CHAPTER 5

Parties

ARTICLE 1

General Provisions

**SECTION 15‑5‑45.** Capacity of partnerships to sue and be sued; effect of judgment.

Any partnership formed under the laws of this State or of another jurisdiction shall have the capacity with or without the joinder of one or more of its partners to sue and be sued in the courts and agencies of this State as a separate entity under the name specified in any recorded certificate of partnership, or, if the partnership conducts business under an assumed name or there is no recorded certificate, under the name by which it does business. All judgments and executions against any such partnership shall bind its real and personal property. Its partners shall also be liable for judgment and be subject to execution to the extent and in the manner provided by law.

HISTORY: 1986 Act No. 533, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 289k191.

Partnership 191.

C.J.S. Partnership Section 184.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 9, Suits Involving Partnership.

NOTES OF DECISIONS

In general 1

Contribution 2

1. In general

Partnership had authority to bring action against partner seeking contribution, though partnership agreement stated partners had the right to seek and obtain damages from a partner who defaulted in making contributions; at time partnership agreement was executed partnerships could not bring actions in their own name, partnerships had since been granted such authority, and partnership agreement did not forbid partnership from bringing action. RIM Associates v. Blackwell (S.C.App. 2004) 359 S.C. 170, 597 S.E.2d 152, certiorari granted. Partnership 615

2. Contribution

Settlement in action brought by partner against other partners seeking payment of partnership’s note to partner that other partners guaranteed did not rescind earlier agreement between partners that partnership did not have the right to seek a contribution from partner on account of any debts owed to partner, where order approving settlement specifically stated that earlier agreement was not part of the settlement, and settlement forbade partnership from borrowing money to repay note without partner’s prior permission. RIM Associates v. Blackwell (S.C.App. 2004) 359 S.C. 170, 597 S.E.2d 152, certiorari granted. Compromise And Settlement 11

**SECTION 15‑5‑90.** Survival of right of action.

Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person and the legal representative of an insolvent person or a defunct or insolvent corporation, any law or rule to the contrary notwithstanding.

HISTORY: 1962 Code Section 10‑209; 1952 Code Section 10‑209; 1942 Code Section 419; 1932 Code Section 419; Civ. P. ‘22 Section 375; Civ. C. ‘12 Section 3963; Civ. C. ‘02 Section 2859; R.S. 2323; 1892 (21) 18; 1905 (24) 945.

CROSS REFERENCES

Affirmative defense under South Carolina Rules of Civil Procedure, see Rule 8, SCRCP.

Recovery of personal property, see Sections 15‑69‑10 et seq.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 2k48 to 2k70; 117k10; 117k28.

Abatement and Revival 48 to 70.

Death 10, 28.

C.J.S. Abatement and Revival Sections 117 to 154, 185.

C.J.S. Conflict of Laws Section 104.

C.J.S. Death Sections 21, 102.

C.J.S. Justices of the Peace Section 58.

C.J.S. Marriage Section 84.

C.J.S. Right of Privacy and Publicity Section 42.

RESEARCH REFERENCES

Encyclopedias

12 Am. Jur. Trials 317, Wrongful Death Actions.

S.C. Jur. Abatement, Revival and Survival of Actions Section 25, Actions on Contract.

S.C. Jur. Abatement, Revival and Survival of Actions Section 26, Actions for Personal Injury.

S.C. Jur. Abatement, Revival and Survival of Actions Section 27, Actions for Injuries to Property.

S.C. Jur. Assignments Section 20, Arising Out of Tort.

S.C. Jur. Assignments Section 21, Personal Injury Claims.

S.C. Jur. Damages Section 20, Pain and Suffering.

S.C. Jur. Damages Section 24.1, Survival Actions.

S.C. Jur. Wrongful Death Section 2, New Cause of Action.

S.C. Jur. Wrongful Death Section 28, Individuals Who May Bring Action.

Forms

South Carolina Litigation Forms and Analysis Section 3:26 , Wrongful Death.

South Carolina Litigation Forms and Analysis Section 3:47 , Survivorship.

South Carolina Litigation Forms and Analysis Section 33:31 , Petition for Approval of Compromise Settlement.

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1. Validity

South Carolina survival statute, which would not permit fraud action to survive death of alleged victim did not violate Fourteenth Amendment’s equal protection clause; legislature could rationally conclude that difficulty and potential unfairness of proving state of mind from dead party to fraudulent transaction justified excepting fraud from survival statute. Faircloth v. Finesod (C.A.4 (S.C.) 1991) 938 F.2d 513. Abatement And Revival 50; Constitutional Law 3455

2. In general

Applied in Cobb v Southern Public Utilities Co., 181 SC 310, 187 SE 363 (1936). Miller v Boyle Const. Co., 198 SC 166, 17 SE2d 312 (1941). United States v Folk, 199 F2d 889 (1952). Griffin v Planters Chem. Corp., 302 F Supp 937 (DSC 1969).

Cited in McLendon v Columbia, 101 SC 48, 85 SE 234 (1915). Ellenberg v Arthur, 178 SC 490, 183 SE 306 (1936). Bourne v Maryland Cas. Co., 185 SC 1, 192 SE 605 (1937). Gregory v Powell, 206 SC 261, 33 SE2d 629 (1945). American Casualty Co. v Howard, 173 F2d 924 (1949). American Casualty Co. v Howard, 187 F2d 322 (1951).

The causes of action made to survive under this section [former Code 1962 Section 10‑209] are those actions which the deceased person could have brought in his lifetime against the wrongdoer for injuries by him. Gowan v Thomas, 237 SC 223, 116 SE2d 761 (1960). Claussen v Brothers, 148 SC 1, 145 SE 539 (1928).

An action in tort against an insurer for negligent, wilful, or bad faith failure to settle, arising out of an excess judgment recovered against the insured and which causes pecuniary loss or potential pecuniary loss to his estate, survives the insured’s death and is assignable. Schneider v. Allstate Ins. Co. (D.C.S.C. 1980) 487 F.Supp. 239. Assignments 24(1)

Quoted in Isgett v. Seaboard Coast Line R. Co. (D.C.S.C. 1971) 332 F.Supp. 1127.

Both personal injury claims and property damage claims survive the death of the injured person under this section [former Code 1962 Section 10‑209]. Hair v. Savannah Steel Drum Corp., 1955, 161 F.Supp. 654.

Generally, any cause of action which could have been brought by the deceased in his lifetime survives to his representative. Ferguson v. Charleston Lincoln Mercury, Inc. (S.C. 2002) 349 S.C. 558, 564 S.E.2d 94. Abatement And Revival 52

Survivability of an action is determined by the nature and substance of the cause of action, rather than the form of the remedy. Ferguson v. Charleston Lincoln/Mercury, Inc. (S.C.App. 2001) 344 S.C. 502, 544 S.E.2d 285, rehearing denied, certiorari granted, affirmed as modified 349 S.C. 558, 564 S.E.2d 94. Abatement And Revival 52

Any cause of action that could have been brought by a deceased in his lifetime survives to his representative under the Survival Act. Layne v. International Broth. of Elec. Workers, (AFL‑CIO), Local No. 382 (S.C. 1978) 271 S.C. 346, 247 S.E.2d 346. Abatement And Revival 52

This section [former Code 1962 Section 10‑209] merely adds to but does not curtail those causes of action which survive at common law. Page v. Lewis (S.C. 1943) 203 S.C. 190, 26 S.E.2d 569. Abatement And Revival 52

Under this section [former Code 1962 Section 10‑209], there are but two instances wherein a cause of action survives: (1) For and in respect to any and all injuries and trespasses to and upon real estate, and (2) Any and all injuries to the person or to personal property. Mattison v. Palmetto State Life Ins. Co. (S.C. 1941) 197 S.C. 256, 15 S.E.2d 117. Abatement And Revival 54; Abatement And Revival 55(1)

The heirs at law are the real representatives. Duke v. Postal Telegraph Cable Co. (S.C. 1905) 71 S.C. 95, 50 S.E. 675.

3. Construction; definitions

This section [former Code 1962 Section 10‑209] should be liberally construed. Allen v Union Oil & Mfg. Co., 59 SC 571, 38 SE 274 (1901). Brewer v Graydon, 233 SC 124, 103 SE2d 767 (1958).

Injury is defined as damage or hurt done to or suffered by a person or thing; detriment to, or violation of, person, character, feelings, rights, property, or interests, or the value of a thing. A synonym for injury is “loss.” Arant v. Stover (D.C.S.C. 1969) 307 F.Supp. 144, 8 A.L.R. Fed. 835.

The claim of the personal representative and sole heir at law of a deceased employee had abated where the employee, who had injured her back while working and filed a Workers’ Compensation claim, was killed in a nonwork‑related auto accident prior to its adjudication, and at the time of her death the employee’s heir, who had been substituted as the claimant in the proceeding, was not dependent on the employee for support; since the Workers’ Compensation Act provides for nonwork‑related deaths, the general survival statute, Section 15‑5‑90, was inapplicable. Estate of Covington by Montgomery v. AT & T Nassau Metals Corp. (S.C. 1991) 304 S.C. 436, 405 S.E.2d 393.

Though this section [former Code 1962 Section 10‑209], as a remedial statute, should be construed liberally, the court must resort to the actual words used in the statute, to effectuate the intent of the legislature rather than its own conception of right. Claussen v. Brothers (S.C. 1928) 148 S.C. 1, 145 S.E. 539, 61 A.L.R. 826. Abatement And Revival 50

4. Abatement

The question of whether or not an action has abated is for the court of common pleas. Ex parte Conrad (S.C. 1906) 75 S.C. 1, 54 S.E. 799.

5. Raising question of survival; pleadings

Survival statute does not violate Fourteenth Amendment’s equal protection clause. Faircloth v. Finesod (C.A.4 (S.C.) 1991) 938 F.2d 513.

A survival claim under the Federal Tort Claims Act, 28 USCA 2671, may only be filed by an executor or an administrator of an estate who has been appointed by the probate court prior to filing of the claim. Pringle v. U. S. (D.C.S.C. 1976) 419 F.Supp. 289.

In an action by an administrator for the tort causing his decedent’s death, surviving under this section [former Code 1962 Section 10‑209], the administrator sues to recover the damages sustained by the deceased and not those sustained by the survivors. Bennett v. Spartanburg Ry., Gas & Elec. Co. (S.C. 1914) 97 S.C. 27, 81 S.E. 189.

The question as to whether a right of action for trespass on real estate survives to the personal or real representative should be made either by demurrer or answer. Voyles v. Postal Telegraph Cable Co. (S.C. 1907) 78 S.C. 430, 59 S.E. 68.

Under former Code 1962 Section 10‑642 (see now SCRCP, Rule 7), as to when the defendant may file demurrers, the defendant may not raise the objection that an action does not survive under this section [former Code 1962 Section 10‑209] by an oral demurrer at the trial. Duke v. Postal Telegraph Cable Co. (S.C. 1905) 71 S.C. 95, 50 S.E. 675.

6. Assignability of actions

This section [former Code 1962 Section 10‑209], providing for the survival of certain causes of action, has the incidental effect of making such causes of action assignable. Hair v Savannah Steel Drum Corp., 161 F Supp 654 (1955), holding that the case of Lisenby v Patz, 130 F Supp 670 (1955), misconstrued the law of South Carolina in holding that a right of action for personal injury is not assignable and that this section was enacted solely for the purpose of protecting survivorship rights and not for carrying with it the usual rights of assignability which customarily flow from survival statutes. Hair v Savannah Steel Drum Corp., 161 F Supp 654 (1955). Lisenby v Patz, 130 F Supp 670 (1955).

Right of action is assignable if, and only if, same action would survive to assignor’s personal representative in event of assignor’s death; action in tort against insurance company for negligent, willful or bad faith failure to settle within policy limits is assignable since such action is unlike purely “personal” tort which basically causes damage to party’s character and reputation. Schneider v. Allstate Ins. Co. (D.C.S.C. 1980) 487 F.Supp. 239.

Where plaintiff recovered a judgment in excess of the coverage of the insured, and insured subsequently assigned to the plaintiff any claim that he had against insurance company based on alleged negligent and bad faith conduct in refusing to settle the claim, such cause of action sounding in tort would survive the death of the assignor, and could be the subject of a valid assignment. Jolly v. General Acc. Group (D.C.S.C. 1974) 382 F.Supp. 265.

If a right of action arising out of tort is of such a nature that, on the death of the party entitled to sue, it would, under this section [former Code 1962 Section 10‑209], survive to his personal representative, it may be assigned; but, if the right of action is such that it would not survive, it may not be made the subject of a valid assignment. Arant v. Stover (D.C.S.C. 1969) 307 F.Supp. 144, 8 A.L.R. Fed. 835. Assignments 24(1)

When injury produces a loss, whether that loss is expressed by payment or obligation for payment, for maintenance of the wife in her injured condition, or loss of consortium as a property and a feeling, redress for such injury (loss) survives under this section [former Code 1962 Section 10‑209] and the cause of action is assignable. Arant v. Stover (D.C.S.C. 1969) 307 F.Supp. 144, 8 A.L.R. Fed. 835. Abatement And Revival 54; Assignments 24(1)

A right of action for personal injuries is assignable where it would, on the death of the assignor, survive to his legal representative as this section [former Code 1962 Section 10‑209] provides. McWhirter v. Otis Elevator Co., 1941, 40 F.Supp. 11. Assignments 24(2)

This section [former Code 1962 Section 10‑209] authorizes the assignment of a right of action existing under Code 1962 Section 58‑1198 (see now Section 58‑17‑3920), providing for the liability of a railroad company for fires caused by its engines. Bultman v. Atlantic Coast Line R. Co. (S.C. 1916) 103 S.C. 512, 88 S.E. 279.

7. Joinder of actions

Civil actions under this section [former Code 1962 Section 10‑209] and Code 1962 Section 10‑1951 (see now Section 15‑51‑10) cannot be joined in one cause of action. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

Civil actions may not be tried together except by consent of the parties. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

Under this section [former Code 1962 Section 10‑209] an action for tort surviving against a wrongdoer may not be joined with an action for wrongful death for which he is also liable. Bennett v. Spartanburg Ry., Gas & Elec. Co. (S.C. 1914) 97 S.C. 27, 81 S.E. 189.

8. Subsequent effect of verdict in survival actions

For many years separate actions for wrongful death and under the survival statute have been brought, and while the factual issues were the same, yet the prior determination has not been held to be binding on the subsequent case. Deaton v. Gay Trucking Co. (D.C.S.C. 1967) 275 F.Supp. 750.

The widow of deceased and a beneficiary of his estate is not estopped by a verdict for the defendant in a survival action under this section [former Code 1962 Section 10‑209] in her suit for damages to her separate property which was injured by the identical contended act of negligence. Gleaton v. Southern Ry. Co. (S.C. 1948) 212 S.C. 186, 46 S.E.2d 879.

9. Trespass or injury to real property

Where dower rights vested in a widow upon the death of her husband, but the full use of the property was enjoyed by the husband’s grantee, the right of action for wrongfully withholding the enjoyment of dower rights survived the death of the widow, pursuant to the survival statute. Floyd v. Barrineau (S.C. 1975) 265 S.C. 16, 216 S.E.2d 753.

An action for trespass on real estate in erecting a telegraph line survives to the heir at law. Duke v. Postal Telegraph Cable Co. (S.C. 1905) 71 S.C. 95, 50 S.E. 675. Abatement And Revival 55(2)

10. Injuries to person or personal property; tort actions generally

A right of action for tort survives. Cathcart v Matthews, 105 SC 329, 89 SE 1021 (1916). McWhirter v Otis Elevator Co., 40 F Supp 11 (1941).

Claims in civil rights action that plaintiff was deprived of personal freedom, and liberty to express his views and to practice his profession, and was embarrassed, humiliated, and put in fear of his life equated to claim of false imprisonment or assault and therefore constituted injury to the person. Dean v. Shirer (C.A.4 (S.C.) 1976) 547 F.2d 227, 42 A.L.R. Fed. 155. Federal Courts 3028

The common‑law rule that there is no survival of actions in tort has been modified by this section [former Code 1962 Section 10‑209], which provides for the survival of causes of action for injuries to real estate as well as injuries to the person or personal property. Dubuque Fire & Marine Ins. Co. v. Wilson (C.A.4 (S.C.) 1954) 213 F.2d 115. Abatement And Revival 52

The right to procedural due process is an injury to the person that survives to the personal representative. Burt v. Abel (D.C.S.C. 1979) 466 F.Supp. 1234. Abatement And Revival 52

Since only exceptions to survival of causes of action are malicious prosecution, libel and slander, and fraud and deceit, federal civil rights action arising out of death of inmate in prison fire survived for benefit of inmate’s estate. Belcher v. South Carolina Bd. of Corrections (D.C.S.C. 1978) 460 F.Supp. 805.

Since there is no federal survival statute, 1962 Code Section 10‑209 [1976 Code Section 15‑5‑90] is applicable to claims brought under the Federal Tort Claims Act, 28 USCA 2671. Pringle v. U. S. (D.C.S.C. 1976) 419 F.Supp. 289.

Even though a plaintiff’s action for personal injuries survives against a nonresident motorist’s estate under this section [former Code 1962 Section 10‑209], service upon his administrator, under former Code 1962 Section 46‑104 (see now Section 15‑9‑350), does not give a court jurisdiction. Gregory v. White, 1957, 151 F.Supp. 761.

Niece, who was decedent’s closest living heir and real representative, lacked standing to assert personal claims for violations of Omnibus Adult Protection Act and breach of fiduciary duty on behalf of decedent against decedent’s former colleagues, to whom decedent devised her entire estate, and decedent’s guardian ad litem; decedent died testate, and probate court appointed a personal representative, so that only personal representative could pursue the claims. Fisher ex rel. Shaw‑Baker v. Huckabee (S.C.App. 2015) 415 S.C. 171, 781 S.E.2d 156, rehearing denied, certiorari granted. Descent and Distribution 89

The trial court erred in directing a verdict for the defense on a survival action where an officer, who was at the scene when the deceased was found, testified that he saw an 8‑foot trail of blood leading away from the deceased’s body, and both his testimony and photos showed that the deceased was found clutching the gun wound in his chest, with leaves and pine needles on his hands; since a reasonable jury could have concluded that the deceased lived long enough to crawl away from the place of the shooting, they could have inferred that he experienced pain and suffering. Vereen v. Liberty Life Ins. Co. (S.C.App. 1991) 306 S.C. 423, 412 S.E.2d 425.

The administrator of the estate of a deceased school child, who had been struck by school bus B after alighting from school bus A, could not recover damages under the Survival Act, Section 15‑5‑90, based on the negligent operation of bus B, where the administrator’s action was premised on the mandatory school bus insurance required by Section 59‑67‑710(1)(b) and the administrator had already collected the insurance benefits available under Section 59‑67‑710(1)(a). Toney v. South Carolina Dept. of Educ. (S.C. 1985) 284 S.C. 401, 327 S.E.2d 322.

Action against county for pain and suffering. There is no cause of action for damages for pain and suffering accruing to the intestate and surviving to his personal representatives by the terms of this section [Code 1962 Section 10‑209] against a county of this State. Chewning v. Clarendon County (S.C. 1933) 168 S.C. 351, 167 S.E. 555.

11. Wrongful death

Genuine issues of material fact remained as to whether police officer used excessive force in fatally shooting suspect during execution of search warrant for evidence of his participation in illegal gambling activities, thus precluding summary judgment on claims against police officer for wrongful death and survivorship action under South Carolina law. Wingate v. Byrd, 2016, 211 F.Supp.3d 816, opinion vacated in part on reconsideration 2016 WL 7012962. Arrest 68.1(4)

This section provides for the survival of an action to recover for injuries to a decedent while he was alive; thus, a federal civil rights action brought by the widow of a prison inmate who died in a prison fire survived his death. Belcher v. South Carolina Bd. of Corrections (D.C.S.C. 1978) 460 F.Supp. 805. Abatement And Revival 52; Abatement And Revival 55(3); Death 10; Libel And Slander 72

A life insurer could not be held liable for the wrongful death of an insured under the doctrine of respondeat superior where the insurer’s agent fraudulently issued a life insurance policy on the life of the insured, without the insured’s knowledge, to one who was later convicted of killing the insured for the policy proceeds, but it was not shown that the agent was acting within the scope of his employment or in furtherance of the insurer’s business when he issued the policy. Vereen v. Liberty Life Ins. Co. (S.C.App. 1991) 306 S.C. 423, 412 S.E.2d 425. Insurance 1665; Insurance 1774

A child who, while viable and capable of existing independently of its mother, suffers a prenatal injury through the alleged negligence of another, may after its birth maintain a cause of action against such other for damages on account of the injury sustained, and therefore, if it dies after birth from the injuries, its administrator can bring actions for its pain and agony and for the wrongful death. Hall v. Murphy (S.C. 1960) 236 S.C. 257, 113 S.E.2d 790.

12. Libel and slander

A cause of action for slander is, until reduced to judgment, a tort of a strictly personal character and is not made assignable by the provisions of this section [Code 1962 Section 10‑209]. Perry v Atlantic Coast Life Ins. Co., 166 SC 270, 164 SE 753 (1932). Lisenby v Patz, 130 F Supp 670 (1955).

Claims for libel and slander are not assignable, but neither are they within the class of actions which survive under this section [Code 1962 Section 10‑209]. Hair v. Savannah Steel Drum Corp., 1955, 161 F.Supp. 654.

Section does not apply to libel or slander. The General Assembly was careful in not including actions for injury to character in this section [Code 1962 Section 10‑209]. Therefore, an ordinary cause of action for libel or slander dies with the person. Carver v. Morrow (S.C. 1948) 213 S.C. 199, 48 S.E.2d 814.

13. Malicious prosecution

Section does not apply to malicious prosecution. Cause of action for malicious prosecution does not survive against estate of deceased. Brown v. Bailey (S.C. 1949) 215 S.C. 175, 54 S.E.2d 769. Abatement And Revival 54

14. Measure and elements of damages

Under the South Carolina Noneconomic Damage Awards Act, estate of kidney transplant patient bringing a survival action, and the patient’s surviving spouse, and surviving children, who were all bringing wrongful death actions, each constituted claimants limited to an amount not to exceed $350,000 each, in case against the United States, alleging the patient died of Tacrolimus toxicity and kidney failure due to the negligent, careless, and reckless filling and dispensing of the patient’s medication by employees at a naval hospital pharmacy; although claimant meant “the person suffering personal injury,” the definition of personal injury made clear that not only did the patient, or more accurately, his estate, qualify as a claimant pursuant to the survival statute, but also, the surviving spouse and children each qualified as claimants pursuant to the wrongful death statute, as they each suffered personal injury, which was defined to include mental distress or suffering, loss of wages, loss of service, loss of consortium, wrongful death, survival, and other noneconomic damages and actual economic damages. Boyle v. U.S., 2012, 948 F.Supp.2d 577. Death 96

In an action under this section [former Code 1962 Section 10‑209] for conscious pain and suffering of plaintiff’s intestate, who lived and was conscious for about four days after receiving fatal injuries in a collision, plaintiff was entitled to the sum of $2500. Downing v. Ulmer (D.C.S.C. 1966) 253 F.Supp. 694.

The measure of damages under this section [former Code 1962 Section 10‑209] is for conscious pain and suffering. Folk v. U.S., 1952, 102 F.Supp. 736, reversed 199 F.2d 889.

Award of zero damages for survival action brought by personal representative of automobile passenger’s estate against railroad was legally incorrect, thus warranting new trial absolute; several witnesses testified that passenger was suffering great pain following collision, and status of personal representative, who was driving vehicle at time of collision, as passenger’s beneficiary, could not be considered to impute her comparative negligence to estate. Carson v. CSX Transp., Inc. (S.C. 2012) 400 S.C. 221, 734 S.E.2d 148. New Trial 75(5)

There can be no recovery for funeral expenses in an action under the survival statute, because one cannot sue and recover for his own funeral expenses. Gowan v. Thomas (S.C. 1960) 237 S.C. 223, 116 S.E.2d 761. Death 84

Unless the deceased consciously suffered there can be no recovery under this section [former Code 1962 Section 10‑209]. Croft v. Hall (S.C. 1946) 208 S.C. 187, 37 S.E.2d 537.

In an action brought under this section [former Code 1962 Section 10‑209] deceased was injured in taxicab accident and was more or less unconscious until she died a day later; as there was more than a scintilla of evidence tending to prove that she consciously suffered, it was in the province of the jury to pass on it. Croft v. Hall (S.C. 1946) 208 S.C. 187, 37 S.E.2d 537.

15. Fraud and deceit

This section [former Code 1962 Section 10‑209] was held inapplicable to an action ex delicto for fraud and deceit, based on alleged false representations made in the sale of certain timber. Halsey v. Minnesota‑South Carolina Land & Timber Co. (D.C.S.C. 1932) 54 F.2d 933.

Dismissal of widow of trust beneficiary’s fraud claims against trustees was warranted, even though the causes of action were based on acts against beneficiary before his death; actions for fraud or deceit were excepted from the survivability statute. Brailsford v. Brailsford (S.C.App. 2008) 380 S.C. 443, 669 S.E.2d 342. Abatement And Revival 55(3)

Buyers’ claims against seller of aluminum windows, awnings, and doors were not grounded in fraud and deceit and, accordingly, survived class member’s death; claims for violation of Consumer Protection Code were absolute and did not depend on actual fraud, and Consumer Protection Code did not define “fraud.” Tilley v. Pacesetter Corp. (S.C. 2003) 355 S.C. 361, 585 S.E.2d 292. Abatement And Revival 53

Car buyer’s action against dealer for an unfair act under the Regulation of Manufacturers, Distributors, and Dealers Act, alleging that the purchase price for the vehicle contained a concealed closing fee, was in essence a claim of fraud or deceit, so that the general survivability statute did not allow the action to be maintained after the car buyer’s death. Ferguson v. Charleston Lincoln Mercury, Inc. (S.C. 2002) 349 S.C. 558, 564 S.E.2d 94. Abatement And Revival 52

An action for fraud or deceit is an exception to the general survivability statute allowing an action to be maintained after a person’s death. Ferguson v. Charleston Lincoln Mercury, Inc. (S.C. 2002) 349 S.C. 558, 564 S.E.2d 94. Abatement And Revival 52

A cause of action for fraud and deceit does not come within either of the instances where a cause of action survives. Mattison v. Palmetto State Life Ins. Co. (S.C. 1941) 197 S.C. 256, 15 S.E.2d 117.

Grantor’s cause of action for alleged fraud or undue influence in procuring execution of deed held not such “trespass” upon nor “injury” to realty as would result in cause of action surviving grantor’s death. Bemis v. Waters (S.C. 1933) 170 S.C. 432, 170 S.E. 475. Abatement And Revival 55(2)

**SECTION 15‑5‑100.** Damages under Sections 15‑5‑90 or 15‑51‑10 may include funeral expenses.

Damages recoverable under either Sections 15‑5‑90 or 15‑51‑10 may include reasonable funeral expenses, but such funeral expenses shall be sought in only one action.

HISTORY: 1962 Code Section 10‑209:1; 1962 (52) 1946.

LIBRARY REFERENCES

Westlaw Key Number Search: 117k84.

Death 84.

C.J.S. Death Sections 204 to 205.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Adams v. Hunter (D.C.S.C. 1972) 343 F.Supp. 1284, affirmed 471 F.2d 648.

**SECTION 15‑5‑110.** Executors’ or administrators’ actions against trespassers.

Executors or administrators in cases of trespass done to their decedents, as of the goods and chattels of the decedents carried away in their life, shall have an action against the trespassers and may recover their damages in like manner as they, whose executors or administrators they are, should have had it if they were alive.

HISTORY: 1962 Code Section 10‑210; 1952 Code Section 10‑210; 1942 Code Section 415; 1932 Code Section 415; Civ. P. ‘22 Section 371; Civ. C. ‘12 Section 3959; Civ. C. ‘02 Section 2855; G.S. 2187; R.S. 2319; 4 Ed. 3c. 7; 1712 (2) 425; 1972 (57) 2485.

CROSS REFERENCES

Affirmative defense under South Carolina Rules of Civil Procedure, see Rule 8, SCRCP.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 2k55(2).

Abatement and Revival 55(2).

C.J.S. Abatement and Revival Section 137.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Abatement, Revival and Survival of Actions Section 26, Actions for Personal Injury.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 10‑210] only gives executors the right to sue trespassers and does not give any right to third persons to sue executors for trespasses or other torts. Elmore v Elmore, 58 SC 289, 36 SE 656 (1900). Huff v Watkins, 20 SC 477 (1884).

For additional related cases, see Middleton v Robinson, 1 Bay (1 SCL) 58. Huff v Watkins, 20 SC 477 (1884).

**SECTION 15‑5‑120.** Actions against executors or administrators when one or more is out of State.

In cases in which there are two or more executors or administrators to any estate and any one or more of them has withdrawn or shall withdraw or shall reside out of the State, any creditor or person having a right or cause of action against such estate may commence his action against all the executors or administrators, naming and setting forth therein the executor or administrator, one or more, who is out of the State. In such case if the summons be served in the usual form upon those who are within the State the suit shall be deemed to be good and effectual in law to all intents and purposes, saving only that the judgment in such cases shall not extend to work any devastavit upon the person so absent or to affect him in his private right.

HISTORY: 1962 Code Section 10‑211; 1952 Code Section 10‑211; 1942 Code Section 417; 1932 Code Section 417; Civ. P. ‘22 Section 373; Civ. C. ‘12 Section 3961; Civ. C. ‘02 Section 2857; G.S. 2189; R.S. 2321; 1793 (7) 282.

CROSS REFERENCES

Affirmative defense under South Carolina Rules of Civil Procedure, see Rule 8, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 162k420 to 162k457.

Executors and Administrators 420 to 457.

C.J.S. Executors and Administrators Sections 278, 706 to 784, 884, 895, 898.

C.J.S. Wills Section 157.

**SECTION 15‑5‑130.** Representative of deceased nonresident motor vehicle operator.

In the event a nonresident who shall have operated a motor vehicle on the public highways or streets of any incorporated municipality of this State causing injuries or death shall have died, any person who may have an interest therein may apply to the probate court of the county of residence of such party so interested or of the county in which such wrong may have been inflicted for the appointment of a personal representative of such deceased wrongdoer and, upon such appointment, action may be commenced against such personal representative of such nonresident deceased and service of such process shall be made upon such personal representative and a copy of such process mailed to the address of such deceased person as provided in Section 15‑9‑370.

HISTORY: 1962 Code Section 10‑212; 1952 Code Section 10‑212; 1949 (46) 342.

CROSS REFERENCES

Affirmative defense under South Carolina Rules of Civil Procedure, see Rule 8, SCRCP.

Director of Department of Public Safety as attorney of nonresident motorists for service of process, see Section 15‑9‑350.

Provisions of South Carolina Probate Code relative to jurisdiction of courts of this State with respect to foreign personal representative, see Sections 62‑4‑301, 62‑4‑302.

LIBRARY REFERENCES

Westlaw Key Number Searches: 48Ak196; 48Ak235(3).

Automobiles 196, 235(3).

C.J.S. Motor Vehicles Sections 833, 998 to 1001.

NOTES OF DECISIONS

In general 1

1. In general

In a civil action commenced in a South Carolina State court by service of Summons (Complaint Not Served) upon a duly appointed temporary administrator, where said temporary administrator and plaintiff were both citizens of South Carolina, a subsequent appointment and substitution of a nonresident administratrix as a party defendant had the effect of relating back to the date of the commencement of the action so that the action could properly be removed from the State court to a Federal court. Smith v. Seaboard Coast Line R. Co. (D.C.S.C. 1971) 327 F.Supp. 536.

State law did not govern the question of when a civil action was commenced for the purpose of determining diversity of citizenship in connection with a petition for removal to a Federal court. Smith v. Seaboard Coast Line R. Co. (D.C.S.C. 1971) 327 F.Supp. 536.

The enactment of this section [former Code 1962 Section 10‑212] is evidence that former Code 1962 Section 46‑104 (see now Section 15‑9‑350) did not intend that the Chief Highway Commissioner was to be the agent of a deceased nonresident motorist’s administrator or personal representative upon whom process could be served. Gregory v. White, 1957, 151 F.Supp. 761.

Cited in Norwood v. Parthemos (S.C. 1956) 230 S.C. 207, 95 S.E.2d 168.

**SECTION 15‑5‑140.** Representative of deceased nonresident motor vehicle operator; substitution of other representative.

The foreign personal representative of any such deceased wrongdoer or any other person interested in defending such action may within sixty days after service as provided in Section 15‑9‑370 apply to the court in which such action may be pending for an order staying such action for a reasonable period of not exceeding sixty days and during such time may apply to the probate court and procure the appointment of some other suitable person to act as personal representative of such deceased person. Upon such appointment such personal representative shall be forthwith made a party defendant on motion of plaintiff without further service of process. If no such application for a stay be made the personal representative so originally appointed shall answer such process within sixty days from the date of such service upon him or be adjudged in default.

HISTORY: 1962 Code Section 10‑213; 1952 Code Section 10‑213; 1949 (46) 342.

CROSS REFERENCES

Affirmative defense under South Carolina Rules of Civil Procedure, see Rule 8, SCRCP.

Provisions of South Carolina Probate Code relative to jurisdiction of courts of this State with respect to foreign personal representative, see Sections 62‑4‑301, 62‑4‑302.

LIBRARY REFERENCES

Westlaw Key Number Searches: 48Ak196; 48Ak235(3).

Automobiles 196, 235(3).

C.J.S. Motor Vehicles Sections 833, 998 to 1001.

**SECTION 15‑5‑150.** Foreign corporations as defendants.

An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court:

(1) By any resident of this State for any cause of action; or

(2) By a plaintiff not a resident of this State when the cause of action shall have arisen or the subject of the action shall be situated within this State.

HISTORY: 1962 Code Section 10‑214; 1952 Code Section 10‑214; 1942 Code Section 826; 1932 Code Section 826; Civ. P. ‘22 Section 774; Civ. P. ‘12 Section 461; Civ. P. ‘02 Section 423; 1870 (14) 522 Section 442.

CROSS REFERENCES

Service of process on foreign corporations generally, see Section 15‑9‑240.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k663.

Corporations 663.

C.J.S. Corporations Sections 936, 939, 947.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 71, The Four Basic Requirements.

S.C. Jur. Constitutional Law Section 94, Civil Remedies and Proceedings.

S.C. Jur. South Carolina Rules of Civil Procedure Section 9.2, Discussion.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 8637.10, Jurisdiction Over Foreign Corporations‑State Courts.

Fletcher Cyclopedia Law of Private Corporations Section 8703.11, Parties‑Nonresidents.

Fletcher Cyclopedia Law of Private Corporations Section 8703.13, Parties‑Rule Under New York Statute and Similar Enactments.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: The South Carolina “Door‑Closing” Statute. 31 S.C. L. Rev. 92.

Annual Survey of South Carolina Law: Practice and Procedure: Door‑Closing Statute. 33 S.C. L. Rev. 117, August 1981.

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1. In general

Cited in State v Rawleigh Co., 172 SC 415, 174 SE 385 (1934). State v Ford Motor Co., 208 SC 379, 38 SE2d 242 (1946). Ratliff v Cooper Laboratories, Inc., 444 F2d 745 (4th Cir 1971).

The reason for enacting this section [Code 1962 Section 10‑214] is uncertain. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

Issue of whether South Carolina’s “door‑closing statute” precluded Florida corporation’s breach of contract action against Canadian defendants could not be resolved prior to discovery phase, since the record contained little or no evidence from which the court could determine whether the contract was made or was to be performed in South Carolina. Tuttle Dozer Works, Inc. v. Gyro‑Trac (USA), Inc., 2006, 463 F.Supp.2d 544. Federal Courts 2781

Cause of action “arises,” for purposes of the Door Closing Statute, which prohibits a non‑resident from maintaining an action against a foreign corporation in a South Carolina court unless the cause of action arose in South Carolina or the subject of the action is located there, when the act or omission that creates the right to bring suit happens or begins. 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. Courts 6

The court did not have jurisdiction over a products liability action arising in Georgia, filed by an Ohio resident against a manufacturing corporation created by the laws of Delaware and New York, even though the principal place of business of one manufacturer was South Carolina. Parsons v. Uniroyal‑Goodrich Tire Corp. (S.C. 1993) 313 S.C. 394, 438 S.E.2d 238. Courts 13.8(2)

The jurisdiction of the courts of this State over foreign corporations is, in the first instance, a question of State law. A Federal Act cannot confer jurisdiction upon the State court where the State has not provided for such jurisdiction. Clark v. Babbitt Bros., Inc. (S.C. 1973) 260 S.C. 378, 196 S.E.2d 120.

There is nothing to compel a state to exercise jurisdiction over a foreign corporation unless it chooses to do so, and the extent to which it so chooses is a matter for the law of the state as made by its legislature. Clark v. Babbitt Bros., Inc. (S.C. 1973) 260 S.C. 378, 196 S.E.2d 120.

Applied in Chappell v. Fidelity & Deposit Co. of Maryland (S.C. 1940) 194 S.C. 124, 9 S.E.2d 592.

2. Constitutionality

This section [former Code 1962 Section 10‑214] does not violate the Federal Const, Art 4, Section 2, which secures to the citizens of each state all the privileges and immunities of citizens in the several states, as the provisions of this section relate only to residence, and not to citizenship; nor does it conflict with SC Const, Art 1, Section 15. Cummings v Wingo, 31 SC 427, 10 SE 107 (1889). Central R. & Banking Co. v Georgia Constr., etc., Co., 32 SC 319, 11 SE 192 (1890).

While this section [former Code 1962 Section 10‑214] may not directly violate the demands of the constitutional principle that the full faith and credit clause of the Federal Constitution express a national interest looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states, it is contrary to its implicit policy. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

Section 15‑5‑150 is not unconstitutional on equal protection grounds since the statute accomplished several legislative objectives rationally related to the state’s interests such as favoring resident plaintiffs over nonresident plaintiffs, providing a forum for wrongs connected with the State while avoiding the resolution of wrongs in which the State has little interest, and encouraging activity and investment within the State by foreign corporations without subjecting it to actions unrelated to the activity within the State. Rosenthal v. Unarco Industries, Inc. (S.C. 1982) 278 S.C. 420, 297 S.E.2d 638.

This section is not unconstitutional as impairing the obligation of contracts, since a corporation, being the mere creation of the local law, depends for a recognition of its legal existence by other states on the assent of the states; and a state may make such regulations in regard to corporations created in another state as it deems best, or it may exclude them. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

Publishing corporation’s regular circulation of magazines in forum state is sufficient to support assertion of jurisdiction in libel action based on contents of magazine, even where single publication rule is applied. Keeton v. Hustler Magazine, Inc., 1984, 104 S.Ct. 1473, 465 U.S. 770, 79 L.Ed.2d 790.

3. Construction, generally

The language of this section [former Code 1962 Section 10‑214] is too clear to require interpretative comment. Mobley v Bland, 200 SC 448, 21 SE2d 22 (1942). Chapman v Southern Ry. Co., 230 SC 210, 95 SE2d 170 (1956). Lipe v Caroline Clinchfield & Ohio Ry. Co., 123 SC 515, 116 SE 101 (1923).

Murphy v. Owens Corning Fiberglas Corp. (S.C. 2003) 2003 WL 22429689, [main volume] rehearing granted, opinion amended and superseded on rehearing 356 S.C. 592, 590 S.E.2d 479.

This section [former Code 1962 Section 10‑214] is procedural. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

Door‑closing statute which restricts suits by non‑resident plaintiffs against foreign corporations does not involve subject matter jurisdiction, but determines the capacity of a party to sue. McCall v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 359 S.C. 372, 597 S.E.2d 181. Courts 6

Where face of complaint showed that plaintiff was not resident, that incident which gave rise to cause of action occurred outside of state, and defendant was joint venture organized under and having its offices in another state, state’s Door Closing Statute was clearly applicable, depriving circuit court of subject matter jurisdiction over action. Eagle v. Global Associates (S.C.App. 1987) 292 S.C. 354, 356 S.E.2d 417.

4. Accrual of cause of action

Cause of action “accrues,” for purposes of the Door Closing Statute, which prohibits a non‑resident from maintaining an action against a foreign corporation in a South Carolina court unless the cause of action arose in South Carolina or the subject of the action is located there, when it becomes complete so that the aggrieved party can begin and prosecute such action. 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. Courts 6

A cause of action accrues when facts exist which authorize one party to maintain an action against another. Cornelius v. Atlantic Grey Hound Lines (S.C. 1935) 177 S.C. 93, 180 S.E. 791.

5. County where action is brought

Under this section [former Code 1962 Section 10‑214] a plaintiff may elect in which county to sue a foreign corporation; and the jurisdiction of a court of a county in which the corporation does not have an agent cannot be overthrown by showing the corporation has become domesticated. Elms v. Southern Power Co. (S.C. 1907) 78 S.C. 323, 58 S.E. 809.

6. Jurisdiction of magistrate’s court

In view of other legislation subjecting foreign corporations to jurisdiction of the State courts, this section [former Code 1962 Section 10‑214] has been construed as not limiting all actions against foreign corporations to the circuit courts; and a magistrate’s court may entertain actions against such corporations when the action is otherwise within the jurisdiction of the magistrate. Best v. Seaboard Air Line Ry. (S.C. 1905) 72 S.C. 479, 52 S.E. 223.

7. Federal courts; removal

State statute which closes doors of state courts for suits involving foreign cause of action brought by foreign plaintiff against foreign corporation deprives Federal District Court of jurisdiction, and plaintiff’s failure to timely file suit in more logical, convenient forum does not constitute countervailing consideration favoring exercise of federal jurisdiction. Proctor & Schwartz, Inc. v. Rollins (C.A.4 (S.C.) 1980) 634 F.2d 738. Federal Courts 2743(2)

This section [former Code 1962 Section 10‑214] did not restrict jurisdiction of South Carolina Federal district court over foreign corporation, which was sued in a diversity action by nonresidents for death of occupants of aircraft which was serviced in South Carolina and crashed in Tennessee. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

If this section [former Code 1962 Section 10‑214] could be regarded as a statutory formulation of the doctrine of forum non conveniens, its restriction would not be binding on the Federal court, since Federal cognizance of a case would in no way frustrate State policy. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

This section [former Code 1962 Section 10‑214] does not enable a cause of action to be removed to the Federal court where the circuit court did not have jurisdiction under this section, even though the cause might have been brought in the Federal court in the first instance. Lightfoot v. Atlantic Coast Line R. Co. (D.C.S.C. 1929) 33 F.2d 765.

Absent countervailing federal interests, a federal court sitting in diversity must apply South Carolina’s “door‑closing statute,”which provides that action against corporation created under law of another state may be brought in South Carolina by nonresident when cause of action arose or subject of action was situated within state. Tuttle Dozer Works, Inc. v. Gyro‑Trac (USA), Inc., 2006, 463 F.Supp.2d 544. Federal Courts 3025(4)

South Carolina’s “door‑closing” statute, which must be applied by federal courts sitting in South Carolina exercising diversity jurisdiction unless case presents affirmative countervailing federal considerations, deprived federal district court of subject matter jurisdiction over personal injury diversity action; no countervailing considerations favoring exercise of federal jurisdiction were presented in personal injury action based on claim that accident, which occurred in Marshall Islands in Pacific ocean, was caused by alleged negligence of defendant, a Delaware corporation with principal place of business in Pennsylvania, and that such accident resulted in injuries to plaintiff, a resident of Alabama. Grimsley v. United Engineers and Constructors, Inc., 1993, 818 F.Supp. 147.

Federal court, which was deprived of subject matter jurisdiction over personal injury diversity action pursuant to state’s door‑closing statute, did not have power to transfer venue pursuant to federal change of venue statute providing for transfer for convenience of parties and witnesses and in interest of justice. Grimsley v. United Engineers and Constructors, Inc., 1993, 818 F.Supp. 147. Federal Courts 2902

Jurisdiction of the Federal courts is not controlled by this section [former Code 1962 Section 10‑214]. Wofford v. Prudential Ins. Co. of America (D.C.S.C. 1946) 65 F.Supp. 637.

8. Service of process

There is no method provided under the South Carolina statutes for service of process on a defendant corporation not doing business in this State so as to bring it within the jurisdiction of the courts of this State. Clark v. Babbitt Bros., Inc. (S.C. 1973) 260 S.C. 378, 196 S.E.2d 120.

The court held service upon agent of undomesticated foreign corporation in county where corporation was conducting business gave jurisdiction of action to court in another county. McIntyre v. United Five Cent & Ten Cent Stores (S.C. 1934) 171 S.C. 273, 172 S.E. 220. Corporations And Business Organizations 3258

9. Matters pertaining to pleading and the like

State of incorporation of defendant does not have to be shown. Machen v. Western Union Telegraph Co. (S.C. 1902) 63 S.C. 363, 41 S.E. 448.

A complaint in a court of general jurisdiction is not demurrable under this section [former Code 1962 Section 10‑214] on the ground of want of jurisdiction because of nonresidence of the plaintiff, it not appearing therefrom what his residence is. Pollock v. Carolina Interstate Building & Loan Ass’n (S.C. 1896) 48 S.C. 65, 25 S.E. 977, 59 Am.St.Rep. 695. Pleading 193(3)

A foreign corporation waives the defect in a complaint failing to state that plaintiff was a resident of State, by appearing in court and answering to the merits, as the appearance presumes jurisdiction by the court over the plaintiff. Chafee v. Postal Telegraph Cable Co. (S.C. 1892) 35 S.C. 372, 14 S.E. 764.

10. Forum non conveniens

Conceding the advisability of adopting the doctrine of forum non conveniens, it should not be applied in an action against a foreign railroad corporation for a death occurring in another state when the plaintiff is a resident of this State. Chapman v. Southern Ry. Co. (S.C. 1956) 230 S.C. 210, 95 S.E.2d 170.

11. Effect of dismissal for want of jurisdiction

Where court is without jurisdiction of subject matter of case by reason of parties and cause of action being all foreign to South Carolina, any action with respect to such cause, other than to dismiss it, is absolutely void, such that circuit court properly denied plaintiff’s motion to compel discovery to demonstrate defendant’s minimum contacts with state. Eagle v. Global Associates (S.C.App. 1987) 292 S.C. 354, 356 S.E.2d 417.

Dismissal of action on sole ground that court has no jurisdiction of subject matter of the suit is not adjudication of merits of case and will not bar another action for same cause. Gulledge v. Young (S.C. 1963) 242 S.C. 287, 130 S.E.2d 695. Judgment 570(9)

As an action cannot be commenced by attachment, which is only a provisional remedy in aid of an action, it follows necessarily that if the action fails for want of jurisdiction under this section [former Code 1962 Section 10‑214], the provisional remedy by attachment in aid of such action must fall with it. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

12. “Any cause of action”

Jurisdiction of a foreign corporation doing business in the State through agents amenable to process, though it has not complied with the State laws nor intended to subject itself to the jurisdiction of the State courts, is acquired under this section [former Code 1962 Section 10‑214] in an action brought by a resident of the State, though the cause of action arose without the State. Lipe v Carolina, etc., R. Co., 123 SC 515, 116 SE 101 (1923). Ezell v Rust Engineering Co., 75 F Supp 980 (1948).

13. “Subject of the action”

The cause of action is described as being a legal wrong threatened or committed against the complaining party; and the object of the action is to prevent or redress the wrong by obtaining some legal relief. The subject of the action is, clearly, neither of these; it is not the wrong which gives the plaintiff the right to ask the interposition of the court, nor is it that which the court is asked to do for him, but it must be the matter or thing, differing both from the wrong and the relief, in regard to which the controversy has arisen, concerning which the wrong has been done; and this is, ordinarily, the property, or the contract and its subject matter, or other thing involved in the dispute. Ophuls & Hill v Carolina Ice & Fuel Co., 160 SC 441, 158 SE 824 (1931). Knight v Fidelity & Casualty Co., 184 SC 362, 192 SE 558 (1934).

“Subject of the action,” within meaning of South Carolina Door Closing Statute prohibiting a non‑resident from maintaining an action against a foreign corporation in a South Carolina court unless the cause of action arose in South Carolina or the “subject of the action” is located there, is typically inapplicable in determining jurisdiction in personal injury actions. 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. Courts 17

In all cases, legal or equitable, the “subject of the action” is the plaintiff’s main primary right which has been broken and by the breach of which a remedial right arises. Knight v. Fidelity & Cas. Co. of New York (S.C. 1937) 184 S.C. 362, 192 S.E. 558. Action 1

In action between foreign corporations, allegations of complaint showed that breach of South Carolina contract was “subject of the action” rather than notes, executed and payable elsewhere, arising from contract, so circuit court had jurisdiction of action and attachment issued in aid thereof. Ophuls & Hill v. Carolina Ice & Fuel Co. (S.C. 1931) 160 S.C. 441, 158 S.E. 824. Corporations And Business Organizations 3286

Under this section [former Code 1962 Section 10‑214] the property seized under attachment proceedings does not constitute “the subject of the action” so as to give the court jurisdiction of an action by a nonresident against a foreign corporation, when there is no allegation in the complaint filed in the action of any title to, or any interest in, the property levied on. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

An attachment is only a provisional remedy, which requires an action legally instituted as a necessary condition precedent to the right to maintain it, and the real subject of the action must necessarily be the subject of the complaint. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

14. Cause of action within state

Failure to pay a loss under a contract of a foreign insurance company with a nonresident, where the loss is payable in the State, creates a cause of action “within the State” under this section [former Code 1962 Section 10‑214], as a cause of action arises at the place of performance, which is presumably the place of making. Carpenter v American Acci. Co., 46 SC 541, 24 SE 500 (1896). Curnow v Phoenix Ins. Co., 37 SC 406, 16 SE 132 (1892). Tillinghast v Boston, etc., Lbr. Co., 39 SC 484, 18 SE 120 (1893).

Murphy v. Owens Corning Fiberglas Corp. (S.C. 2003) 2003 WL 22429689, [main volume] rehearing granted, opinion amended and superseded on rehearing 356 S.C. 592, 590 S.E.2d 479.

South Carolina’s door‑closing statute permits a case brought by a foreign plaintiff against a foreign defendant to be brought in South Carolina when the cause of action arose or the subject matter of the action is situated in South Carolina. Fung Lin Wah Enterprises Ltd. v. East Bay Import Co., 2006, 465 F.Supp.2d 536. Courts 6; Courts 17

Action for breach of contract and to recover under a personal guarantee would not be dismissed for lack of jurisdiction pursuant to South Carolina’s door‑closing statute where the plaintiff produced some evidence that South Carolina was the place of performance, and some evidence that none of the defendants were foreign defendants. Fung Lin Wah Enterprises Ltd. v. East Bay Import Co., 2006, 465 F.Supp.2d 536. Federal Courts 2760(1)

Cause of action arose within South Carolina for purposes of Section 15‑5‑150 where goods, which were ordered from plaintiff Indiana corporation, were to be delivered to defendant North Carolina corporation in South Carolina but where, prior thereto, defendant allegedly terminated, i.e., anticipatorily repudiated, contract. Recreonics Corp. v. Aqua Pools, Inc., 1986, 638 F.Supp. 754.

Non‑resident plaintiff failed to produce evidence of regular and frequent exposure to manufacturers’ asbestos‑containing products in South Carolina, as was required under the Door Closing Statute, to support his action against foreign manufacturers for damages arising when he contracted mesothelioma and other asbestos‑related diseases. Henderson v. Allied Signal, Inc. (S.C. 2007) 373 S.C. 179, 644 S.E.2d 724. Courts 6

Libel cause of action accrued for persons involved in explosion of gun turret on U.S. Navy battleship against publisher of book regarding incident upon each and every dissemination of book in state, as required to satisfy door closing statute requirement that nonresident plaintiffs’ action must accrue in state in order to have capacity to bring action in state court. Moosally v. W.W. Norton & Co., Inc. (S.C.App. 2004) 358 S.C. 320, 594 S.E.2d 878, on remand 2004 WL 5203317. Courts 6

It is not appropriate to apply a strict accrual test to latent disease tort actions brought by a nonresident against a foreign corporation, under the door‑closing statute preventing nonresidents from bringing an action against a foreign corporation unless cause of action arose in state; the proper inquiry is whether the foreign corporation’s activities that allegedly exposed the victim to the injurious substance, and the exposure itself, occurred within the State, and, if so, then the legal wrong was committed in the state. Murphy v. Owens‑Corning Fiberglas Corp. (S.C. 2003) 356 S.C. 592, 590 S.E.2d 479. Courts 6

Where a nonresident, who had used the going portion of round‑trip ticket on a bus from a point in another state to a point within the State and the driver of the bus on the going trip had taken part of her return ticket, was allegedly ejected “in a rude manner” by the bus driver within the State where she had boarded bus for return trip, the cause of action against the bus company, a foreign corporation, arose at the place where the nonresident was ejected, and the circuit court of the county where the ejection took place had jurisdiction. Cornelius v. Atlantic Grey Hound Lines (S.C. 1935) 177 S.C. 93, 180 S.E. 791. Carriers 375

15. Cause of action arising out of state

In order for a circuit court of this State to have jurisdiction in a case against a foreign corporation, where the cause of action arises without the State, it must be shown that the corporation is “doing business” within the State. Thompson v Queen City Coach Co., 169 SC 231, 168 SE 693 (1933). Clark v Babbitt Bros., 260 SC 378, 196 SE2d 120 (1973).

The circuit court, under this section [former Code 1962 Section 10‑214], has no jurisdiction of an action by one foreign corporation against another foreign corporation on a cause of action arising outside of the State. Blue Ridge Power Co. v Southern R. Co., 122 SC 222, 115 SE 306 (1922). Hodges v Lake Summit Co., 155 SC 436, 152 SE 658 (1930).

The trial court properly dismissed an action against several foreign corporations where plaintiff was not a resident of South Carolina, where his cause of action did not arise within the state, and where there was an alternate forum in which plaintiff could gain full relief. Bumgarder v. Keene Corp. (C.A.4 (S.C.) 1979) 593 F.2d 572.

The daughter of a woman, who allegedly used diethylstilbestrol while pregnant in California with the daughter, and the daughter’s husband were actually living in South Carolina at the time suits were filed against six pharmaceutical companies, and they had established a permanent home with the requisite intent to remain indefinitely, thus meeting the requirements of “resident” as defined by Section 15‑5‑150(1); accordingly, the United States District Court had diversity jurisdiction of these suits which could have been brought in state court under South Carolina law. Mizell v. Eli Lilly & Co. (D.C.S.C. 1981) 526 F.Supp. 589. Federal Courts 2412

The power of the State to make the jurisdiction over the foreign corporation wide enough to include the adjudication of a transitory action not arising in the State is not open to question; thus foreign corporations are amenable to suit for causes of action arising outside the State. Szantay v. Beech Aircraft Corp., 1965, 237 F.Supp. 393, affirmed 349 F.2d 60, 7 A.L.R. Fed. 99.

Door‑closing statute which restricts suits by non‑resident plaintiffs against foreign corporations deprived non‑resident insured of capacity to bring suit against foreign insurer arising out of removal of death indemnity provision from North Carolina automobile policy, even though one insured moved to state after insureds separated before his death; dismissal of South Carolina agents broke nexus of state with the suit, the cause of action related to a North Carolina policy provision removed by individuals there, the insured was suing as beneficiary of the provision, and the insurer’s actions in South Carolina were unrelated to any potential liability created by its actions in North Carolina. McCall v. State Farm Mut. Auto. Ins. Co. (S.C.App. 2004) 359 S.C. 372, 597 S.E.2d 181. Courts 6

Circuit Court lacks subject matter jurisdiction in wrongful death action brought by South Carolina resident as personal representative of deceased nonresident against foreign corporation, upon cause of action that did not arise or the subject matter of which was not situated, within South Carolina, since deceased could not have brought action herself, nor avoided Section 15‑5‑150 by assigning cause of action to resident. Nix v. Mercury Motor Exp., Inc. (S.C. 1978) 270 S.C. 477, 242 S.E.2d 683.

Circuit Court lacks subject matter jurisdiction over action by nonresident plaintiff against foreign corporation for cause of action that did not arise or the subject matter of which was not situated within this State. Nix v. Mercury Motor Exp., Inc. (S.C. 1978) 270 S.C. 477, 242 S.E.2d 683.

Joinder of resident defendant with foreign corporation as to whom court had no jurisdiction of subject matter does not confer upon court jurisdiction of subject matter as to foreign corporation when it otherwise had no jurisdiction. Gibbs v. Young (S.C. 1963) 242 S.C. 217, 130 S.E.2d 484. Courts 26(1)

When a resident of this State sues a foreign corporation upon a transitory cause of action, where such corporation is doing business in this State, it would not be consistent with sound public policy to deny such resident access to the courts of this State for the adjudication of his rights. Chapman v. Southern Ry. Co. (S.C. 1956) 230 S.C. 210, 95 S.E.2d 170. Courts 13.4(3)

The mere fact that a surety company is doing business in the State does not give jurisdiction to the courts of the State in an action against the surety growing out of a transaction every phase of which arose and was performed in North Carolina. Knight v. Fidelity & Cas. Co. of New York (S.C. 1937) 184 S.C. 362, 192 S.E. 558.

Where the cause of action did not arise in this State, nor was the subject of the action situated within this State, the court did not acquire jurisdiction under the provisions of this section [former Code 1962 Section 10‑214]. Salway v. Maryland Cas. Co. (S.C. 1935) 176 S.C. 215, 179 S.E. 787.

An assignment of a cause of action arising outside of the State cannot be made by a foreign corporation to a resident of the State to enable suit to be brought when the transaction is purely a colorable one. Hodges v. Lake Summit Co. (S.C. 1930) 155 S.C. 436, 152 S.E. 658.

16. Nonresidents

The trial court properly dismissed an action against several foreign corporations where plaintiff was not a resident of South Carolina, where his cause of action did not arise within the state, and where there was an alternate forum in which plaintiff could gain full relief. Bumgarder v. Keene Corp. (C.A.4 (S.C.) 1979) 593 F.2d 572.

The South Carolina “door‑closing” statute permits its residents to sue foreign corporations on foreign causes of action, yet denies this privilege to nonresidents. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

South Carolina State courts do not have jurisdiction over a suit brought by a nonresident against a foreign corporation on a foreign cause of action. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

Permitting non‑resident child of former employee of chemical company to maintain tort action against foreign chemical company and related corporations, seeking damages resulting from child’s contraction of mesothelioma allegedly caused by exposure to asbestos accumulated on parent’s clothing while parent was at work, would not offend any fundamental policy of door‑closing statute, preventing nonresidents from bringing an action against a foreign corporation unless cause of action arose in state. Murphy v. Owens‑Corning Fiberglas Corp. (S.C. 2003) 356 S.C. 592, 590 S.E.2d 479. Courts 6

Door‑closing statute preventing nonresidents from bringing an action against a foreign corporation unless cause of action arose in state, affected only a party’s capacity to sue and not the subject matter jurisdiction of the trial court; overruling Parsons v. Uniroyal‑Goodrich Tire Corp., 313 S.C. 394, 438 S.E.2d 238; Olson v. Lockwood Greene Engineers, Inc., 278 S.C. 67, 292 S.E.2d 186; Cox v. Lunsford, 272 S.C. 527, 252 S.E.2d 918; Nix v. Mercury Motor Exp., Inc., 270 S.C. 477, 242 S.E.2d 683; Builder Mart of America, Inc. v. First Union Corp., 349 S.C. 500, 563 S.E.2d 352; Eagle v. Global Assoc., 292 S.C. 354, 356 S.E.2d 417. Farmer v. Monsanto Corp. (S.C. 2003) 353 S.C. 553, 579 S.E.2d 325. Courts 6

Door‑closing statute prevented nonresidents whose cause of action did not arise in state from joining class action against foreign corporations who allegedly sold defective cotton seed; statute excluded class members who would otherwise have had no access to state courts via individual lawsuits. Farmer v. Monsanto Corp. (S.C. 2003) 353 S.C. 553, 579 S.E.2d 325. Parties 35.71

In a personal injury action seeking damages for exposure to various asbestos products, Section 15‑5‑150 would bar the claims of the plaintiff where it was undisputed that the plaintiff was a citizen and resident of New York, it was unquestioned that the defendants were all foreign corporations, and where the plaintiff had sustained no exposure to asbestos, and had not been employed, within the State of South Carolina. Rosenthal v. Unarco Industries, Inc. (S.C. 1982) 278 S.C. 420, 297 S.E.2d 638. Courts 13.8(2)

A nonresident may bring an action against a foreign corporation only when the cause of action arose in the state or the subject of the action is situated in the state. Cox v. Lunsford (S.C. 1979) 272 S.C. 527, 252 S.E.2d 918.

The effect of this section [former Code 1962 Section 10‑214] is to declare that a nonresident can sue a foreign corporation only in the two cases specified therein. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

17. Federal courts

A plaintiff’s failure to timely file suit in the more logical, convenient forum does not constitute a countervailing consideration favoring the exercise of federal jurisdiction in face of state’s door closing statute. Boisvert v. Techtronic Industries North America, Inc., 2014, 56 F.Supp.3d 750, appeal dismissed. Federal Courts 2819(5)

South Carolina Door Closing Statute applied in federal court and barred federal court’s exercise of diversity jurisdiction over consumer’s products liability action in South Carolina against manufacturers of table saw, since consumer was non‑resident suing resident corporation over events that did not occur in South Carolina, and consumer could have brought action in Virginia, where accident occurred and where table saw was purchased. Boisvert v. Techtronic Industries North America, Inc., 2014, 56 F.Supp.3d 750, appeal dismissed. Federal Courts 3026(1)

**SECTION 15‑5‑160.** By what name unincorporated associations may be sued.

All unincorporated associations may be sued and proceeded against under the name and style by which they are usually known without naming the individual members of the association.

HISTORY: 1962 Code Section 10‑215; 1952 Code Section 10‑215; 1942 Code Section 7796; 1932 Code Section 7796; Civ. C. ‘22 Section 5070; Civ. C. ‘12 Section 3336; Civ. C. ‘02 Section 2229; G.S. 1410; R.S. 1776; 1865 (13) 315.

CROSS REFERENCES

How suits may be brought by and against business trusts, see Section 33‑53‑40.

Service of process on an unincorporated association and liability under final process, see Sections 15‑9‑330, 15‑35‑170.

LIBRARY REFERENCES

Westlaw Key Number Search: 41k20.

Associations 20.

C.J.S. Associations Section 41.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Associations and Clubs Section 1 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Associations and Clubs Section 41 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Labor and Labor Relations Section 2 , Introductory Comments.

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 62:205, Union Suits.

LAW REVIEW AND JOURNAL COMMENTARIES

Agency. 39 S.C. L. Rev. 215, Autumn 1987.

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1. In general

Cited in Southern Ry. Co. v Order of Railway Conductors, 63 F Supp 306 (1945). Brame v Garner, 232 SC 157, 101 SE2d 292 (1957).

Section 15‑5‑160 does not alter the substantive rule that an unincorporated association has no legal capacity as such. It does, however, provide a convenient procedure by which a plaintiff can bring the members of an association before the court without naming and serving process upon them individually. Once they are before the court, the liability of the members of the association, if any, is determined by the applicable substantive law. The statute neither creates nor destroys any substantive liabilities. Graham v. Lloyd’s of London (S.C.App. 1988) 296 S.C. 249, 371 S.E.2d 801. Associations 20(1)

2. Constitutionality

Since unincorporated associations have the right to sue in their own name by necessary implication from the statutes, the contention that they are deprived of equal protection of the law by the failure of this section [former Code 1962 Section 10‑215] to specifically confer upon them such right is overruled. Bouchette v. International Ladies Garment Worker’s Union, AFL‑CIO, Local No. 371 (S.C. 1965) 245 S.C. 586, 141 S.E.2d 834. Constitutional Law 3455

This section [former Code 1962 Section 10‑215] is not repugnant to the due process clause of the Constitution. Edgar v. Southern Ry. Co. (S.C. 1948) 213 S.C. 445, 49 S.E.2d 841.

This section [former Code 1962 Section 10‑215] does not violate the “due process” clause of the Constitution on account of substituted service, “due process” being any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power in furtherance of the general public good, which guards and preserves the principles of liberty and justice. Appeal of Baylor (S.C. 1913) 93 S.C. 414, 77 S.E. 59.

3. Construction, generally

The remedy of this section [Code 1962 Section 10‑215] is exclusive. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651.

The liability of members of an incorporated association is joint and several, and an individual member may be sued without proceeding under this section [former Code 1962 Section 10‑215]. Medlin v. Ebenezer Methodist Church (S.C. 1925) 132 S.C. 498, 129 S.E. 830. Associations 16

4. Suits in name of unincorporated association

This section [former Code 1962 Section 10‑215] allows an unincorporated association to be “sued and proceeded against” in the name by which it is usually known, but does not provide that such an association may bring an action in its own name. Bouchette v. International Ladies Garment Worker’s Union, AFL‑CIO, Local No. 371 (S.C. 1965) 245 S.C. 586, 141 S.E.2d 834.

The fact that this section [former Code 1962 Section 10‑215] does not contain express authority for suit by an unincorporated association in its own name does not preclude the existence of such right. Bouchette v. International Ladies Garment Worker’s Union, AFL‑CIO, Local No. 371 (S.C. 1965) 245 S.C. 586, 141 S.E.2d 834.

By necessary implication an unincorporated association has the right to sue in its own name in relation to matters affecting the group as a unit. Bouchette v. International Ladies Garment Worker’s Union, AFL‑CIO, Local No. 371 (S.C. 1965) 245 S.C. 586, 141 S.E.2d 834.

An unincorporated association is in no sense a legal entity, and is not made so by this section [former Code 1962 Section 10‑215]. Medlin v. Ebenezer Methodist Church (S.C. 1925) 132 S.C. 498, 129 S.E. 830.

5. Application to particular associations—In general

A group of insurance underwriters known as “Lloyd’s” were members of a society organized for the purpose of insuring risks and carrying on the business of insurance of every description, and were therefore an “association”; thus, under Section 15‑5‑160, the plaintiff was entitled to proceed against the underwriters under the name “Lloyd’s.” Graham v. Lloyd’s of London (S.C.App. 1988) 296 S.C. 249, 371 S.E.2d 801.

This section [former Code 1962 Section 10‑215] applies to an unincorporated burial aid association requiring all the members to pay 25 cents to help defray the burial expenses of one dying. Appeal of Baylor (S.C. 1913) 93 S.C. 414, 77 S.E. 59. Beneficial Associations 20(3)

6. —— Labor unions, application to particular associations

A labor union is an unincorporated association and its liability to suit and process is fixed by this section [former Code 1962 Section 10‑215] and former Code 1962 Section 10‑429 (see now Section 15‑9‑330). Hall v. Walters (S.C. 1955) 226 S.C. 430, 85 S.E.2d 729, certiorari denied 75 S.Ct. 881, 349 U.S. 953, 99 L.Ed. 1277.

Any may be sued for damages for tort and conspiracy. Hall v. Walters (S.C. 1955) 226 S.C. 430, 85 S.E.2d 729, certiorari denied 75 S.Ct. 881, 349 U.S. 953, 99 L.Ed. 1277.

The officers and members of an unincorporated labor union are capable of entering into a conspiracy, and when a tortious act is committed in furtherance of the purpose of the union, the union is liable for all acts done pursuant to such conspiracy to which, through its officers, it is a party. Hall v. Walters (S.C. 1955) 226 S.C. 430, 85 S.E.2d 729, certiorari denied 75 S.Ct. 881, 349 U.S. 953, 99 L.Ed. 1277. Conspiracy 13

Joinder of an unincorporated union and its, or some of its, members as defendants in an action based upon conspiracy is proper. Hall v. Walters (S.C. 1955) 226 S.C. 430, 85 S.E.2d 729, certiorari denied 75 S.Ct. 881, 349 U.S. 953, 99 L.Ed. 1277. Conspiracy 17

**SECTION 15‑5‑170.** Action by and against married woman.

A married woman may sue and be sued as if she were unmarried. When the action is between herself and her husband she may likewise sue or be sued alone.

HISTORY: 1962 Code Section 10‑216; 1952 Code Section 10‑216; 1942 Code Section 400; 1932 Code Section 400; Civ. P. ‘22 Section 357; Civ. P. ‘12 Section 163; Civ. P. ‘02 Section 135; 1870 (14) Section 137; 1925 (34) 263.

CROSS REFERENCES

Property rights of married women, see Sections 20‑5‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 205k206; 205k211.

Husband and Wife 206, 211.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Contribution Section 11, Defendants Immune from Direct Action.

Treatises and Practice Aids

41 Causes of Action 2d 407, Cause of Action in Tort for Spousal Abuse.

Restatement (2d) of Torts Section 895F, Husband and Wife.

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1. In general

Cited in Simmons v Simmons, 41 F Supp 545 (1941). Young v Martin, 254 SC 50, 173 SE2d 361 (1970).

Applied in Rogers v Western Union Tel. Co., 72 SC 290, 51 SE 773 (1905). Seibels v Northern Cent. Ry. Co., 80 SC 133, 61 SE 435 (1908). Ryder v Jefferson Hotel Co., 121 SC 72, 113 SE 474 (1922). Lowry v Jackson, 27 SC 318, 3 SE 473 (1887).

South Carolina has abolished the doctrine of interspousal immunity from tort liability for personal injury. Boone v. Boone (S.C. 2001) 345 S.C. 8, 546 S.E.2d 191. Marriage And Cohabitation 1086(1)

2. Purpose

It is the public policy of South Carolina to provide married persons with the same legal rights and remedies possessed by unmarried persons. Boone v. Boone (S.C. 2001) 345 S.C. 8, 546 S.E.2d 191. Marriage And Cohabitation 401

The language of this section [former Code 1962 Section 10‑216] shows that the legislature meant to complete the work of emancipation and to give married women all the rights and remedies possessed by unmarried women, and to subject them to all the laws of the State without reference to the marital relation. Bryant v. Smith (S.C. 1938) 187 S.C. 453, 198 S.E. 20. Marriage And Cohabitation 1081

3. Application of foreign law

Under the “public policy exception” to the lex loci delicti doctrine, the Supreme Court will not apply foreign law if it violates the public policy of South Carolina. Boone v. Boone (S.C. 2001) 345 S.C. 8, 546 S.E.2d 191. Torts 103

Application of the doctrine of interspousal immunity violates the public policy of South Carolina; thus, South Carolina courts will no longer apply the lex loci delicti when the law of the foreign state recognizes interspousal immunity; overruling Oshiek v. Oshiek, 244 S.C. 249, 136 S.E.2d 303. Boone v. Boone (S.C. 2001) 345 S.C. 8, 546 S.E.2d 191. Marriage And Cohabitation 109(1); Marriage And Cohabitation 1086(1)

4. Effect upon common‑law rights and liabilities

Despite the adoption of the so‑called Married Women’s Acts, the husband’s common‑law right to the wife’s services, aid, comfort, society and companionship, comprehended by the term consortium, remains, together with the attendant right to sue therefor in the event of their loss through personal injury to her by a third party. Brown v Finger, 240 SC 102, 124 SE2d 781 (1962). Hughey v Ausborn, 249 SC 470, 154 SE2d 839 (1967).

The common‑law disability of coverture has been completely abolished in South Carolina. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91. Marriage And Cohabitation 411

The married woman’s law does not deprive the husband of the right to sue for the damages he sustains as the proximate result of the injury to his wife’s person, negligently inflicted by another. Hughey v. Ausborn (S.C. 1967) 249 S.C. 470, 154 S.E.2d 839, 25 A.L.R.3d 1406.

This section [former Code 1962 Section 10‑216] and former Code 1962 Section 20‑207 (see now Section 20‑5‑70) have removed the foundation of the unity in the husband of his own and his wife’s legal identity in so far as it affected property rights, contracts, earnings, and the right to sue and be sued, but it has not abridged the common‑law right of a husband to the companionship, aid, society, and services of his wife—which is comprehended by the term “consortium”—and his attendant right to sue therefor in the event of their loss through some personal injury to her. Cook v. Atlantic Coast Line R. Co. (S.C. 1941) 196 S.C. 230, 13 S.E.2d 1, 133 A.L.R. 1144.

The common‑law liability of the husband for the torts of his wife, committed by her without his participation, has been abrogated in the State by this section [former Code 1962 Section 10‑216], former Code 1962 Section 20‑207 (see now Section 20‑5‑70) and similar legislation, previously enacted, emancipating married women from their common‑law disabilities. Bryant v. Smith (S.C. 1938) 187 S.C. 453, 198 S.E. 20. Marriage And Cohabitation 1081

5. Statute of limitations

Where the common‑law disability of coverture has been completely abolished, as in South Carolina, the statute of limitations is applicable between husband and wife during coverture. McCall v. Bangs (S.C. 1974) 262 S.C. 657, 207 S.E.2d 91. Marriage And Cohabitation 411

6. Particular actions

Under the married woman’s law a wife is required to sue alone for injuries to her person and the damages recovered are her separate property. Hughey v. Ausborn (S.C. 1967) 249 S.C. 470, 154 S.E.2d 839, 25 A.L.R.3d 1406. Marriage And Cohabitation 438; Marriage And Cohabitation 1091(1)

By virtue of this section [former Code 1962 Section 10‑216] and former Code 1962 Section 20‑204 (see now Section 15‑5‑40) the right is conferred upon the wife to bring an action for the recovery of loss of earnings resulting from personal injury to her. Brown v. Finger (S.C. 1962) 240 S.C. 102, 124 S.E.2d 781.

7. Tort actions against husband

In view of this section [former Code 1962 Section 10‑216], a wife may maintain a tort action against her husband for wilfully beating her. Prosser v Prosser, 114 SC 45, 102 SE 787 (1920). Faris v Hope, 298 F 727 (1924).

This section [former Code 1962 Section 10‑216] authorizes wife to bring action against husband for injuries sustained in automobile accident. Pardue v Pardue, 167 SC 129, 166 SE 101 (1932). Fowler v Fowler, 242 SC 252, 130 SE2d 568 (1963).

It is well settled in this State that a wife can maintain an action against her husband for personal injuries sustained in an automobile accident. Oshiek v. Oshiek (S.C. 1964) 244 S.C. 249, 136 S.E.2d 303. Marriage And Cohabitation 1084

But capacity to sue is governed by law of place of tort. Capacity to sue in an interspousal tort action should be determined by the law of the place where the tort is committed, not by the law of the domicile of the parties. Oshiek v. Oshiek (S.C. 1964) 244 S.C. 249, 136 S.E.2d 303.

And wife may not sue husband for tort if state of situs gives no right of action. Where a wife sues her husband for personal injuries suffered in an automobile accident in Georgia, the situs of the tort is controlling on the issue of the existence of a cause of action for personal injury by one spouse against the other. Since, under the law of the state of Georgia, the wife had no right of action against her husband for a personal tort, she has no right of action which can be enforced in this State, although the husband and wife were residents of this State at the time of the accident. Oshiek v. Oshiek (S.C. 1964) 244 S.C. 249, 136 S.E.2d 303.

**SECTION 15‑5‑210.** Unemancipated child as party to motor vehicle accident action.

An unemancipated child may sue and be sued by his parents in an action for personal injuries arising out of a motor vehicle accident. In any such action there shall be appointed a guardian ad litem as provided by law for such child.

HISTORY: 1962 Code Section 46‑802.2; 1974 (58) 2718.

CROSS REFERENCES

Appointment of guardian ad litem under South Carolina Rules of Civil Procedure, see Rule 17, SCRCP.

Decree against guardian ad litem, see SC R PROB CT Rule 3.

Duty of guardian ad litem, see SC R PROB CT Rule 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 48Ak234; 211k70; 211k76; 285k13.5(1).

Automobiles 234.

Infants 70, 76.

Parent and Child 13.5(1).

C.J.S. Infants Sections 215, 222, 226.

C.J.S. Motor Vehicles Sections 985 to 988.

C.J.S. Parent and Child Sections 309 to 311.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Constitutional Law: Equal Protection. 33 S.C. L. Rev. 21, August 1981.

Annual Survey of South Carolina Law: Torts: Abrogation of Parental Immunity. 33 S.C. L. Rev. 164, August 1981.

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1. Validity

In a survival and wrongful death action brought by an administrator of an estate of a daughter against administrators of an estate of the mother, the trial court correctly granted summary judgment to the mother’s estate since, by the time the action was brought, the Supreme Court had held that Section 15‑5‑210 was unconstitutional. Brooks v. Winecoff (S.C.App. 1984) 284 S.C. 58, 324 S.E.2d 339.

Section 15‑5‑210, abolishing parental immunity doctrine only in motor vehicle accident cases is unconstitutional. Elam v. Elam (S.C. 1980) 275 S.C. 132, 268 S.E.2d 109.

2. In general

This statute operates prospectively only, and has no application to motor vehicle accidents occurring prior to its effective date. Hyder v. Jones (S.C. 1978) 271 S.C. 85, 245 S.E.2d 123.

Exception to presumption of prospective application in the case of remedial or procedural statutes does not apply to this section, since it supplied a legal remedy where formerly there was none. Hyder v. Jones (S.C. 1978) 271 S.C. 85, 245 S.E.2d 123. Statutes 1565