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CHAPTER 21

Perpetuation of Evidence

**SECTION 19‑21‑10.** Substituting new records for lost, destroyed, or abstracted records of decrees and judgments.

The plaintiff in any judgment or decree, the record whereof has been destroyed, abstracted or lost, or his personal representatives, or other person claiming under or through them, or any of them, or any person whatever having an interest in the preservation of the evidence of such judgment or decree, may upon notice of not less than twenty‑one days, served as a summons in actions is now served pursuant to law, upon the defendant therein or upon those upon whom his liability has devolved, or others interested to oppose the application, apply to the court in which such judgment or decree was rendered for leave to substitute a new record. If, upon hearing the evidence on each side, the court is satisfied of the existence and loss of such record, an order for leave to substitute shall be made, conforming as nearly as possible in all respects to the lost, abstracted or destroyed record; and if it be for the payment of money, the balance due thereon and date of lien, if any, shall be made to appear thereon. Such substituted record shall be good and valid in law to all intents and purposes.

HISTORY: 1962 Code Section 26‑801; 1952 Code Section 26‑801; 1942 Code Section 729; 1932 Code Section 729; Civ. P. ‘22 Section 745; Civ. C. ‘12 Section 4008; Civ. C. ‘02 Section 2903; G. S. 2230; R. S. 2367; 1882 (17) 1081.

**SECTION 19‑21‑20.** Perpetuation of testimony as to lost, destroyed, or defective instruments.

Any person interested in the preservation of the contents of any deed, release, private writing usually put on record or document alleged to have been lost, destroyed or defective in the record thereof and desiring to preserve the evidence thereof for any purpose may, by summons and complaint as provided by Title 15, institute an action in the court of common pleas to perpetuate testimony as to the existence and true contents of the same. In such complaint the defects, if any, complained of in the record shall be substantially set forth and to such action all persons interested or known or supposed to claim an interest in the property to which such testimony may relate shall be made parties defendant and served with summons as provided by law in civil actions.

HISTORY: 1962 Code Section 26‑802; 1952 Code Section 26‑802; 1942 Code Section 730; 1932 Code Section 730; Civ. P. ‘22 Section 746; Civ. C. ‘12 Section 4009; Civ. C. ‘02 Section 2904; G. S. 2230, 2232; R. S. 2368; 1882 (17) 1081.

**SECTION 19‑21‑30.** Issuance of orders in action to perpetuate testimony.

The court or judge at chambers having jurisdiction of the subject matter may hear, determine and grant all orders as will best subserve the purposes of the complaint and the preservation of the testimony sought without delay.

HISTORY: 1962 Code Section 26‑803; 1952 Code Section 26‑803; 1942 Code Section 731; 1932 Code Section 731; Civ. P. ‘22 Section 747; Civ. C. ‘12 Section 4010; Civ. C. ‘02 Section 2905; G. S. 2230, 2233; R. S. 2369; 1882 (17) 1082.

**SECTION 19‑21‑40.** Recordation and force and effect of perpetuated testimony.

The evidence so taken shall be preserved, and the parties may have the same recorded in the office to which the same may relate. And such evidence so taken, preserved and recorded shall be received in all courts, subject to the same rules as to competency and credibility as any other evidence.

HISTORY: 1962 Code Section 26‑804; 1952 Code Section 26‑804; 1942 Code Section 732; 1932 Code Section 732; Civ. P. ‘22 Section 748; Civ. C. ‘12 Section 4011; Civ. C. ‘02 Section 2906; G. S. 2230, 2234, 2235; R. S. 2370; 1882 (17) 1082.

**SECTION 19‑21‑50.** Proof of lost papers other than by perpetuation of testimony.

Nothing herein contained shall prevent anyone from establishing on the trial of any cause any lost papers, according to the rules of evidence.

HISTORY: 1962 Code Section 26‑805; 1952 Code Section 26‑805; 1942 Code Section 733; 1932 Code Sections 733, 734; Civ. P. ‘22 Sections 749, 750; Civ. C. ‘12 Sections 4012, 4013; Civ. C. ‘02 Sections 2907, 2908; G. S. 2230, 2235; R. S. 2236, 2371; 1882 (17) 1082; 1995 Act No. 104, Section 5, eff September 3, 1995.

**SECTION 19‑21‑60.** Costs.

The costs of such proceedings as shall be had under the provisions of this chapter shall be in the discretion of the presiding judge.

HISTORY: 1962 Code Section 26‑806; 1952 Code Section 26‑806; 1942 Code Section 733; 1932 Code Sections 733, 734; Civ. P. ‘22 Sections 749, 750; Civ. C. ‘12 Sections 4012, 4013; Civ. C. ‘02 Sections 2907, 2908; G. S. 2230, 2235; R. S. 2236, 2371; 1882 (17) 1082.

**SECTION 19‑21‑70.** Repealed by 1985 Act No. 100, Section 2, eff July 1, 1985.

Editor’s Note

Former Section 19‑21‑70 was entitled “Preservation of evidence material to cause of action” and was derived from 1962 Code Section 26‑807; 1952 Code Section 26‑807; 1942 Code Section 734; 1939 (41) 309.

For similar provisions, see SCRCP Rule 17 et seq.

1985 Act No. 100, Sections 1 and 3, provide as follows:

“SECTION 1. Pursuant to Article V, Section 4A of the Constitution of this State, the Supreme Court of South Carolina has promulgated Rules of Civil Procedure governing practice and procedure in civil actions in the courts of this State, which rules were not disapproved by the General Assembly; and it is the intent of the General Assembly to repeal provisions of the 1976 Code of Laws of South Carolina, to be replaced by the Rules of Civil Procedure.”

“SECTION 3. In event of conflict between any provision of the South Carolina Rules of Civil Procedure and any other statutory provisions as to practice and procedure not repealed in this act, the provision of the rules shall control. However, neither the promulgation of the rules nor this act may be construed to affect the substantive legal rights of any party to any civil litigation in the courts of this State but shall affect only matters of practice and procedure.”