CHAPTER 7

Appeals to Circuit and County Courts in Other Cases

ARTICLE 1

General Provisions

**SECTION 18‑7‑10.** Appeals from inferior courts; supersedeas.

When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of the judgment and costs in the event that he fail to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal. Provided, that in any county in which a county court exists, appeals in such cases, except those from the probate courts and those that exceed the jurisdictional amounts of the respective county courts, shall be to the county court of the county.

HISTORY: 1962 Code Section 7‑301; 1952 Code Section 7‑301; 1942 Code Section 794; 1932 Code Section 794; Civ. P. ‘22 Section 659; Civ. P. ‘12 Section 397; Civ. P. ‘02 Section 358; 1870 (14) 369; 1887 (19) 832; 1937 (40) 81.

CROSS REFERENCES

Appeals from magistrates’ or municipal courts to circuit court, see Section 14‑5‑340.

Application of chapter to appeals of decisions of Mining Council pertaining to State Mining Act, see Section 48‑20‑200.

Attorneys and other officers not being sureties under South Carolina Rules of Civil Procedure, see Rule 11, SCRCP.

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

Circuit courts, generally, see Section 14‑5‑10 et seq.

Commencement of new action in circuit court when title to real estate involved, see Sections 22‑3‑1170, 22‑3‑1180.

Constitutional provisions pertaining to jurisdiction of the Circuit Court, see SC Const, Art V, Section 11.

County courts, generally, see Section 14‑9‑10 et seq.

Effect of appeal on execution of magistrates’ judgments, see Section 22‑3‑310.

Filing undertakings, see Section 18‑1‑160.

How appeal heard, see Section 18‑7‑130.

Jurisdiction and procedure in magistrates’ courts, see Section 22‑3‑10 et seq.

Jurisdiction of Courts of Common Pleas for the county to hear appeals from magistrates, see Section 14‑9‑120.

Library References

Courts 181, 185.

Justices of the Peace 163.

Westlaw Topic Nos. 106, 231.

C.J.S. Justices of the Peace Section 358.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Magistrates and Municipal Judges Section 61, Restriction of Action During Appeal.

LAW REVIEW AND JOURNAL COMMENTARIES

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

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Construction and application 3

Limitations on “court” 4

1. In general

Cited in Ransome v. Mimms (D.C.S.C. 1971) 320 F.Supp. 1110.

This section [Code 1962 Section 7‑301] does not confer the right of appeal in any case, but does provide to what court an appeal should be made. Toomer v. Toomer (S.C. 1964) 244 S.C. 399, 137 S.E.2d 406.

The word “wherein” means “in which” or “where.” Toomer v. Toomer (S.C. 1964) 244 S.C. 399, 137 S.E.2d 406.

In this chapter are the only statutes which refer generally to the procedure for appeals from inferior courts. Thomas v. Thomas (S.C. 1963) 243 S.C. 253, 133 S.E.2d 751.

This section [Code 1962 Section 7‑301] is a part of the Code of Civil Procedure and does not relate to an appeal from an inferior court in a criminal case. City of Sumter v. Owens (S.C. 1936) 181 S.C. 540, 188 S.E. 192.

The defendant having failed to give a bond with sureties to pay the amount of the judgment and costs in the event he should fail to sustain his appeal, the appeal did not act as a stay or supersedeas. White v. Barbery (S.C. 1916) 103 S.C. 223, 88 S.E. 132. Appeal And Error 460(3)

Where there is evidence to sustain the judgment of a magistrate and nothing to show that the circuit court affirmed it by reason of any issues of law, the Supreme Court will assume the circuit court affirmed the judgment on the merits. Stanford v. Cudd (S.C. 1913) 93 S.C. 367, 76 S.E. 986.

Adjustment of costs by a clerk of court is not a judgment within this section [Code 1962 Section 7‑301]. State v. Town Council of Beaufort (S.C. 1895) 44 S.C. 500, 22 S.E. 719.

Appeals lie from the city court to the Supreme Court, notwithstanding the city court is an inferior court, the jurisdiction of the Supreme Court over appeals from the city court being exclusive. City Council of Charleston v. Weller (S.C. 1891) 34 S.C. 357, 13 S.E. 628.

This section [Code 1962 Section 7‑301] does not purport to confer the right of appeal in any case, but simply to provide to what court such appeal shall be made, how it shall operate as a supersedeas, and how it shall be heard. Whipper v. Talbird (S.C. 1890) 32 S.C. 1, 10 S.E. 578.

Applied in Dargan v. West (S.C. 1887) 27 S.C. 156, 3 S.E. 68.

An appeal from an order made by two magistrates discharging a prisoner under habeas corpus proceedings cannot be taken to the Supreme Court. It must be taken to the circuit court under this section [Code 1962 Section 7‑301]. State v. Duncan (S.C. 1884) 22 S.C. 87. Courts 244; Habeas Corpus 814

Party may appeal from judgment of magistrate without making a motion for new trial before him. Minnick v. Fort (S.C. 1880) 13 S.C. 215.

2. Constitutional issues

An order of the Workers’ Compensation Commission reversing the issue of whether a claimant was required to elect pursuing a claim under Section 42‑9‑20 or Section 42‑9‑30 involved the merits of the case so as to be immediately appealable to the circuit court since the findings of fact and law by the hearing commissioner would become the law of the case, and due process requires that litigants receive notice of the issues to be met on trial, hearing, or appeal. Green v. City of Columbia (S.C.App. 1993) 311 S.C. 78, 427 S.E.2d 685.

3. Construction and application

Sections 18‑7‑10 and 18‑7‑170 are not applicable to an appeal from a final judgment made by a master, not because a master is not an inferior court or jurisdiction, but because the circuit court’s jurisdiction to determine an appeal in such a case is prescribed by Sections 14‑11‑90, Sections 18‑7‑10 and 18‑7‑170 apply where appeals of inferior courts or jurisdictions are not otherwise provided for “by law.” Since there is no statute prescribing the standard of review that the circuit court must apply where a party appeals a final judgment entered by a master pursuant to Section 14‑11‑90, the appropriate standard of review is that prescribed for an appeal of a judgment made in a law case tried without a jury, i.e. the trial judge’s findings of fact will not be disturbed on appeal unless found to be without evidence reasonably supporting them. Karl Sitte Plumbing Co., Inc. v. Darby Development Co. of Columbia, Inc. (S.C.App. 1988) 295 S.C. 70, 367 S.E.2d 162.

4. Limitations on “court”

A decision of a hospital board of trustees, suspending the hospital staff privileges of a physician, falls under Section 18‑7‑10 and is reviewable by the circuit court. In re Zaman (S.C. 1985) 285 S.C. 345, 329 S.E.2d 436. Health 275

No provision is made for appeals from decisions of the executive committee of a recognized political party; the proper remedy to review such decisions would therefore be through writ of certiorari to the Supreme Court. Sasser v. South Carolina Democratic Party (S.C. 1981) 277 S.C. 67, 282 S.E.2d 602. Election Law 533

In action by candidate in primary election to contest decision of South Carolina Democratic Executive Committee with regard to results of run‑off election, proper remedy would be through writ of certiorari to supreme court of South Carolina and not by petition to circuit court, since Democratic Executive Committee is analogous to Board of State Canvassers, which has been found to be special tribunal. Sasser v. South Carolina Democratic Party (S.C. 1981) 277 S.C. 67, 282 S.E.2d 602.

The county board of education could not be classified as an “inferior court” in the sense in which that term is used in this section [Code 1962 Section 7‑301]. Willow Consol. High School Dist. v. Union School Dist. No. 46 of Orangeburg County (S.C. 1950) 216 S.C. 445, 58 S.E.2d 729.

By the provisions of this section [Code 1962 Section 7‑301], the law designates with particularity from what courts an appeal will lie. It has confined appeals to the court of common pleas (or the county court) to appeals from judgments rendered by a magistrate’s court, by the county commissioners, or any other inferior court of jurisdiction, save the probate court. The county board of education does not come within the purview of the law relating to appeals. It is not an inferior court or jurisdiction, for the duties conferred upon it are purely administrative in character. Turner v. Joseph Walker School Dist. No. 9 (S.C. 1949) 215 S.C. 472, 56 S.E.2d 243.

This chapter and SC Const, Art 5, Section 15 (now Art 5, Section 7), providing for appeal to the circuit court from inferior courts, and decisions under them, are not pertinent to appeals from the Industrial Commission for the simple reason that the latter is not a court in that constitutional and statutory sense; and, by the same token, the authority of those decisions is not impinged by the construction and application of the Workmen’s Compensation Act to controversies within its sphere. Schwartz v. Mount Vernon‑Woodberry Mills (S.C. 1945) 206 S.C. 227, 33 S.E.2d 517.

No appeal lies from the decision of a State board of canvassers, it not being an inferior court. Whipper v. Talbird (S.C. 1890) 32 S.C. 1, 10 S.E. 578.

**SECTION 18‑7‑20.** When and how appeal shall be taken.

The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served and the defendant did not appear, he has thirty days after personal notice of the judgment to serve the notice of appeal provided for in this section.

HISTORY: 1962 Code Section 7‑302; 1952 Code Section 7‑302; 1942 Code Section 795; 1932 Code Section 795; Civ. P. ‘22 Section 660; Civ. P. ‘12 Section 398; Civ. P. ‘02 Section 359; 1870 (14) 70; 1911 (27) 140; 1973 (58) 171; 1989 Act No. 20, Section 1, eff March 12, 1989.

CROSS REFERENCES

Time for appeal from magistrates’ judgments, see Section 22‑3‑1000.

Library References

Courts 190(4).

Justices of the Peace 155(0.5).

Westlaw Topic Nos. 106, 231.

C.J.S. Justices of the Peace Section 327.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 76, Historical Notes: Exceptions and Additional Sustaining Grounds; in Favorem Vitae Review of Death Penalty Cases.

S.C. Jur. Forfeitures Section 10, Due Process Considerations.

Forms

Am. Jur. Pl. & Pr. Forms Appeal and Error Section 1 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Notice 2

Timeliness 3

1. In general

Code 1962 Section 15‑1311.30 makes the provisions of this section [Code 1962 Section 7‑302] applicable to appeals from the juvenile and domestic relations court for Lexington County by providing that appeals may be taken from that court “in the manner now provided for appeal to the circuit court from other inferior courts.” Thomas v. Thomas (S.C. 1963) 243 S.C. 253, 133 S.E.2d 751.

Applied in Laughlin v. Livingston (S.C. 1958) 233 S.C. 81, 103 S.E.2d 741.

Cited in Bigham v. Holliday (S.C. 1898) 52 S.C. 528, 30 S.E. 485.

Stated in Perkins v. Douglas (S.C. 1896) 46 S.C. 6, 24 S.E. 42.

2. Notice

The grounds of appeal being referred to in notice, as being made before the magistrate on motion for new trial and on the evidence and records, is a sufficient statement of the grounds. Dargan v. West (S.C. 1887) 27 S.C. 156, 3 S.E. 68.

When no objection is raised in the circuit court as to the sufficiency of the notice of appeal, it cannot properly be raised on appeal to Supreme Court. Dargan v. West (S.C. 1887) 27 S.C. 156, 3 S.E. 68.

The notice of appeal must state the grounds in every case. Sternberger v. McSween (S.C. 1880) 14 S.C. 35.

3. Timeliness

Nor has he jurisdiction to hear an appeal where notice in writing was not served within that time. Davis v Vaughan (1876) 7 SC 342. Scott v Pratt (1878) 9 SC 82. Foot & Son v Williams (1883 18 SC 601.

Where appellant’s attorney orally gave notice of appeal to appellee’s attorney within the time limit and after the time limit served as postdated written notice of appeal which was signed as received by the appellee’s attorney, the notice of appeal was valid on its face and not subject to impeachment by the appellee’s attorney. Hartman v. City of Columbia (S.C. 1977) 268 S.C. 44, 232 S.E.2d 15.

Appeal from magistrate’s judgment held timely, notwithstanding lapse of some months, where no written notice of judgment was given appellant or his attorney. O’Neal v. Atlas Assur. Co. of London, England (S.C. 1933) 168 S.C. 174, 167 S.E. 227. Appeal And Error 348(1)

The time to move for an appeal does not begin to run until the party affected by the judgment has had notice of it. O’Rourke v. Atlantic Paint Co. (S.C. 1912) 91 S.C. 399, 74 S.E. 930.

The only remedy of a party against whom a judgment is rendered is either to appeal, or make a motion for a new trial, and appeal in case such motion is refused. The motion for a new trial must be made within five days from the rendition of the judgment; and, if it be refused, the appeal must be taken within five days from the refusal of such motion. If the judgment is rendered upon process not personally served, and the defendant does not appear, he shall have five days within which to appeal after personal notice of the judgment. If the magistrate does not render judgment on the day of trial, but reserves his decision, the party against whom judgment is rendered has the right to appeal or move for a new trial within five days after personal notice of the judgment. O’Rourke v. Atlantic Paint Co. (S.C. 1912) 91 S.C. 399, 74 S.E. 930.

Under this section [Code 1962 Section 7‑302] and Code 1962 Section 7‑304, an appeal from an order made by a justice overruling a motion for a new trial is properly dismissed by the circuit court where a notice and ground of appeal were served on the magistrate three days after the entry of the order overruling the motion for a new trial, but were not served on the attorney for the opposite party until seven days thereafter, and were returned by him as not having been served in time, though such order was not made until after the day on which the motion was argued, and appellant had no notice from plaintiff of the denial of such motion. Manuel v. Loveless (S.C. 1900) 56 S.C. 426, 35 S.E. 1.

The circuit judge has no power to extend the time within which to appeal. Davis v. Vaughan (S.C. 1876) 7 S.C. 342.

**SECTION 18‑7‑30.** Contents of notice of appeal.

In the notice of appeal the appellant shall state in what particular or particulars he claims the judgment should have been more favorable to him. If he claims that the amount of judgment is less favorable to him than it should have been, he shall state what should have been its amount.

HISTORY: 1962 Code Section 7‑303; 1952 Code Section 7‑303; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502 Section 20; 1880 (17) 297.

CROSS REFERENCES

Effect of failure to state error in judgment below, see Section 18‑7‑230.

Library References

Appeal and Error 361.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 409 to 412, 414 to 416.

**SECTION 18‑7‑60.** Return; when and how made.

The court below shall thereupon, after ten days and within thirty days after service of the notice of appeal, make a return to the appellate court of the testimony, proceedings and judgment and file it in the appellate court.

HISTORY: 1962 Code Section 7‑306; 1952 Code Section 7‑306; 1942 Code Section 798; 1932 Code Section 798; Civ. P. ‘22 Section 663; Civ. P. ‘12 Section 401; Civ. P. ‘02 Section 362; 1870 (14) 377; 1880 (17) 306; 1972 (57) 2484.

Library References

Appeal and Error 621(3).

Westlaw Topic No. 30.

C.J.S. Appeal and Error Section 648.

Attorney General’s Opinions

A municipal or magistrate court must allow a party to an appeal, as a member of the public, the right to inspect or copy tape recordings of any proceedings which are not otherwise subject to some applicable restriction. Copies should be made at a reasonable expense to the requesting party based on the actual costs of producing such copies. S.C. Op.Atty.Gen. (Feb. 28, 2012) 2012 WL 756271.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Cothran v Knight (1896) 47 SC 243, 25 SE 142. Perkins v Douglass (1896) 46 SC 6, 24 SE 42. Dargan v West (1887) 27 SC 156, 3 SE 68.

Appellant owner of shopping center should have presumed, based on its failure to receive from clerk of circuit court a notice that magistrate had filed a return of testimony, proceedings, and judgment from magistrate court, that such return had not been timely filed, and thus, owner was required to act with due diligence, and if necessary seek writ of mandamus against magistrate, in order to avoid dismissal of its appeal to circuit court in invitee’s personal injury action, based on failure to prosecute the appeal. Joyner v. Glimcher Properties (S.C.App. 2002) 356 S.C. 460, 589 S.E.2d 762. Appeal And Error 787

The circuit court should have sought an amended return on appeal from magistrate’s judgment, instead of remanding matter for a new trial based on court’s allegedly unsuccessful attempts to gain compliance with its request for return, absent evidence in support of court’s statement that it unsuccessfully sought a return and in light of evidence that magistrate was not notified that return he provided was inadequate. Chapman v. Computers, Parts & Repairs, Inc. (S.C.App. 1999) 334 S.C. 387, 513 S.E.2d 120. Justices Of The Peace 190

When the return provided by magistrate following notice of appeal is inadequate, the appropriate remedy is for the circuit court to direct the magistrate to file an amended return. Chapman v. Computers, Parts & Repairs, Inc. (S.C.App. 1999) 334 S.C. 387, 513 S.E.2d 120. Justices Of The Peace 164(5)

An appellant waived failure of the lower court to make return, as well as other claimed irregularities, by participating in hearing on appeal without objection. The last sentence of this section [Code 1962 Section 7‑306] provided the appellant a remedy if he felt himself aggrieved. Laughlin v. Livingston (S.C. 1958) 233 S.C. 81, 103 S.E.2d 741.

Where the testimony of the witness is not taken in writing and certified to the appellate court, a further return would not be effective, and a new trial should be granted. McKinley Music Co. v. Glymph (S.C. 1915) 100 S.C. 200, 84 S.E. 715.

Under this section [Code 1962 Section 7‑306] and Code 1962 Section 7‑308, where a magistrate has made a return on appeal it is discretionary with the circuit judge to order a further or amended return. Lynch v. Heyward (S.C. 1900) 56 S.C. 562, 35 S.E. 220.

**SECTION 18‑7‑70.** Return; how made if magistrate is out of office.

When a magistrate by whom a judgment appealed from was rendered shall have gone out of office before a return is ordered, he shall, nevertheless, make a return in the same manner and with the like effect as if he were still in office.

HISTORY: 1962 Code Section 7‑307; 1952 Code Section 7‑307; 1942 Code Section 799; 1932 Code Section 799; Civ. P. ‘22 Section 664; Civ. P. ‘12 Section 402; Civ. P. ‘02 Section 363; 1870 (14) 378.

Library References

Justices of the Peace 55, 164(3).

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 53, 365 to 367.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Cothran v. Knight (S.C. 1896) 47 S.C. 243, 25 S.E. 142.

**SECTION 18‑7‑80.** Return; further return when original is defective.

If the return be defective the appellate court may direct a further or amended return as often as may be necessary and may compel a compliance with its order. And the court shall always be deemed open for this purpose.

HISTORY: 1962 Code Section 7‑308; 1952 Code Section 7‑308; 1942 Code Section 800; 1932 Code Section 800; Civ. P. ‘22 Section 665; Civ. P. ‘12 Section 403; Civ. P. ‘02 Section 364; 1870 (14) 379; 1972 (57) 2484.

Library References

Appeal and Error 647.

Westlaw Topic No. 30.

C.J.S. Appeal and Error Sections 661 to 663.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Lynah v Heyward (1900) 56 SC 562, 35 SE 220. McKinley Music Co. v Glymph (1915) 100 SC 200, 84 SE 715. Perkins v Douglass (1896) 46 SC 6, 24 SE 42.

The circuit court should have sought an amended return on appeal from magistrate’s judgment, instead of remanding matter for a new trial based on court’s allegedly unsuccessful attempts to gain compliance with its request for return, absent evidence in support of court’s statement that it unsuccessfully sought a return and in light of evidence that magistrate was not notified that return he provided was inadequate. Chapman v. Computers, Parts & Repairs, Inc. (S.C.App. 1999) 334 S.C. 387, 513 S.E.2d 120. Justices Of The Peace 190

When the return provided by magistrate following notice of appeal is inadequate, the appropriate remedy is for the circuit court to direct the magistrate to file an amended return. Chapman v. Computers, Parts & Repairs, Inc. (S.C.App. 1999) 334 S.C. 387, 513 S.E.2d 120. Justices Of The Peace 164(5)

**SECTION 18‑7‑90.** Return; effect of dead, insane, or absent magistrate.

If a magistrate whose judgment is appealed from shall die, become insane or remove from the State before having made a return, the appellate court may examine witnesses on oath as to the facts and circumstances of the trial or judgment and determine the appeal as if the facts had been returned by the magistrate. If he shall have removed to another county within the State the appellate court may compel him to make the return as if he were still within the county where the judgment was rendered.

HISTORY: 1962 Code Section 7‑309; 1952 Code Section 7‑309; 1942 Code Section 801; 1932 Code Section 801; Civ. P. ‘22 Section 666; Civ. P. ‘12 Section 404; Civ. P. ‘02 Section 365; 1870 (14) 380.

CROSS REFERENCES

Books required to be kept by magistrate and disposition thereof in case of death, see Section 22‑1‑80.

Library References

Justices of the Peace 5, 164(0.5), 164(2).

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 13, 360 to 361.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Cothran v. Knight (S.C. 1896) 47 S.C. 243, 25 S.E. 142.

**SECTION 18‑7‑100.** Offer to allow revision of judgment of magistrate.

Within fifteen days after the service of the notice of the appeal the respondent may serve upon the appellant and the magistrate an offer in writing to allow the judgment to be corrected in any of the particulars mentioned in the notice of appeal. The appellant may thereupon, and within five days thereafter, file with the magistrate a written acceptance of such offer, and in such case the magistrate shall thereupon make a minute of such acceptance in his docket and correct the judgment accordingly, and the judgment, so corrected, shall stand as his judgment and be enforced accordingly; and any execution which has been issued upon the judgment appealed from shall be amended by the magistrate to correspond with the amended judgment. If the offer be made and accepted by the appellant, the appellant shall recover all his disbursements on appeal and all his costs in the court below.

HISTORY: 1962 Code Section 7‑310; 1952 Code Section 7‑310; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

CROSS REFERENCES

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

Effect of rejection of offer under this section on liability for costs, see Section 18‑7‑250.

Library References

Justices of the Peace 164(4).

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 368, 370 to 372.

**SECTION 18‑7‑110.** Offer to allow judgment on appeal.

In any appeal either party may, at any time before the trial, serve upon the opposite party an offer, in writing, to allow judgment to be taken against him for the sum or property or to the effect in such offer specified, and with or without costs as the offer shall specify. If the party receiving such offer accept it and give notice thereof in writing within ten days, he may file the return and offer, with an affidavit of service of notice of acceptance thereof, and judgment shall be entered thereon according to the offer. If the notice of acceptance be not given, the offer is to be deemed withdrawn and cannot be given in evidence.

HISTORY: 1962 Code Section 7‑311; 1952 Code Section 7‑311; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

CROSS REFERENCES

Effect of rejection of offer under this section on liability for costs, see Section 18‑7‑260.

Library References

Justices of the Peace 168.

Westlaw Topic No. 231.

**SECTION 18‑7‑130.** Hearing of appeal.

The appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses, and the grounds of exception made, without the examination of witnesses in court. The appeal shall be heard on the original papers and no copy thereof need be furnished for the use of the court.

HISTORY: 1962 Code Section 7‑313; 1952 Code Section 7‑313; 1942 Code Sections 794, 803; 1932 Code Sections 794, 803; Civ. P. ‘22 Sections 659, 668; Civ. P. ‘12 Sections 397, 406; Civ. P. ‘02 Sections 358, 367; 1870 (14) 369, 382; 1887 (19) 832; 1937 (40) 81.

CROSS REFERENCES

Commencement of new action in circuit court when title to real estate is involved, see Sections 22‑3‑1170, 22‑3‑1180.

Power of circuit judges to hear appeals from magistrates’ courts and municipal courts, see Section 14‑5‑340.

Trial of issues of fact, see Section 18‑7‑180.

Library References

Justices of the Peace 169.

Westlaw Topic No. 231.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 11, Proceedings and Review.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Ransome v. Mimms (D.C.S.C. 1971) 320 F.Supp. 1110.

The county court has plenary jurisdiction to review the factual and legal findings of the magistrate. The Supreme Court, however, is without jurisdiction to reverse the findings of fact of the county court if there was any supporting evidence. Wright v. Ritz Theatre Co. (S.C. 1947) 211 S.C. 161, 44 S.E.2d 308. Justices Of The Peace 183(.5)

This section [Code 1962 Section 7‑313] does not apply to criminal cases. City of Sumter v. Owens (S.C. 1936) 181 S.C. 540, 188 S.E. 192.

This section [Code 1962 Section 7‑313] confines the circuit court, on the hearing, to the consideration of such questions only as are raised by the exceptions. Burns v. Gower (S.C. 1891) 34 S.C. 160, 13 S.E. 331.

Applied in Dargan v. West (S.C. 1887) 27 S.C. 156, 3 S.E. 68.

This section [Code 1962 Section 7‑313] as to hearing of appeal in circuit court was not retroactive. McFadden v. Tant (S.C. 1884) 20 S.C. 585.

**SECTION 18‑7‑140.** Powers of appellate court; amendment of pleadings.

The court shall have the same power over its own determinations, and shall render judgment thereon in the same manner, as the circuit court in actions pending therein, without trial by jury, and may allow either party to amend his pleadings upon such terms as shall be just.

HISTORY: 1962 Code Section 7‑314; 1952 Code Section 7‑314; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

Library References

Justices of the Peace 186.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 409 to 414, 421 to 426.

NOTES OF DECISIONS

In general 1

1. In general

Under Sections 18‑7‑140 and 18‑7‑170, the Circuit Judge sitting in an appellate capacity had the ability to make a determination in the same manner as Circuit Courts in trials without a jury, and to reverse a judgment for errors of fact, even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. (S.C.App. 1984) 280 S.C. 232, 312 S.E.2d 20. Judges 24

**SECTION 18‑7‑150.** New trial below when defendant did not appear.

If (a) the appellant failed to appear before the magistrate, (b) it is shown by the affidavits served by the appellant, or otherwise, that manifest injustice has been done and (c) the appellant satisfactorily excuses his default, the court may, in its discretion, set aside or suspend judgment and order a new trial before the same or any other magistrate in the same county at such time and place and on such terms as the court may deem proper. When a new trial shall be ordered before a magistrate the parties must appear before him according to the order of the court and the same proceedings must thereupon be had in the action as on the return of a summons personally served.

HISTORY: 1962 Code Section 7‑315; 1952 Code Section 7‑315; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

Library References

Justices of the Peace 188(2), 190.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 409, 411, 425.

NOTES OF DECISIONS

In general 1

1. In general

Where a default judgment is rendered in the magistrate’s court, and it is shown by affidavits that a manifest injustice has been done, the court may, in its discretion, set aside the judgment and order a new trial. Glover v Heyward (1917) 106 SC 360, 91 SE 316. Wideman v Patton (1902) 64 SC 408, 42 SE 190.

The only mode of relief from a magistrate’s judgment, rendered against a party through his excusable defaults, is by appeal to the circuit court. Doty & Co. v Duvall (1883) 19 SC 143. Wolfe v Port Royal & A.R. Co. (1886) 25 SC 379. Lawrence v Isear (1887) 27 SC 244, 3 SE 222. Miller v Schmidt (1883) 20 SC 588. Green v County Comrs (1887) 27 SC 9, 2 SE 618.

Circuit judge, on appeal from default judgment of magistrate, could consider appellant’s failure to move before magistrate for new trial. O’Neal v. Atlas Assur. Co. of London, England (S.C. 1933) 168 S.C. 174, 167 S.E. 227. Appeal And Error 865

Where a consideration of all the testimony does not warrant the sole conclusion of judgment for a plaintiff, the circuit court reviewing a case on appeal from the magistrate’s court may order a new trial before the magistrate. McKinley Music Co. v. Glymph (S.C. 1915) 100 S.C. 200, 84 S.E. 715.

After a magistrate, as allowed by law, has granted a new trial on defendants’ motion within five days after rendering a default judgment, and defendants again make default, the judgment can only be set aside or suspended under the express provisions of this section [Code 1962 Section 7‑315] by the circuit court, upon defendant’s showing by affidavit or otherwise that manifest injustice has been done and upon satisfactory excuse for their default, and such relief cannot be granted when there is no showing that defendants did not have notice of the day of the second trial, nor that they suffered any other injustice, nor had any excuse for their default. Williams v. Rickembaker (S.C. 1908) 79 S.C. 467, 60 S.E. 1122. Justices Of The Peace 122(4)

Setting aside magistrate’s default judgment is discretionary with the circuit judge, and is not appealable. Carey v. Tolbert (S.C. 1908) 79 S.C. 264, 60 S.E. 674.

The circuit court will, in order to do justice when the verdict in magistrate’s court is not in proper form, send the case back there for new trial. Du Bose v. Armstrong (S.C. 1888) 29 S.C. 290, 6 S.E. 934.

**SECTION 18‑7‑160.** Motions for new trial in appellate court; other procedural rules.

Either party may move for a new trial in the appellate court on a case or exceptions, or otherwise, and such motion may be made before or after judgment has been entered; and the provisions of this code in relation to the proceedings, exceptions to the decisions of the court, making and settling cases and exceptions, motions for new trials and making up the judgment roll in the circuit court are hereby made applicable to all appeals brought up for trial as in this chapter provided.

HISTORY: 1962 Code Section 7‑316; 1952 Code Section 7‑316; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

CROSS REFERENCES

Circuit courts, generally, see Section 14‑5‑10 et seq.

Library References

Justices of the Peace 169.

Westlaw Topic No. 231.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Laughlin v Livingston (1958) 233 SC 81, 103 SE2d 741, wherein the Supreme Court found it unnecessary under the facts to decide whether a ground for new trial is unavailable if not contained in notice of appeal. Laughlin v. Livingston (S.C. 1958) 233 S.C. 81, 103 S.E.2d 741.

**SECTION 18‑7‑170.** Judgment on appeal.

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

HISTORY: 1962 Code Section 7‑317; 1952 Code Section 7‑317; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

CROSS REFERENCES

Judgment on appeal, generally, see Section 18‑1‑140.

Library References

Justices of the Peace 186.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 409 to 414, 421 to 426.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 61.1, Circuit Court Action on Appeal.

NOTES OF DECISIONS

In general 1

Decision 4

Review in Supreme Court 5

Review of exceptions 2

Technical errors 3

1. In general

Applied in Teague v Southern R. Co. (1895) 45 SC 27, 22 SE 779. McCaslan v Nance (1896 46 SC 568, 24 SE 812. Briggs v Donaldson (1912) 91 SC 22, 74 SE 41. Fraser v Atlantic C. L. R. Co. (1912) 93 SC 272, 76 SE 609. Jones v Rosaman (1923) 123 SC 340, 116 SE 193. Hawkins v North Carolina Mut. Life Ins. Co. (1933) 170 SC 478, 170 SE 833. Westbrook v Jefferies (1934) 173 SC 178, 175 SE 433. Cullen v Western Union Tel. Co. (1938) 188 SC 480, 199 SE 702. Honea Path v Wright (1940) 194 SC 461, 9 SE2d 924. Rainwater v Hobeika (1946) 208 SC 433, 38 SE2d 495.

Cited in Drummond v Edwards (1923) 126 SC 435, 120 SE 366. Wall v Chelsea Plantation Club (1911) 88 SC 61, 70 SE 434.

The circuit court, acting as an appellate court in a case heard by a magistrate, improperly addressed the issue of whether the lessee cured its default where the issue had not been raised before the magistrate. Indigo Associates v. Ryan Inv. Co. (S.C.App. 1993) 314 S.C. 519, 431 S.E.2d 271, rehearing denied, certiorari dismissed. Justices Of The Peace 150(1)

Sections 18‑7‑10 and 18‑7‑170 are not applicable to an appeal from a final judgment made by a master, not because a master is not an inferior court or jurisdiction, but because the circuit court’s jurisdiction to determine an appeal in such a case is prescribed by Sections 14‑11‑90, Sections 18‑7‑10 and 18‑7‑170 apply where appeals of inferior courts or jurisdictions are not otherwise provided for “by law.” Since there is no statute prescribing the standard of review that the circuit court must apply where a party appeals a final judgment entered by a master pursuant to Section 14‑11‑90, the appropriate standard of review is that prescribed for an appeal of a judgment made in a law case tried without a jury, i.e. the trial judge’s findings of fact will not be disturbed on appeal unless found to be without evidence reasonably supporting them. Karl Sitte Plumbing Co., Inc. v. Darby Development Co. of Columbia, Inc. (S.C.App. 1988) 295 S.C. 70, 367 S.E.2d 162.

Section 18‑7‑170 confers authority upon Circuit Court to reverse magistrate’s findings of fact when exercising appellate jurisdiction on appeal from magistrate’s judgment. Burns v. Wannamaker (S.C.App. 1984) 281 S.C. 352, 315 S.E.2d 179, affirmed as modified 288 S.C. 398, 343 S.E.2d 27. Justices Of The Peace 209(4)

Stated in Town of North Augusta v. Fennell (S.C. 1952) 221 S.C. 112, 69 S.E.2d 121.

The words “judgment of the court below” are not used in the strict technical sense of a final determination. Redfearn v. Douglass (S.C. 1892) 35 S.C. 569, 15 S.E. 244.

2. Review of exceptions

While Court of Appeals will presume that affirmance by Circuit Court of magistrate’s judgment was made upon merits where testimony is sufficient to sustain judgment of magistrate and there are no facts that show affirmance was influenced by error of law, Court of Appeals will not grant that presumption where it clearly appears that Circuit Court failed to accord contested facts scrutiny which Section 18‑7‑170 contemplates. Burns v. Wannamaker (S.C.App. 1984) 281 S.C. 352, 315 S.E.2d 179, affirmed as modified 288 S.C. 398, 343 S.E.2d 27. Justices Of The Peace 183(1)

Although Section 23‑33‑40 gives concurrent jurisdiction to the Circuit Courts and to Magistrates in ejectment proceedings, the Circuit Courts still have appellate jurisdiction over ejectment cases initially heard by a Magistrate, pursuant to Sections 27‑37‑120, 14‑5‑340, and 18‑7‑170. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. (S.C.App. 1984) 280 S.C. 232, 312 S.E.2d 20. Justices Of The Peace 141(1)

Under Sections 18‑7‑140 and 18‑7‑170, the Circuit Judge sitting in an appellate capacity had the ability to make a determination in the same manner as Circuit Courts in trials without a jury, and to reverse a judgment for errors of fact, even though the Circuit Judge may not have had the opportunity to observe the demeanor of the witnesses. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp. (S.C.App. 1984) 280 S.C. 232, 312 S.E.2d 20. Judges 24

To reverse magistrate’s judgment, appellant must show error at trial, prejudicial to his rights, or influencing adverse judgment. Stukes v. Life Ins. Co. of Virginia (S.C. 1931) 163 S.C. 216, 161 S.E. 478.

The circuit court has jurisdiction to reverse the findings of fact. Dingle v. Northwestern R. Co. of South Carolina (S.C. 1919) 112 S.C. 390, 99 S.E. 828.

An exception to a magistrate’s judgment on the ground that the verdict was contrary to the preponderance of the evidence was sufficient to authorize a review of the facts by the circuit court. A. & E. Leather Goods Co. v. Sentz (S.C. 1910) 87 S.C. 267, 69 S.E. 390. Justices Of The Peace 165

Court must pass on exceptions affecting the merits. Pierce v. Varn, Byrd & Co. (S.C. 1907) 76 S.C. 359, 57 S.E. 184.

The circuit court on appeal can review errors of fact in magistrate’s court. Redfearn v. Douglass (S.C. 1892) 35 S.C. 569, 15 S.E. 244.

The circuit court cannot review findings of fact by magistrate not excepted to. Burns v. Gower (S.C. 1891) 34 S.C. 160, 13 S.E. 331.

Under this section [Code 1962 Section 7‑317], on appeal from a magistrate’s court, the circuit court has jurisdiction to review the facts, though they have been determined by a jury in the magistrate’s court. Truluck v. Atlantic Coast Line R. Co. (S.C. 1918) 110 S.C. 92, 96 S.E. 254. Justices Of The Peace 185(1)

3. Technical errors

An appeal from magistrate’s court judgment should be affirmed on its merits without regard for technical errors or defects. McKinley Music Co. v Glymph (1915) 100 SC 200, 84 SE 715. Hiers v South Carolina Power Co. (1941) 198 SC 280, 17 SE2d 698.

Technical rules of procedure are not applicable to magistrate’s courts, even on appeal from them to circuit court. The latter is required to give judgment according to the justice of the case. Greenville Nursery Co. v Southern R. Co. (1912) 112 SC 194, 98 SE 326. Darby v Southern R. Co. (1917) 108 SC 145, 93 SE 716. A. & E. Leather Goods Co. v Sentz (1910) 87 SC 267, 69 SE 390.

There being sufficient undisputed evidence to support the judgment of a magistrate, error in admitting other evidence will be considered harmless. Charles v Atlantic C. L. R. Co. (1907) 78 SC 36, 58 SE 927 affd Atlantic C. L. R. Co. v Mazursky (1910) 216 US 122, 54 L Ed 411, 30 S Ct 378.

In action for damage from collision of automobiles, failure of circuit court, on appeal from magistrate’s court, to reverse judgment for error in admission of evidence that defendant carried liability insurance, is not error, in view of this section [Code 1962 Section 7‑317], requiring circuit court to give judgment according to justice of case, without regard to technical errors. Naufal v. Gergel (S.C. 1926) 136 S.C. 366, 134 S.E. 463.

A refusal to correct a mere irregularity is not reversible error, unless the party interposing the objection can satisfy the court that it was prejudicial to his rights, under this section [Code 1962 Section 7‑317]. Sanders v. Atlantic Coast Line R. Co. (S.C. 1920) 114 S.C. 164, 103 S.E. 564. Appeal And Error 1030

Under this section [Code 1962 Section 7‑317], defendant cannot complain that action was tried in wrong county; the place of trial being more convenient to defendant than the county where plaintiff resided, and plaintiff having waived the right to have the trial in the county of his residence. Sanders v. Atlantic Coast Line R. Co. (S.C. 1920) 114 S.C. 164, 103 S.E. 564. Appeal And Error 1043(8)

Where record fails to show objection to testimony at the time it was offered, such objection may be deemed waived and too late, when first made on appeal to circuit court. Feinstein v. Politz (S.C. 1916) 103 S.C. 238, 87 S.E. 1005.

The admission of a printed offer of reward in evidence in a magistrate’s court was harmless, if error, where everything it contained was testified to by one or more witnesses without objection, and such admission was not ground for exception in the circuit court, under this section [Code 1962 Section 7‑317]. Hampton v. Hughes (S.C. 1910) 85 S.C. 343, 67 S.E. 311. Justices Of The Peace 189.2(1)

A judgment will not be reversed merely because a deposition did not have the title of the case indorsed on the package containing it. Jenkins v. Atlantic Coast Line R. Co. (S.C. 1909) 83 S.C. 473, 65 S.E. 636.

That a summons in a justice’s court is not dated is not ground for reversal, unless it gives no notice to defendant of the day of trial in the magistrate’s court. Butler Bros. v. Welch (S.C. 1907) 76 S.C. 130, 56 S.E. 668.

A judgment of a magistrate will not be reversed because the summons served fails to state the trial day, where the defendant appeared and declined to answer after his motion to set the summons aside had been overruled. Grant v. Clinton Cotton Mills (S.C. 1900) 56 S.C. 554, 35 S.E. 193.

Failure to file notice and grounds of appeal from a trial justice to a circuit court, would be technical error, within this section [Code 1962 Section 7‑317], providing that the appellate court shall give judgment on the merits “without regard to technical errors.” Perkins v. Douglas (S.C. 1896) 46 S.C. 6, 24 S.E. 42. Appeal And Error 1170.13

4. Decision

Where the case was before the circuit court on appeal from a magistrate, it should have been decided on the jurisdictional facts as they existed in the magistrate’s court, and an equitable remedy, not enforceable in the magistrate’s court, was improperly granted. Blackwell v. Faucett (S.C. 1921) 117 S.C. 60, 108 S.E. 295. Justices Of The Peace 141(2)

An appeal from magistrate’s judgment in claim and delivery proceeding, where magistrate’s jury found for the plaintiff the amount due on the debt and the execution of the mortgage was not denied, the circuit court may enlarge the verdict by giving judgment for possession of the property or its value and fix the value. Neville v. Kelley (S.C. 1913) 94 S.C. 112, 77 S.E. 743.

It is not error for circuit court to give judgment against one member of partnership sued alone for partnership debt, as demurrer for defect of parties was technical and defendant was not deprived of any defense. Aug. Wright Co. v. Hodges (S.C. 1911) 87 S.C. 560, 70 S.E. 316.

Circuit court may increase judgment making it greater than that rendered by magistrate. Goldstein v. Southern Ry. Co. (S.C. 1908) 80 S.C. 522, 61 S.E. 1007.

On appeal from a magistrate’s court, if the circuit court decides that the magistrate had not acquired jurisdiction of defendant’s person, it should dismiss the case, and not remand it for further action. Riley v. Mutual Life Ins. Co. (S.C. 1904) 68 S.C. 383, 47 S.E. 708. Justices Of The Peace 190

5. Review in Supreme Court

The Supreme Court cannot review the findings of fact of the circuit court, nor make an original finding. Faust v Southern R. Co. (1906) 74 SC 360, 54 SE 566. Wilson & James v Atlantic C. L. R. Co. (1908) 79 SC 198, 60 SE 663. Dingle v Northwestern R. Co. (1919) 112 SC 390, 99 SE 828.

Nor consider technical errors or defects which do not affect the merits. Jenkins v Southern Ry. (1906) 73 SC 289, 53 SE 480. Jenkins v Southern Ry. (1906) 73 SC 292, 53 SE 481.

On appeal from the county commissioners, the circuit court may review the facts, but its finding thereon is not reviewable. Tinsley v Union County (1893) 40 SC 276, 18 SE 794. Aull v Newberry County (1894) 42 SC 321, 20 SE 61.

The Supreme Court is without jurisdiction to reverse the findings of fact of the county court if there was any supporting evidence. Wright v. Ritz Theatre Co. (S.C. 1947) 211 S.C. 161, 44 S.E.2d 308. Appeal And Error 1010.1(18)

It assumes that circuit judge, while assigning no reasons for affirming magistrate’s judgment, considered alleged errors and disregarded technicalities to do substantial justice. Stukes v. Life Ins. Co. of Virginia (S.C. 1931) 163 S.C. 216, 161 S.E. 478. Appeal And Error 1091(1)

Under this section [Code 1962 Section 7‑317], the Supreme Court cannot question findings of fact in a magistrate’s court approved by a circuit judge on appeal when there is any evidence whatever, however slight, tending to prove issues involved. Ward v. Atlantic Coast Line R. Co. (S.C. 1930) 155 S.C. 54, 151 S.E. 904.

Where the testimony was sufficient to sustain the judgment of the magistrate’s court for the plaintiff, and it was affirmed on appeal to the circuit court, the Supreme Court will assume that the circuit court affirmed the judgment on the merits, where it does not appear that the affirmance was controlled or affected by errors of law. Bagnal v. Southern Express Co. (S.C. 1917) 106 S.C. 395, 91 S.E. 334.

As the circuit court is required by this section [Code 1962 Section 7‑317] to give judgment on appeal from a magistrate’s court without regard to technical errors and defects not affecting the merits, the Supreme Court, where the record does not show the grounds upon which the circuit court rested its judgment, must assume that it was upon some sound and meritorious ground and sustain it if the record discloses any such ground. Price v. Charleston & W.C. Ry. Co. (S.C. 1913) 93 S.C. 576, 77 S.E. 703. Appeal And Error 1091(2)

Since under this section [Code 1962 Section 7‑317], the circuit court, in affirming a judgment, could have concluded that plaintiff was entitled to judgment regardless of errors, such affirmance will not be disturbed, where there is evidence warranting such a conclusion. Stanford v. Cudd (S.C. 1913) 93 S.C. 367, 76 S.E. 986. Appeal And Error 1170.1

A magistrate’s error in refusing to send a case to another magistrate does not necessarily require the Supreme Court to grant a new trial on appeal from a judgment of the circuit court affirming the magistrate’s judgment. Brown v. Kolb (S.C. 1912) 92 S.C. 309, 75 S.E. 529.

Unless the judgment of the circuit court on appeal to it from a magistrate’s court is without any evidence to support it, it is not reviewable by the Supreme Court. A. & E. Leather Goods Co. v. Sentz (S.C. 1910) 87 S.C. 267, 69 S.E. 390. Appeal And Error 1094(1)

But it can determine if the magistrate had jurisdiction. Jenkins v. Southern Ry. (S.C. 1906) 73 S.C. 292, 53 S.E. 481.

The fact that circuit court heard an appeal on the same day on which it was docketed, where the return of the case had been filed thirteen days before, was no ground for reversing a dismissal of the appeal, where it did not appear that appellant was surprised, and the judgment was in accordance with the justice of the case. Marshall v. Mitchell (S.C. 1901) 59 S.C. 523, 38 S.E. 158.

The Supreme Court will not lend a ready ear to an objection based upon a mere matter of form. Dargan v. West (S.C. 1887) 27 S.C. 156, 3 S.E. 68.

**SECTION 18‑7‑180.** Judgment on appeal; appeals on errors in fact.

If the appeal is founded on an error in fact in the proceedings, not affecting the merits of the action and not within the knowledge of the magistrate, the court may determine the alleged error in fact on affidavits and may, in its discretion, inquire into and determine the alleged error upon examination of the witnesses. Every issue of fact so joined or brought upon an appeal shall be tried in the manner provided in Section 18‑7‑130.

HISTORY: 1962 Code Section 7‑318; 1952 Code Section 7‑318; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

Library References

Justices of the Peace 185.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 415, 418, 427 to 429.

NOTES OF DECISIONS

In general 1

1. In general

The provisions of this section [Code 1962 Section 7‑318] stating that the court may determine alleged error of fact on affidavits, etc., do not apply in criminal cases. State v. Richardson (S.C. 1914) 98 S.C. 147, 82 S.E. 353.

Where the question of demand was not raised in an action to recover possession of cotton in a magistrate’s court, it was not error for the circuit court on appeal to allow affidavits to be introduced to the effect that, before action was brought, plaintiff demanded possession. Burton v. Laurens Cotton Mills (S.C. 1902) 64 S.C. 224, 41 S.E. 975. Justices Of The Peace 175

**SECTION 18‑7‑190.** Judgment on appeal; appeals on issue of law.

If the issue joined before the magistrate was an issue of law, the court shall render judgment thereon according to the law of the case; and if such judgment be against the pleadings of either party, an amendment of such pleading may be allowed on the same terms, and in like case, as pleadings in actions in the circuit court, and the court may thereupon require the opposite party to answer such amended pleading or join issue thereon, as the case may require, summarily. If upon an appeal in an issue of law the court should adjudge the pleading complained of to be valid, it shall, in like manner, require the opposite party summarily to answer such pleading or join issue thereon, as the case may require.

HISTORY: 1962 Code Section 7‑319; 1952 Code Section 7‑319; 1942 Code Section 804; 1932 Code Section 804; Civ. P. ‘22 Section 669; Civ. P. ‘12 Section 407; Civ. P. ‘02 Section 368; 1870 (14) 383; 1873 (15) 502.

CROSS REFERENCES

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

Library References

Justices of the Peace 184.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 415, 419, 427 to 429.

**SECTION 18‑7‑200.** Procedure upon reversal of judgment already paid.

If the judgment below, or any part thereof, be paid or collected and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing, upon a previous notice of six days; and if the order shall be made before the judgment is entered, the amount may be included in the judgment.

HISTORY: 1962 Code Section 7‑320; 1952 Code Section 7‑320; 1942 Code Section 807; 1932 Code Section 807; Civ. P. ‘22 Section 672; Civ. P. ‘12 Section 410; Civ. P. ‘02 Section 371; 1870 (14) 386.

Library References

Justices of the Peace 189.2(1).

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 409, 424.

**SECTION 18‑7‑210.** Judgment roll.

To every judgment upon an appeal there shall be annexed the return on which it was heard, the notice of appeal and any offer, decision of the court, exceptions or case and all orders and papers in any way involving the merits and necessarily affecting the judgment, all of which shall be filed with the clerk of the court and shall constitute the judgment roll.

HISTORY: 1962 Code Section 7‑321; 1952 Code Section 7‑321; 1942 Code Section 805; 1932 Code Section 805; Civ. P. ‘22 Section 670; Civ. P. ‘12 Section 408; Civ. P. ‘02 Section 369; 1870 (14) 383.

CROSS REFERENCES

Judgment rolls under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Statement of questions of law and facts when questions certified as part of judgment roll, see Section 18‑9‑40.

Library References

Justices of the Peace 187.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 409, 421.

NOTES OF DECISIONS

In general 1

1. In general

The return may be used in evidence to show pendency of the case in the magistrate’s court. Cothran v. Knight (S.C. 1896) 47 S.C. 243, 25 S.E. 142.

**SECTION 18‑7‑220.** Costs on appeal.

Costs shall be allowed to the prevailing party in judgments rendered on appeal in all cases, with the exceptions and limitations stated in Sections 18‑7‑230 to 18‑7‑300.

HISTORY: 1962 Code Section 7‑322; 1952 Code Section 7‑322; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

CROSS REFERENCES

Compensation of stenographers, see Sections 14‑15‑40, 14‑15‑80.

Library References

Costs 228.

Westlaw Topic No. 102.

NOTES OF DECISIONS

In general 1

1. In general

An application to the circuit court to correct errors in the adjustment of costs by a clerk is not an appeal within this section [Code 1962 Section 7‑322]. State v. Town Council of Beaufort (S.C. 1895) 44 S.C. 500, 22 S.E. 719. Costs 225

When, on appeal from a justice’s court, the parties consent in writing to a dismissal, with costs, appellant is estopped to claim that costs were erroneously allowed. Ramseur v. Moore (S.C. 1895) 43 S.C. 304, 21 S.E. 81. Appeal And Error 882(18); Costs 232

When appellant is not entitled to costs the respondent is. Wall v. Davis (S.C. 1883) 19 S.C. 455.

**SECTION 18‑7‑230.** Effect of failure to state error in judgment below on award of costs.

If in the notice of appeal the appellant shall not state in what particular or particulars he claims the judgment should have been more favorable to him, he shall not be entitled to costs unless the judgment appealed from shall be wholly reversed.

HISTORY: 1962 Code Section 7‑323; 1952 Code Section 7‑323; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 228, 235, 238(2).

Westlaw Topic No. 102.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Wall v. Davis (S.C. 1883) 19 S.C. 455.

**SECTION 18‑7‑240.** Costs when appellant gains less than ten dollars by appeal.

The appellant shall not recover costs unless the judgment appealed from shall be reversed on such appeal or be made more favorable to him to the amount of at least ten dollars.

HISTORY: 1962 Code Section 7‑324; 1952 Code Section 7‑324; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 231(3).

Westlaw Topic No. 102.

NOTES OF DECISIONS

In general 1

1. In general

A defendant appealing from a judgment against him in claim and delivery which awards to plaintiff the right of possession of the property in dispute or the value fixed at one hundred dollars, is entitled to costs, where the appellate court affirms the judgment, with the exception that it reduces the amount to seventy‑seven dollars and fifty cents. Brown & Parler v. Kolb (S.C. 1913) 95 S.C. 217, 78 S.E. 894.

**SECTION 18‑7‑250.** Effect of rejection of offer under Section 18‑7‑100 on award of costs.

If an offer be made under the provisions of Section 18‑7‑100 and be not accepted and the judgment in the appellate court be not at least ten dollars more favorable to the appellant than the offer of the respondent, the respondent shall recover costs.

HISTORY: 1962 Code Section 7‑325; 1952 Code Section 7‑325; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 238(3).

Westlaw Topic No. 102.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 7‑325] does not conflict with Code 1962 Section 43‑92. Williford v. Gadsden (S.C. 1887) 27 S.C. 87, 2 S.E. 858.

**SECTION 18‑7‑260.** Effect of rejection of offer under Section 18‑7‑110 on award of costs.

If an offer be made under the provisions of Section 18‑7‑110 and be not accepted and if the party to whom such offer is made fail to obtain a judgment more favorable to him by at least ten dollars than that specified in the offer, then he shall not recover costs but must pay the other party’s costs from the date of the service of the offer.

HISTORY: 1962 Code Section 7‑326; 1952 Code Section 7‑326; 1942 Code Sections 804, 809; 1932 Code Sections 804, 809; Civ. P. ‘22 Sections 669, 674; Civ. P. ‘12 Sections 407, 412; Civ. P. ‘02 Sections 368, 373; 1870 (14) 383; 1873 (15) 502 Section 20; 1880 (17) 297 Sections 2, 7.

Library References

Costs 238(3).

Westlaw Topic No. 102.

**SECTION 18‑7‑270.** When award of costs is in discretion of court.

If the judgment appealed from be reversed in part and affirmed as to the residue, the amount of costs allowed to either party shall be such sum as the appellate court may award. If the judgment be reversed for an error of fact in the proceedings not affecting the merits, costs shall be in the discretion of the court.

HISTORY: 1962 Code Section 7‑327; 1952 Code Section 7‑327; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297; 1972 (57) 2602.

Library References

Costs 235.

Westlaw Topic No. 102.

**SECTION 18‑7‑280.** Award of costs when appeal is dismissed for want of prosecution.

If the appeal be dismissed for want of prosecution, as provided by Section 18‑7‑120, no costs shall be allowed to either party.

HISTORY: 1962 Code Section 7‑328; 1952 Code Section 7‑328; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 232.

Westlaw Topic No. 102.

NOTES OF DECISIONS

In general 1

1. In general

Code 1962 Section 7‑312 contemplates a case where neither party brings it to a hearing before the end of the second term, when the appeal is dismissed by court itself, in which case no costs are allowed under this section [Code 1962 Section 7‑328]. Ramseur v. Moore (S.C. 1895) 43 S.C. 304, 21 S.E. 81.

**SECTION 18‑7‑290.** Award of costs to appellant shall include costs below.

Whenever costs are awarded to the appellant and when the judgment in the suit before the court below was against such appellant, he shall further be allowed to tax the costs incurred by him which he would have been entitled to recover in case the judgment below had been rendered in his favor.

HISTORY: 1962 Code Section 7‑329; 1952 Code Section 7‑329; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 247.

Westlaw Topic No. 102.

RESEARCH REFERENCES

Encyclopedias

84 Am. Jur. Trials 367, Using Taxation of Costs to Collect Some Litigation Expenses and Maximize Client Recovery.

**SECTION 18‑7‑300.** Setoff of costs against recovery.

If, upon an appeal, a recovery for any debt or damages be had by one party and costs be awarded to the other party, the court shall set off such costs against such debt or damages and render judgment for the balance.

HISTORY: 1962 Code Section 7‑330; 1952 Code Section 7‑330; 1942 Code Section 809; 1932 Code Section 809; Civ. P. ‘22 Section 674; Civ. P. ‘12 Section 412; Civ. P. ‘02 Section 373; 1870 (14) 388; 1873 (15) 502; 1880 (17) 297.

Library References

Costs 264.

Westlaw Topic No. 102.