CHAPTER 7

Estrays; Livestock Trespassing or Running at Large

ARTICLE 1

Estrays

**SECTION 47‑7‑10.** “Estray” defined.

 Any domestic or domesticated animal found wandering at large or abandoned in the public ways or on the lands of any person other than its owner shall be an “estray.”

HISTORY: 1962 Code Section 6‑201; 1960 (51) 1741.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 16, Disposition of Estrays by Persons.

Attorney General’s Opinions

It does not appear that a county summons could be used to cite for all violations of Title 47, Chapters 1, 3, 5, and 7 since all such provisions could not be adopted as county ordinances. S.C. Op.Atty.Gen. (December 20, 2007) 2007 WL 4686598.

**SECTION 47‑7‑20.** Public sale of estrays.

 Any person finding an estray may take possession thereof and shall, if the owner is not found and no claim to such estray is made within three days, deliver or report the finding and taking up of such estray to the nearest magistrate, who shall sell such estray at public sale after ten days’ notice posted in three public places in the county, one of which shall be the courthouse door.

HISTORY: 1962 Code Section 6‑202; 1952 Code Sections 6‑201, 6‑203, 6‑204; 1942 Code Sections 6270, 6272‑6274; 1932 Code Sections 6270, 6272‑6274; Civ. C. ‘22 Sections 5130, 5132‑5134; Civ. C. ‘12 Sections 3386, 3388‑3390; Civ. C. ‘02 Sections 2275, 2277‑2279; G. S. 1610, 1612‑1614; R. S. 1802, 1804‑1806; 1803 (5) 465; 1839 (11) 30; 1935 (39) 226; 1960 (51) 1741.

CROSS REFERENCES

Seizure of trespassing stock, see Section 47‑7‑130 et seq.

Library References

Animals 61, 106.

Westlaw Topic No. 28.

C.J.S. Animals Sections 248, 251 to 257, 259 to 261, 465, 486, 532, 539.

**SECTION 47‑7‑30.** Application of proceeds of sale.

 The proceeds of sale of an estray shall be applied first to costs of sale and next to costs of care and feeding of the estray, including a reasonable compensation as determined by the magistrate for the finder’s labor for care and feeding. Any balance remaining shall be paid into the county treasury as general county funds.

HISTORY: 1962 Code Section 6‑203; 1952 Code Sections 6‑206, 6‑208; 1942 Code Sections 6275, 6277; 1932 Code Sections 6275, 6277; Civ. C. ‘22 Sections 5135, 5137; Civ. C. ‘12 Sections 3391, 3393; Civ. C. ‘02 Sections 2280, 2282; G. S. 1615, 1617; R. S. 1807, 1809; 1789 (5) 137, 138; 1803 (5) 465, 466; 1960 (51) 1741.

Library References

Animals 61, 106.

Westlaw Topic No. 28.

C.J.S. Animals Sections 248, 251 to 257, 259 to 261, 465, 486, 532, 539.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 16, Disposition of Estrays by Persons.

**SECTION 47‑7‑40.** Penalties for violations or for appropriating estrays.

 Any person violating the provisions of this article, or attempting to conceal or appropriate an estray to his own use, shall be guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned not more than thirty days for each offense.

HISTORY: 1962 Code Section 6‑204; 1952 Code Section 6‑209; 1942 Code Sections 6279, 6280; 1932 Code Sections 6279, 6280; Civ. C. ‘22 Sections 5139, 5140; Civ. C. ‘12 Sections 3395, 3396; Civ. C. ‘02 Sections 2284, 2285; G. S. 1619, 1620; R. S. 1811, 1812; 1803 (5) 466; 1960 (51) 1741.

Library References

Animals 64.

Westlaw Topic No. 28.

C.J.S. Animals Sections 248, 251.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 17, Criminal Provisions.

ARTICLE 3

Livestock Trespassing or Running at Large

**SECTION 47‑7‑110.** Permitting domestic animals to run at large unlawful.

 It shall be unlawful for the owner or manager of any domestic animal of any description wilfully or negligently to permit any such animal to run at large beyond the limits of his own land or the lands leased, occupied or controlled by him. Any owner, manager or person violating the provisions of this section shall be subject to a fine for each offense of not more than twenty‑five dollars or to imprisonment for not more than twenty‑five days.

HISTORY: 1962 Code Section 6‑311; 1952 Code Section 6‑311; 1942 Code Sections 6281, 6282; 1932 Code Sections 1221, 6281, 6282, 6283; Civ. C. ‘22 Sections 3276, 3277; Civ. C. ‘12 Section 2280; Civ. C. ‘02 Section 1497; G. S. 1184; R. S. 1288; 1898 (20) 800; 1905 (24) 959; 1906 (25) 116; 1908 (25) 1048; 1913 (28) 29; 1917 (30) 330; 1918 (30) 848; 1919 (31) 152; 1920 (31) 719, 877, 1051; 1921 (32) 200; 1925 (34) 24; 1927 (35) 749; 1943 (43) 306.

Library References

Animals 50(3), 50(4), 56.

Westlaw Topic No. 28.

C.J.S. Animals Sections 268 to 274, 276 to 279, 295, 297 to 300, 308, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 13, Owner’s Duty to Confine‑ Generally.

Treatises and Practice Aids

7 Causes of Action 2d 427, Cause of Action in Negligence for Damages Arising from Collision Between Motor Vehicle and Livestock Running‑At‑Large.

38 Causes of Action 2d 281, Cause of Action for Loss of or Injury to Animal by an Animal.

Attorney General’s Opinions

Discussion of this section in light of Hossenlopp v. Cannon, 285 S.C. 367, 329 S.E.2d 438 (1985). S.C. Op.Atty.Gen. (November 4, 1997) 1997 WL 811890.

Dogs are excluded from Section 47‑7‑110 (Code of Laws, 1962, Section 6‑311), which precludes domestic animals from running at large. S.C. Op.Atty.Gen. (June 2, 1978) 1978 WL 34926.

NOTES OF DECISIONS

In general 1

Sufficiency of evidence 2

1. In general

“Liability for owners of trespassing stock” statute did not impose strict liability on owner of livestock for personal injuries suffered when automobile driver collided with escaped livestock, rather, liability could be found only upon negligence; because livestock strayed onto public highway and not driver’s private land, driver had no property right that was impinged upon by livestock’s presence, and driver enjoyed neither the right of exclusive possession nor the right to expel other persons or property from the highway. Williams v. Smalls (S.C.App. 2010) 390 S.C. 375, 701 S.E.2d 772, rehearing denied, certiorari denied. Automobiles 289.5

Plain meaning of the language “all damages” in the liability for owners of trespassing stock statute contemplates not only injury to real property, but also to personal property, and strict liability for personal injury. Williams v. Smalls (S.C.App. 2010) 390 S.C. 375, 701 S.E.2d 772, rehearing denied, certiorari denied. Animals 97

However, this section [Code 1962 Section 6‑311] does not impose an absolute duty to prevent the escape of livestock from the owner’s custody and control. At least negligence in permitting the animals to stray is of the essence of the proscribed conduct and some evidence from which an inference of such negligence may be drawn is required. McCullough v. Gatch (S.C. 1968) 251 S.C. 171, 161 S.E.2d 182.

And, the mere presence of unattended animals on a highway is insufficient to support a conclusion that this section [Code 1962 Section 6‑311] has been violated. McCullough v. Gatch (S.C. 1968) 251 S.C. 171, 161 S.E.2d 182.

Violation of section negligence per se. It was not error for a trial judge to read to the jury in a civil case against the driver of a truck which struck and killed a cow, and in which the driver counterclaimed for personal injuries and damage to his truck, only the first sentence of this section [Code 1962 Section 6‑311], making no reference to the remainder other than to say it provided a penalty, because the rule that the violation of a statute is negligence per se is by its very nature especially applicable to statutes imposing upon persons specific duties for the protection of others, and consequently penal in character. Swindler v. Peay (S.C. 1955) 227 S.C. 157, 87 S.E.2d 296.

As to proof of negligence where cattle running at large were killed by a train, see Johnson v. Atlantic Coast Line R. Co. (S.C. 1950) 217 S.C. 190, 60 S.E.2d 226.

And it is not limited by Code 1962 Section 6‑316. This section [Code 1962 Section 6‑311] imposes certain duties upon the owners and managers of stock, and the law operating independently of the statute will hold them liable for failure to observe these duties, and Code 1962 Section 6‑316, while giving certain specific remedies, does not limit this section [Code 1962 Section 6‑311], under which relief can be obtained by an action for damages. Kirby v. Mathis (S.C. 1911) 89 S.C. 252, 71 S.E. 862.

So owner or manager is liable in damages. When another person sustains damages, as the direct and proximate result of failure, on the part of the owner or manager, to discharge the duty imposed by this section [Code 1962 Section 6‑311], the law, operating independently of the statute, when it fails to provide an adequate remedy for the injured party, renders the owner or manager liable in damages. Kirby v. Mathis (S.C. 1911) 89 S.C. 252, 71 S.E. 862.

2. Sufficiency of evidence

In an action by a husband and a wife against the owner of a horse for damages arising out of an accident in which the horse left its pasture and collided with the plaintiffs’ car on a highway, the jury verdict in favor of the plaintiffs was supported by sufficient evidence where there was testimony that the fence at the place where the horse apparently escaped had not been strong enough under the attending circumstances, the record showed that the horse had been allowed to graze unrestrained outside the fenced pasture on prior occasions, thereby tending to induce a horse to seek greener pastures, and there was testimony of prior escapes by horses on at least five occasions known by the plantation employee who maintained the fences; the trial court did not err by admitting testimony of the prior escapes where the fact that the same horse had escaped numerous times, even though from a different pasture with a different fence, constituted at least some competent evidence showing the propensity of that particular animal to seek freedom outside a fenced area. Reed v. Clark (S.C. 1982) 277 S.C. 310, 286 S.E.2d 384.

**SECTION 47‑7‑120.** Stock coming into State shall not be permitted to run at large.

 It shall be unlawful for any person to drive, cause to be driven or in any other manner permit to come into this State any horse, mule, hog, cattle, sheep or other livestock and suffer it to run at large in any marsh, forest lands or range in this State. Any person so offending shall be subjected to a penalty of five dollars for each head so permitted to run at large, to be recovered for the benefit of anyone who may sue for it, or the offender shall be proceeded against by attachment in case he cannot be found in this State. But this section shall not apply to any person owning lands in this State who permits such stock to run at large, as aforesaid, upon his own lands, nor to any person driving or causing to be driven any such stock to or from market or for breeding purposes.

HISTORY: 1962 Code Section 6‑315; 1952 Code Section 6‑315; 1942 Code Section 5806‑45; 1932 Code Section 1341; Cr. C. ‘22 Section 230; Cr. C. ‘12 Section 524; 1903 (24) 124.

Library References

Animals 50(3), 50(4), 56.

Westlaw Topic No. 28.

C.J.S. Animals Sections 268 to 274, 276 to 279, 295, 297 to 300, 308, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 13, Owner’s Duty to Confine‑ Generally.

**SECTION 47‑7‑130.** Liability of owners of trespassing stock.

 Whenever any domestic animals shall be found upon the lands of any other person than the owner or manager of such animals, the owner of such trespassing stock shall be liable for all damages sustained and for the expenses of seizure and maintenance. Such damages and expenses shall be recovered, when necessary, by action in any court of competent jurisdiction. And the trespassing stock shall be held liable for such damages and expenses, in preference to all other liens, claims or encumbrances upon it.

HISTORY: 1962 Code Section 6‑316; 1952 Code Section 6‑316; 1942 Code Section 6284; 1932 Code Section 6284; Civ. C. ‘22 Section 3278; Civ. C. ‘12 Section 2281; Civ. C. ‘02 Section 1498; G. S. 1185; R. S. 1289; 1881 (17) 592.

Library References

Animals 97, 100(1).

Westlaw Topic No. 28.

C.J.S. Animals Sections 415 to 420, 422 to 423, 430 to 431, 433 to 434, 484 to 485.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Damages Section 42, Strict Liability.

NOTES OF DECISIONS

In general 1

1. In general

Civ.Code 1902, Section 1497 (See Code, 1942, Section 6281), provides that it shall be unlawful to permit cattle to run at large, and section 1498 (see Code, 1942, Section 6284) provides that, when stock or animals shall be found upon the lands of any other person, the owner of the same shall be liable for the damages sustained, and that the stock shall be held liable for such damages in preference to all other liens. Held, that the first section imposed certain duties upon the owners and managers of stock, and that the law operating independently of the statute would hold them liable for failure to observe these duties, and that the second section, while giving certain specific remedies, did not limit the first section, under which relief could be obtained by an action for damages. Kirby v. Mathis (S.C. 1911) 89 S.C. 252, 71 S.E. 862.

Plaintiff is entitled to damages whether he has conformed to law or not. Utsy v. Hiott (S.C. 1889) 30 S.C. 360, 9 S.E. 338, 14 Am.St.Rep. 910.

**SECTION 47‑7‑140.** Right to seize trespassing stock.

 Any freeholder or tenant of land, his agent or representative, may seize and hold possession of any domestic animal which may be trespassing upon his premises and as compensation for such seizure may demand of the owner of every such horse, mule, ass, jennet, bull, ox, cow, calf, swine, sheep, goat, or other animal not herein named, just damages for injuries sustained. Such claim shall, when possible, be laid before the owner of the trespassing stock within forty‑eight hours after seizure of the stock.

HISTORY: 1962 Code Section 6‑317; 1952 Code Section 6‑317; 1942 Code Section 6285; 1932 Code Section 6285; Civ. C. ‘22 Section 3279; Civ. C. ‘12 Section 2282; Civ. C. ‘02 Section 1499; G. S. 1186; R. S. 1290; 1881 (17) 592; 1972 (57) 2482.

Library References

Animals 95(1).

Westlaw Topic No. 28.

C.J.S. Animals Sections 415 to 416, 426 to 428.

NOTES OF DECISIONS

In general 1

1. In general

A tenant in possession under a lease alone has the right under this section [Code 1962 Section 6‑317] to recover for animals trespassing upon the leased premises. Holliday v. Holliday (S.C. 1889) 30 S.C. 613, 9 S.E. 104.

**SECTION 47‑7‑150.** Liability of owner for maintenance; bond; recovery of possession.

 In case the claim shall not be amicably or legally adjusted and the trespassing animals recovered by the owner within twelve hours after the receipt of such notification, the owner shall further become liable in a sum sufficient to cover the maintenance and care of his stock up to the time of its removal. But the owner shall be entitled to recover immediate possession of his stock on due execution of such bond to cover expenses and claimed damages as any magistrate shall decide to be good and sufficient.

HISTORY: 1962 Code Section 6‑318; 1952 Code Section 6‑318; 1942 Code Section 6286; 1932 Code Section 6286; Civ. C. ‘22 Section 3280; Civ. C. ‘12 Section 2283; Civ. C. ‘02 Section 1500; G. S. 1187; R. S. 1291; 1881 (17) 592.

Library References

Animals 95.

Westlaw Topic No. 28.

C.J.S. Animals Sections 415 to 416, 426 to 430.

**SECTION 47‑7‑160.** Rescuing animal from custody of person impounding it unlawful.

 Whenever any animal shall be taken up under the provisions of this article, it shall be unlawful for any person to rescue it or deliver it from the custody of the person impounding it; and whoever shall violate this provision shall be guilty of a misdemeanor and be punished by a fine of not less than five nor more than thirty dollars or by imprisonment in the county jail not less than five nor more than thirty days.

HISTORY: 1962 Code Section 6‑321; 1952 Code Section 6‑321; 1942 Code Sections 1222, 1223; 1932 Code Sections 1222, 1223; Cr. C. ‘22 Sections 110, 111; Cr. C. ‘12 Sections 229, 230; Cr. C. ‘02 Sections 176, 177; G. S. 1190, 1191; R. S. 171, 172; 1881 (17) 593; 1903 (24) 111; 1921 (32) 200.

CROSS REFERENCES

Satisfaction as defense in criminal prosecution under this section, see Section 47‑7‑170.

Library References

Animals 95(2), 101.

Westlaw Topic No. 28.

C.J.S. Animals Sections 415 to 416, 426, 429 to 430.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Animals Section 17, Criminal Provisions.

**SECTION 47‑7‑170.** Satisfaction as defense in criminal prosecutions.

 In any criminal prosecution for violation of the provisions of Section 47‑7‑160, the defendant may plead, as a matter of defense, the full satisfaction of all reasonable demands of the party or parties aggrieved by such violation; and upon such plea being legally established and upon payment of all costs accrued up to the time of such plea he shall be discharged from further penalty.

HISTORY: 1962 Code Section 6‑322; 1952 Code Section 6‑322; 1942 Code Section 1225; 1932 Code Section 1225; Cr. C. ‘22 Section 113; Cr. C. ‘12 Section 233; Cr. C. ‘02 Section 179; G. S. 1193; R. S. 173; 1881 (17) 594.

Library References

Animals 102.

Westlaw Topic No. 28.

C.J.S. Animals Sections 415 to 416, 447, 511, 514 to 531.