CHAPTER 3

Supreme Court

ARTICLE 1

Composition, Organization, and Employees

**SECTION 14‑3‑10.** Composition of court and election of justices; term.

 The Supreme Court shall consist of a Chief Justice and four associate justices, who shall be elected by a joint viva voce vote of the General Assembly for a term of ten years and shall continue in office until their successors are elected and qualified. They shall be so classified that one of them shall go out of office every two years. The successors of the Chief Justice and associate justices shall each be elected at the session of the General Assembly next preceding the expiration of their respective terms. The time for the commencement of their terms of office shall be the first day of August after their election.

HISTORY: 1962 Code Section 15‑101; 1952 Code Section 15‑101; 1942 Code Section 11; 1941 (42) 120.

CROSS REFERENCES

Composition of Supreme Court, generally, see SC Const. Art. V, Section 2.

Constitutional provision that no person is to hold two offices of honor or profit at the same time, see SC Const. Art. XVII, Section 1A.

Election of members of Supreme Court, generally, see SC Const. Art. V, Section 3.

Head of the Supreme Court being ex officio voting member of Governor’s Committee on Criminal Justice, Crime and Delinquency, see Section 23‑4‑110.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 4, Supreme Court.

**SECTION 14‑3‑20.** Qualification; administration of oath of office.

 The justices of the Supreme Court shall qualify within twelve months after the date of their election by taking the constitutional oath or the office shall be declared vacant by the Governor. The oath shall be administered by a justice of said court or by a circuit judge.

HISTORY: 1962 Code Section 15‑102; 1952 Code Section 15‑102; 1942 Code Section 14; 1932 Code Section 14; Civ. P. ‘22 Section 14; Civ. C. ‘12 Section 3818; Civ. C. ‘02 Section 2722; G. S. 2090; R. S. 2222; 1896 (22) 3.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑30.** Salaries.

 The Chief Justice shall receive such annual salary as may be provided by the General Assembly and the associate justices shall receive such annual salary as may be provided by the General Assembly. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under the State, the United States, or any other power.

HISTORY: 1962 Code Section 15‑103; 1952 Code Section 15‑103; 1942 Code Section 19; 1932 Code Section 19; Civ. P. ‘22 Section 19; Civ. C. ‘12 Section 3823; Civ. C. ‘02 Section 2727; G. S. 2088; R. S. 2220; 1901 (23) 622; 1905 (24) 845; 1917 (30) 131; 1919 (31) 101; 1928 (35) 1237; 1935 (39) 88; 1948 (45) 1716; 1951 (47) 546, 710; 1963 (53) 358; 1964 (53) 1918; 1966 (54) 2424; 1970 (56) 2085.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑40.** Vacancies; term of incumbent.

 All vacancies in the Supreme Court shall be filled by elections as herein prescribed; provided, that if the unexpired term does not exceed one year such vacancy may be filled by executive appointment. When a vacancy is so filled by either appointment or election, the incumbent shall hold only for the unexpired term of his predecessor.

HISTORY: 1962 Code Section 15‑104; 1952 Code Section 15‑104; 1942 Code Section 20; 1932 Code Section 20; Civ. P. ‘22 Section 20; Civ. C. ‘12 Section 3824; Civ. C. ‘02 Section 2728; G. S. 2088; R. S. 2220; 1901 (23) 622.

CROSS REFERENCES

Emergency interim successors for justices, see Section 1‑9‑70.

Library References

Courts 244.

Westlaw Topic No. 106.

Attorney General’s Opinions

The Chief Justice of the Supreme Court may appoint the Orangeburg Probate Judge to preside over the Calhoun County Probate Court upon the resignation of that Judge until further order. 1982 Op.Atty.Gen. No 82‑37, p 41 (May 25, 1982) 1982 WL 155007.

**SECTION 14‑3‑50.** Disqualification of justice by reason of interest or prior participation in case.

 In addition to the cases mentioned in Section 14‑1‑130, no justice shall preside in any case or at the hearing thereof in which he may be interested or in which he may have been counsel or has presided in any inferior court.

HISTORY: 1962 Code Section 15‑105; 1952 Code Section 15‑105; 1942 Code Section 21; 1932 Code Section 21; Civ. P. ‘22 Section 21; Civ. C. ‘12 Section 3825; Civ. C. ‘02 Section 2729; 1887 (19) 85; 1926 (34) 1040; Const. 1895 Art. 5 Sections 6 and 12.

CROSS REFERENCES

The power to impeach state judges, see SC Const. Art. XV, Section 1.

Library References

Courts 244.

Westlaw Topic No. 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Judges—Disqualification to Act Because of Stock Interest. 22 S.C. L. Rev. 261.

**SECTION 14‑3‑60.** Procedure when justice cannot preside in cause; special justices.

 In case all or any of the justices of the Supreme Court shall be disqualified or be otherwise prevented from presiding in any cause, the court, or the justices thereof, shall certify the same to the Governor of the State, and he shall immediately commission specially the requisite number of men learned in the law for the trial and determination thereof.

HISTORY: 1962 Code Section 15‑106; 1952 Code Section 15‑106; 1942 Code Section 21; 1932 Code Section 21; Civ. P. ‘22 Section 21; Civ. C. ‘12 Section 3825; Civ. C. ‘02 Section 2729; 1887 (19) 85; 1926 (34) 1040; Const. 1895 Art. 5 Sections 6 and 12.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑70.** Compensation and allowances for special justices.

 When such appointments are made by the Governor, such person shall receive as compensation for his services while so acting as associate justice of the Supreme Court for the time actually engaged in performing such services the same salary allowance and expenses and stenographic hire as an associate justice of the Supreme Court would receive for the same period. Such salary and expense allowance shall be figured in the ratio that the number of days such acting associate justice is actually engaged in sitting with the court bears to the number of days that the court is actually in session during the year, except that in the event such acting associate justice shall sit and hear only one cause he shall receive only fifty per cent of the salary and allowances herein fixed.

HISTORY: 1962 Code Section 15‑107; 1952 Code Section 15‑107; 1942 Code Section 21; 1932 Code Section 21; Civ. P. ‘22 Section 21; Civ. C. ‘12 Section 3825; Civ. C. ‘02 Section 2729; 1887 (19) 85; 1926 (34) 1040; Const. 1895 Art. 5 Sections 6 and 12.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑80.** Presiding officer.

 The Chief Justice shall preside. In the absence of the Chief Justice, the justice oldest in service and present shall preside.

HISTORY: 1962 Code Section 15‑108; 1952 Code Section 15‑108; 1942 Code Sections 11, 12; 1932 Code Section 11; Civ. P. ‘22 Section 11; Civ. C. ‘12 Section 3815; Civ. C. ‘02 Section 2721; 1896 (22) 3; 1941 (42) 120; Const. Art. 5 Section 2.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑90.** Attendance; quorum.

 It shall be the duty of all the justices to be present. Any three of the justices shall constitute a quorum.

HISTORY: 1962 Code Section 15‑109; 1952 Code Section 15‑109; 1942 Code Section 12; 1932 Code Section 11; Civ. P. ‘22 Section 11; Civ. C. ‘12 Section 3815; Civ. C. ‘02 Section 2721; 1896 (22) 3; 1941 (42) 120; Const. Art. 5 Section 2.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑100.** Effect of lack of quorum.

 If at any stated term of the court a quorum thereof shall not attend on the first day of the term, the justice or justices attending may adjourn the court from day to day for ten days after the time appointed for the commencement of the term, unless a quorum shall sooner attend or unless a sufficient number of men learned in the law, commissioned by the Governor as provided in Section 14‑3‑60, to make a quorum, shall sooner attend, and the business of the court shall not in such case be continued over to the next stated term thereof until the expiration of such ten days.

HISTORY: 1962 Code Section 15‑110; 1952 Code Section 15‑110; 1942 Code Section 11; 1941 (42) 120.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑110.** Messenger and attendant.

 The Supreme Court shall appoint a messenger of the court and an attendant to hold for the term of four years, subject to removal by the court, and shall prescribe the duties of the officers so appointed.

HISTORY: 1962 Code Section 15‑111; 1952 Code Section 15‑111; 1942 Code Section 16; 1932 Code Section 16; Civ. P. ‘22 Section 16; Civ. C. ‘12 Section 3820; Civ. C. ‘02 Section 2724; G. S. 2094; R. S. 2226; 1896 (22) 3; 1918 (30) 788.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑120.** Reporter.

 The Supreme Court shall appoint a reporter for a term of four years, who shall take the constitutional oath before any one of the justices or the clerk of the Supreme Court.

HISTORY: 1962 Code Section 15‑112; 1952 Code Section 15‑112; 1942 Code Section 18; 1932 Code Section 18; Civ. P. ‘22 Section 18; Civ. C. ‘12 Section 3822; Civ. C. ‘02 Section 2726; G. S. 2102 to 2108; R. S. 2237 to 2241; 1896 (22) 3; 1901 (23) 622; 1920 (31) 1049; 1929 (36) 52.

CROSS REFERENCES

Duties of the Supreme Court reporter with respect to the Court of Appeals, see Section 14‑8‑100.

Reporter of Supreme Court, see SC Const. Art. V, Section 6.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑130.** Clerk.

 The Supreme Court shall also appoint a clerk, who shall hold his office for four years and who shall have the custody and keeping of its records and shall furnish certified copies thereof to persons desiring the same upon the payment of the fees prescribed by law. He shall receive a fee of fifty cents for each certificate.

HISTORY: 1962 Code Section 15‑113; 1952 Code Section 15‑113; 1942 Code Section 17; 1932 Code Section 17; Civ. P. ‘22 Section 17; Civ. C. ‘12 Section 3821; Civ. C. ‘02 Section 2725; R. S. 2234 to 2236; G. S. 2109 to 2111; 1896 (22) 3.

CROSS REFERENCES

Clerk of Supreme Court, see SC Const. Art. V, Section 6.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 6, Clerks of Courts.

NOTES OF DECISIONS

In general 1

1. In general

Increase in appropriation held an increase in salary. Where the annual appropriation for the salary of the clerk provided for a larger amount than fixed by statute, it was held that all acts and parts of acts inconsistent therewith were repealed and that the intent was to pay the clerk the amount provided for in the appropriation. Brooks v. Jones (S.C. 1908) 80 S.C. 443, 61 S.E. 946.

**SECTION 14‑3‑140.** Expenses of court; payment upon approval and order.

 The amounts specified for expenses connected with the Supreme Court shall be paid upon the approval and order of the Chief Justice.

HISTORY: 1962 Code Section 15‑114; 1952 Code Section 15‑114; 1942 Code Section 3202; 1932 Code Section 3202; Civ. C. ‘22 Section 899; Civ. C. ‘12 Section 819; 1909 (26) 283.

CROSS REFERENCES

Power of Chief Justice to adjust salary levels of judicial employees, see Section 14‑1‑95.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑150.** Duties of county sheriffs and clerks; enforcement of service and execution.

 The Supreme Court may require the sheriff of each and every county to whom any order or process issuing from said court may be directed to serve and execute the same and shall have the same power to enforce such service and execution and to punish default thereon as is vested in circuit courts on processes issuing therefrom. The sheriff and clerk of each and every county, whenever required, shall attend any hearing in any case by any of the justices at the courthouse in any of the counties.

HISTORY: 1962 Code Section 15‑115; 1952 Code Section 15‑115; 1942 Code Section 23; 1932 Code Section 23; Civ. P. ‘22 Section 23; Civ. C. ‘12 Section 3827; Civ. C. ‘02 Section 2731; 1896 (22) 3.

Library References

Courts 244.

Westlaw Topic No. 106.

ARTICLE 3

Jurisdiction, Duties and Procedure

**SECTION 14‑3‑310.** Original jurisdiction of Supreme Court.

 The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other remedial and original writs.

HISTORY: 1962 Code Section 15‑121; 1952 Code Section 15‑121; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

CROSS REFERENCES

Constitutional provision regarding jurisdiction, see SC Const. Art. V, Section 5.

Constitutional provision that Supreme Court has jurisdiction over admission to practice of law and discipline of persons admitted, see SC Const. Art. V, Section 4.

Injunctions, generally, see SCRCP, Rule 65.

Judicial power vested in certain courts, generally, see SC Const. Art. V, Section 1.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 8, Original Jurisdiction of the Supreme Court.

S.C. Jur. Appeal and Error Section 11, Certiorari Jurisdiction of the Supreme Court.

S.C. Jur. Constitutional Law Section 19, Structure of the Judicial System.

S.C. Jur. Injunctions Section 6, Appellate Courts.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 1.7(G), Local Court Rules.

LAW REVIEW AND JOURNAL COMMENTARIES

The Federal Anti‑Injunction Statute and the Related Abstention Doctrine. 21 S.C. L. Rev. 313.

Judicial Apportionment. 24 S.C. L. Rev. 647.

“Reviewing Administrative Action by Writ of Mandamus in South Carolina,” 7 SC LQ 427 (1955).

NOTES OF DECISIONS

In general 1

Justiciability 2

1. In general

Proceedings for injunction in original jurisdiction. British American Mortg. Co. v Jones, 76 SC 218, 56 SE 983 (1907). Dillingham v City Council of Spartanburg, 75 SC 549, 56 SE 381 (1907).

Writ of prohibition. The ancient prerogative writ of prohibition has been recognized and employed in the common‑law system of jurisprudence for more than seven centuries, and like all prerogative writs should be used with forbearance and caution, and only in cases of necessity. New South Life Ins. Co. v. Lindsay (S.C. 1972) 258 S.C. 198, 187 S.E.2d 794.

The writ of prohibition will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure; but, if the inferior court or tribunal has jurisdiction of the person and subject‑matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption of jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available. New South Life Ins. Co. v. Lindsay (S.C. 1972) 258 S.C. 198, 187 S.E.2d 794.

Petitioner who had been duly certified as nominee of Democratic Party for county sheriff was entitled to order directing three county election commissioners who had resigned their office but had not been replaced by qualified successors to place petitioner’s name on official ballot in general election. Rogers v. Coleman (S.C. 1964) 245 S.C. 32, 138 S.E.2d 415. Mandamus 74(3)

Unliquidated claim not ground for mandamus. Supreme Court in its original jurisdiction will not entertain petition for mandamus for the collection of an unliquidated demand. Wolfe v. Jessen (S.C. 1931) 164 S.C. 1, 161 S.E. 927.

Certiorari is enforceable against Governor where acting as judicial tribunal. The Supreme Court has jurisdiction to enforce a writ of certiorari against the Governor in a case in which he is created a judicial tribunal by the General Assembly. State v. Ansel (S.C. 1907) 76 S.C. 395, 57 S.E. 185, 11 Am.Ann.Cas. 613. Certiorari 21

But certification of record of acts purely executive is not enforceable by certiorari. The Supreme Court has no jurisdiction by certiorari to require the Governor to certify to it the record of acts which are purely executive and not judicial. State v. Ansel (S.C. 1907) 76 S.C. 395, 57 S.E. 185, 11 Am.Ann.Cas. 613. Certiorari 25

Special damages must be shown before granting. Mandamus will not be granted to compel the removal of a dam obstructing a navigable stream unless the plaintiffs show special damages resulting to them, or damages other than naturally result to the general public. State v. Charleston Light & Water Co. (S.C. 1904) 68 S.C. 540, 47 S.E. 979. Mandamus 23(1)

2. Justiciability

Action in which Retirement Investment Commission petitioned for writ of mandamus requiring custodian of the Retirement Systems Group Trust to authorize the funding of an investment was moot, where custodian agreed to perform the precise act sought in the petition. South Carolina Retirement System Inv. Com’n v. Loftis (S.C. 2013) 402 S.C. 382, 741 S.E.2d 757. Mandamus 16(1)

Where there is no actual controversy, Supreme Court will not decide moot or academic questions. South Carolina Retirement System Inv. Com’n v. Loftis (S.C. 2013) 402 S.C. 382, 741 S.E.2d 757. Appeal and Error 843(1)

**SECTION 14‑3‑320.** Appellate jurisdiction in chancery; review of findings of fact of Family Court.

 The Supreme Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases when the facts are settled by a jury and the verdict not set aside; provided, that in cases which arise out of the Family Court, except those cases dealing with juvenile misconduct, review by the Supreme Court of the findings of fact of the Family Court shall be limited to a determination of whether or not there is substantial evidence to sustain such facts.

HISTORY: 1962 Code Section 15‑122; 1952 Code Section 15‑122; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623; 1983 Act No. 89 Section 2, eff June 2, 1983.

Editor’s Note

The Supreme Court of South Carolina declared Section 14‑3‑320 unconstitutional to the extent this section purported to limit the scope of appellate review in domestic cases, in Rutherford v Rutherford (1992, SC) 414 SE2d 157.

CROSS REFERENCES

Appeal when case decided on report of referee and exceptions, see SCRCP, Rule 53.

Jurisdiction, see SC Const. Art. V, Section 5.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Adoption Section 6, Appellate Jurisdiction.

S.C. Jur. Appeal and Error Section 2, Nature and Source of Right to Appeal.

S.C. Jur. Appeal and Error Section 9, Exclusive Appellate Jurisdiction of the Supreme Court.

S.C. Jur. Appeal and Error Section 15, General Rule.

S.C. Jur. Appeal and Error Section 122, Issues of Law.

S.C. Jur. Costs Section 14, South Carolina Frivolous Civil Proceedings Sanctions Act.

S.C. Jur. South Carolina Rules of Civil Procedure Section 72.1, Reporter’s Notes.

LAW REVIEW AND JOURNAL COMMENTARIES

Appeal from Interlocutory Order as to Liability Alone. 24 S.C. L. Rev. 503.

Functions of Supreme Court as Court of Review. 22 S.C. L. Rev. 497.

The Rule Against Generality, Vagueness, and Failure to Assign Error in Rule 4, Section 6 of the South Carolina Supreme Court Rules, 20 S.C. L. Rev. 59.

NOTES OF DECISIONS

In general 2

Action in equity 3

Family court 4

Validity 1

1. Validity

Section 14‑3‑320 is unconstitutional in that it purports to limit the scope of appellate review in domestic cases to a determination of substantial evidence since Article 5, Section 5 of the state constitution provides that the appellate court has the authority to review findings of fact as well as conclusions of law in appeals from all equity actions. Rutherford v. Rutherford (S.C. 1992) 307 S.C. 199, 414 S.E.2d 157. Constitutional Law 2372

2. In general

In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. Appeal And Error 842(1)

Subject matter jurisdiction may be raised at any time, and thus, the Supreme Court was able to review defendant’s claim that trial court lacked subject matter jurisdiction on grounds that indictment was insufficient, even though he failed to raise the issue until his petition for certiorari. Hooks v. State (S.C. 2003) 353 S.C. 48, 577 S.E.2d 211. Criminal Law 105; Criminal Law 1033.1

Supreme Court was free to decide, with no particular deference to the lower court, the novel question of law of whether punitive damages awarded in a negligence action should be reduced by the proportion of the plaintiff’s negligence, under comparative negligence. Clark v. Cantrell (S.C. 2000) 339 S.C. 369, 529 S.E.2d 528. Appeal And Error 842(11)

When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts; the appellate court owes no particular deference to the trial court’s legal conclusions. J.K. Const., Inc. v. Western Carolina Regional Sewer Authority (S.C. 1999) 336 S.C. 162, 519 S.E.2d 561. Appeal And Error 841

Judgment based upon pleadings and deposition of plaintiff taken by defendant before magistrate, determining that jury issue exists and denying motion for summary judgment, is interlocutory and not appealable. Neal v. Carolina Power and Light Co. (S.C. 1980) 274 S.C. 552, 265 S.E.2d 681.

Where defendant did not raise question as to whether an order extending time for service of a proposed case and exceptions was appealable but the appeal of plaintiff from an order refusing to grant a motion to dismiss the appeal for that ground amounted substantially to a motion to dismiss in the Supreme Court, it would consider that it was error by the county judge to refuse to dismiss the appeal of the defendant. Associated Petroleum Carriers v. Mutual Properties, Inc. (S.C. 1959) 235 S.C. 195, 110 S.E.2d 861. Appeal And Error 778

Refusal of new trial involving issues of fact not reviewable. Exceptions assigning error in the refusal of a motion for a new trial in a chancery case which merely involve questions of fact cannot be reviewed by the Supreme Court. Tindal v. Sublett (S.C. 1909) 82 S.C. 199, 63 S.E. 960.

3. Action in equity

Burden of proof is on appellant. In equity cases the appellant has the burden of showing that the findings of the appellate court were against the preponderance of the evidence. Boatwright v Crosby, 83 SC 190, 65 SE 174 (1908). Tindal v Sublett, 82 SC 199, 63 SE 960 (1907).

Court of Appeals lacked jurisdiction over attorney’s appeal from the circuit court’s dismissal of his appeal from decision of resolution of fee disputes board; proceeding was not an equity case or a law case, as to either of which there was statutory authority for appeals, but rather was a specialized proceeding before a branch of the state bar, which in turn was an administrative arm of the Supreme Court, and appellate rule that authorized appeal to circuit court from decisions of the board made no mention of further appeals. Wright v. Dickey (S.C.App. 2006) 370 S.C. 517, 636 S.E.2d 1, rehearing denied, certiorari denied. Attorney And Client 169

Pursuant to the State Constitution provision governing standard of review in matters of equity, the decision whether to award sanctions under the Frivolous Civil Proceedings Sanctions Act (FCPSA), as a matter in equity, mandates that an appellate court take its own view of the facts. Father v. South Carolina Dept. of Social Services (S.C. 2003) 353 S.C. 254, 578 S.E.2d 11. Appeal And Error 1024.1

In an action in equity, a reviewing court is not required to disregard the findings of the master or referee, but the court may take its own view of the preponderance of the evidence. BB & T of South Carolina v. Kidwell (S.C.App. 2002) 350 S.C. 382, 565 S.E.2d 316. Appeal And Error 1020

In an action in equity, a reviewing court is not bound by the trial court’s legal conclusions. BB & T of South Carolina v. Kidwell (S.C.App. 2002) 350 S.C. 382, 565 S.E.2d 316. Appeal And Error 842(2)

The Supreme Court’s scope of review for a case heard by a Master‑in‑Equity who entered a final judgment is the same as that for review of a case heard by a circuit court without a jury, i.e., the Supreme Court may review the evidence to determine facts in accordance with its own view of the preponderance of the evidence. While this permits a broad scope of review, the Supreme Court does not disregard the findings of the Master, who saw and heard the witnesses and was in a better position to evaluate their credibility. Tiger, Inc. v. Fisher Agro, Inc. (S.C. 1989) 301 S.C. 229, 391 S.E.2d 538.

In equity actions tried by a judge without a reference, the Supreme Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Braswell v. Roche (S.C. 1989) 299 S.C. 181, 383 S.E.2d 243. Appeal And Error 1122(2)

In an action in equity, tried by the judge alone, the Supreme Court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Cockrell by Cockrell v. Trustees of Dist. 20 Constituent School Dist. (S.C. 1989) 299 S.C. 155, 382 S.E.2d 923. Appeal And Error 1122(2)

A partition action is an equitable action heard by a judge alone and, as such, the Supreme Court on review may find facts in accordance with its view of the preponderance of the evidence. Anderson v. Anderson (S.C. 1989) 299 S.C. 110, 382 S.E.2d 897. Appeal And Error 1122(2); Partition 34

In equity matter, where findings of fact by master are concurred in by trial judge, they will not be disturbed by Supreme Court unless found to be without evidentiary support or against clear preponderance of evidence; ample evidence existed to support findings of master and trial court that defendant never exerted undue influence over plaintiff in action to set aside conveyances by plaintiff to defendant on ground that they were procured by fraud, undue influence and without adequate consideration, where, while plaintiff had psychiatric care for emotional ups and downs, she was strong‑willed woman who was not easily influenced; moreover, as licensed real estate broker and dealer in antiques, she was no stranger to business world. Atkinson v. Belser (S.C. 1979) 273 S.C. 296, 255 S.E.2d 852. Deeds 210; Deeds 211(4)

Where master and circuit judge disagree in equity matter, Supreme Court has jurisdiction to review entire record and make findings in keeping with its view of preponderance of evidence. Segall v. Shore (S.C. 1977) 269 S.C. 31, 236 S.E.2d 316. Appeal And Error 1022(4)

In an action in equity, tried by judge alone, without a reference, on appeal the Supreme Court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. Townes Associates, Ltd. v. City of Greenville (S.C. 1976) 266 S.C. 81, 221 S.E.2d 773. Appeal And Error 1009(1)

In an action in equity, tried first by master or special referee and concurred in by the judge, findings of fact will not be disturbed on appeal unless found to be without evidentiary support or against the clear preponderance of the evidence; in an action in equity where the master, or special referee, is in disagreement with the judge on a factual finding, Supreme Court may make findings in accordance with its own views of the preponderance or the greater weight of the evidence, the same as if the case had been tried by the judge without reference to the master or a referee. Townes Associates, Ltd. v. City of Greenville (S.C. 1976) 266 S.C. 81, 221 S.E.2d 773. Appeal And Error 1022(2); Appeal And Error 1022(3)

Supreme Court may weigh evidence. In an equity case with no concurrent findings of fact, the Supreme Court has jurisdiction to consider the evidence and find the facts in accord with its view of the preponderance or greater weight of the evidence. McLaughlin v. McLaughlin (S.C. 1964) 244 S.C. 265, 136 S.E.2d 537.

4. Family court

In appeals from the family court, Court of Appeals has the authority to find the facts in accordance with its own view of the preponderance of the evidence, though broad scope of review does not require Court to disregard findings of family court, or require Court to ignore the fact that the trial judge, who saw and heard the witnesses, was in a better position to evaluate their credibility and assign comparative weight to their testimony. Pendergast v. Pendergast (S.C.App. 2003) 354 S.C. 32, 579 S.E.2d 530, certiorari denied. Divorce 184(6.1); Divorce 184(7)

Adoptions are equitable proceedings, and therefore the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence. Adoptive Parents v. Biological Parents (S.C. 1994) 315 S.C. 535, 446 S.E.2d 404. Adoption 1; Adoption 15

The Court of Appeal’s standard of review of family court issues is not restricted by Section 14‑3‑320 to a consideration of whether there is “substantial evidence” to support the family court’s finding. A divorce proceeding is a proceeding in equity, and the Supreme Court may decide fact issues based upon a preponderance of the evidence in equity cases; the standard applies to the Court of Appeals since it derives its jurisdiction by transfer from the Supreme Court pursuant to Section 14‑8‑260. To the extent that Section 14‑3‑320 is repugnant to Article V section 5 of the South Carolina Constitution, the statute is void. Rutherford v. Rutherford (S.C.App. 1990) 303 S.C. 424, 401 S.E.2d 177, reversed 307 S.C. 199, 414 S.E.2d 157.

As an action for divorce is an equitable action heard by a family court judge alone, the Supreme Court may, on appeal, find facts in accordance with its own view of the preponderance of the evidence. Roberts v. Roberts (S.C. 1989) 299 S.C. 315, 384 S.E.2d 719. Divorce 184(6.1)

In appeals from the family court, the Supreme Court has authority to correct errors of law and find facts in accordance with its own view of the preponderance of the evidence. Miller v. Miller (S.C. 1989) 299 S.C. 307, 384 S.E.2d 715. Courts 176.5

Where a family court order is appealed, the Supreme Court has jurisdiction to find facts based on its own view of the preponderance of the evidence, but the Supreme Court is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to evaluate their credibility. Strout v. Strout (S.C. 1985) 284 S.C. 429, 327 S.E.2d 74. Courts 176.5

**SECTION 14‑3‑330.** Appellate jurisdiction in law cases.

 The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

 (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

 (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

 (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

 (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

HISTORY: 1962 Code Section 15‑123; 1952 Code Section 15‑123; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623; 1991 Act No. 115, Section 2, eff June 5, 1991.

CROSS REFERENCES

Exclusive appellate jurisdiction in the Court of Appeals in certain cases, see Section 14‑8‑200.

Granting of new trials, see Section 17‑23‑110.

Judgment on appeal from order granting new trial and proceedings below thereafter, see Section 14‑3‑440.

Jurisdiction, see SC Const. Art. V, Section 5.

Statutory grounds for change of place of trial, see Sections 15‑7‑100, 15‑7‑110, 17‑21‑80 and notes thereto.

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1. In general

Immediate appeals under the section for appellate jurisdiction in law cases have been allowed in situations when a substantial right could not be vindicated on appeal after the case. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Divorce 177

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by statute regarding appellate jurisdiction in law cases; absent a specialized statute, an order must fall into one of several categories set forth in that statute in order to be immediately appealable. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 68

An order generally must fall into one of several categories set forth in the statute governing appellate jurisdiction in order to be immediately appealable. State v. Wilson (S.C. 2010) 387 S.C. 597, 693 S.E.2d 923, rehearing denied. Criminal Law 1023(1)

Determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by statute. Pocisk v. Sea Coast Const. of Beaufort (S.C.App. 2008) 380 S.C. 584, 671 S.E.2d 98, rehearing denied, certiorari denied. Appeal And Error 1

Order generally must fall into one of several categories set forth in statute governing appellate jurisdiction in law cases in order to be immediately appealable. Pocisk v. Sea Coast Const. of Beaufort (S.C.App. 2008) 380 S.C. 584, 671 S.E.2d 98, rehearing denied, certiorari denied. Appeal And Error 68

An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. Hagood v. Sommerville (S.C. 2005) 362 S.C. 191, 607 S.E.2d 707. Appeal And Error 68

Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in statute governing appellate jurisdiction in law cases. Baldwin Const. Co., Inc. v. Graham (S.C. 2004) 357 S.C. 227, 593 S.E.2d 146. Appeal And Error 68

Absent some specialized statute, an appellate court is not permitted to hear a case on appeal not comporting with requirements of statute setting forth requirements for appellate jurisdiction in law cases. Tatnall v. Gardner (S.C.App. 2002) 350 S.C. 135, 564 S.E.2d 377. Appeal And Error 68

Pursuant to statute setting forth requirements for appellate jurisdiction in law cases, an appellate court may not review an order that does not prevent a judgment from being rendered in action, and from which an appellant can seek review in any appeal from final judgment. Tatnall v. Gardner (S.C.App. 2002) 350 S.C. 135, 564 S.E.2d 377. Appeal And Error 68

An order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted. Appeal And Error 73(1)

Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within one of the several categories of appealable judgments, decrees or orders listed in Section 14‑3‑330. Woodard v. Westvaco Corp. (S.C. 1995) 319 S.C. 240, 460 S.E.2d 392, rehearing denied. Appeal And Error 68

An interlocutory order that affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken, or an order that discontinues the action, may be reviewed by the Supreme Court. Duncan v. Government Employees Ins. Co. (S.C. 1994) 331 S.C. 484, 449 S.E.2d 580. Appeal And Error 68

The state may appeal a pretrial order if the order is appealable under Section 14‑3‑330. State v. Hill (S.C. 1994) 314 S.C. 330, 444 S.E.2d 255. Criminal Law 1024(1)

A writ of supersedeas is only available where there is an appealable order. State v. Hill (S.C. 1994) 314 S.C. 330, 444 S.E.2d 255. Criminal Law 1084

When multiple claims are made against a single defendant, an order adjudicating some but not all of them is ordinarily not appealable. Plaza Development Services v. Joe Harden Builder, Inc. (S.C.App. 1988) 296 S.C. 115, 370 S.E.2d 893. Appeal And Error 80(6)

The cancellation of a notice of lis pendens is directly appealable under Section 14‑3‑330. Lebovitz v. Mudd (S.C. 1986) 289 S.C. 476, 347 S.E.2d 94.

Lack of certification under Rule 54(b), Rules of Civil Procedure, does not preclude immediate appeal of an order which is directly appealable under Section 14‑3‑330. Lebovitz v. Mudd (S.C. 1986) 289 S.C. 476, 347 S.E.2d 94. Appeal And Error 366

In an action at law, on appeal of a case tried by a jury, jurisdiction of Supreme Court extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless review of the record discloses that there is no evidence which reasonably supports its findings. Townes Associates, Ltd. v. City of Greenville (S.C. 1976) 266 S.C. 81, 221 S.E.2d 773. Appeal And Error 989; Appeal And Error 1001(3)

In an action at law, on appeal of a case tried without a jury, findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports judge’s findings, and this rule is the same whether findings are made with or without a reference; judge’s findings are equivalent to jury’s findings in a law action. Townes Associates, Ltd. v. City of Greenville (S.C. 1976) 266 S.C. 81, 221 S.E.2d 773. Appeal And Error 1010.2; Appeal And Error 1018

The erroneous order must decide some point that goes to the very root of the matter involved. Sease v. Dobson (S.C. 1891) 34 S.C. 345, 13 S.E. 530.

The right of appeal arises from and is controlled by statutory law. North Carolina Federal Sav. and Loan Ass’n v. Twin States Development Corp. (S.C. 1986) 289 S.C. 480, 347 S.E.2d 97. Appeal And Error 1

An order of reference in a mortgage foreclosure action is not subject to immediate appeal. North Carolina Federal Sav. and Loan Ass’n v. Twin States Development Corp. (S.C. 1986) 289 S.C. 480, 347 S.E.2d 97.

Appeals from a justice are of the same nature as appeals from the circuit court. Western Union Telegraph Co. v. Town of Winnsboro (S.C. 1905) 72 S.C. 42, 51 S.E. 528.

An appeal from an intermediate order leaving unaffected a former order is conclusive of appeal from the former order. Pringle v. Sizer (S.C. 1876) 7 S.C. 131.

2. Construction and application

To avoid circuitous litigation and needless appeals, the Court of Appeals construes statute governing appellate jurisdiction narrowly, eyeing the nature and effect of the order from which an appeal is sought and not merely its label. Tillman v. Tillman (S.C.App. 2017) 420 S.C. 246, 801 S.E.2d 757. Appeal and Error 17

The Court of Appeals narrowly construes the code section for appellate jurisdiction in law cases because immediate appeals of various orders generally have not been allowed. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Appeal And Error 91(1)

The question of whether an order is immediately appealable is determined on a case‑by‑case basis. Dorn v. Cohen (S.C.App. 2016) 418 S.C. 126, 791 S.E.2d 313, rehearing denied. Appeal and Error 68

The determination of whether a trial court’s order is immediately appealable is governed by statute. Dorn v. Cohen (S.C.App. 2016) 418 S.C. 126, 791 S.E.2d 313, rehearing denied. Appeal and Error 68

The provisions of statute governing appellate jurisdiction in law cases have been narrowly construed, and immediate appeal of various orders issued before or during trial generally has not been allowed; piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 68

Section 14‑3‑330(1) and (2) are not exclusive provisions, and a given ruling may fall within the confines of both. Link v. School Dist. of Pickens County (S.C. 1990) 302 S.C. 1, 393 S.E.2d 176.

In the dissenting opinion in the case of Bodie v Charleston & W. C. Ry. Co., 66 SC 302, 44 SE 943 (1902), it was said in construing this provision that where no notice of the appeal was given, and no exceptions taken at the time the intermediate order was made, an appeal from such intermediate order may be taken along with the final judgment appealed from. Bodie v. Charleston & W. C. R. Co. (S.C. 1903) 66 S.C. 302, 44 S.E. 943.

3. Substantial right

It may be concluded that whenever a substantial right of the party to an action material to obtaining a judgment in such action is denied, a right of appeal lies to the Supreme Court. Blakely & Copeland v. Frazier (S.C. 1878) 11 S.C. 122.

4. Involves the merits

As are rulings and charges material to such judgment. An appeal from a judgment involves any intermediate order involving the merits and necessarily affecting the judgment, and this includes all rulings and charges material to the judgment. Hubbard v Rowe, 192 SC 12, 5 SE2d 187 (1939), quoting Brice v Hamilton, 12 SC 32 (1879).

Intermediate order affecting final judgment reviewable with final judgment. An order intermediate in its nature and involving the merits of the case is reviewable on appeal from the final judgment, under subdiv. (1), as an intermediate order of decree necessarily affecting the judgment. McMaster v Ford Motor Co., 122 SC 244, 115 SE 244 (1920). Hyatt v McBurney, 17 SC 143 (1880). Lee v Fowler, 19 SC 607 (1883).

An order “involves the merits,” for purposes of exception to the final judgment rule of appealability, when it finally determines some substantial matter forming the whole or a part of some cause of action or defense. Tillman v. Tillman (S.C.App. 2017) 420 S.C. 246, 801 S.E.2d 757. Appeal and Error 68

An order “involving the merits” is an order that must finally determine some substantial matter forming the whole or a part of some cause of action or defense. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Divorce 177

An order “involves the merits,” as that term is used in statute governing appellate jurisdiction in law cases, and is immediately appealable, when it finally determines some substantial matter forming the whole or part of some cause of action or defense. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 68; Appeal and Error 90

The phrase “involving the merits,” as used in statute governing appellate jurisdiction in law cases, is narrowly construed; an order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties’ rights. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 68; Appeal and Error 90

In order to be immediately appealable, an order involving the merits of a case must finally determine some substantial matter forming the whole or a part of some cause of action or defense. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(2)

An interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. Burkey v. Noce (S.C.App. 2012) 398 S.C. 35, 726 S.E.2d 229. Appeal and Error 68

An order “involves the merits,” as that term is used in the statute outlining appellate jurisdiction in law cases, and is immediately appealable when it finally determines some substantial matter forming the whole or part of some cause of action or defense. Ex parte Capital U‑Drive‑It, Inc. (S.C. 2006) 369 S.C. 1, 630 S.E.2d 464. Appeal And Error 80(1)

To involve the merits, as would support immediate appealability of an interlocutory order, the order must finally determine some substantial matter forming the whole or a part of some cause of action or defense. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Appeal And Error 70(.5)

To involve merits, pursuant to statute setting forth requirements for appellate jurisdiction in law cases, an order must finally determine some substantial matter forming the whole or part of some cause of action or defense. Tatnall v. Gardner (S.C.App. 2002) 350 S.C. 135, 564 S.E.2d 377. Appeal And Error 80(1)

Section 14‑3‑330(1) allows the appeal of an interlocutory order “involving the merits”; to involve the merits, the order must finally determine some substantial matter forming the whole or part of some cause of action or defense. Peterkin v. Brigman (S.C. 1995) 319 S.C. 367, 461 S.E.2d 809. Appeal And Error 70(.5); Appeal And Error 80(6)

Under Section 14‑3‑330, the Supreme Court may review any intermediate order that involves the merits of the action; an order involving the merits must finally determine some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled. Duncan v. Government Employees Ins. Co. (S.C. 1994) 331 S.C. 484, 449 S.E.2d 580. Appeal And Error 68

The terms “involving the merits” and “necessarily affecting the judgment” are equivalent. The terms must be regarded as different definitions of the same case. Blakely & Copeland v. Frazier (S.C. 1878) 11 S.C. 122. Appeal And Error 90

“Merits” includes all rights to which party is entitled. The term “merits” is not very clearly defined. It certainly embraces more than the questions of law and fact, constituting the cause of action or defense. The word “merits” naturally bears the sense of including all that the party may claim of right in reference to his case. Blakely & Copeland v. Frazier (S.C. 1878) 11 S.C. 122.

An order to involve the merits must finally determine some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled. If the order merely affects the form of procedure, it does not involve the merits. Henderson v. Wyatt (S.C. 1877) 8 S.C. 112.

5. Final judgments

When judgment absolute can be rendered. The appellate court can render judgment absolute only in those cases where there is no error in the order appealed from, and the questions of law involved are conclusive of the case both as to law and merits. Snipes v Davis, 131 SC 298, 127 SE 447 (1923). Walker v Quinn, 134 SC 510, 133 SE 444 (1923).

Absent a specialized statute, an interlocutory order must fall within one of several exceptions to the final judgment rule found in the code section for appellate jurisdiction in law cases to be immediately appealable. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Appeal and Error 68

Finding by family court in a bifurcated divorce action that a common law marriage existed was not a final judgment that was appealable; the family court had not decided the issues of divorce and equitable distribution, and the family court did not intend its decision on the common law marriage issue to be dispositive of the case as the court included a handwritten notation on its order stating that divorce and equitable distribution were “still pending,” and explicitly indicated that its order, although marked “Final,” did not end the case. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Appeal And Error 66

An appeal ordinarily may be pursued only after a party has obtained a final judgment. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 66

South Carolina adheres to the final judgment rule, which provides that, with certain exceptions, an appeal lies only from a final judgment. Brunson v. American Koyo Bearings (S.C.App. 2005) 367 S.C. 161, 623 S.E.2d 870, rehearing denied. Appeal And Error 66

The better practice is to await appeal from final judgment and then have reviewed errors and defects in intermediate and interlocutory orders. The court further said that it is only in exceptional cases that an appeal from an intermediate or interlocutory order is viewed with favor. Capell v. Moses (S.C. 1892) 36 S.C. 559, 15 S.E. 711.

An order of the court that the report of a certain referee be printed is not a rule of the court, so as to come under Code 1962 Section 10‑1606, for a payment of such printing, and such an order is one affecting the judgment and may be reviewed upon an appeal from the final judgment. Scott v. Alexander (S.C. 1887) 27 S.C. 15, 2 S.E. 706. Appeal And Error 90

A party is not required to make an argument appealing an adverse final judgment in order to contest an earlier intermediate judgment or order under Section 14‑3‑330(1). (Overruling Huyler v Kohn 156 SC 437, 153 SE 460 (1930).) Link v. School Dist. of Pickens County (S.C. 1990) 302 S.C. 1, 393 S.E.2d 176.

6. Dockets

The decision on a motion to restore the case to the active docket is not a final judgment but is interlocutory and, therefore, not immediately appealable. Shields v. Martin Marietta Corp. (S.C. 1991) 303 S.C. 469, 402 S.E.2d 482. Appeal And Error 78(1)

An order docketing a legal action to which an equitable defense was interposed, on calendar two, for the purpose of having the equitable defense tried by the court when it was already docketed on calendar one, did not involve the merits and hence is not appealable under this section [Code 1962 Section 15‑123]. Knox v. Campbell (S.C. 1898) 52 S.C. 461, 30 S.E. 485.

In February, 1970, an order was made that plaintiff give security for costs on or before the 1st May, 1870, or be non‑suited. He failed to comply with the order, and the Clerk having refused to enter judgment defendants obtained a rule against him to show cause, at June Term, 1870, why he should not be attached for contempt. On return to the rule an order was made discharging the rule, re‑instating the action on the docket without prejudice, and giving plaintiff further time to comply with the previous orders. Held, That as neither of the orders made in the cause was final or involved the merits, the Supreme Court had no jurisdiction to review them. McMillan v. McCall (S.C. 1871) 2 S.C. 390, 1871 WL 5232, Unreported.

7. Venue

Trial court’s order denying motion to change venue was not immediately appealable; order was not one “affecting a substantial right,” i.e., defendant’s right to venue in county of its residence, as any error in order could be corrected on appeal following trial. Breland v. Love Chevrolet Olds, Inc. (S.C. 2000) 339 S.C. 89, 529 S.E.2d 11, rehearing denied. Appeal And Error 91(7)

The Court of Appeal erred in dismissing the appeal of the defendants in a medical malpractice action where the plaintiff’s motion for change of venue had been granted, a trial was held which resulted in a plaintiff’s verdict, the defendants moved for a new trial on the ground that venue had been improperly transferred, and such motion was denied; the denial of the motion for a new trial constituted a final judgment in accordance with the requirements of Section 14‑3‑330. Lancaster v. Fielder (S.C. 1991) 305 S.C. 418, 409 S.E.2d 375.

An order granting or refusing a change of venue is interlocutory and not immediately appealable, under Section 14‑3‑330, irrespective of whether or not a second defendant, with whom plaintiff entered into a covenant not to sue, was a sham defendant for venue purposes. Lewis v. Atkinson Implement Co., Inc. (S.C.App. 1983) 280 S.C. 87, 311 S.E.2d 80. Appeal And Error 78(1)

Motions for change of venue may be first made upon the call of calendar for the term of court for which the case is docketed for trial, upon dismissal of a resident defendant, and after appeal to the Supreme Court pursuant to this section [Code 1962 Section 15‑123] resulting in elimination of one of the defendants. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

Order denying motion for change of venue. See McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

Code 1962 section 10‑303 confers a substantial right. The right of a defendant in a civil action to a trial in the county of his residence, pursuant to Code 1962 Section 10‑303, is a substantial right. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

Waiver. Defendant did not waive his rights by not appealing from the refusal of a motion for a change of venue where the trial of the case was commenced shortly after the first motion for a change of venue was denied, and the motion was renewed at various stages of the proceedings with the defendant pressing its contention at every opportunity. McMillan v. B. L. Montague Co. (S.C. 1961) 238 S.C. 512, 121 S.E.2d 13.

An order refusing to change the place of trial to the county where the defendant resides is an order involving the merits and hence reviewable before judgment. Blakely & Copeland v. Frazier (S.C. 1878) 11 S.C. 122.

8. Jurisdiction

Order of reference objected to on jurisdictional grounds. An appeal which raises a jurisdictional question may be taken from an order referring the case to a master to take testimony before the entry of a final judgment. Simms v. Phillips (S.C. 1896) 46 S.C. 149, 24 S.E. 97. Appeal And Error 66

9. Service

An order denying a Civil Procedure Rule 6(b) motion to be allowed to file a late answer was not appealable under Section 14‑3‑330(1) because it did not involve the merits. Jefferson by Johnson v. Gene’s Used Cars, Inc. (S.C. 1988) 295 S.C. 317, 368 S.E.2d 456.

The denial of a Civil Procedure Rule 6(b) motion for enlargement of time is directly appealable only if it falls within the purview of Section 14‑3‑330(1) or (2)(c) which provide that an order is appealable only if it involves the merits or affects a substantial right by striking out an answer. Jefferson by Johnson v. Gene’s Used Cars, Inc. (S.C. 1988) 295 S.C. 317, 368 S.E.2d 456.

Order extending time for service of exceptions. Deal v. Deal (S.C. 1910) 85 S.C. 262, 67 S.E. 241.

10. Motion for more definite statement

Order denying motion to make pleading more definite. An order denying a motion to require plaintiff to make more definite and certain his bill of complaint does not go to the merits. Hawkins v Wood, 60 SC 521, 39 SE 9 (1901). Blakely & Copeland v Frazier, 11 SC 122 (1876). Pickett v Fidelity & Cas. Co., 52 SC 584, 30 SE 614 (1898).

An order denying a motion to require the plaintiff to make his complaint more definite is not appealable until final judgment. Fladger v Beckman, 42 SC 547, 20 SE 790 (1894). Miles v Charleston Light & Water Co., 87 SC 254, 69 SE 292 (1909).

11. Motion to strike

Trial court’s denial of property owners’ motion to amend answer was an interlocutory order that was not directly appealable in construction company’s action that asserted claims for foreclosure of mechanic’s lien, breach of contract, and quantum meruit; while statute governing appellate jurisdiction in law cases provided for review of striking out of an answer, trial court did not strike a pleading but rather refused to allow its filing. Baldwin Const. Co., Inc. v. Graham (S.C. 2004) 357 S.C. 227, 593 S.E.2d 146. Appeal And Error 70(3)

Dismissal order in negligence action brought by child of former employee and spouse against chemical company that was former employer and related companies, which dismissed action as to all non‑resident defendants, was immediately appealable, even though action was still pending as to resident defendant, where practical effect of grant of dismissal motion was to strike complaint with respect to chemical company and non‑resident defendants, and where dismissal affected child and spouse’s substantial rights. Murphy v. Owens‑Corning Fiberglas Corp. (S.C.App. 2001) 346 S.C. 37, 550 S.E.2d 589, rehearing denied, certiorari granted, affirmed 356 S.C. 592, 590 S.E.2d 479. Appeal And Error 91(6)

An order denying a Civil Procedure Rule 6(b) motion to be allowed to file a late answer was not appealable under Section 14‑3‑330(2)(c) since it did not strike the answer, but refused to allow its filing. Jefferson by Johnson v. Gene’s Used Cars, Inc. (S.C. 1988) 295 S.C. 317, 368 S.E.2d 456.

An order granting a Civil Procedure Rule 12(b) motion as to one of multiple claims is directly appealable under Section 14‑3‑330(2), because it affects a substantial right and strikes out part of a pleading. Lebovitz v. Mudd (S.C. 1986) 289 S.C. 476, 347 S.E.2d 94.

Since an order granting a Civil Procedure Rule 12(b) motion as to one of multiple claims is directly appealable under Section 14‑3‑330(2), because it affects a substantial right and strikes out part of a pleading, the order is therefore subject to immediate appeal notwithstanding the refusal to certify under Civil Procedure Rule 54(b). Lebovitz v. Mudd (S.C. 1986) 289 S.C. 476, 347 S.E.2d 94.

Order refusing to strike out allegations is not subject to interlocutory appeal. The court in considering this section [Code 1962 Section 15‑123] has generally and correctly held that orders refusing to strike out allegations in a pleading are not subject to interlocutory appeal and that orders granting motions to make more definite and certain are not so appealable, unless the merits are involved. Rice Hope Plantation v. South Carolina Public Service Authority (S.C. 1950) 216 S.C. 500, 59 S.E.2d 132.

But order refusing to strike is not appealable. There is no provision for appeal made under this section [Code 1962 Section 15‑123] for a refusal to strike out a pleading or a part thereof. Cooper v. Atlantic Coast Line R. Co. (S.C. 1907) 78 S.C. 562, 59 S.E. 704.

The reason for this distinction is that if the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial because the evidence and issues are submitted to the jury according to the pleadings, and on appeal from the final judgment the Supreme Court could not say there was error of law in confining the evidence and charge to the pleadings. This same reasoning does not apply where the court refuses to strike out a portion of a pleading. See Harbert v. Atlanta & C. Air Line Ry. Co. (S.C. 1906) 74 S.C. 13, 53 S.E. 1001.

12. Dismissal motion

Trial court’s order granting motion to dismiss brother’s counterclaims filed by sister, who brought ejectment action against brother and brother’s wife for failure to pay rent, and denying brother’s oral motion to amend his pleadings, but allowing brother to formally move to amend his pleadings, was not immediately appealable; brother’s rights had yet to be fully determined by trial court, action from which appeal came remained to be heard by trial court, and brother had opportunity to appeal order after conclusion of underlying action. Tillman v. Tillman (S.C.App. 2017) 420 S.C. 246, 801 S.E.2d 757. Appeal and Error 78(3)

Trial court’s interlocutory order denying motion to dismiss based on immunity, filed by defendant individual members of county council in plaintiff county clerk of court’s action for defamation, defamation per se, and intentional infliction of emotional distress, was not an order involving the “merits of the case” nor did it “affect a substantial right,” as bases for allowing immediate appeal from interlocutory order; order did not prevent individual council members from raising again, at later point in the case, their affirmative defenses of absolute immunity and immunity under Tort Claims Act. Brown v. County of Berkeley (S.C. 2005) 366 S.C. 354, 622 S.E.2d 533. Appeal And Error 70(5)

Denial, in interlocutory order which was not immediately appealable, of motion to dismiss based on immunity, filed by defendant individual members of county council in plaintiff county clerk of court’s action for defamation, defamation per se, and intentional infliction of emotional distress, lacked sufficient nexus to or companionship with immediately appealable order denying plaintiff’s request for preliminary injunction to prevent special audit of county clerk of court’s office, and thus, appellate court would not accept appeal from interlocutory order. Brown v. County of Berkeley (S.C. 2005) 366 S.C. 354, 622 S.E.2d 533. Appeal And Error 70(5)

An order denying a Rule 12(b)(1) motion to dismiss is not immediately appealable. Woodard v. Westvaco Corp. (S.C. 1995) 319 S.C. 240, 460 S.E.2d 392, rehearing denied.

The denial of a motion to dismiss under Rule 12(b)(2), SCRCP, is interlocutory and not directly appealable since the appeal of the personal jurisdiction issue prior to a full development of the facts serves no useful function. Mid‑State Distributors, Inc. v. Century Importers, Inc. (S.C. 1993) 310 S.C. 330, 426 S.E.2d 777.

Circuit court order overruling a motion to dismiss the complaint under Civil Procedure Rule 12(b)(6) for failure to state a cause of action is not directly appealable under Section 14‑3‑330. Moyd v. Johnson (S.C. 1986) 289 S.C. 482, 347 S.E.2d 97. Appeal And Error 103

13. Judgment on the pleadings

Denial of motion for judgment on pleadings is not directly appealable under Section 14‑3‑330, even if it raises only question of law. Rose v. Thrash (S.C. 1987) 291 S.C. 459, 354 S.E.2d 378. Appeal And Error 103

Order refusing motion for judgment on pleadings. Where pleadings raised issues of law only, refusal of motion for judgment on the pleadings was an order involving the merits within the scope of this section [Code 1962 Section 15‑123], and therefore appealable forthwith. Mullis v. Celanese Corp. of America (S.C. 1959) 234 S.C. 380, 108 S.E.2d 547.

14. Demurrer

Appeal suspends further proceedings below. An appeal from an order overruling a demurrer to the complaint because it did not state facts sufficient to constitute a cause of action, stayed further proceedings below during the pendency of the appeal. Hammond v Port Royal & Augusta R. Co., 15 SC 10 (1880). National Exch. Bank v Stelling, 32 SC 102, 10 SE 766 (1889).

An order overruling an oral demurrer is an order involving the merits and hence reviewable. Elliott v Pollitzer, 24 SC 81 (1885). McCown v McSween, 29 SC 130, 7 SE 45 (1887).

Supreme Court’s review on appeal from order of lower court sustaining demurrer is limited to allegations in complaint, which are assumed to be true. Bobo Bros., Inc. v. South Carolina Tax Commission (S.C. 1978) 271 S.C. 18, 244 S.E.2d 519. Appeal And Error 917(1)

Denial of motion to strike is not ordinarily appealable until final judgment, unless (1) the motion to strike is in the nature of a demurrer or (2) there is an appealable issue before the court justifying the consideration of the motion to strike also in order to avoid unnecessary litigation. Pelfrey v. Bank of Greer (S.C. 1978) 270 S.C. 691, 244 S.E.2d 315. Appeal And Error 103

Appeal of order of court of common pleas overruling demurrers constitutes an intermediate order within the meaning of 1962 Code Section 15‑123 [1976 Code Section 14‑3‑330]; and order overruling a demurrer on the ground that it fails to state a cause of action is one “involving the merits”. Meadors v. South Carolina Medical Ass’n (S.C. 1976) 266 S.C. 391, 223 S.E.2d 600.

An interlocutory appeal may be taken to Supreme Court from an order overruling a demurrer, but failure to make or perfect such an appeal does not affect right of Supreme Court to review matter in connection with an appeal from the final judgment. Crotts v. Fletcher Motor Co. (S.C. 1951) 219 S.C. 204, 64 S.E.2d 540. Appeal And Error 870(5)

Also order striking out a portion of the complaint. An order on demurrer to a complaint, which in effect strikes out a portion thereof, is an order affecting a substantial right. Miles v. Charleston Light & Water Co. (S.C. 1910) 87 S.C. 254, 69 S.E. 292. Appeal And Error 91(6)

Order striking portion of pleading is appealable. An order sustaining a demurrer which has the effect of striking out a part of the complaint is appealable under this section [Code 1962 Section 15‑123]. Miles v. Charleston Light & Water Co. (S.C. 1910) 87 S.C. 254, 69 S.E. 292.

15. Amendment of pleading

Court of Appeals lacked subject matter jurisdiction to hear appeal of defendant; trial court’s order denying defendant’s motion to amend her answer to assert third party claims against co‑defendant neither determined substantial matter forming whole or part of some cause of action, nor prevented judgment from being rendered in action from which defendant could then seek review. Tatnall v. Gardner (S.C.App. 2002) 350 S.C. 135, 564 S.E.2d 377. Appeal And Error 80(1)

Under Section 14‑3‑330, an order permitting amendment of pleadings is interlocutory and generally is not appealable until final judgment. Schein v. Lamar (S.C.App. 1985) 284 S.C. 252, 325 S.E.2d 573. Appeal And Error 78(3)

Since an order of a common pleas court granting a defendant the right within 30 days to serve an amended answer, counterclaim, cross complaint and third party summons upon a town was not final at the time an appeal was taken, the order was not appealable under Section 14‑3‑330. Lake City Development Corp. v. Gilbert Const. Co., Ltd. (S.C.App. 1984) 283 S.C. 10, 320 S.E.2d 494. Appeal And Error 78(3)

Where certain allegations of corporation’s answer were stricken on stockholder’s motion, and corporation served notice of appeal, but instead of appealing gave notice of motion to amend answer and served with notice copy of amended answer, stockholder appealing from order refusing amendment of answer was entitled to appeal from order striking allegations from answer. Johnson v. Abney Mills (S.C. 1951) 219 S.C. 231, 64 S.E.2d 641. Appeal And Error 103

Order allowing amendment to complaint. Buist v. Williams (S.C. 1909) 83 S.C. 321, 65 S.E. 343.

Order refusing to allow amendment upon legal grounds. Although applications to amend pleadings are addressed to the discretion of the trial court, yet where the refusal is based not upon discretion but upon legal grounds, an appeal will lie under this subdivision. Sibley v. Young (S.C. 1887) 26 S.C. 415, 2 S.E. 314. Appeal And Error 88

16. Parties

A party who does not immediately appeal an order of substitution of a party may not appeal this interlocutory order after final judgment. Neeltec Enterprises, Inc. v. Long (S.C. 2012) 397 S.C. 563, 725 S.E.2d 926, on remand 402 S.C. 524, 741 S.E.2d 767. Appeal and Error 70(1)

The right of the plaintiff to choose her defendant is a substantial right, within the meaning of the statute permitting an appeal for correction of errors of law in law cases when such order determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. Neeltec Enterprises, Inc. v. Long (S.C. 2012) 397 S.C. 563, 725 S.E.2d 926, on remand 402 S.C. 524, 741 S.E.2d 767. Appeal and Error 93

Order requiring fireworks store operator to substitute alleged corporate owners of competitor for defendant named in complaint was appealable interlocutory order, where it affected plaintiff owner’s substantial right to name his defendant. Neeltec Enterprises, Inc. v. Long (S.C. 2012) 397 S.C. 563, 725 S.E.2d 926, on remand 402 S.C. 524, 741 S.E.2d 767. Appeal and Error 70(1)

Order denying client’s motion to proceed anonymously in legal malpractice action was appealable interlocutory order; order conclusively determined the question of client’s anonymity, the issue was independent of the merits of client’s legal malpractice claim, and order was effectively unreviewable given that client’s identity would already be known upon later appeal. Doe v. Howe (S.C.App. 2004) 362 S.C. 212, 607 S.E.2d 354, rehearing granted in part, on subsequent appeal 367 S.C. 432, 626 S.E.2d 25, rehearing denied, certiorari denied. Appeal And Error 70(1)

An order of the trial court which declined to dismiss a party from either an action alleging conspiracy or a related injunction was immediately appealable under Section 14‑3‑330(4) since, although a motion to dismiss is not immediately appealable as an interlocutory order, Section 14‑3‑330(4) grants the court appellate jurisdiction over orders “refusing an injunction” and the denial of the motion to dismiss in effect refused the injunction. Williams v. Northwestern Sec. Life Ins. Co. (S.C. 1992) 307 S.C. 462, 415 S.E.2d 809.

Order of lower court vacating a previous order joining certain persons as party defendants and granting the right to make further motion to join them was not final at the time appeal was taken and therefore was not appealable under 1962 Code Section 15‑123 [Code 1976 Section 14‑3‑330]; accordingly, appeal will be dismissed and appellant will be granted 20 days to renew motion as provided under the lower court’s order. Goodson v. R. A. Taylor Const. Co. (S.C. 1975) 266 S.C. 33, 221 S.E.2d 102. Appeal And Error 80(1)

Order refusing petition to be made party to cause. Rutledge v. Tunno (S.C. 1902) 63 S.C. 205, 41 S.E. 308. Appeal And Error 95

An order adjudging that a person has been made a party to an action is appealable under subdiv. (1). National Exch. Bank v. Stelling (S.C. 1890) 32 S.C. 102, 10 S.E. 766. Appeal And Error 449

17. Class actions

Interlocutory order denying class certification was not immediately appealable; although defendant’s motion was captioned as a motion to strike class action allegations, the motion actually raised the merits of class certification, and thus, the effect of the order granting the motion was not to strike a pleading, as its label suggested, but rather to deny class certification on the merits. Thornton v. South Carolina Elec. & Gas Corp. (S.C.App. 2011) 391 S.C. 297, 705 S.E.2d 475. Appeal and Error 70(1)

Class certification orders in products liability action by homeowner against seller of synthetic stucco were not immediately appealable; orders did not prevent a judgment from which appeal could be taken, nor did they discontinue the action. Salmonsen v. CGD, Inc. (S.C. 2008) 377 S.C. 442, 661 S.E.2d 81. Appeal And Error 95

Orders establishing “opt‑in” notification procedure in class action were immediately appealable because they affected a substantial right of class members and the mode of trial. Salmonsen v. CGD, Inc. (S.C. 2008) 377 S.C. 442, 661 S.E.2d 81. Appeal And Error 95

An order prohibiting the plaintiffs, who were contemplating a class action to determine the ownership of a railroad right‑of‑way, from communicating with potential members of the plaintiff class was immediately appealable since it affected a substantial right. Eldridge v. City of Greenwood (S.C. 1992) 308 S.C. 125, 417 S.E.2d 532. Appeal And Error 71(3)

Class certification orders are not decisions on the merits affecting substantial rights, and are not appealable. Knowles v. Standard Sav. and Loan Ass’n (S.C. 1979) 274 S.C. 58, 261 S.E.2d 49. Appeal And Error 78(2)

18. Intervention

Probate court’s order adding mother as party to father’s action, which father brought on children’s behalf to remove mother’s parents as co‑trustees of special needs trust established to provide for mother’s medical needs, did not affect father’s substantial right to choose his own defendant, and thus, order was not immediately appealable; order had effect of granting motion to intervene by allowing for mother’s full participation as party, it did not substitute mother for parents or deprive father of his petition to remove parents as co‑trustees, and father suffered no undue prejudice as result of the order. Dorn v. Cohen (S.C.App. 2016) 418 S.C. 126, 791 S.E.2d 313, rehearing denied. Trusts 366(1)

An order granting a motion to intervene is not immediately appealable. Duncan v. Government Employees Ins. Co. (S.C. 1994) 331 S.C. 484, 449 S.E.2d 580. Appeal And Error 70(1)

19. Disqualification

An order granting a motion to disqualify a party’s preferred attorney must be immediately appealed or any later objection in a subsequent appeal will be waived. Hagood v. Sommerville (S.C. 2005) 362 S.C. 191, 607 S.E.2d 707. Appeal And Error 91(1)

An order granting a motion to disqualify a party’s attorney in a civil case affects a substantial right and may be immediately appealed, under statute governing the determination of whether a party may immediately appeal an order issued before or during trial. Hagood v. Sommerville (S.C. 2005) 362 S.C. 191, 607 S.E.2d 707. Appeal And Error 91(1)

20. Continuance

A plaintiff’s service of his notice of appeal from an administrative judge’s order refusing plaintiff’s motion for a continuance or a voluntary dismissal did not act as a supersedeas staying further proceedings in the trial court, pursuant to Supreme Court Rule 42(1)(A) and Section 14‑3‑330, where the administrative judge’s order was not appealable in that it was an intermediate order not involving the merits and, therefore, the notice of appeal from that order did not transfer jurisdiction to the Supreme Court or stay further proceedings in the trial court; the administrative judge’s order did not become appealable until after final judgment in the trial court. Crout v. South Carolina Nat. Bank (S.C. 1982) 278 S.C. 120, 293 S.E.2d 422.

Order upon motion for continuance does not affect a substantial right. An order made upon a motion for a continuance and not when the merits of the case were under consideration cannot be construed or in any respect regarded as “involving the merits” or affecting a substantial right. Latimer v. Latimer (S.C. 1894) 42 S.C. 205, 20 S.E. 159.

21. Bifurcation

Finding by family court in a bifurcated divorce action that a common law marriage existed was not an immediately appealable as affecting putative wife’s fundamental right to marriage to qualify as an exception to the final judgment rule to give appellate jurisdiction; putative wife would not be prevented from correcting any alleged errors in the family court’s interlocutory order following final judgment on the remaining issues in divorce action. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Divorce 177

Finding by family court in a bifurcated divorce action that a common law marriage existed was not an intermediate order involving the merits of divorce action so as to be an exception to the final judgment rule to give appellate jurisdiction; the issue of common law marriage was a preliminary matter for the family court to determine before reaching putative husband’s requests for divorce and division of the marital estate, and the family court merely exercised its discretion to bifurcate the trial to save time and resources on the remaining issues if it found that a common law marriage did not exist. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Appeal And Error 90

Trial court order bifurcating issues of direct liability for nursing home resident’s injuries and corporate liability was immediately appealable on ground that substantial rights were implicated; by considering resident’s claims against corporate entities as dependent upon claim against nursing home operator, trial court effectively granted corporate entities potential summary judgment on issues of direct corporate liability and prevented resident from being architect of his own complaint and deprived him of bringing case against defendant of his choosing. Morrow v. Fundamental Long‑Term Care Holdings, LLC (S.C. 2015) 412 S.C. 534, 773 S.E.2d 144. Appeal and Error 91(7)

Trial court order denying bifurcation of the issues of liability and damages in a personal injury case is not immediately appealable, either permissibly or mandatorily, pursuant to statute providing that Supreme Court shall review on appeal order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken. Senter v. Piggly Wiggly Carolina Co., Inc. (S.C. 2000) 341 S.C. 74, 533 S.E.2d 575. Appeal And Error 93; Appeal And Error 358

A bifurcation order granting separate trials of issues in a contract case is not immediately appealable, either permissibly or mandatorily; trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right. Flagstar Corp. v. Royal Surplus Lines (S.C. 2000) 341 S.C. 68, 533 S.E.2d 331, rehearing denied. Appeal And Error 91(1); Appeal And Error 358; Trial 3(1)

22. Discovery

Defendant’s appeal from trial court’s order permitting deposition of defendant’s former trustee under certain conditions was interlocutory, and thus, was not immediately appealable. Tucker v. Honda of South Carolina Mfg., Inc. (S.C. 2003) 354 S.C. 574, 582 S.E.2d 405. Appeal And Error 70(4)

An order directing a nonparty to submit to discovery is not immediately appealable. Ex parte Whetstone (S.C. 1986) 289 S.C. 580, 347 S.E.2d 881. Appeal And Error 78(1)

Rule that order directing nonparty to participate in discovery is not immediately appealable is consistent with Section 18‑1‑30, limiting appellate review to parties aggrieved by a judgment or order below; an aggrieved party is one who is injured in a legal sense or one who has suffered an injury to person or property. Ex parte Whetstone (S.C. 1986) 289 S.C. 580, 347 S.E.2d 881.

An order granting an extension of time in which to answer a request for admissions is intermediate or interlocutory in nature and does not involve the merits or a substantial right, but is reviewable after final judgment under Section 18‑1‑130. Pendergrass v. Martin (S.C. 1980) 275 S.C. 413, 272 S.E.2d 172. Appeal And Error 90; Appeal And Error 91(4)

An order denying or compelling discovery is not directly appealable since it is an intermediate or interlocutory decision not appealable before final judgment. Lowndes Products, Inc. v. Brower (S.C. 1974) 262 S.C. 431, 205 S.E.2d 184.

And not appealable before final judgment. A discretionary order granting the right to inspect books, papers and documents, issued within the authority conferred by Code 1962 Sections 12‑16.26 and 26‑502, is not appealable before final judgment. Wallace v. Interamerican Trust Co. (S.C. 1965) 246 S.C. 563, 144 S.E.2d 813.

An order issued pursuant to Code 1962 Sections 12‑16.26 and 26‑502 is an intermediate or interlocutory decision. Wallace v. Interamerican Trust Co. (S.C. 1965) 246 S.C. 563, 144 S.E.2d 813.

23. Summary judgment

Order granting defendant partial summary judgment that no private cause of action existed under the Mining Act was not an appealable order; because the plaintiffs never asserted a cause of action under the Act, the order did not have the effect of removing any material issues from the case, and therefore did not affect a substantial right by striking a pleading, and the plaintiffs could still pursue their negligence claim as originally pled in their complaint. Thornton v. South Carolina Elec. & Gas Corp. (S.C.App. 2011) 391 S.C. 297, 705 S.E.2d 475. Appeal and Error 91(1)

Circuit court’s certification of partial summary judgment in action brought by contractor against design engineer alleging breach of implied warranty was an abuse of discretion; language in order purporting to certify partial summary judgment was not in response to motion by either party, court did not cite rule setting forth requirements for judgments and failed to make any findings in support of certification, there was substantial factual overlap between two remaining claims and seven adjudicated claims, and thus, adjudicated claims were not sufficiently separate to warrant certification. Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc. (S.C.App. 2002) 351 S.C. 459, 570 S.E.2d 197, rehearing denied, certiorari denied. Appeal And Error 366

The denial of summary judgment is not directly appealable, since it decides nothing about the merits of the case, only that the case should proceed to trial. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted. Appeal And Error 93

A summary judgment that ends the case is directly appealable. Osborne v. Allstate Ins. Co. (S.C.App. 1995) 319 S.C. 479, 462 S.E.2d 291, rehearing denied, certiorari granted. Appeal And Error 93

An order denying a motion for summary judgment is interlocutory and not generally appealable. Ex parte South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1993) 314 S.C. 487, 431 S.E.2d 252, rehearing denied. Appeal And Error 78(1)

The denial of a motion for summary judgment is appealable under Section 14‑3‑330(2)(c) where it, in effect, strikes a portion of the answer. Ex parte South Carolina Farm Bureau Mut. Ins. Co. (S.C. 1993) 314 S.C. 487, 431 S.E.2d 252, rehearing denied.

A trial court’s failure to certify a summary judgment ruling as final under Rule 54(b), SCRCP, did not prevent the grant of summary judgment from being immediately appealable. Link v. School Dist. of Pickens County (S.C. 1990) 302 S.C. 1, 393 S.E.2d 176. Appeal And Error 366

A plaintiff was entitled, under Section 14‑3‑330(1), to wait until final judgment to appeal a summary judgment ruling striking one of his 4 claims, even though the order might have been appealable under Section 14‑3‑330(2)(c) because it had the effect of striking out a pleading, since the order was also appealable under Section 14‑3‑330(1) as “involving merits.” Link v. School Dist. of Pickens County (S.C. 1990) 302 S.C. 1, 393 S.E.2d 176.

Judgment based upon pleadings and deposition of plaintiff taken by defendant before magistrate, determining that jury issue exists and denying motion for summary judgment, is interlocutory and not appealable. Neal v. Carolina Power and Light Co. (S.C. 1980) 274 S.C. 552, 265 S.E.2d 681.

On appeal from an order granting a motion for summary judgment, the Supreme Court will review the evidence and all inferences therefrom in the light most favorable to appellant. Hyder v. Jones (S.C. 1978) 271 S.C. 85, 245 S.E.2d 123. Appeal And Error 934(1)

On appeal from order granting a motion for summary judgment, the Supreme Court will review evidence and all inferences therefrom in a light most favorable to appellant. Gold v. South Carolina Bd. of Chiropractic Examiners (S.C. 1978) 271 S.C. 74, 245 S.E.2d 117. Appeal And Error 934(1)

A summary judgment limited to the issue of liability determines that the defenses interposed by defendant are without merit and that he is liable to the plaintiff on the claim asserted in the complaint, leaving only the amount of the damages at issue. It thus finally decides the merits of every issue in the case, except that of damages. Such a determination involves the merits and comes within the class of interlocutory or intermediate orders from which an immediate appeal is allowed under this section [Code 1962 Section 15‑123]. Nauful v. Milligan (S.C. 1972) 258 S.C. 139, 187 S.E.2d 511. Appeal And Error 70(8)

24. Settlements

In a wrongful death and survival action, the refusal to approve a settlement agreement does not determine anything about any cause of action or defense; therefore, the order is not immediately appealable as involving the merits. Peterkin v. Brigman (S.C. 1995) 319 S.C. 367, 461 S.E.2d 809. Appeal And Error 70(.5)

In a wrongful death and survival action, the trial court’s refusal to approve a settlement agreement was not immediately appealable under Section 14‑3‑330(2) where the order did not prevent a judgment from being rendered in the action and appellant could seek review of the settlement order in any appeal from final judgement. Peterkin v. Brigman (S.C. 1995) 319 S.C. 367, 461 S.E.2d 809. Appeal And Error 91(1); Appeal And Error 93

25. Evidence

A pretrial order suppressing testimony offered by the prosecution was directly appealable where the failure to present the testimony would significantly impair the prosecution of the case. Smart by Clark v. Hampton County School Dist. No. 2 (S.C.App. 1993) 315 S.C. 192, 432 S.E.2d 487, certiorari denied.

Order denying a reference to master in chancery suit. A reference for the purpose of taking testimony is not demandable as a matter of right in any equity cause, therefore an order denying such reference does not involve the merits of the action within subdiv. (1), nor does it affect any substantial right of the appellant within subdiv. (2); hence, such order is nonappealable. Farmers’ Mut. Ins. Ass’n v. Berry (S.C. 1898) 53 S.C. 129, 31 S.E. 53.

26. Mode of trial

Order depriving party of legal mode of trial. An order of reference that deprives a party of a mode of trial which the law allows him is an order which involves the merits and is appealable under this section [Code 1962 Section 15‑123]. Ferguson v Harrison, 34 SC 169, 13 SE 332 (1890). McLaurin v Hodges, 43 SC 187, 20 SE 991 (1894). Alston v Limehouse, 61 SC 1, 39 SE 192 (1900).

An order of reference, the purpose of which is to take proof of claims against an insolvent partnership to close up its affairs, before a master, not involving the merits of any issue embraced in the case is not appealable under this subdivision. Jones v Trumbo, 29 SC 26, 6 SE 887 (1888). Palmetto Lumber Co. v Risley, 25 SC 309 (1885).

The failure to immediately appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue; however, the right of trial by jury is highly favored, and waivers of the right are always strictly construed and not lightly inferred or extended by implication. South Carolina Community Bank v. Salon Proz, LLC (S.C.App. 2017) 420 S.C. 89, 800 S.E.2d 488. Jury 28(15)

Department of Transportation’s failure to immediately appeal the trial court’s order denying the Department’s request for a non‑jury trial during the takings phase of the trial on property owner’s inverse condemnation claim constituted a waiver of the Department’s argument that the court erred in seating the jury during the takings phase; the trial court’s order affected a mode of trial, a substantial right that was immediately appealable. Frampton v. South Carolina Dept. of Transp. (S.C.App. 2013) 406 S.C. 377, 752 S.E.2d 269, rehearing denied. Eminent Domain 315

Orders affecting the mode of trial affect a substantial right and must, therefore, be appealed immediately; moreover, the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue. Frampton v. South Carolina Dept. of Transp. (S.C.App. 2013) 406 S.C. 377, 752 S.E.2d 269, rehearing denied. Appeal and Error 91(7); Appeal and Error 356

Analysis of whether a trial court order deprives a party of a mode of trial to which it is entitled as a matter of right, such that the order is immediately appealable, includes the consideration of the availability of trial, as question of the denial of an actual trial is intrinsic to that analysis. Salmonsen v. CGD, Inc. (S.C. 2008) 377 S.C. 442, 661 S.E.2d 81. Appeal And Error 91(1)

Purported wife did not waive her right to trial by jury on widow’s conversion claim by failing to immediately appeal denial of her request for jury trial, in action brought by widow against purported wife alleging conversion and wrongful withholding of certain funds and personal property due the widow of deceased husband; purported wife’s constitutional right to trial by jury on issue of conversion was lost through no fault of her own, as she made every effort to assert her right to jury trial and to immediately appeal issue, and, once case was tried non‑jury, purported wife arguably was required to wait for written order prior to appealing. Bateman v. Rouse (S.C.App. 2004) 358 S.C. 667, 596 S.E.2d 386. Appeal And Error 201(1)

Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights, and are immediately appealable. Bateman v. Rouse (S.C.App. 2004) 358 S.C. 667, 596 S.E.2d 386. Appeal And Error 91(7)

Purpose of requiring an immediate appeal of the denial of the right to a jury trial is to preserve a party’s constitutional rights that would otherwise be lost. Bateman v. Rouse (S.C.App. 2004) 358 S.C. 667, 596 S.E.2d 386. Appeal And Error 91(7)

Employee, who brought breach of contract action against employer, waived argument on appeal that he should have been awarded jury trial, where employee failed to appeal issue immediately; orders concerning mode of trial affected substantial rights, and had to be appealed immediately. Shah v. Richland Memorial Hosp. (S.C.App. 2002) 350 S.C. 139, 564 S.E.2d 681, rehearing denied, certiorari denied. Appeal And Error 70(6)

Client’s failure, in attorney’s action to recover attorney fees, to immediately appeal pretrial order denying his motion for jury trial and placing case on nonjury roster constituted waiver of his right to appeal that issue; question of whether to order jury trial had not been discretionary, as would have allowed client to not appeal issue until entry of final judgment. Lester v. Dawson (S.C. 1997) 327 S.C. 263, 491 S.E.2d 240, rehearing denied.

Failure to timely appeal an order affecting mode of trial effects waiver of right to appeal that issue. Lester v. Dawson (S.C. 1997) 327 S.C. 263, 491 S.E.2d 240, rehearing denied.

An order referring a land title dispute to a master was not interlocutory and affected the mode of trial, a substantial right under Section 14‑3‑330(2). The order became the law of the case in the absence of the timely appeal, and a party’s failure to appeal from the order waived his objection to the reference and his right to a jury trial. Creed v. Stokes (S.C. 1985) 285 S.C. 542, 331 S.E.2d 351.

Order denying compulsory reference of the issues involved in a law suit affects the mode of trial and is appealable. Pelfrey v. Bank of Greer (S.C. 1978) 270 S.C. 691, 244 S.E.2d 315. Appeal And Error 107

Order denying legal mode of trial affects a substantial right. An order denying a party the mode of trial to which he is entitled by law, and requiring him to submit to some other mode of trial, is an order affecting a substantial right and is appealable under this section [Code 1962 Section 15‑123]. Ferguson v. Harrison (S.C. 1891) 34 S.C. 169, 13 S.E. 332.

Order denying issue out of chancery prior to hearing upon merits. In an action for the purpose of having a deed cancelled where the plaintiff is neither in possession of the premises conveyed nor does he set up any title thereto, but bases his claim solely upon an equity growing out of an alleged fraud practiced on him, an order refusing his motion for an issue for a jury in advance of the hearing upon the merits does not deny the plaintiff any substantial rights to which he is entitled, nor does it involve the merits within this section [Code 1962 Section 15‑123] and is not appealable under either subdiv. (1) or (2). Du Pont v. Du Bos (S.C. 1890) 33 S.C. 389, 11 S.E. 1073. Appeal And Error 90

Also order denying issue out of chancery prior to hearing upon merits. An order denying a motion for issue for a jury, in advance of hearing upon the merits, does not affect a substantial right within the meaning of this subdivision. Du Pont v. Du Bos (S.C. 1890) 33 S.C. 389, 11 S.E. 1073.

27. Mistrial

Denial of defendant’s motion, following mistrial, to dismiss any subsequent prosecution on double jeopardy grounds was interlocutory order from which no appeal could be taken. State v. Rearick (S.C. 2016) 417 S.C. 391, 790 S.E.2d 192, certiorari denied 137 S.Ct. 1582, 197 L.Ed.2d 712. Criminal Law 1023(3)

An order denying the defendant’s motion for a mistrial on the basis of the defendant’s poor health and physical inability to continue with the trial, and ordering that the case be continued on the condition that it would be referred to the master in equity, that the testimony already presented to the court would be transcribed for the benefit of the master at the defendant’s expense, and that the defendant’s deposition would be taken, at her expense, for the use of the master in case she was unable to testify before him, was not directly appealable under Section 14‑3‑330 because it was an interlocutory order not involving the merits. Temples v. Ramsey (S.C.App. 1985) 285 S.C. 600, 330 S.E.2d 558.

A mistrial is not the final disposition of a case, and until the case is finally disposed of, no appeal may be brought as to rulings made up to the time the mistrial was ordered. Good v. Hartford Acc. & Indem. Co. (S.C. 1942) 201 S.C. 32, 21 S.E.2d 209.

28. Verdicts

Whether or not a verdict is capricious or contrary to the weight of the evidence cannot be determined on appeal. Cooper v Atlantic Coast Line R. Co., 78 SC 562, 59 SE 704 (1905), citing Blowers v Southern Ry. Co., 74 SC 221, 54 SE 368 (1905). Ingram v Hines, 126 SC 509, 120 SE 493 (1922).

Appeal from verdict when no judgment. It has been held frequently that an appeal will not lie from a verdict of a jury on certain matters submitted to them but on which verdict no order or judgment has been predicated. Brock v Kirkpatrick, 69 SC 231, 48 SE 72 (1901). All v Hiers, 59 SC 557, 38 SE 157 (1900). Hutmacher v Charleston Consol. Ry., Gas & Electric Co., 63 SC 123, 40 SE 1029 (1901).

An order setting aside a verdict for the plaintiff without notice to him is an order which involves the merits and is reviewable before final judgment. Williams v County of Charleston, 7 SC 71 (1875).

29. Relief from judgment

Denial of motion by member of limited liability company (LLC) for foreclosure of other member’s interest in LLC was a final judgment and, thus, was immediately appealable, where the only relief requested or available was the issuance of a charging order and foreclosure upon the lien, and once foreclosure was denied, the action was over and nothing was left to be done. Kriti Ripley, LLC v. Emerald Investments, LLC (S.C. 2013) 404 S.C. 367, 746 S.E.2d 26. Appeal and Error 78(1)

Order granting motion for relief from judgment was not immediately appealable under statute providing for immediate appeal of interlocutory order affecting substantial right when such order in effect determines action and prevents judgment from which appeal might be taken or discontinues the action; appellant could seek appellate review of order following final judgment. Pocisk v. Sea Coast Const. of Beaufort (S.C.App. 2008) 380 S.C. 584, 671 S.E.2d 98, rehearing denied, certiorari denied. Appeal And Error 70(9)

Order granting motion for relief from judgment was not immediately appealable under statute providing for immediate appeal of interlocutory order affecting substantial right when such order strikes out answer or any part thereof or any pleading; order did not strike out any part of pleading. Pocisk v. Sea Coast Const. of Beaufort (S.C.App. 2008) 380 S.C. 584, 671 S.E.2d 98, rehearing denied, certiorari denied. Appeal And Error 70(9)

Court of Appeals would consider merits of ex‑wife’s appeal of order denying her motion for relief from judgment awarding emergency temporary custody of parties’ child to ex‑husband, in which she alleged case was void ab initio for lack of subject matter jurisdiction, and order denying her motion to reconsider, even though orders were not true final orders, as orders had practical effect of final orders affecting ex‑wife’s substantial rights, under statute governing appellate jurisdiction in law cases, and it was in interest of judicial economy to decide matters now, given that issues raised by ex‑wife on appeal had been subject of much contention, they would inevitably be raised to trial court again in the future, and issues had been fully briefed by parties. Widdicombe v. Tucker‑Cales (S.C.App. 2005) 366 S.C. 75, 620 S.E.2d 333, rehearing denied, certiorari granted, affirmed in part, vacated in part 375 S.C. 427, 653 S.E.2d 276. Child Custody 902

An interlocutory order denying a petition to vacate a mechanic’s lien would not be reviewed on the ground that it involved a substantial right where the trial court’s order had preserved the petitioners’ right to renew their claim during later proceedings. Cobb v. Maccaro (S.C.App. 1992) 310 S.C. 303, 423 S.E.2d 156. Appeal And Error 82(3)

An interlocutory order denying a petition to vacate a mechanic’s lien was not immediately appealable on the ground that it had been decided on its merits, since statutory authority to dissolve a lien is only available when there is no genuine issue of material fact, and thus is in the nature of a summary judgment. Cobb v. Maccaro (S.C.App. 1992) 310 S.C. 303, 423 S.E.2d 156. Appeal And Error 82(3)

An order of the family court reopening a divorce case only for the limited purpose of allowing the wife to testify, after she claimed that she had gone to the county court house in the mistaken belief that the hearing was being held there and by the time she arrived at the correct location the hearing had been concluded, was not appealable under Section 14‑3‑330. Gowens v. Gowens (S.C.App. 1988) 294 S.C. 500, 366 S.E.2d 29. Divorce 177

Decision to reduce excessive verdict, made by the trial judge in the exercise of his discretion, is not appealable and will not be disturbed unless it clearly appears that the exercise of discretion was controlled by manifest error of law. Daniel v. Sharpe Const. Co., Inc. (S.C. 1978) 270 S.C. 687, 244 S.E.2d 312. Appeal And Error 110; Appeal And Error 979(5)

Order setting aside homestead upon summary application after judgment. An order setting aside an assignment of a homestead made upon a summary application after judgment, affects a substantial right and is appealable. Weatherly v. Jackson (S.C. 1872) 3 S.C. 228.

30. Default judgments

Law firm was entitled to opportunity to fully explore the factual issues involved in corporation’s motion to set aside default judgment on basis of improper service in dispute over legal fees, and therefore trial court improperly denied law firm’s request for discovery and cross‑examination in connection with corporation’s motion; because a finding that a party was not properly served for purposes of a motion to set aside an entry of default judgment was binding with regard to the remainder of the litigation, such a ruling could have, in effect, determined the action. Graham Law Firm, P.A. v. Makawi (S.C. 2012) 396 S.C. 290, 721 S.E.2d 430. Judgment 163

The right to appeal a court order granting a motion to set aside a default judgment under Rule 60(b) of the Rules of Civil Procedure was controlled by Section 14‑3‑330, and not by Rule 72 of the Rules of Civil Procedure. Pioneer Associates, Inc. v. Ticor Title Ins. Co. (S.C.App. 1989) 300 S.C. 346, 387 S.E.2d 711.

An order granting a motion under Rule 60(b) of the Rules of Civil Procedure to set aside a default judgment did not fall within any exception enumerated in Section 14‑3‑330, and therefore was not immediately appealable. Pioneer Associates, Inc. v. Ticor Title Ins. Co. (S.C.App. 1989) 300 S.C. 346, 387 S.E.2d 711. Appeal And Error 113(3)

The grant or denial of Civil Procedure Rule 55(c) motion to set aside entry of default is not directly appealable under Section 14‑3‑330. Jefferson by Johnson v. Gene’s Used Cars, Inc. (S.C. 1988) 295 S.C. 317, 368 S.E.2d 456.

Order setting aside entry of default is not appealable until after final judgment, where order was under Rule 55(c), not Rule 60(b), and order was not one of those made appealable by Section 14‑3‑330; Rule 72 was adopted to reduce appeals from interlocutory or intermediate orders. Ateyeh v. United of Omaha Life Ins. Co. (S.C.App. 1987) 293 S.C. 436, 361 S.E.2d 340.

Order giving judgment by default. An order refusing leave to the defendant to file his answer and giving judgment by default against him is appealable. Ayer v. Chassereau (S.C. 1882) 18 S.C. 597.

31. New trial

The terms of this statute are mandatory and it is perfectly clear that this court must entertain appeals from orders which grant new trials when they are based upon errors of law. Daughty v Northwestern R. Co., 92 SC 361, 75 SE 553 (1912). Ingram v Hines, 126 SC 509, 120 SE 493 (1922).

Order granting motion for relief from judgment was not immediately appealable under statute providing for immediate appeal of interlocutory order affecting substantial right when such order grants or refuses a new trial; since original judgment was consent judgment that arose from pretrial settlement, there had not yet been a trial, and order did not affect substantial right. Pocisk v. Sea Coast Const. of Beaufort (S.C.App. 2008) 380 S.C. 584, 671 S.E.2d 98, rehearing denied, certiorari denied. Appeal And Error 70(9)

Court of Appeals will only reverse if trial judge abused his discretion in deciding motion for new trial nisi additur to extent that error of law results. Green v. Fritz (S.C.App. 2003) 356 S.C. 566, 590 S.E.2d 39. Appeal And Error 979(5)

An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court, but when the order is based upon questions of fact, or upon questions of law and fact, it is not appealable. Knight v. Johnson (S.C. 1964) 244 S.C. 70, 135 S.E.2d 372. Appeal And Error 110

Such as grant of new trial for erroneous admission of testimony. Where an order granting a new trial was based upon the conclusion that the admission of certain testimony constituted prejudicial error, this ruling was based solely upon an error of law and is subject to review. Knight v. Johnson (S.C. 1964) 244 S.C. 70, 135 S.E.2d 372.

Motion for new trial not required where objections to verdict are based on matters of law alone. Where objections to the verdict related to matters of law alone and could be heard in the Supreme Court, the appellants were not bound to submit them to the circuit judge, on a motion for a new trial, before appealing. Hubbard v. Rowe (S.C. 1939) 192 S.C. 12, 5 S.E.2d 187.

An order granting a new trial cannot be reviewed on appeal from a final judgment obtained in the second trial of the case, especially if notice of intention to appeal therefrom is not given within the time required by law. De Pass v. Broad River Power Co. (S.C. 1934) 173 S.C. 387, 176 S.E. 325, 95 A.L.R. 545. Appeal And Error 870(6)

Supreme Court has power to render judgment absolute on appeal from order granting new trial, which is without error, where decision of question of law is determinative of case, but such power does not exist on appeal from order refusing new trial, nor where decision of law question is not determinative of case. Walker v. Quinn (S.C. 1926) 134 S.C. 510, 133 S.E. 444.

Under Code Civ.Proc. 1922, Section 26 (See Code, 1942, Section 26), all orders granting or refusing a new trial based on matter of law are appealable, but such orders based on sufficiency of evidence are not appealable. Walker v. Quinn (S.C. 1926) 134 S.C. 510, 133 S.E. 444.

A circuit judge’s order granting a new trial, based on a consideration of the evidence and a conclusion therefrom inconsistent with the verdict, is not appealable. Ingram v. Hines (S.C. 1923) 126 S.C. 509, 120 S.E. 493.

If an order granting a new trial is based on a matter of law, the decision of which is conclusive, not simply on the appeal, but on the merits of the controversy, leaving no issue of fact on which the rights of the parties depend, the order is appealable; otherwise not. Ingram v. Hines (S.C. 1923) 126 S.C. 509, 120 S.E. 493.

A circuit court’s order granting a new trial, on the theory that the jury’s finding was without adequate evidential basis to support it, was based on a matter of fact, and not a matter of law, and hence is not appealable. (Per Marion, J., and Gary, C.J.) Ingram v. Hines (S.C. 1923) 126 S.C. 509, 120 S.E. 493.

The Supreme Court has no jurisdiction to review orders granting or refusing new trials when they are based upon or involve the decision of questions of fact, unless it appears that the finding is wholly unsupported by the evidence, or the conclusion reached was influenced or controlled by some error of law. Miller v. Atlantic Coast Line R. Co. (S.C. 1913) 95 S.C. 471, 79 S.E. 645. Appeal And Error 979(1)

The Supreme Court cannot review orders granting or refusing new trials when involving the decision of questions of fact, unless the finding is wholly unsupported by the evidence, or the conclusion reached has been controlled by error of law. Miller v. Atlantic Coast Line R. Co. (S.C. 1913) 95 S.C. 471, 79 S.E. 645.

While an order granting or refusing a new trial is appealable under Code Civ.Proc.1912, Section 11(d), subd. 2 (See Code, 1942, Section 26), the right is limited to orders which the court has jurisdiction to review. Miller v. Atlantic Coast Line R. Co. (S.C. 1913) 95 S.C. 471, 79 S.E. 645.

This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law. Daughty v. Northwestern R. Co. of South Carolina (S.C. 1912) 92 S.C. 361, 75 S.E. 553.

An order granting new trial is not appealable, except in cases which permit of a judgment absolute. Lampley v. Atlantic Coast Line R. Co. (S.C. 1907) 77 S.C. 319, 57 S.E. 1104.

An error in granting a new trial cannot be reviewed on appeal from judgment on a subsequent trial. Kennedy v. City of Greenville (S.C. 1907) 78 S.C. 124, 58 S.E. 989.

And was not intended to apply to motion for new trials. The idea that this section [Code 1962 Section 15‑123] was intended to apply to motions for new trials is negatived by a special provision in subdiv. (2) on this identical subject. Kennedy v. City of Greenville (S.C. 1907) 78 S.C. 124, 58 S.E. 989.

32. Appeals from inferior courts

Court of Appeals lacked jurisdiction over attorney’s appeal from the circuit court’s dismissal of his appeal from decision of resolution of fee disputes board; proceeding was not an equity case or a law case, as to either of which there was statutory authority for appeals, but rather was a specialized proceeding before a branch of the state bar, which in turn was an administrative arm of the Supreme Court, and appellate rule that authorized appeal to circuit court from decisions of the board made no mention of further appeals. Wright v. Dickey (S.C.App. 2006) 370 S.C. 517, 636 S.E.2d 1, rehearing denied, certiorari denied. Attorney And Client 169

Order allowing appeal from inferior court. An order allowing an appeal to the court of common pleas from the verdict of a jury empaneled in an inferior court, is an order affecting a substantial right. Atlantic Coast‑Line R. Co. v. South‑Bound R. Co. (S.C. 1900) 57 S.C. 317, 35 S.E. 553.

Order allowing an appeal from a verdict of a jury in an inferior court. An order allowing an appeal to the court of common pleas from the verdict of a jury impaneled in an inferior jurisdiction is an order involving the merits within subdiv. (1). Atlantic Coast‑Line R. Co. v. South‑Bound R. Co. (S.C. 1900) 57 S.C. 317, 35 S.E. 553.

Order allowing appeal from inferior court. Where an appeal is allowed by a circuit court from the verdict of a jury in a proceeding to condemn land for a right of way, such order of the circuit court in allowing the appeal involves the merits of the case and affects the substantial rights of the parties; hence, it can be reviewed on appeal under this subdivision. Atlantic Coast‑Line R. Co. v. South‑Bound R. Co. (S.C. 1900) 57 S.C. 317, 35 S.E. 553. Appeal And Error 91(3)

The jurisdiction of the Supreme Court over appeals from a city court is exclusive. City Council of Charleston v. Weller (S.C. 1891) 34 S.C. 357, 13 S.E. 628. Courts 244

And not affected by absence of special provision. The absence of a provision conferring jurisdiction to review appeals from a city court does not affect the jurisdiction of the Supreme Court. City Council of Charleston v. Weller (S.C. 1891) 34 S.C. 357, 13 S.E. 628.

33. Nonsuit

Order of trial judge granting nonsuit in favor of defendant is appealable under Section 14‑3‑330(2) where it has effect of both determining wrongful death action of executor and preventing judgment, as well as discontinuing action. Bain v. Self Memorial Hosp. (S.C.App. 1984) 281 S.C. 138, 314 S.E.2d 603.

A refusal to grant a motion for non‑suit is a mere ruling and not appealable until after final judgment. Agnew v. Adams (S.C. 1885) 24 S.C. 86, 1885 WL 4338, Unreported.

34. Costs

An order that plaintiff give security for costs, or be nonsuited, is not appealable. McMillan v. McCall (S.C. 1871) 2 S.C. 390, 1871 WL 5232, Unreported.

35. Novel questions of law

When case raises a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. S.C. Const. art. South Carolina Farm Bureau Mut. Ins. Co. v. Durham (S.C. 2009) 380 S.C. 506, 671 S.E.2d 610. Appeal And Error 842(1)

In a case raising a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. Madison ex rel. Bryant v. Babcock Center, Inc. (S.C. 2006) 371 S.C. 123, 638 S.E.2d 650, rehearing denied. Appeal And Error 842(1)

36. Stay of proceedings

Order in certiorari permanently staying proceedings below is a final order. Coleman v. Keels (S.C. 1889) 30 S.C. 614, 9 S.E. 270.

37. Collateral proceedings

Subdivision applies to collateral proceedings after judgment. Subdivision (3) of this section [Code 1962 Section 15‑123] was intended to apply only to collateral proceedings arising after judgment. Kennedy v. City of Greenville (S.C. 1907) 78 S.C. 124, 58 S.E. 989.

38. Special proceeding

And to matters of independent nature arising after judgment. This subdivision was intended to provide a remedy where matters either of an independent nature, or collateral to any action, arise upon a special proceeding, and where matters arise upon a summary proceeding in an action after judgment. Cureton v Hutchinson, 3 SC 606 (1871). Kennedy v Greenville, 78 SC 124, 58 SE 989 (1906).

The word “cases” is used as comprehending special proceedings as contradistinguished from “actions.” Sease v. Dobson (S.C. 1892) 36 S.C. 554, 15 S.E. 703.

Proceeding by rule against sheriff touching return of process is a “special proceeding” and a final order thereon is in the nature of a final judgment, on appeal from which the court may revise any intermediate order in the same proceeding involving the merits and necessarily affecting the judgment. Emory v. Davis (S.C. 1872) 4 S.C. 23. Appeal And Error 864

“Special proceeding” is defined by statute. The term “special proceeding” must be taken in the sense of the Code. It is defined in Code 1962 Sections 10‑9 and 10‑10. Allen v. Partlow (S.C. 1872) 3 S.C. 417.

39. Injunctions

An appeal lies from an interlocutory order granting a temporary injunction. Lamar v Croft, 73 SC 407, 53 SE 540 (1905). Williams v Jones, 62 SC 472, 40 SE 881 (1901).

Injunction denied. South Bound R. Co. v Burton, 63 SC 348, 41 SE 451 (1901). Lamar v Croft, 73 SC 407, 53 SE 540 (1905).

Unless ordered by the trial court, an appeal from a preliminary injunction order does not prevent the case moving forward on the merits. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc. (S.C. 2010) 387 S.C. 583, 694 S.E.2d 15. Appeal and Error 460(2)

Interlocutory order that stayed customer’s action challenging imposition of $200.00 early cancellation fee by her cellular telephone company pending ruling by the Federal Communications Commission (FCC) as to whether the fee was a “rate charged” did not discontinue the proceeding but merely stayed the matter temporarily, and thus the order was not immediately appealable; overruling Hiott v. Contracting Services, 276 S.C. 632, 281 S.E.2d 224, Dill v. Moon, 14 S.C. 338, 1880 WL 5713, Carolina Water Service, Inc. v. Lexington County Joint Mun. Water and Sewer Comm’n, 367 S.C. 141, 625 S.E.2d 227. Edwards v. SunCom (S.C. 2006) 369 S.C. 91, 631 S.E.2d 529. Appeal And Error 70(.5)

In an action to enforce subdivision covenants, property owners could not complain of unnecessary oppression as a result of an order of reference enjoining them from erecting any buildings on their property during the pendency of the action because an order of reference granting a temporary injunction is immediately appealable. Gibbs v. Kimbrell (S.C.App. 1993) 311 S.C. 261, 428 S.E.2d 725. Injunction 1228

An appeal lies from a restraining order or temporary injunction issued in a partition action enjoining the master from delivering a deed in accordance with a sale therein. Appeal of Paslay (S.C. 1956) 230 S.C. 55, 94 S.E.2d 57.

Though questions of fact are involved. In an action for an accounting, an order dissolving a temporary injunction and refusing to appoint a receiver would be reviewed on appeal, though questions of fact were involved. Lyles v. Williams (S.C. 1913) 96 S.C. 290, 80 S.E. 470.

Conclusions of circuit judge not to be disturbed unless clearly erroneous. The appointment of a receiver and the granting of an order of injunction are discretionary, and the court will not disturb the conclusions of the circuit judge unless there has been an abuse of discretion showing that the order is clearly erroneous. Lyles v. Williams (S.C. 1913) 96 S.C. 290, 80 S.E. 470.

But appeal from dissolution does not lie after nuisance is abated. An appeal from an order dissolving a temporary injunction does not lie after nuisance is abated. Wright v. City of Columbia (S.C. 1907) 77 S.C. 416, 57 S.E. 1096. Appeal And Error 781(2)

Refusal of interlocutory order of injunction on grounds of jurisdiction appealable. The refusal of an interlocutory order of injunction to restrain the defendants from selling a house, on the grounds of want of jurisdiction, is appealable. Salinas v. C. Aultman & Co. (S.C. 1897) 49 S.C. 325, 27 S.E. 385.

An interlocutory injunction made solely for the purpose of keeping the subject of the action in status quo until the merits of the action can be considered and determined, determines none of the rights of the parties to the action but simply prevents any interference with the subject of the action until those rights can be considered and adjudicated. Such order does not involve the merits and is unappealable under this subdivision. Garlington v. Copeland (S.C. 1886) 25 S.C. 41.

40. Mandamus

Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. City of Rock Hill v. Thompson (S.C. 2002) 349 S.C. 197, 563 S.E.2d 101. Mandamus 1

When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued. City of Rock Hill v. Thompson (S.C. 2002) 349 S.C. 197, 563 S.E.2d 101. Mandamus 1

City failed to establish the elements required for issuance of a writ of mandamus in prosecution for driving under the influence (DWI) to direct the municipal court judge to apply most recent legislation concerning correct alcohol concentration to be applied in a simulator test, rather than original version of the statute, and failed to serve the judge with its petition, warranting denial of its petition for a writ of mandamus pending judge’s ruling of its motion in limine; it was debatable which of the two versions of the statute was the correct law of the State, and thus, the judge was not being asked to perform a ministerial duty so as to be compelled to rule in a particular way, and city had adequate remedies at law to either await judge’s ruling on the pending motion in limine, or seek appeal if its ability to prosecute the defendant was significantly disadvantaged by the judge’s ultimate in limine ruling. City of Rock Hill v. Thompson (S.C. 2002) 349 S.C. 197, 563 S.E.2d 101. Mandamus 3(3); Mandamus 4(1); Mandamus 40

An order refusing a writ of mandamus is appealable under this section [Code 1962 Section 15‑123]. Ex parte Mackey (S.C. 1881) 15 S.C. 322. Mandamus 187.2

41. Arbitration

Order dismissing action without prejudice and allowing the parties to pursue arbitration finally determined rights of the parties and was immediately appealable, although Uniform Arbitration Act did not include order dismissing action among list of orders from which appeal could be taken. Widener v. Fort Mill Ford (S.C.App. 2009) 381 S.C. 522, 674 S.E.2d 172. Alternative Dispute Resolution 213(3)

The trial court did not err in refusing to apply Section 14‑3‑330 to the determination of the appealability of an order staying an action and compelling arbitration under the Federal Arbitration Act, 9 USCA Sections 1‑16; to apply the general appealability provisions of Section 14‑3‑330 would conflict with the more specific provision of Section 15‑48‑200 regarding the appealability of orders relating to arbitration. Heffner v. Destiny, Inc. (S.C. 1995) 321 S.C. 536, 471 S.E.2d 135. Alternative Dispute Resolution 213(3)

An order denying an application to consolidate pending arbitration proceedings is not immediately appealable. St. Francis Xavier Hosp. v. Ruscon/Abco (S.C.App. 1985) 285 S.C. 584, 330 S.E.2d 548. Alternative Dispute Resolution 213(3)

42. Attachment

An order refusing dissolution of an attachment and thereby holding an automobile to answer as a defendant is immediately appealable. Kay v. Meadors (S.C. 1950) 216 S.C. 483, 58 S.E.2d 893.

An interlocutory administrative order directing the sheriff to seize property in a claim and delivery action out of his county, does not involve the merits, hence is not appealable under this section [Code 1962 Section 15‑123]. Easterling v. Odom (S.C. 1914) 98 S.C. 171, 82 S.E. 407.

Order refusing to vacate order of arrest. Hurst v. Samuels (S.C. 1888) 29 S.C. 476, 7 S.E. 822.

As is a proceeding to enforce agricultural lien. The seizure and sale of a crop under the agricultural lien laws as provided for by the Code are a special proceeding within the meaning of this section [Code 1962 Section 15‑123]. Johnstone v. Manigault (S.C. 1880) 13 S.C. 403.

Orders on motion to dissolve attachments. Allen v. Partlow (S.C. 1872) 3 S.C. 417.

But an order dissolving an attachment is not an order made in “a special proceeding” and hence is not appealable under this subdivision. Allen v. Partlow (S.C. 1872) 3 S.C. 417.

43. Findings

Trial court’s finding that seller was liable for civil compensatory contempt was appealable, even though damages were undetermined and fraud claim had not been decided, since order involved merits and determined substantial matter forming underlying cause of action. Jarrell v. Petoseed Co., Inc. (S.C.App. 1998) 331 S.C. 207, 500 S.E.2d 793. Contempt 66(2)

44. Criminal actions

Defendant was not “aggrieved” by circuit court’s order reversing magistrate’s dismissal of driving under the influence (DUI) charge, and therefore order was not appealable; order was analogous to an order denying a motion to suppress evidence, which was an interlocutory order that was not immediately appealable. State v. Looper (S.C.App. 2015) 412 S.C. 363, 772 S.E.2d 516, rehearing denied, certiorari granted. Criminal Law 1023(3)

Trial court’s pretrial order excluding statement homicide defendant made to law enforcement in connection with a polygraph examination was not an immediately appealable interlocutory order; defendant’s statements made subsequent to the excluded statement were admitted by the trial court and supplied essentially the same information and confession as the excluded statement, such that the exclusion did not significantly impair the prosecution’s ability to try the case. State v. Samuel (S.C. 2015) 411 S.C. 602, 769 S.E.2d 662. Criminal Law 1024(1)

A criminal action is one at law and one which can be appealed following conviction and sentencing. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(5); Criminal Law 1023(9)

Order denying defendant’s request for hearing to determine whether he was entitled to immunity on charges for murder and related offenses under Protection of Persons and Property Act did not finally determination substantial cause of action or defense, and thus, was not immediately appealable order. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(3)

Order denying defendant’s request for hearing to determine immunity from charges for murder and related offenses under Protection of Persons and Property Act was not appealable interlocutory order or decree in court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing appointment of receiver. State v. Isaac (S.C. 2013) 405 S.C. 177, 747 S.E.2d 677. Criminal Law 1023(3)

The State may appeal a pretrial order in a criminal case if the order is appealable under statute governing appellate jurisdiction. State v. Wilson (S.C. 2010) 387 S.C. 597, 693 S.E.2d 923, rehearing denied. Criminal Law 1024(1)

Pretrial order disqualifying a prosecuting attorney in a criminal case was not directly appealable by the State; State had no substantial right that had been invaded, and the State’s ability to appeal had historically been limited in criminal matters. State v. Wilson (S.C. 2010) 387 S.C. 597, 693 S.E.2d 923, rehearing denied. Criminal Law 1024(1)

The denial of an attorney disqualification motion is not directly appealable as the ruling does not affect the merits or a party’s substantial rights, nor does it effectively determine the action, and any error in the failure to grant the motion is more amenable to correction through the remedy of a new trial. State v. Wilson (S.C. 2010) 387 S.C. 597, 693 S.E.2d 923, rehearing denied. Criminal Law 1023(3)

Order of trial court that excluded testimonies of four state’s witnesses in prosecution for securities fraud and conspiracy was immediately appealable; witnesses personally interacted with defendant during relevant time period and would be able to provide a firsthand account of defendant knowledge and actions, and thus witnesses’ testimonies were critical to prove charges against defendant, and exclusion of testimonies would significantly impair the state’s case. State v. Sterling (S.C. 2008) 377 S.C. 475, 661 S.E.2d 99. Criminal Law 1024(1)

A pretrial order granting the suppression of evidence that significantly impairs the prosecution of a criminal case is directly appealable. State v. Pichardo (S.C.App. 2005) 367 S.C. 84, 623 S.E.2d 840, rehearing denied, certiorari denied. Criminal Law 1024(1)

State has the right to immediately appeal a trial court’s suppression of evidence which significantly impairs the prosecution of a criminal case. State v. Belviso (S.C.App. 2004) 360 S.C. 112, 600 S.E.2d 68, rehearing denied, certiorari denied. Criminal Law 1024(1)

Circuit court, in its appellate capacity, had jurisdiction to entertain State’s appeal from magistrate’s pre‑trial rulings dismissing open container charge and suppressing evidence which significantly impaired the prosecution of charge of driving with an unlawful alcohol concentration. State v. Belviso (S.C.App. 2004) 360 S.C. 112, 600 S.E.2d 68, rehearing denied, certiorari denied. Criminal Law 1024(1)

In criminal appeals from magistrate or municipal court, the circuit court does not conduct a de novo review, but instead reviews for preserved error raised to it by appropriate exception; in reviewing criminal cases, appellate court may review errors of law only. Richland County v. Simpkins (S.C.App. 2002) 348 S.C. 658, 560 S.E.2d 899. Municipal Corporations 642(1)

Trial court’s orders regarding payment of psychiatric expert hired by alleged sexually violent predator for civil commitment proceedings did not fall into category of limited interlocutory orders that were directly appealable, either as orders which involved merits of case or which affected substantial right, where orders did not determine any issues in case, affect mode of trial, or prevent judgment from being rendered. State v. Cooper (S.C. 2000) 342 S.C. 389, 536 S.E.2d 870, rehearing denied. Mental Health 467

Because it so significantly impairs the prosecution of a criminal case, an order which prohibits the state from withdrawing a plea offer is directly appealable by the state. Reed v. Becka (S.C.App. 1999) 333 S.C. 676, 511 S.E.2d 396. Criminal Law 1024(1)

Orders admitting respondents to bail do not involve the merits, nor do the orders affect a substantial right which determines or discontinues the action; therefore, such orders are not appealable under Section 14‑3‑330. State v. Hill (S.C. 1994) 314 S.C. 330, 444 S.E.2d 255.

In reviewing a postconviction relief grant, the Supreme Court is concerned only with whether there is “any evidence” to support the postconviction relief judge’s decision. If “any evidence” is found, the Supreme Court must affirm the ruling of the postconviction relief judge. Grier v. State (S.C. 1989) 299 S.C. 321, 384 S.E.2d 722. Criminal Law 1158.36

A criminal defendant may not appeal until sentenced. Parsons v. State (S.C. 1986) 289 S.C. 542, 347 S.E.2d 504. Criminal Law 1023(9)

There is no federal constitutional right to appellate review of a criminal conviction; in both state and federal courts, the right to appeal a criminal conviction is conferred by statute, and, in order to exercise a statutory right to appeal, a defendant must come within the terms of the applicable statute. State v. Miller (S.C. 1986) 289 S.C. 426, 346 S.E.2d 705.

Order denying a defendant’s motion to bar capital sentencing proceedings on double jeopardy grounds was not appealable until after sentence had been imposed. State v. Miller (S.C. 1986) 289 S.C. 426, 346 S.E.2d 705. Criminal Law 1023(9)

A pre‑trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable under Section 14‑3‑330(2)(a). State v. McKnight (S.C. 1985) 287 S.C. 167, 337 S.E.2d 208. Criminal Law 1024(1)

Though Const. art. 5, Section 4, limits Supreme Court’s appellate jurisdiction to cases in chancery and provides that in law cases it is a court for correction of errors of law, and Const. art. 5, Section 12, limits convocation en banc to questions in the exercise of its original or appellate jurisdiction, under Code Civ.Proc.1912, Section 11(D) (See Code 1942, Section 26), prescribing the methods of appeal, such court has jurisdiction of an appeal in law cases; appeal being the only method of exercising power of review, and “appellate” in section 12 not being interpreted in a restricted sense. Sandel v. State (S.C. 1922) 128 S.C. 178, 122 S.E. 571.

45. Family court

Family court’s order finding a common law marriage existed did not deprive putative wife of a mode of trial, and thus was not immediately appealable as an exception to the final judgment rule to give appellate jurisdiction; putative husband’s stayed action in the circuit court included causes of action against putative wife for breach of a partnership agreement, breach of fiduciary duty, quantum meruit, partition, and constructive trust, and the theories of recovery and considerations in that case based upon partnership law were radically different from those in divorce action. Stone v. Thompson (S.C.App. 2016) 418 S.C. 599, 795 S.E.2d 49, rehearing denied. Divorce 177

Temporary, pendente lite family court order is without prejudice to the rights of the parties, and such orders are, by definition, temporary, and they neither decide any issue with finality nor affect a substantial right within the meaning of statute, providing that Supreme Court shall have appellate jurisdiction for correction of errors of law and shall review upon appeal order affecting a substantial right. Terry v. Terry (S.C. 2012) 400 S.C. 453, 734 S.E.2d 646. Courts 176.5

Order unsealing the records in husband’s divorce case was immediately appealable; the order determined a substantial matter forming the whole or part of the family court proceeding in which husband’s former employer sought access to husband’s divorce records, and after the records were unsealed no appellate remedy would repair the damage done by improper disclosure. Ex parte Capital U‑Drive‑It, Inc. (S.C. 2006) 369 S.C. 1, 630 S.E.2d 464. Records 32

Order deferring consideration of former wife’s request for attorney fees in connection with her filing of order and rule to show cause seeking to hold former husband in contempt of order requiring him to pay alimony in divorce proceeding did not involve merits of case or affect former wife’s substantial rights, and therefore was not immediately appealable. Smith v. Smith (S.C.App. 2004) 359 S.C. 393, 597 S.E.2d 188. Divorce 1207

Family court’s denial of incarcerated husband’s request for an order of transportation, which would have allowed him to attend final hearing in his divorce proceeding, was appealable; the denial affected a substantial right and, when combined with rule requiring dismissal of action after expiration of 270 days, served to discontinue the action. Kocaya v. Kocaya (S.C.App. 2001) 347 S.C. 26, 552 S.E.2d 765. Divorce 177

Although normally an order granting a divorce would constitute the final judgment in the matter, such an order did not constitute a final judgment where an issue regarding sanctions was still pending at the time the divorce was granted; thus, the rights of the parties had not been completely determined until the judge gave his final sanctions order. Culbertson v. Clemens (S.C. 1996) 322 S.C. 20, 471 S.E.2d 163.

In a divorce action, the trial court’s order relieving an attorney of representation of one of the parties did not constitute a final judgment and was therefore not immediately appealable where the divorce proceedings had not been concluded. Culbertson v. Clemens (S.C. 1996) 322 S.C. 20, 471 S.E.2d 163.

An order denying a natural father leave to withdraw his consent to adoption was appealable under Section 14‑3‑330, since it effectively foreclosed him from contesting the case on its merits, and affected a substantial right. McLaughlin v. Strickland (S.C.App. 1983) 279 S.C. 513, 309 S.E.2d 787. Adoption 15

46. Probate court

Appeals from the probate court are governed by the statute specifically pertaining to appeals from the probate court rather than the general statute governing appellate jurisdiction in law cases. Dorn v. Cohen (S.C. 2017) 2017 WL 6503853. Courts 202(5)

Order determining whether appeal from probate court was taken in time. Henderson v. Wyatt (S.C. 1877) 8 S.C. 112.

An order of the circuit court allowing an appeal which has been denied by the probate court, as it merely affects the form of procedure, does not involve the “merits” and is not reviewable before judgment. Henderson v. Wyatt (S.C. 1877) 8 S.C. 112. Appeal And Error 120(7)

47. Real property actions

An order of reference in an action to set aside a deed and mortgage on the grounds of fraud, when the pleading shows the question raised to be equitable in character, and it appears that the order was made after full statements by counsel, is not appealable under subdiv. (1), nor under subdivs. (2) or (3). Ferguson v Harrison, 34 SC 169, 13 SE 332 (1890). Brock v Kirkpatrick, 69 SC 231, 48 SE 72 (1901).

In condemnation action, trial court’s order ruling that landowner was entitled to interest on additional 50% of funds deposited with clerk of court by condemning authority was not a final, appealable judgment and was thus not the law of the case when no appeal was taken; court noted that it did not have the relevant dates needed to calculate actual amount of interest due, and court left the matter to the parties to determine but gave them the option to bring the matter back before court if they could not agree. South Carolina Dept. of Transp. v. Faulkenberry (S.C.App. 1999) 337 S.C. 140, 522 S.E.2d 822. Courts 99(6); Eminent Domain 253(1)

An action to recover possession of a tract of land being an action at law, and the issue of title having been submitted to the court without a jury, questions of fact must be accepted as finally settled, since the Supreme Court has no jurisdiction to review issues of fact in a law case. Gunter v. Fallaw (S.C. 1907) 78 S.C. 457, 59 S.E. 70.

Where a decree of foreclosure and an order of sale were made, and a reference to a master was made in order to ascertain the amount due, and the defendant noted an appeal which was dismissed because the notice was not given in proper time, it was held that no appeal would lie from an order by a succeeding judge confirming the report of the master, and ordering the sale, when no error was charged as to the report or order of confirmation, as the first decree was conclusive of every issue involved in the action. Wallace v. Carter (S.C. 1890) 32 S.C. 314, 11 S.E. 97. Appeal And Error 864

48. Trusts

Trial court’s order denying settlor’s petition to terminate irrevocable trust created by daughter pursuant to settlor’s power of attorney was not appealable, in settlor’s action challenging validity and funding of trust, where the matters at issue in the denial of the petition were intertwined with those to be determined at trial. Watson v. Underwood (S.C.App. 2014) 407 S.C. 443, 756 S.E.2d 155. Appeal and Error 70(.5)

49. Workers’ compensation

Interlocutory order that rejected hospital’s defense that was based on exclusive remedy provision of Workers’ Compensation Act was immediately appealable in helicopter pilot’s personal injury action that was brought against hospital and hospital’s employee; order involved merits of case since trial court finally determined substantial matter forming part of hospital’s defense. Cooke v. Palmetto Health Alliance (S.C.App. 2005) 367 S.C. 167, 624 S.E.2d 439, rehearing denied. Workers’ Compensation 2242

Workers’ compensation claimant failed to preserve for appellate review claims that went beyond issue of whether claimant could appeal to Circuit Court interlocutory order of Workers’ Compensation Commission that remanded case to single commissioner for de novo hearing, where only ruling obtained from Circuit Court related to appealability of order. Brunson v. American Koyo Bearings (S.C.App. 2005) 367 S.C. 161, 623 S.E.2d 870, rehearing denied. Workers’ Compensation 1958

Appeal will not lie from an interlocutory order of the Workers’ Compensation Commission unless the order affects the merits or deprives the appellant of a substantial right. Brunson v. American Koyo Bearings (S.C.App. 2005) 367 S.C. 161, 623 S.E.2d 870, rehearing denied. Workers’ Compensation 1834

Workers’ Compensation Commission’s interlocutory order, which remanded case to single commissioner for purpose of conducting de novo hearing, neither involved the merits nor affected a substantial right, and thus order was not immediately appealable; Commission did not rule on any issue, and compensability of claimant’s contact dermatitis, which was not challenged on appeal to Commission, was law of the case and could not be relitigated on remand. Brunson v. American Koyo Bearings (S.C.App. 2005) 367 S.C. 161, 623 S.E.2d 870, rehearing denied. Workers’ Compensation 1789; Workers’ Compensation 1834; Workers’ Compensation 1951

Orders from the Workers’ Compensation Commission remanding a case to the single commissioner for further proceedings generally do not affect the merits and are not considered final for appellate purposes. Brunson v. American Koyo Bearings (S.C.App. 2005) 367 S.C. 161, 623 S.E.2d 870, rehearing denied. Workers’ Compensation 1834

A ruling by the Workers’ Compensation Commission that a claimant could withdraw her request for a hearing, over her employer’s objection, without effecting a dismissal of her underlying claim, was interlocutory and unappealable. Walker v. Springs Industries, Inc. (S.C.App. 1989) 298 S.C. 249, 379 S.E.2d 729.

Order of Industrial Commission denying defendants’ motion pursuant to the statute to have claimant examined by a medical specialist after claimant’s request at first hearing that hearing be held over for medical testimony was granted, resulted in the deprivation of a substantial right of defendants, and although no award has been made by Commission, order was similar to intermediate order entered in law action prior to final judgment which affects merits, and therefore was appealable before final award. Cord v. E. H. Hines Const. Co. (S.C. 1951) 220 S.C. 356, 67 S.E.2d 677. Workers’ Compensation 1834

50. Scope of review

While the Supreme Court will assume that when the record is settled, all corrections have been made, except upon appeal from an order settling the record, the Supreme Court will take notice that something within the record was clearly not introduced into evidence below. To hold otherwise would encourage litigants to attempt to supplement the record with evidence they failed to introduce below, and it would be utterly inappropriate for an appellate court to reverse a trial court’s decision in reliance on evidence never submitted to the trial court for its consideration. Hofer v. St. Clair (S.C. 1989) 298 S.C. 503, 381 S.E.2d 736.

Single order from part of which appeal lies. Where there is a single order from part of which an appeal will lie, the entire order shall be considered upon appeal where the merits of the cause are involved and it is essential that all phases of such order be passed upon to avoid confusion in the trial of the cause in the circuit court, since this will be better for both parties in the further progress of the case. Rice Hope Plantation v. South Carolina Public Service Authority (S.C. 1950) 216 S.C. 500, 59 S.E.2d 132.

**SECTION 14‑3‑340.** Reference of issues of fact to jury or referee; appointment of referees.

 Whenever in the course of any action or proceeding in the Supreme Court arising in the exercise of the original jurisdiction conferred upon the court by the Constitution and laws of the State an issue of fact shall arise upon the pleadings or when an issue of fact shall arise upon a traverse to return in mandamus, prohibition or certiorari, or whenever the determination of any question of fact shall be necessary to the exercise of the jurisdiction conferred upon the Supreme Court, the court may frame an issue therein and certify the same to the circuit court for the county wherein the cause shall have originated or in case of original jurisdiction to the circuit court of the county in which the cause of action shall have arisen. The Supreme Court shall also have the same powers as are now possessed by the circuit courts of the State for the appointment of referees to take testimony and report thereon, under such instructions as may be prescribed by the court, in any cases arising in the Supreme Court wherein issues of fact shall arise.

HISTORY: 1962 Code Section 15‑124; 1952 Code Section 15‑124; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

Library References

Courts 244.

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RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 4, Unauthorized Practice of Law.

NOTES OF DECISIONS

In general 1

1. In general

Issue of title may be certified for jury trial. If, in a case for an injunction to remove a cloud on a title, it becomes necessary to settle an issue or title, the Supreme Court may under this section [Code 1962 Section 15‑124] certify that issue to the circuit court to be tried by a jury. Trustees of University of South Carolina v. Trustees of Academy of Columbia (S.C. 1910) 85 S.C. 546, 67 S.E. 951.

Referee may take testimony of party refusing to make affidavit. The Supreme Court has power to appoint a referee to take the testimony of a party declining to make an affidavit in proceedings before it. State v. Marks (S.C. 1905) 70 S.C. 448, 50 S.E. 14. Criminal Law 1181(2)

**SECTION 14‑3‑350.** Power of individual justices at chambers; appeal.

 Each of the justices of the Supreme Court shall have the same power at chambers to administer oaths, issue writs of habeas corpus, mandamus, quo warranto, certiorari and prohibition and interlocutory writs or orders of injunction as when in open court. But an appeal shall be allowed from the decision of any such justice to the Supreme Court.

HISTORY: 1962 Code Section 15‑125; 1952 Code Section 15‑125; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

CROSS REFERENCES

Powers of Chief Justice, Generally, see SC Const. Art. V, Section 4.

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RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 12, Jurisdiction at Chambers.

S.C. Jur. Injunctions Section 6, Appellate Courts.

NOTES OF DECISIONS

In general 1

1. In general

Single justice of Supreme Court has power to issue writ or order in court’s original jurisdiction and make it returnable to the court as a whole. King v. Aetna Ins. Co. (S.C. 1932) 168 S.C. 84, 167 S.E. 12. Courts 209(2)

**SECTION 14‑3‑360.** Three justices must concur to reverse a judgment.

 In all cases decided by the Supreme Court the concurrence of three of the justices shall be necessary for a reversal of the judgment below, subject to the provisions of Sections 14‑3‑370 and 14‑3‑380.

HISTORY: 1962 Code Section 15‑126; 1952 Code Section 15‑126; 1942 Code Section 30; 1932 Code Section 30; Civ. P. ‘22 Section 29; Civ. P. ‘12 Section 14; Civ. P. ‘02 Section 14; 1870 (14) 314.

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**SECTION 14‑3‑370.** Times when circuit judges shall sit with Supreme Court.

 Whenever, upon the hearing of any cause or question before the Supreme Court in the exercise of its original or appellate jurisdiction, (a) it shall appear to the justices thereof or any three of them that there is involved a question of constitutional law or of conflict between the Constitution and laws of this State and of the United States or between the duties and obligations of her citizens under the same, upon the determination of which the entire court is not agreed or (b) the justices of said court, or any two of them, desire it, the Chief Justice, or in his absence the presiding associate justice, shall call to the assistance of the Supreme Court all the judges of the circuit courts, except that when the matter to be submitted is involved in an appeal from a circuit court the circuit judge who tried the case shall not sit.

HISTORY: 1962 Code Section 15‑127; 1952 Code Section 15‑127; 1942 Code Section 30; 1932 Code Section 30; Civ. P. ‘22 Section 29; Civ. P. ‘12 Section 14; Civ. P. ‘02 Section 14; 1870 (14) 314.

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1. In general

And it has no fixed terms and loses jurisdiction when it has answered the questions submitted by filing with the clerk of the Supreme Court, its written decision signed by a majority of the justices and judges. Its functions are then exhausted. Hinson v Pickett, 2 Hill (11 SC Eq.) 355. Citizens Bank v Heyward, 144 SC 365, 142 SE 651 (1926).

The term “court en banc” as used in the following constructions of this section is but a designation of the Supreme Court sitting with the circuit judges as provided for under this section [Code 1962 Section 15‑127]. For a history of the term, see Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

The court en banc differs materially from the Supreme Court, in that it is merely a consultative one, like the English Court of Exchequer Chamber, whose judgments are authoritative, though the suitor had no right to appeal to it. The court en banc is called into existence by the justices of the Supreme Court only when they may desire to consult with the circuit judges as to particular causes or questions. Citizens’ Bank v. Heyward (S.C. 1926) 144 S.C. 365, 142 S.E. 651.

Supreme Court cannot modify or set aside a judgment of the court en banc. The Chief Justice and the three associate justices, sitting as the Supreme Court, cannot set aside or in any wise lessen the force and effect of a judgment rendered by the court sitting en banc composed of the Supreme Court justices and the circuit judges. State v. Adams (S.C. 1909) 83 S.C. 149, 65 S.E. 220.

Circuit judges not called unless one of the named contingencies exists. Where neither contingency as provided for by this section [Code 1962 Section 15‑127] for the calling in of the circuit judges occurs, the circuit court will not be called in merely because the Supreme Court is divided and the parties desire an authoritative determination of the question involved. City of Florence v. Brown (S.C. 1897) 49 S.C. 332, 27 S.E. 273. Courts 102(1)

**SECTION 14‑3‑380.** Proceedings when Supreme Court justices and circuit judges sit together; expenses.

 A majority of the justices of the Supreme Court and circuit judges shall constitute a quorum. The decision of the court so constituted, or a majority of the justices and judges sitting, shall be final and conclusive. In such case the Chief Justice or in his absence the presiding associate justice shall preside. Whenever the justices of the Supreme Court and the judges of the circuit court meet together for the purposes aforesaid, if the number thereof qualified to sit constitute an even number one of the circuit judges must retire, and the circuit judges present shall determine by lot which of their number shall retire. Whenever the circuit judges are called to sit with the justices of the Supreme Court for the determination of any cause or causes the actual travelling and other expenses of each judge so attending shall be paid by the Governor out of his civil contingent fund upon an itemized statement made out and certified to by each judge.

HISTORY: 1962 Code Section 15‑128; 1952 Code Section 15‑128; 1942 Code Section 30; 1932 Code Section 30; Civ. P. ‘22 Section 29; Civ. P. ‘12 Section 14; Civ. P. ‘02 Section 14; 1870 (14) 314.

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**SECTION 14‑3‑390.** Assignment of circuit judges by roster; interchange of circuits among judges.

 Between the first and fifteenth days of December in each year the Chief Justice or, in his absence or inability to attend, the senior associate justice shall form a roster of the circuit judges of the several circuits in order to arrange a regular and continuous assignment and interchange of circuits among such judges and make an order assigning the several circuit judges to hold the several circuit courts in all of the circuits of the State for the whole of the succeeding year in such order as will effect a continuous interchange of circuits according to such numerical series.

HISTORY: 1962 Code Section 15‑129; 1952 Code Section 15‑129; 1942 Code Section 22; 1932 Code Section 22; Civ. P. ‘22 Section 22; Civ. C. ‘12 Section 3826; Civ. C. ‘02 Section 2730; 1896 (22) 3.

CROSS REFERENCES

Constitutional provisions concerning rotation of judges of the Circuit Court, see SC Const. Art. V, Section 14.

Procedure in the Supreme Court, see Rule 201, SCACR et seq.

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NOTES OF DECISIONS

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Justiciability 2

1. In general

The General Assembly enacted this section [Code 1962 Section 15‑129] in compliance with SC Const, Art 5, Section 14. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Powers of judge after leaving circuit to which he was assigned. Ordinarily, a judge in the system of rotation of judges, duly assigned and empowered to hold court in another circuit, must exercise his judicial powers while within the territorial boundaries of such circuit. To this general statement of the rule there are some exceptions. Thus, it has been held that the visiting judge, after the adjournment of court in the designated circuit, may render his decision in a cause tried before him, or pass upon a motion heard by him, even after he has returned to his home circuit. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Any designated judge who has held court in another circuit than his own, has the power, notwithstanding his absence from such circuit, to decide all matters which have been submitted to him within such circuit, decide motions for new trials duly made, or perform any other act required by law or the rules of the court in order to prepare any case so tried by him for review in an appellate court. But the jurisdiction and power of a circuit judge goes no farther. The rule does not contemplate that, after he has left the circuit, he shall decide any matter which has not been submitted to or heard by him while holding court in such circuit. No authority is given to him to hear and determine new matter, even though such new matter may arise in the same case. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Where a judge signs an order for nonsuit, he loses jurisdiction to pass an order to set it aside after he has left the circuit, no notice having been given to anyone while court was in session that such an order would be asked for and no motion having been made before him for such an order while court was in session. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Presiding judge loses jurisdiction with adjournment of term. The presiding judge in a circuit court loses jurisdiction with the adjournment of the term. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

And sentence may not thereafter be modified. After the adjournment of the term of court at which sentence is imposed the judge is without authority to change, amend or modify it. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272.

Expiration of term by operation of law. The term of the court of general sessions in a county terminated by operation of law because of the commencement of another term of court in another county in the same judicial circuit. State v. Best (S.C. 1972) 257 S.C. 361, 186 S.E.2d 272. Courts 65

2. Justiciability

Individual who alleged no fact from which it might be inferred that rotation of circuit judges had prejudiced him lacked standing to question validity of statute, on ground that it allegedly embodied unconstitutional delegation of legislative power to the Chief Justice, providing for rotation of circuit judges among the circuits. O’Shields v. McLeod (S.C. 1972) 257 S.C. 477, 186 S.E.2d 408.

**SECTION 14‑3‑400.** Notice to circuit judges of assignments.

 Immediately thereupon the Chief Justice or, in his absence or inability to act, the senior associate justice shall direct the clerk of the Supreme Court to furnish each of the circuit judges, as well as the Chief Justice and senior associate justice, with a certified copy of such order which shall be sufficient notice to the circuit judges of their assignments aforesaid, and they shall proceed to hold the courts in the circuits to which they are respectively assigned at the time appointed by law for the several circuit courts to be held. The clerk of the Supreme Court shall also forthwith transmit a certified copy of said order to the clerk of every circuit court of the State.

HISTORY: 1962 Code Section 15‑130; 1952 Code Section 15‑130; 1942 Code Section 22; 1932 Code Section 22; Civ. P. ‘22 Section 22; Civ. C. ‘12 Section 3826; Civ. C. ‘02 Section 2730; 1896 (22) 3.

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**SECTION 14‑3‑410.** Court of record; public inspection of records.

 The Supreme Court shall be a court of record, and the records thereof shall at all times be subject to the inspection of the citizens of the State or other persons interested. The records shall be kept in a manner prescribed by the justices of the court.

HISTORY: 1962 Code Section 15‑131; 1952 Code Section 15‑131; 1942 Code Section 15; 1932 Code Section 15; Civ. C. ‘22 Section 15; Civ. C. ‘12 Section 3819; Civ. C. ‘02 Section 2723; G. S. 2091; R. S. 2223; 1896 (22) 3.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑420.** Costs and disbursements in actions and proceedings brought in original jurisdiction.

 In all actions and proceedings brought in the Supreme Court in its original jurisdiction the court may provide, by rule, order or otherwise, for the payment of reasonable costs and disbursements of the case by the losing party or otherwise as in the judgment of the court may be just and proper, such costs and disbursements to be taxed and adjusted by the clerk of said court under direction of the court. When the clerk has taxed such costs and disbursements under the direction of the court he shall certify the taxation to the clerk of the court of common pleas for the county in which the party resides against whom such costs and disbursements have been taxed. Such clerk of the court of common pleas shall enter judgment therefor, as other judgments are entered, and shall issue execution for the enforcement of such judgment. The judgment so entered shall have the same force and effect in all respects as judgments rendered by the court of common pleas.

HISTORY: 1962 Code Section 15‑132; 1952 Code Section 15‑132; 1942 Code Section 25; 1932 Code Section 25; Civ. P. ‘22 Section 25; Civ. C. ‘12 Section 3829; 1909 (26) 162; 1941 (42) 140.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑430.** Review of intermediate orders.

 Upon an appeal under item (3) of Section 14‑3‑330 the court may review any intermediate order involving the merits and necessarily affecting the order appealed from.

HISTORY: 1962 Code Section 15‑133; 1952 Code Section 15‑133; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

Library References

Courts 244.

Westlaw Topic No. 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Appeal from Interlocutory Order as to Liability Alone. 24 S.C. L. Rev. 503.

Functions of Supreme Court as Court of Review. 22 S.C. L. Rev. 497.

**SECTION 14‑3‑440.** Judgment on appeal from order granting new trial; proceedings below.

 Upon any appeal from an order granting a new trial on a case made, or on exceptions taken, if the Supreme Court shall determine that no error was committed in granting the new trial, it shall render judgment absolute upon the right of the appellant; and after the proceedings are remitted to the court from which the appeal was taken, an assessment of damages, or other proceedings to render the judgment effectual, may be then and there had in cases where such subsequent proceedings are requisite.

HISTORY: 1962 Code Section 15‑134; 1952 Code Section 15‑134; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

Library References

Courts 244.

Westlaw Topic No. 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Appeal from Interlocutory Order as to Liability Alone. 24 S.C. L. Rev. 503.

NOTES OF DECISIONS

In general 1

1. In general

Under Code Civ.Proc. 1912, Section 11, subd. 2 (See Code 1942, Section 26), the Supreme Court, on appeal from an order granting new trial and setting aside verdict directed for plaintiff, if no error was committed in granting the new trial, must render judgment dismissing the complaint. Planters’ Oil Co. v. Lightsey (S.C. 1914) 98 S.C. 3, 81 S.E. 1102.

When error committed verdict or judgment restored. This statute means that when the Supreme Court should determine that no error was committed, the appellant should have judgment absolute given upon his right by the Supreme Court; but if it should determine that error was committed in granting the new trial, it would correct the error by restoring the verdict or judgment set aside. Daughty v. Northwestern R. Co. of South Carolina (S.C. 1912) 92 S.C. 361, 75 S.E. 553.

**SECTION 14‑3‑450.** Effect on proceedings below of appeals regarding injunctions or receivers.

 In case of an appeal under item (4) of Section 14‑3‑330 the proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.

HISTORY: 1962 Code Section 15‑135; 1952 Code Section 15‑135; 1942 Code Section 26; 1932 Code Section 26; Civ. P. ‘22 Section 26; Civ. P. ‘12 Section 11; Civ. P. ‘02 Section 11; 1896 (22) Section 1; 1901 (23) 623.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 54, Exceptions to the Automatic Stay.

S.C. Jur. Injunctions Section 6, Appellate Courts.

ARTICLE 5

Terms; Order and Place of Hearings

**SECTION 14‑3‑610.** Terms; notice of time and place of additional terms.

 The Supreme Court shall hold at least nine terms in each year at the seat of government, commencing on the second Monday in each month except the months of July, August and September. Each of such terms shall be continued for so long a period as the public interest may require. The court may also hold such additional terms or sessions as the public interest may require, the time and place therefor to be appointed and fixed by the court. Ten days’ notice of such time and place shall be given to the attorneys or counsel appearing in the cases docketed in such manner as the court by its rules or orders may provide.

HISTORY: 1962 Code Section 15‑141; 1952 Code Section 15‑141; 1942 Code Section 28; 1932 Code Section 28; Civ. P. ‘12 Section 13; Civ. P. ‘02 Section 13; 1870 (14) 314; 1896 (22) 1; 1897 (22) 488; 1916 (29) 687; 1923 (33) 32.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑620.** Order and priority of hearing cases.

 The court may by general rules prescribe and provide the order in which cases shall be docketed and the priority thereof on the calendar except:

 (1) On a second and each subsequent appeal to the Supreme Court, or when an appeal has once been dismissed for a defect or irregularity, the cause shall be placed upon the calendar as of the time of filing the first appeal and may be noticed and put on the calendar for any succeeding term;

 (2) Whenever, in any action or proceeding in which the State or any State officer or any board of State officers is or are sole plaintiff or defendant, an appeal has been brought up from any judgment or order for or against him or them in any court such appeal shall have preference in the Supreme Court and may be moved by either party out of the order on the calendar; and

 (3) An appeal from any order granting, refusing, sustaining, dissolving, modifying or discharging an injunction, or appointing or refusing to appoint a receiver, shall take precedence over other matters.

HISTORY: 1962 Code Section 15‑142; 1952 Code Section 15‑142; 1942 Code Sections 26, 28; 1932 Code Sections 26, 28; Civ. P. ‘22 Section 26; Civ. P. ‘12 Sections 11, 13; Civ. P. ‘02 Sections 11, 13; 1870 (14) 314; 1896 (22) 1; 1897 (22) 488; 1901 (23) 623; 1916 (29) 687; 1923 (33) 32; 1961 (52) 12.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Injunctions Section 6, Appellate Courts.

**SECTION 14‑3‑630.** Disposition of appeals not heard.

 If the cases on the calendar and set for hearing cannot be heard in the period allotted the court shall continue the same to be heard after the regular call of the cases for that session or may call an extra term for the hearing of the same or continue them to the next stated term thereafter.

HISTORY: 1962 Code Section 15‑143; 1952 Code Section 15‑143; 1942 Code Section 28; 1932 Code Section 28; Civ. P. ‘12 Section 13; Civ. P. ‘02 Section 13; 1870 (14) 314; 1896 (22) 1; 1897 (22) 488; 1916 (29) 687; 1923 (33) 32.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑640.** Promulgation of rules and regulations.

 The court may establish and promulgate such rules and regulations as may be necessary to carry into effect the provisions of this article and to facilitate the work of the court.

HISTORY: 1962 Code Section 15‑144; 1952 Code Section 15‑144; 1942 Code Section 28; 1932 Code Section 28; Civ. P. ‘12 Section 13; Civ. P. ‘02 Section 13; 1870 (14) 314; 1896 (22) 1; 1897 (22) 488; 1916 (29) 687; 1923 (33) 32.

Library References

Courts 244.

Westlaw Topic No. 106.

LAW REVIEW AND JOURNAL COMMENTARIES

The Procedural Rule Making Power of the South Carolina Supreme Court. 30 S.C. L. Rev. 625.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 15‑144] is consistent with the constitutional provisions establishing the Supreme Court of South Carolina. King v. Aetna Ins. Co. (S.C. 1932) 168 S.C. 84, 167 S.E. 12.

**SECTION 14‑3‑660.** Sheriff shall provide place of hearing; expenses.

 If at any term of the Supreme Court proper and convenient room both for the consultation of the judges and the holding of the court, with furniture, attendants, fuel, lights and stationery suitable and sufficient for the transaction of its business, be not provided for in the place where by law the court may be held, the court may order the sheriff of the county to make such provision, and the expenses incurred by him in carrying the order into effect shall be paid from the State Treasury.

HISTORY: 1962 Code Section 15‑146; 1952 Code Section 15‑146; 1942 Code Section 31; 1932 Code Section 31; Civ. P. ‘22 Section 30; Civ. P. ‘12 Section 15; Civ. P. ‘02 Section 15; 1870 (14) 495.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑670.** Places to hold court; adjournment.

 The Supreme Court may be held in other buildings than those designated by law as places for holding courts and at a different place, at the same city or town, from that at which it is appointed to be held. Any one or more of the judges may adjourn the court with the like effect as if all were present.

HISTORY: 1962 Code Section 15‑147; 1952 Code Section 15‑147; 1942 Code Section 32; 1932 Code Section 32; Civ. P. ‘22 Section 31; Civ. P. ‘12 Section 16; Civ. P. ‘02 Section 16; 1870 (14) 314.

Library References

Courts 244.

Westlaw Topic No. 106.

ARTICLE 7

Reports

**SECTION 14‑3‑810.** Duties of clerk with respect to opinions; fees when published in other than official reports.

 The clerk of the Supreme Court shall, upon the rendition of an opinion by the Supreme Court, deliver forthwith to the reporter of said court a certified copy of such decision made by the court, together with a copy of the printed arguments and the briefs of counsel, for use in publishing the South Carolina Reports. Should any copies furnished by the clerk be used in the publication of any other reports than the official series of South Carolina Reports the publisher shall pay the clerk the fees provided by law for copies of opinions.

HISTORY: 1962 Code Section 15‑161; 1952 Code Section 15‑161; 1942 Code Section 18; 1932 Code Section 18; Civ. P. ‘22 Section 18; Civ. C. ‘12 Section 3822; Civ. C. ‘02 Section 2726; G. S. 2102 to 2108; R. S. 2237 to 2241; 1896 (22) 3; 1901 (23) 622; 1920 (31) 1049; 1929 (36) 52.

CROSS REFERENCES

Publication of decisions of the Supreme Court, see SC Const. Art. V, Section 25.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑820.** Appointment of committee to contract for publishing of reports.

 The Speaker of the House of Representatives, the President of the Senate and the Chief Justice of the Supreme Court shall appoint a committee of four, composed of two members of the House of Representatives to be appointed by the Speaker, one member of the Senate to be appointed by the President of the Senate and one member of the Supreme Court to be appointed by the Chief Justice, which shall contract for five years at a time for the prompt editing, publishing and distribution of the opinions of the Supreme Court and bound volumes thereof.

HISTORY: 1962 Code Section 15‑162; 1952 Code Section 15‑162; 1942 Code Section 18; 1932 Code Section 18; Civ. P. ‘22 Section 18; Civ. C. ‘12 Section 3822; Civ. C. ‘02 Section 2726; G. S. 2102 to 2108; R. S. 2237 to 2241; 1896 (22) 3; 1901 (23) 622; 1920 (31) 1049; 1929 (36) 52; 1968 (55) 2835.

CROSS REFERENCES

Publication of decisions of the Supreme Court, see SC Const. Art. V, Section 25.

Library References

Courts 244.

Westlaw Topic No. 106.

**SECTION 14‑3‑830.** Contents of reports.

 The reports of the decisions shall contain at least such matter as is now found in the South Carolina Reports including:

 (1) A syllabus of the decision, citations, statements of the testimony and pleadings sufficient to give an understanding of the case and the decision of the court;

 (2) An alphabetical list at the end of the volume of all cases mentioned in any way in the decision; and

 (3) A full and complete digest and index to the contents of the volume.

 Each volume shall contain not more than one thousand pages, exclusive of index.

HISTORY: 1962 Code Section 15‑163; 1952 Code Section 15‑163; 1942 Code Section 18; 1932 Code Section 18; Civ. P. ‘22 Section 18; Civ. C. ‘12 Section 3822; Civ. C. ‘02 Section 2726; G. S. 2102 to 2108; R. S. 2237 to 2241; 1896 (22) 3; 1901 (23) 622; 1920 (31) 1049; 1929 (36) 52.

Library References

Courts 244.

Westlaw Topic No. 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 117, Ruling on the Motion.

**SECTION 14‑3‑840.** Distribution of reports.

 The Legislative Council shall distribute the copies of the reports of the decisions of the Supreme Court purchased by the State as follows:

 (1) To the offices of the Governor, of the Attorney General of the State and of the Attorney General of the United States, to each circuit judge of the State, to the library of the Supreme Court of the United States, to the clerk of the circuit court of appeals of the United States for the fourth circuit, to the library of the University of South Carolina, to the Charleston Library Society and to the clerks of the district courts of the United States for the districts of South Carolina, one copy each;

 (2) To the library of the Supreme Court of this State, eight copies; and

 (3) To every state and territory of the United States from which the State receives two or more copies of each volume of its law reports, two copies each and to every other state and territory of the United States, one copy each.

 All copies of South Carolina Reports not otherwise disposed of and not distributed under the provisions of this section shall be retained in the office of the Legislative Council for the use of this State.

HISTORY: 1962 Code Section 15‑164; 1952 Code Section 15‑164; 1942 Code Section 24; 1932 Code Section 24; Civ. P. ‘22 Section 24; Civ. C. ‘12 Section 3828; Civ. C. ‘02 Section 2732; G. S. 2107; R. S. 2242; 1880 (17) 533; 1908 (25) 1128; 1917 (30) 64; 1936 (39) 1350; 1971 (57) 709.

CROSS REFERENCES

Furnishing reports to Library of Congress, see Section 11‑25‑680.

Furnishing reports to University of South Carolina law library, see Section 11‑25‑650.

Library of the Supreme Court, see Sections 60‑3‑10, 60‑3‑20.

Library References

Courts 244.

Westlaw Topic No. 106.

ARTICLE 9

Court Register

**SECTION 14‑3‑940.** Establishment of Court Register; manner in which Supreme Court rules become effective.

 There shall be established a “Court Register” which shall be published and maintained in current status with all proposed and final form rules promulgated by the Supreme Court. The Register shall be the responsibility of the Court Administrator. The Court Administrator shall transmit to the clerk of court of each county and to the Legislative Council a copy of the Court Register and all additions thereto when published. All rules promulgated by the Supreme Court shall become effective in the following manner:

 (a) All rules governing the administration of all courts of the State shall become effective upon publication of such rules in the Court Register.

 (b) Rules governing the practice and procedure of all courts of the State shall become effective upon publication in the Court Register and review by the General Assembly pursuant to the provisions of Section 14‑3‑950.

HISTORY: 1979 Act No. 4 Section 1, eff January 26, 1979.

CROSS REFERENCES

Authority of Supreme Court to adopt rules, see Section 14‑3‑640.

Authority of the Supreme Court to promulgate rules to facilitate the work of the Court of Appeals, see Section 14‑8‑430.

State agency rulemaking and adjudication of contested cases, see Section 1‑23‑10 et seq.

Library References

Courts 244.

Westlaw Topic No. 106.

NOTES OF DECISIONS

In general 1

1. In general

By reason of the mandate of Article V of the South Carolina Constitution, a family court may not adopt its own rules of administration or practice and procedure. Such local, non‑uniform rules are inconsistent with both the provisions and purpose of the constitutional mandate and are therefore unconstitutional and void. There is no place in the unified judicial system for local rules which have the effect of varying the administrative and procedural rules of practice from circuit to circuit and court to court. The purpose of the mandate in Article V and the development of a South Carolina Court Register is, among other things, to insure that each participant in the judicial system can find in the Constitution, statutes and rules of the Supreme Court a court system which is the same in each county of the state. Spartanburg County Dept. of Social Services v. Padgett (S.C. 1988) 296 S.C. 79, 370 S.E.2d 872.

**SECTION 14‑3‑950.** Submission of rules governing practice and procedure to General Assembly; approval.

 All rules and amendments to rules governing practice and procedure in all courts of this State promulgated by the Supreme Court shall be submitted by the Supreme Court to the Judiciary Committee of each House of the General Assembly during a regular session, but not later than the first day of February during each session. Such rules or amendments shall become effective ninety calendar days after submission unless disapproved by concurrent resolution of the General Assembly, with the concurrence of three‑fifths of the members of each House present and voting.

HISTORY: 1979 Act No. 4 Section 2, eff January 26, 1979; 1984 Act No. 500, eff June 28, 1984.

CROSS REFERENCES

Authority of the Supreme Court to promulgate rules to facilitate the work of the Court of Appeals, see Section 14‑8‑430.

Library References

Courts 244.

Westlaw Topic No. 106.