in lieu of master 3

Sale under decree of mortgage foreclosure 4

1. In general

Cited in Bush v Aldrich, 110 SC 491, 96 SE 922 (1918). In re Rugheimer, 36 F 369 (1888). Habenicht v Rawls, 24 SC 461 (1886).

For cases decided under former Code provisions as to the revival of judgments and executions, see Freer v Tupper, 21 SC 75 (1884). Jackson v Patrick, 10 SC 197 (1878). McNair v Ingraham, 21 SC 70 (1884).

A recital in the record of partition proceedings that the sale of land in another county was by consent, as provided for in this section [former Code 1962 Section 10‑1753] and former Code 1962 Section 15‑1824 [see now Section 14‑11‑160], is not open to collateral attack. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257. Partition 108

It seems that a judge cannot disqualify an official to sell property under this section [former Code 1962 Section 10‑1753] without a right of judicial inquiry in that official as to the basis of the judgment. See New England Mortg. Security Co. v. Kinard (S.C. 1895) 43 S.C. 311, 21 S.E. 113.

When a judgment, entered in one county and becoming a lien on land in that county, is transcribed to the records of a new county, formed from the old county and embracing the lands under the lien, execution may issue upon the transcript and the land sold. Garvin v. Garvin (S.C. 1891) 34 S.C. 388, 13 S.E. 625.

n unsatisfied execution of an older judgment lodged in the sheriff’s office before defendant sells land, will permit a sheriff’s sale of the land under an execution on a judgment obtained after the sale by defendant, and the purchaser will, in such a case, prevail over defendant’s vendee. Garvin v. Garvin (S.C. 1891) 34 S.C. 388, 13 S.E. 625.

2. Provisions as mandatory or directory

The provisions requiring property adjudged to be sold, to be sold in the county where it lies, and by the sheriff of the county, are mandatory. Rose v Thornley, 33 SC 313, 12 SE 11 (1890). Ostendorff v Brown, 15 SC 616 (1881). Armstrong v Humphreys, 5 SC 128 (1874).

Even if the provisions of this section [former Code 1962 Section 10‑1753] requiring property adjudged to be sold, to be sold in the county where it lies, and by the sheriff of the county, were directory merely, it would still follow that the courts are bound to pursue such direction, and a decree or order disregarding it would have to be considered as erroneous. Rose v Thornley, 33 SC 313, 12 SE 11 (1890). Ostendorff v Brown, 15 SC 616 (1881). Armstrong v Humphreys, 5 SC 128 (1874).

3. Sale by receiver in lieu of master

This section [former Code 1962 Section 10‑1753] and former Code 1962 Sections 10‑2301 to 10‑2313 [see now Sections 15‑65‑10 to 15‑65‑130], when construed together, mean that while, as a general rule, sales ordered by the court in granting equitable relief must be made by the master, in a case of the sale of the property of an insolvent bank, the circuit court is not obliged to follow the general rule, and may order the assets disposed of through a receiver by sale or otherwise. Buist v. Merchants’ & Planters’ Bank (S.C. 1903) 65 S.C. 487, 43 S.E. 958.

An order authorizing a receiver appointed by the court under the authority of former Code 1962 Sections 10‑2301 to 10‑2313 [see now Sections 15‑65‑10 to 15‑65‑130] to sell the property of an insolvent bank is not in contravention to this section [former Code 1962 Section 10‑1753] requiring the property to be sold by a master. Buist v. Merchants’ & Planters’ Bank (S.C. 1903) 65 S.C. 487, 43 S.E. 958.

4. Sale under decree of mortgage foreclosure

Under the provisions of this section [former Code 1962 Section 10‑1753] a circuit court judge is authorized to order the clerk to sell certain premises under a decree of mortgage foreclosure and to pay the proceeds to the mortgagee, and the sureties on the clerk’s official bond are liable for any misappropriation by him. Fort v. Assmann (S.C. 1893) 38 S.C. 253, 16 S.E. 887.

In counties where the office of master does not exist, the court may order a sale for foreclosure of mortgaged land to be made by the sheriff. Childs v. Alexander (S.C. 1885) 22 S.C. 169. Judicial Sales 4

A decree in foreclosure directing the sale of property to be made by a referee is erroneous, and will be set aside on appeal; but, until notice of appeal is given, it binds the defendant, and purchaser at the sale will not be affected by an appeal afterwards taken. Armstrong v. Humphreys (S.C. 1874) 5 S.C. 128. Mortgages And Deeds Of Trust 2162

**SECTION 15‑39‑635.** Judicial sales by referees.

In the counties which do not have a master‑in‑equity, judicial sales of real property which a master has authority to perform may be performed by a referee in those matters referred to him by the presiding judge of the court of common pleas, or by a referee appointed by the presiding judge for this purpose.

The provisions of law governing these sales by masters also apply to referees acting pursuant to this section. These referees have the same powers and are entitled to the same fees as masters when performing these sales.

Judicial sales of real property by referees prior to the effective date of this section, in those counties that did not have a master‑in‑equity and which sales a master had authority to perform, are confirmed, ratified, and declared valid.

HISTORY: 1989 Act No. 65, Section 1.

CROSS REFERENCES

Judicial sales of real property by master‑in‑equity, see Section 15‑39‑635.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k215; 161k218; 229k7.

Execution 215, 218.

Judicial Sales 7.

C.J.S. Executions Sections 213, 215.

C.J.S. Judicial Sales Section 12.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

The successful bid on property which was the subject of a foreclosure sale was properly set aside where (1)the order of sale required the foreclosure referee to advertise and conduct the sale, (2) both of these functions were performed, not by the referee, but by the clerk of the court in accordance with county practice, (3) neither the advertisement for sale nor the oral announcement of the terms of the sale indicated the proper time for payment of the bid by a prospective bidder, (4) the successful bidder had no right to rely on either the advertisement or the announcement when reference to the foreclosure decree would have provided him with the correct information regarding compliance, and (5) he failed to pay the amount of his bid into the court within the time required by the decree. Federal Nat. Mortg. Ass’n v. Brooks (S.C.App. 1991) 304 S.C. 506, 405 S.E.2d 604.

**SECTION 15‑39‑640.** Sheriff shall make judicial sales; fees.

All judicial sales shall be made by the sheriff, unless otherwise provided by law. In all such sales made by him his fees shall be such as are allowed by law on sales under executions issuing from the court of common pleas.

HISTORY: 1962 Code Section 10‑1754; 1952 Code Section 10‑1754; 1942 Code Section 3542; 1932 Code Section 3542; Civ. C. ‘22 Section 2085; Civ. C. ‘12 Section 1192; Civ. C. ‘02 Section 867; G. S. 691; R. S. 746; 1870 (14) 324 Section 2; 1878 (16) 336; 1891 (20) 1250; 1931 (37) 2.

CROSS REFERENCES

Compensation of officers making judicial sales of real estate, see Section 15‑39‑770.

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k215; 161k218; 229k7; 353k48.

Execution 215, 218.

Judicial Sales 7.

Sheriffs and Constables 48.

C.J.S. Executions Sections 213, 215.

C.J.S. Judicial Sales Section 12.

C.J.S. Sheriffs and Constables Section 488.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 63, Sales Conducted by Officer.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

There is no distinct class of cases in which by positive law the clerk, not the sheriff, is to execute titles. Childs v Alexander, 22 SC 169 (1885). Williams v McLendon, 44 SC 174, 21 SE 616 (1895).

Applied in Calder v. Maxwell (S.C. 1914) 99 S.C. 115, 82 S.E. 997.

**SECTION 15‑39‑650.** Sheriff shall advertise sale of property.

The sheriff of every county in this State shall, before he exposes any lands or tenements which he may be directed to sell by virtue of any execution or mortgage, publicly advertise the lands or tenements three weeks immediately previous to the sale day or days on which he means to expose them for sale.

Personal property shall be advertised for fifteen days.

HISTORY: 1962 Code Section 10‑1758; 1952 Code Section 10‑1758; 1942 Code Section 9070; 1932 Code Section 9070; Civ. C. ‘22 Section 5479; Civ. C. ‘12 Section 3700; Civ. C. ‘02 Section 2616; G. S. 1987; R. S. 2116; 1797 (5) 305; 1839 (11) 54; 1879 (17) 192.

CROSS REFERENCES

Length of time legal sales shall be advertised, see Section 15‑29‑60.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k222; 229k11.

Execution 222.

Judicial Sales 11.

C.J.S. Executions Section 225.

C.J.S. Judicial Sales Sections 9 to 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 130, Notice of Sale.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

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In general 1

1. In general

Stated in Osborne v. Vallentine (S.C. 1941) 196 S.C. 90, 12 S.E.2d 856.

Applied as to foreclosure sale, in Alexander v. Messervey (S.C. 1892) 35 S.C. 409, 14 S.E. 854.

In computing the time, the day the advertisement begins and the day of sale may both be counted. Manning v. Dove (S.C. 1857) 10 Rich. 395. But see Code 1962 Section 10‑1301. Time 9(5)

**SECTION 15‑39‑660.** Contents of advertisement of sale; manner of publication.

The sheriff shall specify in the advertisement the property to be sold, the time and place of sale, the name of the owner of the property and the party at whose suit the sale is to be made and shall publish the advertisement at three public places in the county, one of which shall be at the courthouse door, and publication shall also be made in some gazette, as provided in Section 15‑39‑650, before the day of sale, if the sale is to be made in a county in which a newspaper may be printed.

HISTORY: 1962 Code Section 10‑1759; 1952 Code Section 10‑1759; 1942 Code Section 9071; 1932 Code Section 9071; Civ. C. ‘22 Section 5480; Civ. C. ‘12 Section 3701; Civ. C. ‘02 Section 2617; G. S. 1988; R. S. 2117; 1791 (7) 263; 1796 (7) 283; 1839 (11) 54; 1849 (11) 598; 1933 (38) 441.

CROSS REFERENCES

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k222; 229k11.

Execution 222.

Judicial Sales 11.

C.J.S. Executions Section 225.

C.J.S. Judicial Sales Sections 9 to 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 130, Notice of Sale.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

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In general 1

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1. In general

Court of Appeals had no authority to impose condition on foreclosure sale that highest bidder had until 5:00 p.m. on the sale day to tender the required deposit, even if court order and notice of the sale did not specifically provide for a different payment time, considering that such condition was not imposed by statute and conflicted with selling officer’s broad discretion in conducting judicial sales. Ex parte Moore (S.C. 2003) 352 S.C. 508, 575 S.E.2d 561. Mortgages And Deeds Of Trust 1969

As to sale en masse or in parcels, see Hammett v. Farmer (S.C. 1887) 26 S.C. 566, 2 S.E. 507.

The advertisement may be evidence to show that purchaser was not mistaken as to the property sold. Elfe v. Gadsden (S.C. 1846) 2 Rich. 373.

2. Contents

An imperfect description of the property does not vitiate the advertisement. Ward v Cohen, 3 SC 338 (1872). Lawrence v Grambling, 13 SC 120 (1880). Cain v Maples, 1 Hill (19 SCL) 304.

A tax collector did not strictly comply with the requirement set forth in Section 15‑39‑660 that the advertisement of a sale of property for taxes specify the property to be sold where the advertisement identified the property to be sold only by reference to a tax map number which was not the tax map number for the property sold and, therefore, the sale of the property was void. Rose v. Bradwell (S.C.App. 1988) 295 S.C. 147, 367 S.E.2d 443.

The constructive notice provided by the levy, advertisement and sale in the owner’s name, is deemed sufficient. Such notice to the owners, as required by the tax sale statutes, being constructive rather than actual, the court requires strict compliance therewith, the sound view being that all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory, and are to be strictly enforced. Osborne v. Vallentine (S.C. 1941) 196 S.C. 90, 12 S.E.2d 856.

Where deceased died prior to assessment of her land for the current year but after January 1, and advertisement and levy were made for sale of the land for taxes in her name, although she had devised her land to others, it was held that the levy and advertisement were not in the name of the true owners, they being the devisees. Osborne v. Vallentine (S.C. 1941) 196 S.C. 90, 12 S.E.2d 856.

3. Manner of publication

For additional related case, as to publication in newspaper, see State v. Beckett (S.C. 1825).

Also, failure to publish in a newspaper does not invalidate a sale. Turner v. McCrea (S.C. 1817).

**SECTION 15‑39‑680.** Judicial sale days.

The regular day of judicial sales is the first Monday in each month except when the first Monday in any month is a legal holiday in which case the sale day is on the Tuesday next succeeding the holiday. However, the sheriff may sell personal property on any day after fifteen days’ advertisement at any convenient place in his county to be designated in the advertisement. If there is not time to dispose of all the property on sale day the next day following is also a regular sale day, if by public outcry on sale day notice of sale on the next day has been given. Judicial sales of property may be conducted at any other time when so ordered by a court of competent authority or when so directed by an order of reference.

HISTORY: 1962 Code Section 10‑1761; 1952 Code Section 10‑1761; 1942 Code Section 9072; 1932 Code Section 9072; Civ. C. ‘22 Section 5481; Civ. C. ‘12 Section 3702; Civ. C. ‘02 Section 2618; G. S. 1988; R. S. 2118; 1791 (7) 263; 1839 (11) 54; 1875 (15) 850; 1918 (30) 776; 1931 (37) 95; 1961 (52) 616; 1987 Act No. 27, Section 1.

CROSS REFERENCES

Length of time legal sales shall be advertised, see Section 15‑29‑60.

Sales at public auction of confiscated property, see Section 27‑21‑10.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k221; 229k10.

Execution 221.

Judicial Sales 10.

C.J.S. Executions Section 219.

C.J.S. Judicial Sales Section 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 128, Manner of Sale.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

Attorney General’s Opinions

Code 1962 Section 65‑2002 [Code 1976 Section 12‑45‑120] provides procedure to be used to collect taxes when taxpayers reside in another county or possess property or debts therein; Personal property may be sold for delinquent taxes after advertising the same for fifteen days. 1974‑75 Op Atty Gen, No 4057, p 133.

When the proper date of a judicial sale falls on Labor Day, the sale should be held on the following Tuesday. 1968‑69 Op Atty Gen, No 2702, p 146.

Probate court may order sale held on day other than regular sales day. A judicial sale may be held on a different day than those days provided for by this section [Code 1962 Section 10‑1761], when so ordered by the probate court. 1962‑63 Op Atty Gen, No 1568, p 137.

The normal sale ordered by a probate judge should be made on the regular sales day, but if for some special reason the sale should be held on some other day the court can order the sale provided that all of the other proceedings are in conformity with the law. 1962‑63 Op Atty Gen, No 1568, p 137.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Henry v. Blakely (S.C. 1949) 216 S.C. 13, 56 S.E.2d 581.

The sheriff can sell only on the first Monday and Tuesday of each month. Minter v. Dent (S.C. 1831).

The sheriff must be the judge of the necessity to postpone a sale to Tuesday. Cain v. Maples (S.C. 1833) 26 Am.Dec. 184.

Sheriff is not liable for attachment for postponement of sale. Connor v. Archer (S.C. 1842).

**SECTION 15‑39‑690.** Hours of sale.

The hours of sale shall be between eleven and five o’clock. But sales shall not be held at any time after notice given by the sheriff that the sales for the day have been closed.

HISTORY: 1962 Code Section 10‑1762; 1952 Code Section 10‑1762; 1942 Code Section 9077; 1932 Code Section 9077; Civ. C. ‘22 Section 5484; Civ. C. ‘12 Section 3705; Civ. C. ‘02 Section 2620; G. S. 1991; R. S. 2120; 1791 (7) 263; 1839 (11) 54.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k221; 229k10.

Execution 221.

Judicial Sales 10.

C.J.S. Executions Section 219.

C.J.S. Judicial Sales Section 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 128, Manner of Sale.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑1762] is directory. Lewis v. Brown (S.C. 1850).

**SECTION 15‑39‑700.** Place of sales.

The place of sheriff’s sales, as to real estate, shall be at the courthouse of the county. Personalty may be sold at the place whereon it may be found by the sheriff upon levy or such other more convenient place as may be selected.

HISTORY: 1962 Code Section 10‑1764; 1952 Code Section 10‑1764; 1942 Code Section 9073; 1932 Code Section 9073; Civ. C. ‘22 Section 5482; Civ. C. ‘12 Section 3703; Civ. C. ‘02 Section 2619; G. S. 1990; R. S. 2119; 1839 (11) 54.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k220; 229k9.

Execution 220.

Judicial Sales 9.

C.J.S. Executions Section 218.

C.J.S. Judicial Sales Section 20.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 128, Manner of Sale.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

**SECTION 15‑39‑710.** Sheriff’s execution sales shall be for cash; resale.

Every sheriff’s sale made by virtue of the directions of an execution shall be for cash. If the purchaser shall fail to comply with the terms aforesaid the sheriff’s shall proceed to resell at the risk of the defaulting purchaser either on the same or some subsequent sale day, as the plaintiff may direct, and, in the absence of any direction by the plaintiff, the sheriff shall resell on the same day, if practicable, and if not on the next succeeding sale day, making in every such case proclamation that he is reselling at the risk of such defaulting former purchaser.

HISTORY: 1962 Code Section 10‑1769; 1952 Code Section 10‑1769; 1942 Code Section 9078; 1932 Code Section 9078; Civ. C. ‘22 Section 5485; Civ. C. ‘12 Section 3706; Civ. C. ‘02 Section 2621; G. S. 1992; R. S. 2121; 1791 (7) 263; 1839 (11) 54.

CROSS REFERENCES

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k227; 229k16.

Execution 227.

Judicial Sales 16.

C.J.S. Executions Sections 212, 215, 233.

C.J.S. Judicial Sales Section 14.

RESEARCH REFERENCES

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

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In general 1

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1. In general

The formalities required are intended for benefit of parties interested and may be waived by their common consent. O’Bannon v Kirkland, 2 Strob (33 SCL) 29. Lewis v Brown, 4 Strob (35 SCL) 293. Richardson v Inglesby, 13 Rich (34 SC Eq) 59.

For additional related cases, as to act of 1839, see Connor v Archer, 1 Spears (28 SCL) 89. Yongue v Cathcart, 2 Strob (33 SCL) 221. Towles v Turner, 3 Hill (21 SCL) 178.

Judgment creditor was not required to pay cash deposit in sheriff’s sale of the property, since deposit would have been immediately repaid to her in her capacity as judgment creditor. Holden v. Cribb (S.C.App. 2002) 349 S.C. 132, 561 S.E.2d 634. Creditors’ Remedies 506

This section [former Code 1962 Section 10‑1769] does not apply to a sale by the sheriff as directed by decree of foreclosure. Calder v. Maxwell (S.C. 1914) 99 S.C. 115, 82 S.E. 997.

Bid by attorney for undisclosed principal, see Long v. McKissick (S.C. 1897) 50 S.C. 218, 27 S.E. 636.

As to time within which to comply, see Brown v. Barnwell Mfg. Co. (S.C. 1896) 46 S.C. 415, 24 S.E. 191.

Acceptance of check for bid, see Brown v. Barnwell Mfg. Co. (S.C. 1896) 46 S.C. 415, 24 S.E. 191.

Deed of sheriff, when the bid has not been fully paid, is valid. Woody v. Dean (S.C. 1886) 24 S.C. 499.

The bidder may comply after the time fixed for the resale. Yates v. Gridley (S.C. 1882) 16 S.C. 496.

2. Liability of purchaser

Where the purchaser is the owner of the execution and entitled to the proceeds of the sale, he need not pay cash, except sufficient to pay costs. Cobb v Pressly, 2 McM (27 SCL) 416. Lemmond v Short, 3 Strob (34 SCL) 313. Lorick & Lowrance v McCreery, 20 SC 424 (1884).

The bidder is responsible, when the property is delivered, for the interest on his bid from the sale. Hampton v Eigleberger, 2 Bail (18 SCL) 520. Arnold v House, 12 SC 600 (1880).

Purchaser’s title fails where he does not comply. Jones v. Cathcart Co. (S.C. 1882) 17 S.C. 592.

This section [former Code 1962 Section 10‑1769] fixes the liability upon the highest bidder as a purchaser to the extent of the difference in bids. Cox v. Edwards (S.C. 1876) 8 S.C. 1.

3. Resale

The rule that the resale is not at risk of the former purchaser does not apply where the sheriff delivers the property without the cash. Towles v Turner, 3 Hill (21 SCL) 178. Cobb v Pressly, 2 McM (27 SCL) 416. Elfe v Gadsden, 1 Strob (32 SCL) 225. Cochran v Roundtree, 3 Strob (34 SCL) 217. Richardson v Inglesby, 13 Rich Eq (34 SC Eq) 59.

The resale on the same day is not at risk of the former purchaser if made months afterwards, without the direction of the plaintiff. Yongue v Cathcart, 3 Strob (34 SCL) 304. Yongue v Aiken, 4 Rich (38 SCL) 15.

Where an order for sale by the master of decedent’s land for payment of debts provided that, on purchaser’s failure or refusal to comply with the terms of the sale within five days, the master should readvertise in like manner, and offer the property for sale until the property should be sold to a bidder who would comply with the terms, the master, on the successful bidder’s refusal to comply with his bid, was not authorized to resell the property at the bidder’s risk, notwithstanding this section, since this section [former Code 1962 Section 10‑1769] does not apply to judicial sales, and the master was bound strictly by the terms of the order of sale. White v. Brown (S.C. 1925) 131 S.C. 71, 126 S.E. 750.

A resale on the same day, at the instance of the second purchaser, at great sacrifice, is invalid. Pickett v. Pickett (S.C. 1836).

The successor is not authorized to sue for the difference in price between the first and second sale. Underwood v. Jacobs (S.C. 1826).

Where the creditor consents to postpone the resale, the sheriff is not liable for the difference in bids. State v. Yongue (S.C. 1857) 10 Rich. 448.

Where the debtor consents to postpone the resale, the sheriff is not liable for the difference in bids. State v. Yongue (S.C. 1857) 10 Rich. 448.

A subsequent judgment creditor cannot complain of the sheriff’s neglect to bind the bidder by resale within the time required. State v. Yongue (S.C. 1857) 10 Rich. 448.

Where the first bidder is insolvent and the sheriff fails to bind him, and resells for less than his bid, the execution is not satisfied to the extent of the bid. Lewis v. Richardson (S.C. 1853) 6 Rich. 382.

Direction of judgment creditor alone to deliver property without payment releases the debtor and the bid satisfies the execution. Richardson v. Inglesby (S.C. 1866).

Whether a resale is made by the proper officer is a question which the purchaser at the first sale may raise only when sued for a deficiency. Childs v. Frazee (S.C. 1881) 15 S.C. 612.

The resale on the same day is not at the risk of the former purchaser, if the sheriff failed to make proclamation to that effect. Yongue v. Cathcart (S.C. 1847).

The sheriff is not bound to resell. Elfe v. Gadsden (S.C. 1847).

**SECTION 15‑39‑720.** Upset bids within thirty days on foreclosure or execution sale.

In all judicial sales of real estate for the foreclosure of mortgages and sales in execution the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale. Within such thirty day period any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid upon complying with the terms of sale by making any necessary deposit as a guaranty of his good faith, and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or in his behalf at the sale. If the thirtieth day falls on Sunday the bidding shall be closed on the Monday immediately following.

The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale, exclusive of the day of the sale, at eleven o’clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. The sales officer shall announce the sales about to be closed and shall receive the final bids in such sales in the order determined by him.

HISTORY: 1962 Code Section 10‑1770; 1952 Code Section 10‑1770; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

CROSS REFERENCES

Foreclosure under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k229; 229k18.

Execution 229.

Judicial Sales 18.

C.J.S. Executions Section 230.

C.J.S. Judicial Sales Section 23.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 128, Manner of Sale.

S.C. Jur. Reference Section 8, Master‑In‑Equity.

Treatises and Practice Aids

Bruner and O’Connor on Construction Law App II, 50 State Statutory Survey‑Enforcement of Mechanics’ and Materialmen’s Liens.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Commercial Law. 43 S.C. L. Rev. 27 (Autumn 1991).

Attorney General’s Opinions

Pursuant to Section 10‑1770 [1976 Code Section 15‑39‑720], the only time when a mortgagee may bid is at the time of sale. 1976‑77 Op Atty Gen, No 77‑78, p 72.

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1. In general

For a construction of this section [former Code 1962 Section 10‑1770] prior to the 1939 amendments, see Holliday v. McFadden (S.C. 1938) 188 S.C. 187, 198 S.E. 392.

By this section [former Code 1962 Section 10‑1770] the legislature has undertaken to protect, as far as possible, mortgagors and mortgagor’s distressed property from mortgagees who seek an advantage; the principle of the conduct of all judicial sales is the same—the sale must be made upon free, fair and competitive bidding. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

Former Code 1962 Section 10‑1772 [see now Section 15‑39‑740] in no wise conflicts with this section [former Code 1962 Section 10‑1770]. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

This section [former Code 1962 Section 10‑1770] distinctly recognizes the necessity of a strict compliance with the terms of the decree under which property is sold, in defining who shall be deemed to be the successful bidder. Peoples Nat. Bank of Greenville v Hudson, 179 SC 399, 184 SE 102 (1936). Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

This section [former Code 1962 Section 10‑1770] is inapplicable to receiver’s sale of industrial corporation’s property, including both realty and personalty, as a going concern. Montgomery Crawford, Inc. v. Arcadia Mills (S.C. 1934) 174 S.C. 252, 177 S.E. 151.

In proper cases the court will set aside a judicial sale. This power of the courts is not circumscribed by this section [former Code 1962 Section 10‑1770] which relates to the manner of making judicial sales. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24.

As regards court’s right to set aside judicial sales, any irregularity occurring at any time after public sale up until thirtieth day thereafter would, under this section, be as potential to invoke power of court as if it occurred on day of public auctioning. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24. Judicial Sales 37

2. Bids

Given that the bidding is reopened for foreclosure sale under South Carolina law when deficiency judgment is not waived, hammer does not fall on foreclosure sale until sales officer closes sale on thirtieth day, and high bidder on first day of sale has no right that cannot be extinguished by subsequent bidder, and therefore no rights or obligations arise in first‑day bidder that diminish title of mortgagor. In re Riverfront Properties, LLC (Bkrtcy.D.S.C. 2009) 405 B.R. 570. Mortgages And Deeds Of Trust 1961; Mortgages And Deeds Of Trust 1968

The bid must be in a definite sum, since in no other way can it be said that the sale is conducted in a fair manner to all bidders. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

3. Confirmation and proof of bid

Confirmation of bid on theory that it was made within statutory thirty‑day period after public sale was error, where no bid was actually made and entered on master’s sales book before expiration of time. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24. Mortgages And Deeds Of Trust 1968

In confirmation proceedings, one alleging that the party making the upset bid could not during statutory thirty‑day period raise the bid made at a mortgage foreclosure sale because only bid at public sale was made on its behalf, must prove that such bid was made on behalf of such party. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24. Mortgages And Deeds Of Trust 1990(1)

4. Private sale

Order directing sale of realty by receiver at private sale after advertisement and filing of bids in suit which was begun by petition for leave to sell and convey property to mortgage creditor held not violative of laws relating to judicial sales, since proceeding was not suit to foreclose real estate mortgage and court had given full consideration to questions relating to necessity for sale of property and time, place, manner, and method of sale. Hannon v. Mechanics Bldg. & Loan Ass’n of Spartanburg (S.C. 1935) 177 S.C. 153, 180 S.E. 873, 100 A.L.R. 928. Receivers 135

5. Setting sale side

Assuming that sales price of property at judicial sale following mortgage foreclosure was inadequate, neither the officer presiding over the sale nor the purchaser made a mistake or perpetrated a fraud, and thus, the sale was not required to be set aside; the mistake by bank in entering a low starting bid on property that involved a deficiency judgment was solely the fault of paralegal for law firm representing bank. Eastern Savings Bank, FSB v. Sanders (S.C.App. 2007) 373 S.C. 349, 644 S.E.2d 802. Mortgages And Deeds Of Trust 2009

In a foreclosure action by a plaintiff seeking a deficiency judgment, the special referee did not err in amending the order and canceling the sale without notice to the defendant and an opportunity to be heard where, as a result of a typographical error, the order did not specify that the bidding would remain open for 30 days as required by Sections 15‑39‑720 and 15‑39‑760; since the error was clerical, the special referee retained jurisdiction to correct the error. Goethe v. Cleland (S.C.App. 1994) 323 S.C. 50, 448 S.E.2d 574.

In a sale of property arising from a foreclosure action, the bidder was not a bona fide purchaser where the order on which the sale was based did not specify that the bidding would remain open for 30 days as required by Sections 15‑39‑720 and 15‑39‑760; the bidder was charged with notice of the terms of the judgment and the proper procedure. Goethe v. Cleland (S.C.App. 1994) 323 S.C. 50, 448 S.E.2d 574.

Mortgage sale of property which evidence showed to be worth more than $5,000.00 was set aside and premises ordered resold, where last bid of $500.00 was inadequate, and through negligence of master’s stenographer, bid of $4,000.00 was not received in time. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24. Mortgages And Deeds Of Trust 2009

6. Waiver

Party waived right to object that questions respecting bids made during statutory thirty‑day period after judicial sale were raised by rule to show cause in original case, where he made return to rule after objections were overruled. Poole v. Jefferson Standard Life Ins. Co. (S.C. 1934) 174 S.C. 150, 177 S.E. 24. Judicial Sales 28

7. Foreclosure

Under South Carolina law, as of date on which it filed for bankruptcy protection, mortgagor held more than bare legal title to two parcels of land that were subject of prepetition foreclosure sale where mortgagee did not waive deficiency judgment and mortgagor filed bankruptcy petition while sale remained open under state law, such that sale did not close and no rights or obligations arose in mortgagee, as high first‑day bidder, that diminished mortgagor’s title. In re Riverfront Properties, LLC (Bkrtcy.D.S.C. 2009) 405 B.R. 570. Bankruptcy 2545; Mortgages And Deeds Of Trust 1961; Mortgages And Deeds Of Trust 1968

South Carolina Judicial Department (SCJD) did not require Master‑In‑Equity to hold lenders’ foreclosure proceeds, and therefore SCJD did not owe lenders a fiduciary duty to protect proceeds in action by lenders against SCJD arising from loss of proceeds due to embezzlement by Master’s employee; authority for Master to hold these proceeds was found in statutes and a rule which implemented the statutes, and did not come from SCJD. Bank of New York v. Sumter County (S.C. 2010) 387 S.C. 147, 691 S.E.2d 473. Equity 395; Equity 397

**SECTION 15‑39‑730.** Upset bids in other judicial sales.

In judicial sales other than foreclosures or in execution the bidding shall not remain open but shall be closed upon the date of sale unless there be objection at or prior to the hearing at which the decree is rendered to such closing by one or more parties to the suit, in which case the question shall be within the discretion of the court. In sales which involve both partition and foreclosure the bidding shall remain open as in foreclosure sales unless the right to a deficiency judgment is expressly waived.

HISTORY: 1962 Code Section 10‑1771; 1952 Code Section 10‑1771; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k229; 229k18.

Execution 229.

Judicial Sales 18.

C.J.S. Executions Section 230.

C.J.S. Judicial Sales Section 23.

**SECTION 15‑39‑740.** Deposits by bidders.

In no decree of sale or order thereunder shall there be a requirement for a deposit of cash or other guaranty of good faith prior to the conclusion of the bidding at any judicial sale of real estate, and such deposit or guaranty as may be required at the conclusion of the bidding and of any person who thereafter raises the bid within the period mentioned in Sections 15‑39‑720 and 15‑39‑730 shall be five per cent of the bid or some lesser percentage thereof.

HISTORY: 1962 Code Section 10‑1772; 1952 Code Section 10‑1772; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k229; 161k232; 229k18; 229k21.

Execution 229, 232.

Judicial Sales 18, 21.

C.J.S. Executions Sections 230, 232.

C.J.S. Judicial Sales Sections 23, 37.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑1772] in no wise conflicts with former Code 1962 Section 10‑1770 [see now Section 15‑39‑720]. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

This section [former Code 1962 Section 10‑1772] leaves to the discretion of the court the form of deposit or guaranty, whether it be cash, cashier’s check, certified check, or a bond or other security. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

This section [former Code 1962 Section 10‑1772], if not directly, by implication recognizes the power of the court in its decree of sale or order, to require a deposit of cash or other guaranty of good faith on the part of a bidder, the only limitation thereon and thereabout being that the decree or order shall not require a deposit of cash or other guaranty of good faith prior to the conclusion of the bidding, and of any person who thereafter raises the bid within the thirty‑day period, as a prerequisite to bidding; and that the deposit required shall not exceed five per cent of the bid. Ex parte Keller (S.C. 1937) 185 S.C. 283, 194 S.E. 15.

**SECTION 15‑39‑750.** Return of deposit when bid raised.

When any bid is raised as provided in Section 15‑39‑720 the deposit theretofore made by the prior high bidder shall be returned, with written notice to the effect that his bid has been raised, to him or his attorney personally or by mail within two days thereafter, and he shall have no further interest in the bid or sale.

HISTORY: 1962 Code Section 10‑1773; 1952 Code Section 10‑1773; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k229.

Westlaw Key Number Searches: 161k232; 229k18; 229k21.

Execution 229, 232.

Judicial Sales 18, 21.

C.J.S. Executions Sections 230, 232.

C.J.S. Judicial Sales Sections 23, 37.

**SECTION 15‑39‑760.** Provisions of Sections 15‑39‑720 to 15‑39‑750 inapplicable to certain foreclosure suits.

The provisions of Sections 15‑39‑720 to 15‑39‑750 shall not apply to any suit brought for foreclosure if the complaint therein states that no personal or deficiency judgment is demanded and that any right to such judgment is expressly waived or when the plaintiff is suing in a representative or fiduciary capacity or a defendant is sued in such capacity and sets up a right to affirmative relief in his answer, makes the beneficiary or a member of the class of beneficiaries a party to the action and requests in the complaint or answer leave of the court to waive any right to a personal or deficiency judgment, and such leave is granted by the court and incorporated in the decree. But in any such case the sales officer shall state in the advertisement of sale that no personal or deficiency judgment is demanded and that the bidding will not remain open after the sale but that compliance with the bid may be made immediately.

HISTORY: 1962 Code Section 10‑1774; 1952 Code Section 10‑1774; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 156, 202.

CROSS REFERENCES

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 266k517; 266k518.

Mortgages 517, 518.

C.J.S. Mortgages Sections 862 to 864.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 128, Manner of Sale.

S.C. Jur. Mortgages Section 130, Notice of Sale.

S.C. Jur. Mortgages Section 140, Election or Waiver.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Deficiency Judgment as an Incident of a Mortgage Foreclosure. 31 S.C. L. Rev. 97.

NOTES OF DECISIONS

In general 1

1. In general

In a foreclosure action by a plaintiff seeking a deficiency judgment, the special referee did not err in amending the order and canceling the sale without notice to the defendant and an opportunity to be heard where, as a result of a typographical error, the order did not specify that the bidding would remain open for 30 days as required by Sections 15‑39‑720 and 15‑39‑760; since the error was clerical, the special referee retained jurisdiction to correct the error. Goethe v. Cleland (S.C.App. 1994) 323 S.C. 50, 448 S.E.2d 574.

In a sale of property arising from a foreclosure action, the bidder was not a bona fide purchaser where the order on which the sale was based did not specify that the bidding would remain open for 30 days as required by Sections 15‑39‑720 and 15‑39‑760; the bidder was charged with notice of the terms of the judgment and the proper procedure. Goethe v. Cleland (S.C.App. 1994) 323 S.C. 50, 448 S.E.2d 574.

Language of Section 15‑39‑760 stating that 30‑day requirement will not apply when there is express waiver of right to deficiency judgment indicates legislature’s intention to deny deficiency judgment only when expressly waived. Perpetual Bldg. and Loan Ass’n of Anderson v. Braun (S.C. 1978) 270 S.C. 338, 242 S.E.2d 407.

**SECTION 15‑39‑770.** Compensation of officer making sale of real estate.

The officer making judicial sales of real estate may charge for services rendered in making such sales and in paying over the proceeds of such sales to the parties entitled thereto and for rendering all services in connection with such sales for which a commission fee is authorized by law a fee of seven dollars in case of such sale for a price of five hundred dollars or less, and in the case of a sale for more than five hundred dollars he shall be entitled to an additional fee of one per cent of the excess. No fees, charges or commissions, other than those herein authorized, may be charged by the officer making such sales, except that if such officer acted as referee or master in any case and took testimony, made a report or performed any other service prior to the order or decree of sale he shall be entitled to the regular legal fees therefor. When such officer is upon a salary basis of compensation all such fees, charges and commissions shall be paid to the county treasurer as may be provided by law.

HISTORY: 1962 Code Section 10‑1775; 1952 Code Section 10‑1775; 1942 Code Section 9078‑1; 1932 (37) 1529; 1933 (38) 511; 1934 (38) 1187, 1266, 1346, 1620; 1936 (39) 1294; 1939 (41) 202.

CROSS REFERENCES

Fees generally, see Sections 8‑21‑10 et seq.

Mortgage foreclosure under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 353k48.

Sheriffs and Constables 48.

C.J.S. Sheriffs and Constables Section 488.

Attorney General’s Opinions

The fees authorized by Section 15‑39‑770 should be paid to the Treasurer of Beaufort County. 1979 Op Atty Gen, No 79‑99, p 138.

A Master may collect no fee when a mortgagee buys in the property at a foreclosure sale. 1975‑76 Op Atty Gen, No 4516, p 378.

**SECTION 15‑39‑780.** Sale by debtor of property subject to levy and sale; proceeds shall be paid over to sheriff.

The entire proceeds of a sale of property subject to levy and sale made by the judgment debtors are to be paid over by such judgment debtors to the sheriff in whose office such judgments, executions or decrees are lodged, to be applied by the sheriff towards the satisfaction of such judgments, executions or decrees.

HISTORY: 1962 Code Section 10‑1781; 1952 Code Section 10‑1781; 1942 Code Section 9079; 1932 Code Section 9081; Civ. C. ‘22 Section 5486; Civ. C. ‘12 Section 3707; Civ. C. ‘02 Section 2622; G. S. 687; R. S. 2122; 1871 (14) 604.

CROSS REFERENCES

Foreclosure under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

Sales of land at auction under South Carolina Rules of Civil Procedure, see Rule 69, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k322.

Execution 322.

C.J.S. Executions Section 258.

**SECTION 15‑39‑790.** Sale by debtor of property subject to levy and sale; confirmation of sale and deed.

If no objection as to the price at which the property may have been sold by the judgment debtors shall be made in writing by either of the judgment creditors and filed with the sheriff within three months from and after the time such payment shall have been made, the sale shall thereupon be considered confirmed, and the sheriff shall make the following endorsement on the back of the deed of conveyance, viz.: “No objection having been filed in my office to the within bargain and sale within the time prescribed by law this bargain and sale is therefore confirmed.” Such endorsement shall be dated and signed officially by the sheriff.

HISTORY: 1962 Code Section 10‑1782; 1952 Code Section 10‑1782; 1942 Code Section 9079; 1932 Code Section 9081; Civ. C. ‘22 Section 5486; Civ. C. ‘12 Section 3707; Civ. C. ‘02 Section 2622; G. S. 687; R. S. 2122; 1871 (14) 604.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k242.

Execution 242.

C.J.S. Executions Sections 239 to 240.

Attorney General’s Opinions

Filing a Notice of Non‑Acceptance of Deed of Conveyance is not common practice in South Carolina; however, a grantee could conceivably choose such a method to demonstrate his or her lack of acceptance. S.C. Op.Atty.Gen. (August 24, 2011) 2011 WL 3918172.

**SECTION 15‑39‑800.** Sale by debtor of property subject to levy and sale; proceedings if judgment creditors object to sale.

Should any of the judgment creditors object to the price at which any of the property may have been sold and file such notice with the sheriff within the time mentioned in Section 15‑39‑790 the sheriff shall immediately proceed to levy upon and offer for sale such property, proceeding, in all respects, according to the law in regard to levy and sale by the sheriff. If the highest bid made for such property upon such sale shall not be more than the amount of the indebtedness which had been cancelled by the sale made by the debtor the sheriff shall withdraw such property from sale, and the creditor who may have filed his objection shall be required to pay all costs and expenses that accrued in consequence thereof.

HISTORY: 1962 Code Section 10‑1783; 1952 Code Section 10‑1783; 1942 Code Section 9080; 1932 Code Section 9082; Civ. C. ‘22 Section 5487; Civ. C. ‘12 Section 3708; Civ. C. ‘02 Section 2623; G. S. 688; R. S. 2123; 1871 (14) 605.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k242.

Execution 242.

C.J.S. Executions Sections 239 to 240.

**SECTION 15‑39‑810.** Sale by debtor of property subject to levy and sale; endorsement on conveyance in case of objection.

Should any judgment creditor so object the sheriff shall make the following endorsement on the back of the conveyance made by the debtor, viz.: “Objection having been filed in my office by \_\_\_\_\_\_\_\_\_\_,judgment creditor, I levied upon and exposed for sale the property within named; and failing to receive a higher bid than the amount of indebtedness cancelled by the proceeds of the within bargain and sale, this sale is therefore confirmed.” Such endorsement shall be signed by the sheriff.

HISTORY: 1962 Code Section 10‑1784; 1952 Code Section 10‑1784; 1942 Code Section 9081; 1932 Code Section 9083; Civ. C. ‘22 Section 5488; Civ. C. ‘12 Section 3709; Civ. C. ‘02 Section 2624; G. S. 689; R. S. 2124; 1871 (14) 605.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k303 to 161k318.

Execution 303 to 318.

C.J.S. Executions Sections 277 to 287.

**SECTION 15‑39‑820.** Sale by debtor of property subject to levy and sale; proceedings when sale by sheriff brings more.

In the event that the property, when so exposed for sale by the sheriff as provided for in Section 15‑39‑800, should bring more than the amount of the indebtedness cancelled by the proceeds of the sale made by the debtor the purchaser from the debtor shall be refunded the amount paid by him with interest from the time of payment, and the bargain and sale made by the debtor rescinded, and titles executed by the sheriff to the purchaser at his sale. After deducting the costs and expenses by reason of the levy and sale the remainder shall be applied, according to law, towards satisfaction of the judgments or executions in his office.

HISTORY: 1962 Code Section 10‑1785; 1952 Code Section 10‑1785; 1942 Code Section 9082; 1932 Code Section 9084; Civ. C. ‘22 Section 5489; Civ. C. ‘12 Section 3710; Civ. C. ‘02 Section 2625; G. S. 690; R. S. 2125; 1871 (14) 605.

LIBRARY REFERENCES

Westlaw Key Number Search: 161k257.

Execution 257.

C.J.S. Executions Section 256.

**SECTION 15‑39‑830.** Conveyance after sale.

Upon a judicial sale being made and the terms complied with the officer making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interests adjudged to be sold.

HISTORY: 1962 Code Section 10‑1786; 1952 Code Section 10‑1786; 1942 Code Section 740; 1932 Code Section 740; Civ. P. ‘22 Section 607; Civ. P. ‘12 Section 345; Civ. P. ‘02 Section 306; 1870 (14) 490 Section 310; 1872 (15) 194; 1878 (16) 336, 558; 1884 (18) 708; 1885 (19) 7; 1927 (35) 289; 1929 (36) 1052.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k303 to 161k318; 229k61.

Execution 303 to 318.

Judicial Sales 61.

C.J.S. Executions Sections 277 to 287.

C.J.S. Judicial Sales Sections 48 to 52.

**SECTION 15‑39‑840.** Conveyances of real estate sold under execution.

When any sheriff or other officer makes a conveyance of any real estate sold by virtue of a tax execution or other execution the conveyance shall contain the name of the person owning the property executed on, the name of the judgment creditor executing, the date of execution and the date of sale.

HISTORY: 1962 Code Section 10‑1787; 1952 Code Section 10‑1787; 1942 Code Section 9083; 1932 Code Section 9079; 1929 (36) 277.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k303 to 161k318; 229k61.

Execution 303 to 318.

Judicial Sales 61.

C.J.S. Executions Sections 277 to 287.

C.J.S. Judicial Sales Sections 48 to 52.

Attorney General’s Opinions

Tax sale. Code 1962 Section 65‑2769 states that property may be sold in the name of the persons in whose name the property was returned and it is not necessary to determine the heirs of assigns of such person when property is sold by the tax collector. 1968‑69 Op Atty Gen, No 2618, p 14.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Osborne v. Vallentine (S.C. 1941) 196 S.C. 90, 12 S.E.2d 856.

**SECTION 15‑39‑850.** Successors of selling officers may make title.

In all cases in which any sheriff, probate judge, clerk of court or master shall have legally sold any real or personal estate and such sheriff, probate judge, clerk of court or master shall die, resign or otherwise go out of office before he shall have executed title therefor to the purchaser, any subsequent sheriff, probate judge, clerk of court or master of the same county, upon the terms of sale being complied with or satisfactory evidence produced that they have been complied with, may make and execute good and sufficient title to the purchaser for the property so sold.

HISTORY: 1962 Code Section 10‑1788; 1952 Code Section 10‑1788; 1942 Code Section 3541; 1932 Code Section 3541; Civ. C. ‘22 Section 2084; Civ. C. ‘12 Section 1191; Civ. C. ‘02 Section 866; G. S. 686; R. S. 745; 1899 (23) 44.

CROSS REFERENCES

Confirmation of titles, see Sections 27‑11‑10 et seq.

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k303 to 161k318; 229k61.

Execution 303 to 318.

Judicial Sales 61.

C.J.S. Executions Sections 277 to 287.

C.J.S. Judicial Sales Sections 48 to 52.

NOTES OF DECISIONS

In general 1

1. In general

A deed in fee of the property sold to a purchaser by a subsequent sheriff of the same county will vest in him the fee to the land, and relate back to the time of the sale. Carolina Sav. Bank v. McMahon (S.C. 1892) 37 S.C. 309, 16 S.E. 31.

**SECTION 15‑39‑860.** Recording and indexing of execution conveyances.

When any conveyance under Section 15‑39‑840 is offered to any clerk of court or register of deeds of this State for recording he shall index it under the name of the officer who made the conveyance, the name of the person whose property was executed on, as grantor, and the name of the person who purchased, as grantee.

HISTORY: 1962 Code Section 10‑1789; 1952 Code Section 10‑1789; 1942 Code Section 9083‑1; 1932 Code Section 9079; 1929 (36) 277; 1997 Act No. 34, Section 1.

CROSS REFERENCES

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

Indexing deeds of certain officers, see Sections 30‑9‑50, 30‑9‑70.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k303 to 161k318; 229k61.

Execution 303 to 318.

Judicial Sales 61.

C.J.S. Executions Sections 277 to 287.

C.J.S. Judicial Sales Sections 48 to 52.

**SECTION 15‑39‑870.** Judicial sales shall be res judicata as to innocent purchasers, even without confirmation.

Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

HISTORY: 1962 Code Section 10‑1790; 1952 Code Section 10‑1790; 1942 Code Section 9084; 1932 Code Section 9080; 1923 (33) 126.

CROSS REFERENCES

Confirmation of titles, generally, see Sections 27‑11‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k242; 229k48.

Execution 242.

Judicial Sales 48.

C.J.S. Executions Sections 239 to 240.

C.J.S. Judicial Sales Section 86.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 125, Conclusiveness of Judgment.

LAW REVIEW AND JOURNAL COMMENTARIES

Stewart, Res Judicata and Collateral Estoppel in South Carolina. 28 S.C. L. Rev. 451.

NOTES OF DECISIONS

In general 1

Bona fide purchasers 2

Elements 3

1. In general

The rationale for statute that provides judicial sales are res judicata as to innocent purchasers is the public policy of protecting good faith purchasers and upholding the finality of a judicial sale. Bloody Point Property Owners Ass’n, Inc. v. Ashton (S.C.App. 2014) 410 S.C. 62, 762 S.E.2d 729. Judicial Sales 53

In a sale of property arising from a foreclosure action, the bidder was not a bona fide purchaser for value where he had not yet complied with his bid and thus was never issued a deed; consequently, the special referee did not err in canceling the sale where, as a result of a typographical error, the order for the sale did not specify that the bidding would remain open for 30 days as required by Sections 15‑39‑720 and 15‑39‑760. Goethe v. Cleland (S.C.App. 1994) 323 S.C. 50, 448 S.E.2d 574.

Where the mortgagee was the purchaser of the property sold and there was no suggestion of fraud, nor was there any evidence that the purchaser had notice of any irregularities in the proceedings, if any existed, the trial judge holding that the sale was regular and fair, it was held that the failure to have the sale confirmed by the order of the court did not work any hardship on the mortgagor and this section [Code 1962 Section 10‑1790] disposed of the matter. Wooten v. Seanch (S.C. 1938) 187 S.C. 219, 196 S.E. 877.

2. Bona fide purchasers

To qualify as a bona fide purchaser under statute providing that judicial sales are res judicata as to bona fide purchasers, a party must show (1) actual payment of the purchase price of the property; (2) acquisition of legal title to the property, or the best right to it; and (3) a bona fide purchase, i.e., in good faith and with integrity of dealing, without notice of a lien or defect. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Judicial Sales 50(1)

In foreclosure proceedings initiated by a homeowners’ association for unpaid assessments, purchasers at the foreclosure sale did not qualify as a bona fide purchaser under statute providing that judicial sales are res judicata as to bona fide purchasers, despite fact that when purchasers paid a portion of their bid, they did not know there was any adverse claim against the property; before purchasers paid the entire purchaser price, they received actual knowledge that there could be a claim or defect that would affect title to the property. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Judicial Sales 50(1)

Purchaser of land that was sold to vendors pursuant to judgment of foreclosure and judicial sale was a bona fide purchaser for value without notice such that claims of defective service in the foreclosure action did not affect purchaser’s title; judgment of foreclosure was entered by court of competent jurisdiction and all title exchanges were properly executed, purchaser showed evidence of actual payment and legal title to the subject property, and there was no evidence that purchaser had notice of claims that original title owners were not served in the foreclosure action. Robinson v. Estate of Harris (S.C.App. 2008) 378 S.C. 140, 662 S.E.2d 420, rehearing denied, certiorari granted, affirmed 390 S.C. 272, 701 S.E.2d 740. Mortgages And Deeds Of Trust 2050

3. Elements

Under statute providing that judicial sales are res judicata as to bona fide purchasers, the bona fide purchaser must show all three conditions—actual payment, acquiring of legal title, and bona fide purchase—occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Common Interest Communities 77

**SECTION 15‑39‑880.** Certain liens extinguished by sale when lien creditor is a party to proceeding.

No lien created by operation of law or agreement of the parties whether of record or authorized by law to be entered of record in any office of any clerk of court or register of mesne conveyance in this State or any transcript, extension, renewal or revival thereof shall constitute a lien or attach or reattach as a lien on real property of the lien debtor or real property in which the lien debtor has an interest after a public sale of such real property at any execution or judicial sale in any action or special proceeding to which the lien creditor is duly made a party as provided by law. But this section and Section 15‑39‑890 shall not be construed to affect any prior mortgage lien not foreclosed in any such action or special proceeding and shall not be construed to require the foreclosure of any such prior mortgage lien. And this section and Section 15‑39‑890 shall not apply to tax execution sales.

HISTORY: 1962 Code Section 10‑1791; 1952 Code Section 10‑1791; 1942 Code Section 9084‑1; 1935 (39) 503.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k268; 229k48; 229k50(2).

Execution 268.

Judicial Sales 48, 50(2).

C.J.S. Executions Section 297.

C.J.S. Judicial Sales Sections 43, 62 to 63, 71, 86.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 108, Defendants.

**SECTION 15‑39‑890.** Reacquisition of property by lien debtor.

No lien on real property barred by a public sale of such real property at any execution or judicial sale heretofore made in the manner provided in Section 15‑39‑880, nor any transcript, extension, renewal or revival thereof, shall constitute a lien or attach or reattach as a lien on the real property so sold, or any part thereof, if acquired by the lien debtor subsequent to May 11, 1935.

HISTORY: 1962 Code Section 10‑1792; 1952 Code Section 10‑1792; 1942 Code Section 9084‑2; 1935 (39) 503.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k268; 229k48; 229k50(2).

Execution 268.

Judicial Sales 48, 50(2).

C.J.S. Executions Section 297.

C.J.S. Judicial Sales Sections 43, 62 to 63, 71, 86.

**SECTION 15‑39‑900.** Proceeds paid to prior judgment lienor.

The sheriff shall pay over the proceeds of sale of any real estate sold by him to any judgment creditor having a prior lien thereon.

HISTORY: 1962 Code Section 10‑1793; 1952 Code Section 10‑1793; 1942 Code Section 3540; 1932 Code Section 3540; Civ. C. ‘22 Section 2083; Civ. C. ‘12 Section 1190; Civ. C. ‘02 Section 865; G. S. 685; R. S. 744; 1839 (11) 55 Section 60.

LIBRARY REFERENCES

Westlaw Key Number Searches: 161k322 to 161k329; 229k62.

Execution 322 to 329.

Judicial Sales 62.

C.J.S. Executions Sections 258 to 264.

C.J.S. Judicial Sales Sections 53 to 54.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

NOTES OF DECISIONS

In general 1

1. In general

A prior judgment to another does not constitute a prior lien on lands acquired by the judgment debtor subsequent to the entry of both judgments, as their lien attaches at the same time, and they are entitled to a prorata distribution. Belknap v Greene, 56 SC 119, 34 SE 26 (1899). Davis v Hunt, 2 Bail (18 SCL) 412. State v Easterling, 1 Rich (30 SCL) 310. Furman v Christie, 3 Rich (37 SCL) 1. Lynch v Hanahan, 9 Rich (43 SCL) 186; Wallace v Graham, 13 Rich (47 SCL) 322. State v Boles, 13 SC 283 (1880). Trimmier v Winsmith, 23 SC 449 (1885). Garvin v Garvin, 34 SC 388, 13 SE 625 (1891).

A State court, on an application, by the holder of a senior judgment rendered in a Federal court within the State, for a rule against a sheriff holding the proceeds of a sale on execution under a junior judgment rendered in a State court, will require him to apply such proceeds first on the Federal judgment. In re Voorhies (S.C. 1896) 46 S.C. 114, 24 S.E. 170.

Applied in Kaminsky v. Trantham (S.C. 1895) 45 S.C. 393, 23 S.E. 132.

Under this section [former Code 1962 Section 10‑1793] an execution for costs in a suit to compel compliance herewith was properly postponed to an execution for costs issued upon a prior judgment. National Bank of Newberry v. Goodman (S.C. 1890) 33 S.C. 601, 11 S.E. 785.