CHAPTER 69

Recovery of Personal Property

**SECTION 15‑69‑10.** Time when immediate delivery may be claimed.

 The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

HISTORY: 1962 Code Section 10‑2501; 1952 Code Section 10‑2501; 1942 Code Section 552; 1932 Code Section 552; Civ. P. ‘22 Section 469; Civ. P. ‘12 Section 257; Civ. P. ‘02 Section 227; 1870 (14) 470 Section 229.

CROSS REFERENCES

Arrest of defendant in action to recover personal property, see Section 15‑17‑20.

Proceedings in claim and delivery before a magistrate, see Sections 22‑3‑1310 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k1.

Replevin 1.

C.J.S. Replevin Sections 2 to 7.

RESEARCH REFERENCES

Forms

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

NOTES OF DECISIONS

In general 1

Arbitration 4

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1. In general

Section was applied. Ex parte Dort, 238 SC 506, 121 SE2d 1 (1961). South Carolina Nat. Bank v Florence Sporting Goods, 241 SC 110, 127 SE2d 199 (1962).

Assuming that state prison inmate had protected property interest in funds in his trust account, state corrections department’s debiting of account for costs of inmate’s legal correspondence did not constitute due process violation; department had provided notice of its policy to debit accounts for costs of such correspondence, department had compelling interest in maintaining orderly assessment process, inmate could contest any allegedly erroneous assessment via prison grievance process, and state offered adequate post‑deprivation remedy. Johnson v. Ozmint, 2008, 567 F.Supp.2d 806. Constitutional Law 4822; Prisons 117; Prisons 328

Claim and delivery available only in an action to recover possession of personal property. United Fabrics Corp. v. Delaney (S.C. 1962) 241 S.C. 268, 128 S.E.2d 111.

The requirements of this section [former Code 1962 Section 10‑2501] and former Code 1962 Sections 10‑2503 to 10‑2507 [Sections 15‑69‑30 to 15‑69‑60] need not be met unless plaintiff desires to obtain immediate possession. The procedure set forth in these sections constitutes solely a subsidiary or ancillary remedy which the plaintiff may at his option pursue. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311.

Plaintiff is entitled to have his action for possession of property tried though seizure was illegal. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311.

While, by filing a petition in the cause attacking the validity of the proceedings, defendant voluntarily appeared and waived the necessity of a summons, where this occurred four days after the property had been seized it did not have the effect of validating the wrongful seizure. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311. Appearance 9(1); Appearance 25

Proof of title, or right of possession, is a prerequisite to a plaintiff prevailing in an action in claim and delivery. Manship v. Newsome (S.C. 1938) 188 S.C. 6, 198 S.E. 428.

Where there has been actual fraud mixed with deceit and corruption in an exchange of personalty, the party defrauded has his election to sue on the warranty or bring his action for the property exchanged by him. If he elects the latter, he may bring an action in claim and delivery, for title to the goods remained in him at his election. Manship v. Newsome (S.C. 1938) 188 S.C. 6, 198 S.E. 428. Exchange Of Property 13(1)

Action by pledgor against pledgee. Gregg v. Bank of Columbia (S.C. 1905) 72 S.C. 458, 52 S.E. 195, 110 Am.St.Rep. 633.

2. Nature of action of claim and delivery

The action of claim and delivery is not a chancery proceeding, but an action to take property from one who wrongfully withholds it, and to give it to another who has a plain legal right thereto. Clerks’ Benevolent Union v Knights of Columbus, 70 SC 543, 50 SE 206 (1905). Cannon v Dean, 80 SC 557, 61 SE 1012 (1908). Sparks v Green, 69 SC 198, 48 SE 61 (1904). United Fabrics Corporation v Delaney, 241 SC 268, 128 SE2d 111 (1962).

Claim and delivery is an action at law. Haverty Furniture Co., Inc. of Charleston v. Worthy (S.C. 1962) 241 S.C. 369, 128 S.E.2d 707.

In claim and delivery the right to possession, the value of the property, the amount due, any counterclaims arising out of the same transaction or any defenses legal or equitable are determined and damages actual or punitive may be recovered, but no procedure is provided for a sale with the protection afforded by court order, and the matter of accountability for the proceeds of sale is not concluded. On the other hand, a proceeding in equity to foreclose protects the rights of all parties, both plaintiff and defendant, and makes a complete disposition and accounting of the entire controversy with nothing left open for further litigation. Speizman v. Guill (S.C. 1943) 202 S.C. 498, 25 S.E.2d 731.

Remedy sought as set forth in the complaint was not one for claim and delivery. Speizman v. Guill (S.C. 1943) 202 S.C. 498, 25 S.E.2d 731.

Actions of trover and replevin are combined in claim and delivery. Reynolds v. Philips (S.C. 1905) 72 S.C. 32, 51 S.E. 523.

Claim and delivery is a civil action. Jones v. Brown (S.C. 1900) 57 S.C. 14, 35 S.E. 397.

3. Issuance of summons

Under the terms of this section [former Code 1962 Section 10‑2501] a proceeding to obtain immediate delivery of property may not be commenced until the summons has been issued. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311.

The provision of this section [former Code 1962 Section 10‑2501] that the summons must be issued before the proceeding for immediate possession is commenced is mandatory. Thus, where no summons was issued until four days after the property was seized by the sheriff, this omission invalidated the seizure. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311. Replevin 42

In a claim and delivery action, where the plaintiff only seeks to get possession of the property, it is necessary to serve a complaint in addition to the affidavit required by former Code 1962 Section 10‑2503 [see now Section 15‑69‑30]. Middleton v. Robinson (S.C. 1943) 202 S.C. 418, 25 S.E.2d 474. Replevin 41

4. Arbitration

Borrowers’ claim for violation of the claim and delivery proceedings statute against lenders, for allegedly repossessing borrowers’ mobile home without following requisite formalities after borrowers’ defaulted on loan, was within the scope of the contract’s arbitration clause applicable to claims “arising out of or relating to” the contract; lender’s actions to recover the property as a result of borrowers’ default created a controversy arising out of the contract. Hall v. Green Tree Servicing, LLC (S.C.App. 2015) 413 S.C. 267, 776 S.E.2d 91. Alternative Dispute Resolution 143

**SECTION 15‑69‑20.** Any one of several joint owners may sue for possession.

 Any one or more of several joint owners of personal property who can establish such partial ownership in such property shall have the right to institute an action in claim and delivery to recover possession of the property from any wrongful holder thereof. In such an action the co‑owners of the property who do not join the plaintiff in bringing the suit may be made parties defendant.

HISTORY: 1962 Code Section 10‑2502; 1952 Code Section 10‑2502; 1942 Code Section 564‑1; 1940 (41) 1667.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k15.

Replevin 15.

C.J.S. Replevin Section 27.

**SECTION 15‑69‑30.** Affidavit and requisites thereof.

 When a delivery is claimed an affidavit must be made by the plaintiff or by someone on his behalf showing:

 (1) That the plaintiff is the owner of the property claimed, particularly describing it, or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

 (2) That the property is wrongfully detained by the defendant;

 (3) The alleged cause of the detention thereof, according to the affiant’s best knowledge, information and belief;

 (4) That the property has not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the plaintiff or, if so seized, that it is by statute exempt from such seizure; and

 (5) The actual value of the property.

HISTORY: 1962 Code Section 10‑2503; 1952 Code Section 10‑2503; 1942 Code Section 553; 1932 Code Section 553; Civ. P. ‘22 Section 470; Civ. P. ‘12 Section 258; Civ. P. ‘02 Section 228; 1870 (14) 471 Section 230.

CROSS REFERENCES

Manner of preparing papers under South Carolina Rules of Civil Procedure, see Rule 10, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k26.

Replevin 26.

C.J.S. Replevin Section 47.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 70, Appealability.

NOTES OF DECISIONS

In general 1

1. In general

The affidavit required by this section [former Code 1962 Section 10‑2503] and the bond required by Code 1962 Section 10‑2505 [see now Section 15‑69‑50] are not mandatory in a claim and delivery action unless the plaintiff claims immediate possession. Middleton v Robinson, 202 SC 418, 25 SE2d 474 (1943). Plowden v Mack, 217 SC 226, 60 SE2d 311 (1950).

Cases in question involved description of the property. Phoenix Furniture Co. v Jaudon, 75 SC 229, 55 SE 308 (1906). Bossard v Vaughn, (1904) 68 SC 96, 46 SE 523.

Circuit court’s order appointing receiver to take possession of borrower’s properties was law of the case, and therefore cause of action for claim and delivery by assignee of loan documents was moot; borrower did not move for circuit court to alter or amend its order, nor did borrower appeal it. Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC (S.C.App. 2015) 414 S.C. 635, 780 S.E.2d 263. Appeal and Error 853

Verified complaint may be used to augment affidavit. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311.

Verified complaint did not comply with the requisites of the affidavit herein set forth and did not take the place of the affidavit required by this statutory proceeding, in Speizman v. Guill (S.C. 1943) 202 S.C. 498, 25 S.E.2d 731.

The affidavit in an action for claim and delivery is not the basis of plaintiff’s cause of action but is merely the means of obtaining immediate possession of the property. Middleton v. Robinson (S.C. 1943) 202 S.C. 418, 25 S.E.2d 474. Replevin 27

The affidavit required under this section [former Code 1962 Section 10‑2503] is in no sense a part of the complaint, and need not be executed at all unless the plaintiff desires to claim the immediate delivery of the property; it is essentially a subsidiary proceeding. Adeimy v. Dleykan (S.C. 1921) 116 S.C. 159, 107 S.E. 35. Replevin 27

An objection to an affidavit, because of the omission of some essential element, should be raised by a motion to set aside the proceedings, or a rule to show cause. Adeimy v. Dleykan (S.C. 1921) 116 S.C. 159, 107 S.E. 35.

The plaintiff is not required, under this section [former Code 1962 Section 10‑2503], to set out evidence of his title, but can prove ownership by any testimony evidencing it. Osteen v. Lowry (S.C. 1918) 111 S.C. 217, 97 S.E. 244.

The plaintiff must prove that he was entitled to the possession of the property at the time the action was commenced. Segars v. Segars (S.C. 1909) 82 S.C. 196, 63 S.E. 891. Replevin 10

Property does not have to be in possession of defendant at commencement of action. Segars v. Segars (S.C. 1909) 82 S.C. 196, 63 S.E. 891.

**SECTION 15‑69‑40.** Notice of right to preseizure hearing.

 The plaintiff shall attach to the affidavit a notice of a right to a preseizure hearing which shall notify the defendant that within five days from service thereof, he may demand such hearing by notifying the clerk of court in writing and present such evidence touching upon the probable validity of the plaintiff’s claim for immediate possession, and defendant’s right to continue in possession.

HISTORY: 1962 Code Section 10‑2504; 1952 Code Section 10‑2504; 1942 Code Section 554; 1932 Code Section 554; Civ. P. ‘22 Section 471; Civ. P. ‘12 Section 259; Civ. P. ‘02 Section 229; 1870 (14) 471 Section 231; 1972 (57) 3080.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k26.

Replevin 26.

C.J.S. Replevin Section 47.

**SECTION 15‑69‑50.** Sheriff shall serve affidavit and notice; required security; sheriff shall be directed to take property.

 Upon the receipt of the affidavit and notice, with a written undertaking executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, if the return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, including damages suffered on account of depreciation in value of the property pending the determination of the action, the sheriff shall forthwith serve the same upon defendant. If the defendant (1) fails to demand a preseizure hearing within five days of service, or (2) after such hearing the judge shall find that plaintiff’s claim for immediate possession should be allowed, or (3) the clerk of court or judge finds that a preseizure hearing has been previously waived in writing as provided in this chapter, or (4) the clerk of court or judge finds, as provided in this chapter, that there is a probability that the subject property is in immediate danger of being destroyed or concealed by the possessor of such property, then the clerk of court or judge shall endorse upon the affidavit for possession a direction to the sheriff requiring him to take the property described therein from the defendant and keep it, to be disposed of according to law.

 In case the plaintiff does not execute the required undertaking, the party having possession of the property shall retain it until the determination of the suit, and no endorsement allowing immediate possession shall be made on the affidavit until the appropriate undertaking is executed.

HISTORY: 1962 Code Section 10‑2505; 1952 Code Section 10‑2505; 1942 Code Section 555; 1932 Code Section 555; Civ. P. ‘22 Section 472; Civ. P. ‘12 Section 260; Civ. P. ‘02 Section 230; 1870 (14) Section 232; 1873 (15) 498; 1937 (40) 204; 1972 (57) 3080.

CROSS REFERENCES

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

Delivery of undertakings to parties for whose benefit they are taken, see Section 15‑1‑220.

Proceedings against sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

Security and form of undertaking under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k41; 335k42.

Replevin 41, 42.

C.J.S. Replevin Section 64.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 82, Chapter 69 Claim and Delivery.

NOTES OF DECISIONS

In general 1

1. In general

The bond required by this section [former Code 1962 Section 10‑2505] and the affidavit required by former Code 1962 Section 10‑2503 [see now Section 15‑69‑10] are not mandatory in a claim and delivery action unless the plaintiff claims immediate possession. Middleton v Robinson, 202 SC 418, 25 SE2d 474 (1943). Plowden v Mack, 217 SC 226, 60 SE2d 311 (1950).

In absence of bond sheriff commanded by this section [former Code 1962 Section 10‑2505] to leave chattels in possession of party having possession. South Carolina Nat. Bank v. Florence Sporting Goods, Inc. (S.C. 1962) 241 S.C. 110, 127 S.E.2d 199.

Sureties on an undertaking in claim and delivery are not liable for payment of judgment rendered against principal for either actual or punitive damages for fraudulent or wrongful acts committed by principal prior to institution of action in claim and delivery and before execution of undertaking. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)

Principal and sureties on bond executed in claim and delivery action to indemnify defendant against loss which he might suffer from surrender of property involved pending trial of action, where held liable for payment of judgment for actual damages rendered against plaintiff in claim and delivery action for unlawful seizure and sale of property after execution of undertaking. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)

Sureties on an undertaking in claim and delivery cannot be held liable for payment of judgment against their principal for punitive damages for acts done by such principal after execution of bond in claim and delivery, since principal is not liable for punitive damages for anything which occurs after execution of such undertaking, and obligation of sureties is no greater than that of principal. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)

An objection that plaintiff’s undertaking lacked sheriff’s formal approval is waived, under this section [former Code 1962 Section 10‑2505], by defendant’s failure to except. Guglieri v. Roman Tile & Marble Co. (S.C. 1930) 158 S.C. 365, 155 S.E. 406. Replevin 33(2)

**SECTION 15‑69‑60.** Manner of effecting service; when sheriff shall take and retain property.

 The sheriff shall without delay serve on the defendant a copy of the affidavit, notice and undertaking, by delivering it to him personally, if he can be found, or to his agent, from whose possession the property is taken, or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion. Upon delivery of the affidavit with the endorsement of the clerk of court or judge allowing immediate possession, the sheriff shall take the property described in the affidavit, if it be in possession of the defendant or his agent, and retain it in his custody.

HISTORY: 1962 Code Section 10‑2507; 1952 Code Section 10‑2507; 1942 Code Section 555; 1932 Code Section 555; Civ. P. ‘22 Section 472; Civ. P. ‘12 Section 260; Civ. P. ‘02 Section 230; 1870 (14) Section 232; 1873 (15) 498; 1937 (40) 204; 1972 (57) 3080.

CROSS REFERENCES

Personal service in state, see SCRCP, Rule 4.

Sheriff compelled to return process under South Carolina Rules of Civil Procedure, SCRCP, see Rule 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k41; 335k42.

Replevin 41, 42.

C.J.S. Replevin Section 64.

Attorney General’s Opinions

City policemen may serve magistrates’ arrest warrants and civil papers. 1964‑65 Ops Atty Gen, No 1800, p 44.

City policemen may not serve papers in claim and delivery actions. 1964‑65 Ops Atty Gen, No 1800, p 44.

NOTES OF DECISIONS

In general 1

1. In general

Requirements of section need not be met unless plaintiff desires immediate possession. Plowden v. Mack (S.C. 1950) 217 S.C. 226, 60 S.E.2d 311.

**SECTION 15‑69‑70.** Purpose of preseizure hearing; allowing claim for immediate possession.

 The purpose of the preseizure hearing is to protect the defendant’s use and possession of property from arbitrary encroachment, and to prevent unfair or mistaken deprivations of property. If the judge shall, after conducting the hearing, find that the plaintiff’s claim for immediate possession is probably valid and the defendant has no overriding right to continue in possession of the property, then the judge may allow the claim for immediate possession and endorse the affidavit accordingly.

HISTORY: 1962 Code Section 10‑2507.1; 1972 (57) 3080.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k25.

Replevin 25.

C.J.S. Replevin Section 46.

**SECTION 15‑69‑80.** Notice and opportunity for preseizure hearing is required; waiver.

 No property shall be seized under the provisions of this chapter unless five days’ notice and an opportunity to be heard have been afforded the party in possession as herein provided; provided, however, any person in possession of the personal property may waive the right to a preseizure hearing, if the waiver is conspicuously displayed in the contract and includes the wording “waiver of hearing prior to immediate possession.” In order for the contractual waiver or any other waiver to be effective, the plaintiff by affidavit must show that the defendant has in writing by contract or separate written instrument voluntarily, intelligently and knowingly waived his right to a hearing prior to the repossession of such personal property. The judge or clerk of court may order immediate delivery of the property to the plaintiff upon receipt of such affidavit.

HISTORY: 1962 Code Section 10‑2507.2; 1972 (57) 3080.

CROSS REFERENCES

Consent must be in writing, see Rule 43, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k87.

Replevin 87.

**SECTION 15‑69‑90.** Order restraining defendant from damaging, concealing or removing property.

 The judge may issue an order which shall be concurrently served on the defendant that restrains the defendant from damaging, concealing or removing the subject property, when immediate possession of such property is not being taken. Upon proper showing that such order has been violated, the defendant shall be subject to a fine not to exceed one thousand dollars or imprisonment for not more than six months, or both.

HISTORY: 1962 Code Section 10‑2507.3; 1972 (57) 3080.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k44.

Replevin 44.

C.J.S. Replevin Sections 79 to 80.

**SECTION 15‑69‑100.** Determination upon affidavit showing danger of destruction or concealment.

 Upon a showing unto the judge or clerk of court supported by an affidavit containing facts sufficient to show that it is probable to believe that the property at issue is in immediate danger of being destroyed or concealed by the possessor of such property and particularly describing such property and its location, the judge or clerk of court shall make a determination as to whether or not the property may be immediately seized. Provided, that the holding of a preseizure hearing by the judge shall not be a condition precedent to such determination.

HISTORY: 1962 Code Section 10‑2507.4; 1972 (57) 3080.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k25; 335k34; 335k39.

Replevin 25, 34, 39.

C.J.S. Replevin Sections 46, 60.

NOTES OF DECISIONS

In general 1

1. In general

If the defendant questions the determination of the court pursuant to Section 15‑69‑100 ordering immediate seizure, the defendant’s remedy is pursuant to Section 15‑69‑140 permitting the defendant at any time within three days after service or any time before delivery of the property to the plaintiff to require the return thereof by giving the sheriff a written undertaking. General Motors Acceptance Corp. v. McMinn (S.C. 1985) 285 S.C. 67, 328 S.E.2d 472.

**SECTION 15‑69‑110.** Service of affidavit of waiver or probability of destruction or concealment.

 If either an affidavit showing that the defendant has waived his right to a preseizure hearing or an affidavit of probability of damage or concealment is filed under the provisions of this chapter, a copy thereof shall be served on the defendant in lieu of serving him with notice of right to preseizure hearing.

HISTORY: 1962 Code Section 10‑2507.5; 1972 (57) 3080.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k41; 335k42.

Replevin 41, 42.

C.J.S. Replevin Section 64.

**SECTION 15‑69‑120.** Filing of notice and affidavit.

 The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein.

HISTORY: 1962 Code Section 10‑2508; 1952 Code Section 10‑2508; 1942 Code Section 564; 1932 Code Section 564; Civ. P. ‘22 Section 480; Civ. P. ‘12 Section 268; Civ. P. ‘02 Section 238; 1870 (14) Section 240.

CROSS REFERENCES

Sheriff is compelled to return process, see Rule 4, SCRCP.

When sheriff or constable is to return attachment with his proceedings thereon, see Section 15‑19‑400.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k25; 335k26.

Replevin 25, 26.

C.J.S. Replevin Sections 46 to 47.

NOTES OF DECISIONS

In general 1

1. In general

No penalty is imposed for failure to comply with the provisions of this section [former Code 1962 Section 10‑2508]. Alexander v. Jamison (S.C. 1900) 56 S.C. 409, 34 S.E. 695.

**SECTION 15‑69‑130.** Exception to sureties.

 The defendant may within three days after the service of a copy of the affidavit and undertaking give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fails to do so, he shall be deemed to have waived all objections to them. When the defendant excepts the sureties shall justify, on notice, in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justify. But before delivery of such property to the plaintiff the defendant shall have three days after (a) such justification, (b) new sureties have been substituted by the plaintiff or (c) a holding by the sheriff that plaintiff’s sureties are sufficient, within which to replevy as provided in Section 15‑69‑140.

HISTORY: 1962 Code Section 10‑2509; 1952 Code Section 10‑2509; 1942 Code Section 556; 1932 Code Section 556; Civ. P. ‘22 Section 473; Civ. P. ‘12 Section 261; Civ. P. ‘02 Section 231; 1870 (14) Section 233; 1947 (45) 197.

CROSS REFERENCES

Justification of bail on arrest, see Section 15‑17‑270.

Sureties, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k33.

Replevin 33.

C.J.S. Replevin Section 54.

**SECTION 15‑69‑140.** When defendant shall be entitled to redelivery; undertaking.

 At any time before the delivery of the property to the plaintiff the defendant may require the return thereof upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, including damages suffered on account of depreciation in value of the property pending the determination of the action, be recovered against the defendant. If a return of the property be not required by the defendant as herein and under the circumstances in Section 15‑69‑130 provided and within the time therein provided, it shall be delivered to the plaintiff, except as provided in Section 15‑69‑200.

HISTORY: 1962 Code Section 10‑2510; 1952 Code Section 10‑2510; 1942 Code Section 558; 1932 Code Section 558; Civ. P. ‘22 Section 474; Civ. P. ‘12 Section 262; Civ. P. ‘02 Section 232; 1870 (14) 471 Section 234; 1937 (40) 205; 1947 (45) 197.

CROSS REFERENCES

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

Delivery of undertakings to parties for whose benefit they are taken, see Section 15‑1‑220.

Judgments in actions for recovery of personal property, see Section 15‑69‑210.

Security and form of undertaking, see App. of Forms, SCRCP, Form 1.

Sureties, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k47.

Replevin 47.

C.J.S. Replevin Section 74.

NOTES OF DECISIONS

In general 1

Depreciation, sureties’ responsibilities and liabilities 4

Sureties’ responsibilities and liabilities 3‑4

In general 3

Depreciation 4

Undertaking bond 2

1. In general

Section was construed or applied by court. Vance v Vandercook Co., 170 US 468, 18 S Ct 645, 42 L Ed 1111 (1898). Miami Powder Co. v Port Royal & W. C. Ry. Co., 47 SC 324, 25 SE 153 (1896). Loeb v Mann, 39 SC 465, 18 SE 1 (1893). Lipscomb v Tanner, 31 SC 49, 9 SE 733 (1889). Cooper River Timber Co. v Cone, 181 SC 288, 187 SE 341 (1936). Kimbrell v Heffner, 163 SC 35, 161 SE 175 (1931).

If the defendant questions the determination of the court pursuant to Section 15‑69‑100 ordering immediate seizure, the defendant’s remedy is pursuant to Section 15‑69‑140 permitting the defendant at any time within three days after service or any time before delivery of the property to the plaintiff to require the return thereof by giving the sheriff a written undertaking. General Motors Acceptance Corp. v. McMinn (S.C. 1985) 285 S.C. 67, 328 S.E.2d 472.

Construing this section [former Code 1962 Section 10‑2510] as a whole, the sheriff must deliver seized property to plaintiff if he has filed required undertaking, unless the defendant files the required counter undertaking within three days. Guglieri v. Roman Tile & Marble Co. (S.C. 1930) 158 S.C. 365, 155 S.E. 406. Replevin 45

“If such delivery be adjudged” means by competent authority. Elder v. Greene (S.C. 1891) 34 S.C. 154, 13 S.E. 323.

2. Undertaking bond

A redelivery bond given to secure return of the property to defendant in the action is breached under this section [former Code 1962 Section 10‑2510] when judgment is rendered for the plaintiff. Bolt v Milam, 110 SC 399, 96 SE 614 (1918). Thompson v Joplin, 12 SC 580 (1880).

A redelivery undertaking filed with only one surety, and signed by the other after the expiration of the three day period, is, under this section [former Code 1962 Section 10‑2510], an insufficient undertaking. Guglieri v. Roman Tile & Marble Co. (S.C. 1930) 158 S.C. 365, 155 S.E. 406. Replevin 49

This section [former Code 1962 Section 10‑2510] does not require that the defendant actually execute the undertaking bond himself. Polite v. Bero (S.C. 1902) 63 S.C. 209, 41 S.E. 305.

3. Sureties’ responsibilities and liabilities—In general

Sureties are not liable under this section [former Code 1962 Section 10‑2510] on a redelivery bond where, in claim and delivery for personal property covered by a mortgage, the plaintiff recovers a judgment, not for recovery of the property or its value, with damages for detention, but for the amount of the debt secured by the mortgage. Wilkins v Willimon, 128 SC 509, 122 SE 503 (1924). Whisenhunt v Sandel, 177 SC 207, 181 SE 61 (1935).

The sureties of a defendant are, under this section [former Code 1962 Section 10‑2510], bound by whatever judgment is rendered against the principal, subject to reduction by the amount returned to plaintiff under the judgment. Parish v Smith, 66 SC 424, 45 SE 16 (1903). Bolt v Milam, 110 SC 399, 96 SE 614 (1918).

The responsibility of a surety upon the redelivery bond in replevin is limited to a delivery of the property within a reasonable time, in substantially the same condition it was in at the time of the judgment. Even if a previous sale of the property may be considered a breach of the condition of the bond, it would amount to no more than a technical breach, and it could not be said that any substantial right of the plaintiff was invalid if the property was later repurchased and then tendered under conditions which fully complied with the rule above stated. West v. Jennings (S.C. 1939) 192 S.C. 225, 6 S.E.2d 263.

A bond given by defendant, under this section [former Code 1962 Section 10‑2510], does not include the payment of costs. Brock v. Bolton (S.C. 1892) 37 S.C. 40, 16 S.E. 370.

The sureties are not discharged under this section [former Code 1962 Section 10‑2510] by the plaintiff electing to ask a recovery in damages in place of specific delivery. Thomson v. Joplin (S.C. 1880) 12 S.C. 580.

4. —— Depreciation, sureties’ responsibilities and liabilities

“Depreciation in value,” within the meaning of this section [former Code 1962 Section 10‑2510], means depreciation in the fair market value of the property involved. This depreciation is to be determined by the difference between the fair market value of the property at the time of the filing of the redelivery bond and its fair market value at the time of its redelivery to the plaintiff. General Motors Acceptance Corp. v. Henson (S.C. 1963) 243 S.C. 276, 133 S.E.2d 798. Replevin 124(3)

Sureties of redelivery bond liable for depreciation of automobile while in possession of defendant and such depreciation recoverable in subsequent action. Commercial Credit Corp. v. McAdams (S.C. 1963) 241 S.C. 532, 129 S.E.2d 429.

Sureties on redelivery bond are not liable for deficiency remaining after sale of automobile and application of proceeds of sale to amount of judgment. Commercial Credit Corp. v. McAdams (S.C. 1963) 241 S.C. 532, 129 S.E.2d 429.

**SECTION 15‑69‑150.** Amount of bond required of defendant when claim is for debt.

 In all actions in claim and delivery when the purpose is to collect a debt the undertaking required of the defendant shall in no case be in excess of double the amount of the debt claimed by the plaintiff to be due. But if there is an appeal the court from which the appeal is taken may increase the bond.

HISTORY: 1962 Code Section 10‑2510.1; 1952 Code Section 10‑2510.1; 1942 Code Section 551‑1; 1932 Code Section 557; 1930 (36) 1347.

CROSS REFERENCES

Attachment when debt is not due, see Section 15‑19‑30.

Minimum bond required before obtaining attachment, see Section 15‑19‑80.

Recovery of damages on breach of bond, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k49.

Replevin 49.

C.J.S. Replevin Sections 76 to 77.

**SECTION 15‑69‑160.** Justification of defendant’s sureties.

 The defendant’s sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a judge, clerk of court or magistrate in the same manner as upon bail on arrest. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant’s sureties until they justify or until justification is completed or expressly waived and may retain the property until that time. But if they, or others in their place, fail to justify at the time and place appointed he shall deliver the property to the plaintiff.

HISTORY: 1962 Code Section 10‑2511; 1952 Code Section 10‑2511; 1942 Code Section 559; 1932 Code Section 559; Civ. P. ‘22 Section 475; Civ. P. ‘12 Section 263; Civ. P. ‘02 Section 233; 1870 (14) 472 Section 235.

CROSS REFERENCES

Justification of bail on arrest, see Section 15‑17‑270.

Sureties, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k49.

Replevin 49.

C.J.S. Replevin Sections 76 to 77.

**SECTION 15‑69‑170.** Manner of qualification and justification of sureties.

 The qualifications of sureties and their justification shall be as are prescribed by Sections 15‑17‑230 and 15‑17‑270 in respect to bail upon an order of arrest.

HISTORY: 1962 Code Section 10‑2512; 1952 Code Section 10‑2512; 1942 Code Section 560; 1932 Code Section 560; Civ. P. ‘22 Section 476; Civ. P. ‘12 Section 264; Civ. P. ‘02 Section 234; 1870 (14) 472 Section 236.

CROSS REFERENCES

Sureties, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k49.

Replevin 49.

C.J.S. Replevin Sections 76 to 77.

**SECTION 15‑69‑180.** Taking of property concealed in building or enclosure.

 If the property or any part thereof be concealed in a building or enclosure the sheriff shall publicly demand its delivery. If it be not delivered he shall cause the building or enclosure to be broken open and take the property into his possession and, if necessary, he may call to his aid the power of his county.

HISTORY: 1962 Code Section 10‑2513; 1952 Code Section 10‑2513; 1942 Code Section 561; 1932 Code Section 561; Civ. P. ‘22 Section 477; Civ. P. ‘12 Section 265; Civ. P. ‘02 Section 235; 1870 (14) 472 Section 237.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k40.

Replevin 40.

C.J.S. Replevin Section 65.

Attorney General’s Opinions

Only a sheriff or one of his duly appointed and qualified (regular) deputies, and a constable of the county in claim and delivery actions arising out of a magistrate’s court, are empowered to break residence buildings under this section [Code 1962 Section 10‑2513]. No “special” deputy or constable has the authority, and neither the sheriff nor the magistrate may appoint anyone specially to exercise this authority. 1963‑64 Ops Atty Gen, No 1720, p 196.

The authority to break and enter a residence building under civil process may be exercised in claim and delivery only—unless the authority is granted in other types of civil actions by special statute. 1963‑64 Ops Atty Gen, No 1720, p 196.

Collection of rent by distraint on a tenant’s property, authorized by Code 1962 Sections 41‑151 et seq., does not come within the authority conferred by this section [Code 1962 Section 10‑2513] and Code 1962 Section 43‑176. 1963‑64 Ops Atty Gen, No 1720, p 196.

The word “concealed” as used in this section [Code 1962 Section 10‑2513] apparently does not mean hidden from view within the house. If the objects sought are within a building or house, even though in their normal places within such house, and demand has been made by the officer and refused by the owner or occupant, they are “concealed” within the meaning of the statute. 1963‑64 Ops Atty Gen, No 1720, p 196.

A sheriff, a regular deputy sheriff, or a magistrate’s constable may break open the door or window of a residence building to gain admittance to seize specified personal property in claim and delivery proceedings if entrance can be gained in no other reasonable manner. 1963‑64 Ops Atty Gen, No 1720, p 196.

If an officer is unable to find anyone at home, or the occupants fail to answer his knocks and hallooing, on the second or subsequent trip, with every reasonable effort being made each time to make his presence known to the occupants, he is empowered to break open a door or window and take possession of the goods without further demand or notice. 1963‑64 Ops Atty Gen, No 1720, p 196.

Before breaking and entering, an officer must make his presence and business known to the occupants and must demand that such property be given over to him. Only after refusal of such demand may he break and enter. 1963‑64 Ops Atty Gen, No 1720, p 196.

The “public demand” required of the officer does not mean that such demand must be posted on the courthouse door or advertised in a newspaper. It means, simply, that the officer must make every reasonable effort to make his presence known to the occupants of the house and to demand surrender of the goods to him. 1963‑64 Ops Atty Gen, No 1720, p 196.

An officer must use no more force than is necessary to break and enter, and he must act reasonably throughout the entire proceeding. 1963‑64 Ops Atty Gen, No 1720, p 196.

NOTES OF DECISIONS

In general 1

1. In general

Where, after being denied entry, law officers forcibly entered defendant’s home under authority of claim and delivery judgment, and where with respect to search and seizure of weapon officers did everything possible to act in good faith, claim and delivery judgment gave officers authority to enter house if property demanded was not delivered. U.S. v. Tyler (C.A.4 (S.C.) 1991) 943 F.2d 420, certiorari denied 112 S.Ct. 646, 502 U.S. 1008, 116 L.Ed.2d 664.

**SECTION 15‑69‑190.** Keeping of property; sheriff’s fees and expenses.

 When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the property.

HISTORY: 1962 Code Section 10‑2514; 1952 Code Section 10‑2514; 1942 Code Section 562; 1932 Code Section 562; Civ. P. ‘22 Section 478; Civ. P. ‘12 Section 266; Civ. P. ‘02 Section 236; 1870 (14) Section 238.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Search: 335k44.

Replevin 44.

C.J.S. Replevin Sections 79 to 80.

**SECTION 15‑69‑200.** Claim of property by third person.

 If the property taken be claimed by any other person than the defendant or his agent and such person shall make affidavit of his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve the affidavit upon the sheriff, the sheriff shall not be bound to keep the property or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking executed by two sufficient sureties accompanied by their affidavit that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, and are freeholders and householders within this State. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff, unless made as aforesaid, and, notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

HISTORY: 1962 Code Section 10‑2515; 1952 Code Section 10‑2515; 1942 Code Section 563; 1932 Code Section 563; Civ. P. ‘22 Section 479; Civ. P. ‘12 Section 267; Civ. P. ‘02 Section 237; 1870 (14) 472 Section 239.

CROSS REFERENCES

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

Claim of third person in attachment proceedings, see Section 15‑19‑290.

Delivery of undertakings to parties for whose benefit they are taken, see Section 15‑1‑220.

LIBRARY REFERENCES

Westlaw Key Number Search: 335k52.

Replevin 52.

C.J.S. Replevin Section 73.

NOTES OF DECISIONS

In general 1

1. In general

Court applied instant section. Ex parte Dort (S.C. 1961) 238 S.C. 506, 121 S.E.2d 1.

**SECTION 15‑69‑210.** Judgment.

 In an action to recover the possession of personal property judgment for the plaintiff may be for the possession, for the recovery of possession or for the value thereof in case a delivery cannot be had and for damages, both punitive and actual, for the detention. If the property has been delivered to the plaintiff and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages, both actual and punitive, for taking and withholding the property.

 But when either party gives bond for the property, as provided by law, no punitive damages shall be allowed for anything occurring after the giving of the bond.

HISTORY: 1962 Code Section 10‑2516; 1952 Code Section 10‑2516; 1942 Code Section 661; 1932 Code Section 661; Civ. P. ‘22 Section 600; Civ. P. ‘12 Section 338; Civ. P. ‘02 Section 299; 1907 (25) 483.

CROSS REFERENCES

Entry of judgment, see Rule 58, SCRCP.

Judgment for sale of mortgage premises, see Rule 71, SCRCP.

Recovery of damages on breach of bond, see Rule 65, SCRCP.

Verdict in action for personal property, see Rule 49, SCRCP.

What judgment for sale of mortgage premises should contain, see Rule 71, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 335k99 to 335k115.

Replevin 99 to 115.

C.J.S. Replevin Sections 90 to 98.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 70, Personal Property and Sale of Goods.

S.C. Jur. South Carolina Rules of Civil Procedure Section 49.1, Reporter’s Notes.

NOTES OF DECISIONS

In general 1

Actual damages 4

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In general 6

Actual damages 7

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Object and purpose 2

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Punitive damages, effect of bond and surety’s liability 8

Verdict and judgment 3

1. In general

This section [former Code 1962 Section 10‑2516] does not apply to action for general damages. Joplin v Carrier, 11 SC 327 (1879). Richey v DuPre, 20 SC 6 (1883).

Court treated early law on this subject. Vance v. W.A. Vandercook Co. (U.S.S.C. 1898) 18 S.Ct. 674, 170 U.S. 438, 42 L.Ed. 1100.

A claim and delivery action affords a restricted remedy to a successful plaintiff, i.e., he is entitled only to a judgment for possession of the chattel which he sought to recover, or, if return of the property is impossible, to a money judgment for its value. Brunswick Corp. v. Long (C.A.4 (S.C.) 1968) 392 F.2d 337, certiorari denied 88 S.Ct. 2036, 391 U.S. 966, 20 L.Ed.2d 879. Replevin 105; Replevin 106

Claim and delivery is one of several methods by which mortgage foreclosure can be accomplished, and by choosing to follow this procedure a mortgagee is not precluded from obtaining both a judgment on his mortgage debt and possession of the mortgaged chattel to satisfy that debt. Brunswick Corp. v. Long (C.A.4 (S.C.) 1968) 392 F.2d 337, certiorari denied 88 S.Ct. 2036, 391 U.S. 966, 20 L.Ed.2d 879.

Medical partnership’s commingling of money withheld from former associate physician’s paychecks for purpose of contributing to buy‑in that was necessary to join partnership did not change money’s nature as determinative sum, and thus former associate was not required to specifically identify money as separate and distinct account in her conversion action against partnership for failure to return $20,000 in buy‑in payments after partnership elected not to make associate a partner. Mullis v. Trident Emergency Physicians (S.C.App. 2002) 351 S.C. 503, 570 S.E.2d 549, rehearing denied, certiorari denied. Partnership 560

In claim and delivery action, defendant’s counterclaim for wrongful taking and withholding of property held authorized. Columbia Nat. Bank v. Reynolds (S.C. 1932) 166 S.C. 426, 164 S.E. 911. Set‑off And Counterclaim 29(2)

The provisions of this section [former Code 1962 Section 10‑2516] are directory and optional as the circumstances may require. Wilkins v. Willimon (S.C. 1924) 128 S.C. 509, 122 S.E. 503.

Where the plaintiff in an action of replevin has taken the property from the defendant’s possession, he cannot discontinue the action without first restoring the original status. Pee Dee River Lumber Co. v. Fountain (S.C. 1911) 90 S.C. 122, 72 S.E. 885.

2. Object and purpose

The real object of this section [former Code 1962 Section 10‑2516] “is of a twofold character: First, to protect the rights of the true owner to regain the possession of his property in specie, if practicable; second, to save the party who may be innocently, but illegally, in the possession of the property of another from being compelled to pay such value as the jury may see fit to place upon the property, by giving him the alternative of returning the property to its rightful owner and only paying such damages for its detention as may be determined to be proper.” Finley v Cudd, 42 SC 121, 20 SE 32 (1894). Holliday v Poston, 60 SC 103, 38 SE 449 (1901). Burnett v Boukedes, 240 SC 144, 125 SE2d 10 (1962).

It is plainly evident from the provisions of this section [former Code 1962 Section 10‑2516] and former Code 1962 Sections 10‑1453 and 10‑1455 [see now SCRCP, Rule 54] that it was the intention of the Legislature to make such provisions so as to permit the settlement in one suit of all claims, demands, and controversies between the parties that are connected with the right of possession of the personal property involved in the action. Columbia Nat. Bank v Reynolds, 166 SC 426, 164 SE 911 (1932). Washington v Western Auto Supply Co., 230 SC 424, 96 SE2d 63 (1957).

3. Verdict and judgment

If the plaintiff has given bond and has possession of the property at the time of trial, there would be no point in requiring him to enter a judgment in the alternative. Floyd v Burden, 226 SC 512, 85 SE2d 861 (1955). Wilkins v Willimon, 128 SC 509, 122 SE 503 (1924).

The proper form for entry of judgment for a defendant is that the defendant recover of the plaintiff the possession of the property or, in case delivery cannot be had, for its value. Washington v. Western Auto Supply Co. (S.C. 1957) 230 S.C. 424, 96 S.E.2d 63.

Where the defendant enters an unconditional money judgment, he thereby waives the right to the return of the property and elects to take judgment for its value. Washington v. Western Auto Supply Co. (S.C. 1957) 230 S.C. 424, 96 S.E.2d 63.

If the judgment awarded defendant does not include all of the relief to which she is entitled, it is her duty to move for a new trial or to appeal. Washington v. Western Auto Supply Co. (S.C. 1957) 230 S.C. 424, 96 S.E.2d 63.

Under this section [former Code 1962 Section 10‑2516] the judgment should conform to the verdict. Wilkins v. Willimon (S.C. 1924) 128 S.C. 509, 122 S.E. 503.

Decision spoke to forms of verdict and judgment. Wilkins v. Willimon (S.C. 1924) 128 S.C. 509, 122 S.E. 503.

In an action where plaintiff takes possession of the property and the verdict gives him a portion of it with damages, and the remainder to the defendant with damages, each party is entitled to enter judgment. Stoney v. Bailey (S.C. 1888) 28 S.C. 156, 5 S.E. 347.

4. Actual damages

Where plaintiff, suing to recover possession of personal property or its value, proves her title thereto, and then the defendant takes such property and disposes of it, she shall be entitled, under this section, to recover the property or its value, and, in addition, such actual damages as she might have suffered by reason of the taking and withholding thereof. Manley v. Bailey (S.C. 1929) 151 S.C. 366, 149 S.E. 119.

Remote or speculative damages must be excluded and a verdict should embrace only such damages as are the proximate result of the taking and withholding of the property. Robert R. Sizer & Co. v. Dopson (S.C. 1911) 89 S.C. 535, 72 S.E. 464.

“Actual damages” include all compensatory damages whether general or special. Shieder v. Southern Ry. Co. (S.C. 1909) 83 S.C. 455, 65 S.E. 631.

5. Punitive damages

Prior to the amendment of this section [former Code 1962 Section 10‑2516] by 1907 Act No. 229 [1907 (25) 483], punitive damages in action of claim and delivery were not allowed under this section. Brayton v Beall, 73 SC 308, 53 SE 641 (1906). Tittle v Kennedy, 71 SC 1, 50 SE 544 (1905).

Under this section [former Code 1962 Section 10‑2516] punitive damages can only be allowed in an action to recover possession of personal property where the taking or holding of such property is wilful. Manley v. Bailey (S.C. 1929) 151 S.C. 366, 149 S.E. 119. Replevin 81

Question of right to punitive damages is one for jury. Manley v. Bailey (S.C. 1929) 151 S.C. 366, 149 S.E. 119.

A finding of punitive damages by the jury cannot be sustained when the court instructs otherwise. Robert R. Sizer & Co. v. Dopson (S.C. 1911) 89 S.C. 535, 72 S.E. 464.

Punitive damages, in a claim and delivery action, can be applied only where the taking or holding of property was wilful. Shieder v. Southern Ry. Co. (S.C. 1909) 83 S.C. 455, 65 S.E. 631.

6. Effect of bond and surety’s liability—In general

Sureties on undertaking in claim and delivery are not liable for payment of judgment rendered against principal for either actual or punitive damages for fraudulent or wrongful acts committed by principal prior to institution of action in claim and delivery and before execution of undertaking. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)

7. —— Actual damages, effect of bond and surety’s liability

Principals and sureties on bond executed in claim and delivery action to indemnify defendant against loss which he might suffer from surrender of property involved pending trial of action held liable for payment of judgment for actual damages rendered against plaintiff in claim and delivery action for unlawful seizure and sale of property after execution of undertaking. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)

While punitive damages could not be recovered under this section [former Code 1962 Section 10‑2516] in claim and delivery for acts occurring after execution of bond, actual damages could. Sandel v. Whisenhunt (S.C. 1932) 168 S.C. 129, 167 S.E. 166. Replevin 81

8. —— Punitive damages, effect of bond and surety’s liability

No punitive damages allowed for anything occurring after giving bond. South Carolina Nat. Bank v. Florence Sporting Goods, Inc. (S.C. 1962) 241 S.C. 110, 127 S.E.2d 199.

Sureties on an undertaking in claim and delivery cannot be held liable for payment of judgment against their principal for punitive damages for acts done by such principal, after execution of bond in claim and delivery, since principal, is not liable for punitive damages for anything which occurs after execution of such undertaking, and obligation of sureties is no greater than that of principal. Whisenhunt v. Sandel (S.C. 1935) 177 S.C. 207, 181 S.E. 61, 100 A.L.R. 376. Replevin 124(1)