CHAPTER 9

Summonses, Orders of Publication and Service of Papers Generally

CROSS REFERENCES

Recreational vehicle manufacturers, distributors, and dealers, persons subject to jurisdiction, see Section 56‑14‑20.

ARTICLE 1

Summons Generally

**SECTION 15‑9‑15.** Affidavit as proof of service by publication.

In addition to the method of proof of service by publication provided by the South Carolina Rules of Civil Procedure, proof of service by publication may be made by affidavit before a notary public of this State that the appropriate notice has been printed or published.

HISTORY: 1988 Act No. 400, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 313k138.

Process 138.

C.J.S. Process Section 90.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Process Section 92 , Introductory Comments.

**SECTION 15‑9‑17.** Service of summons, complaint or other judicial documents on Sunday.

Notwithstanding another provision of law, a process server may serve a summons, complaint, or other judicial documents on Sundays; however, a process server may not serve a person who is going to or from or attending a regularly or specially scheduled church or other religious service on Sunday.

HISTORY: 2000 Act No. 360, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k60; 313k63.

Process 60, 63.

C.J.S. Process Sections 40 to 41.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Process Section 92 , Introductory Comments.

ARTICLE 3

Personal or Substitute Service in State

**SECTION 15‑9‑210.** Service of process on domestic corporations.

(a) A domestic business or nonprofit corporation’s registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served, and the service is binding upon the corporation.

(b) The business or nonprofit corporation may be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or the office of the secretary of the corporation at its principal office. Service is effective upon the date of delivery as shown on the return receipt. Entry of default and default judgments shall be subject to the conditions of Rule 4(d)(8).

(c) If the business or nonprofit corporation has no registered agent, or the agent cannot be served with reasonable diligence by means authorized by rule or statute, other than under Section 15‑9‑710, and such appears by affidavit, the court or judge thereof, the clerk of the court of common pleas or the master may grant an order that the corporation may be served by registered or certified mail, return receipt requested, addressed to the office of the secretary of the corporation at its principal office. The summons shall state the date it was mailed under this subsection, and the date service is effective. Service is perfected five days after its deposit in the United States mail, as evidenced by the postmark, or other evidence of the date the summons and complaint was mailed pursuant to this paragraph, if mailed postpaid and correctly addressed to the address of the company’s principal office which is listed on the last filed annual report of the business corporation or last filed notice of change of principal office for a nonprofit corporation or, if none has been filed, the address of the principal office specified in the initial annual report of the business corporation filed with the South Carolina Department of Revenue and, in the Articles of Incorporation (or initial annual report, if filed) for a nonprofit corporation. Entry of judgment and judgment by default may be taken as otherwise provided by Rule 55 of the Rules of Civil Procedure.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a domestic business or nonprofit corporation.

HISTORY: 1962 Code Section 10‑421; 1952 Code Section 10‑421; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) 456 Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275; 1947 (45) 322; 1964 (53) 1830; 1981 Act No. 146, Section 4; 1988 Act No. 444, Section 3; 1993 Act No. 42, Section 1; 1993 Act No. 181, Section 258; 1994 Act No. 384, Section 2.

SOUTH CAROLINA REPORTERS’ COMMENTS

The reasons for the amendments in this section are explained in the South Carolina Reporters’ Comments to Section 33‑5‑104 in Section 2 of this act.

CROSS REFERENCES

Corporations, generally, see Sections 33‑1‑101 et seq.

Further provisions as to service of process on domestic corporations, see Section 33‑5‑104.

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k507.

Corporations 507.

C.J.S. Corporations Section 721.

RESEARCH REFERENCES

ALR Library

42 ALR 5th 221 , Place Where Corporation is Doing Business for Purposes of State Venue Statute.

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 4.1, Reporter’s Notes.

Forms

South Carolina Litigation Forms and Analysis Section 4:9 , Letter to Secretary of State for Receiving Service on Corporation.

LAW REVIEW AND JOURNAL COMMENTARIES

The 1981 Revision of the South Carolina Business Corporation Act. 33 S.C. L. Rev. 405, March 1982.

Annual Survey of South Carolina Law: Practice and Procedure: Venue. 33 S.C. L. Rev. 111, August 1981.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

NOTES OF DECISIONS

In general 1

Agents, domestic corporations 2

1. In general

South Carolina construes her service of process statutes narrowly and restrictively. Szantay v. Beech Aircraft Corp., 1965, 237 F.Supp. 393, affirmed 349 F.2d 60, 7 A.L.R. Fed. 99.

The principal object of service of process is to give notice to the defendant corporation of the proceedings against it. Mull v. Ridgeland Realty, LLC (S.C.App. 2010) 387 S.C. 479, 693 S.E.2d 27. Corporations And Business Organizations 2540

Plaintiff’s mailing of a copy of summons and complaint via certified mail to limited liability company’s (LLC’s) registered agent for service at his out‑of‑state address, rather than the South Carolina address on file with the Secretary of State’s office, constituted service to the “office of the registered agent,” and thus complied with statute governing service of process on corporations; registered agent received the summons and complaint and signed the return receipt, and registered agent neither lived nor worked in South Carolina. Mull v. Ridgeland Realty, LLC (S.C.App. 2010) 387 S.C. 479, 693 S.E.2d 27. Corporations And Business Organizations 3654(7)

Service of process on corporation under its trade name rather than under its true corporate name was valid, in breach of computer training contract action brought by student, even though corporation’s registered agent claimed it did not recognize the name as a corporate principal; contract with student prominently identified corporation under its trade name and information brochures and its web site all conformed to its trade name, and failure of registered agent to recognize corporation’s trade name was result of corporation’s own neglect. McCall v. IKON (S.C.App. 2005) 363 S.C. 646, 611 S.E.2d 315, rehearing denied. Corporations And Business Organizations 2541(2)

The principal object of service of process is to give notice to the defendant corporation of the proceedings against it. Burris Chemical, Inc. v. Daniel Const. Co. (S.C. 1968) 251 S.C. 483, 163 S.E.2d 618. Corporations And Business Organizations 2540

Jurisdiction is absolutely essential to the maintenance of an action, and it can be obtained only by service of process in the manner prescribed by the law of the forum; there must be certainty that the person served is one who meets the requirements of the statute. Dyar v. Georgia Power Co. (S.C. 1934) 173 S.C. 527, 176 S.E. 711. Courts 21

2. Agents, domestic corporations

Federal courts are not bound by decisions of this State as to agency to receive summons. S.B. McMaster, Inc. v. Chevrolet Motor Co. (D.C.S.C. 1925) 3 F.2d 469. Federal Courts 3065

Trial court could set aside default breach of lease judgment in favor of landlord due to improper service on nursing home tenant; landlord did not serve tenant at address for service of process as indicated on annual report which tenant had filed with Department of Revenue, and landlord, who knew that tenant’s registered agent had been deceased for almost 20 years, failed to effect service on tenant’s sole shareholder, whom landlord’s controlling shareholder had known for over 40 years. Honorage Nursing Home of Florence, S.C., Inc. v. Florence Convalescent Center, Inc. (S.C.App. 2005) 367 S.C. 108, 623 S.E.2d 853, rehearing denied, certiorari denied. Judgment 138(3)

Although service upon a restaurant had been effected in prior actions by service through its registered agent under Section 33‑5‑60, service upon the restaurant by delivering copy of the summons and complaint to an agent pursuant to Section 15‑9‑210 was proper and entitled the plaintiff to a default judgment upon the restaurant’s failure to serve a timely answer; however, the award of $200,000 damages would be vacated on the ground that it was grossly out of proportion to the alleged injury and the case would be remanded for a hearing on the issue of damages only. In all unliquidated damages default hearings, even when no appearance has been made, the claimant’s counsel must give to the defending party four days’ notice, as set out in Section 15‑9‑960, of the time and place of the hearing; the fact that a defendant is in default does not mean that Sections 15‑35‑110, 14‑15‑30 are inapplicable and, when a default unliquidated damages matter is referred to a referee or to a master in equity, Section 15‑31‑100 is also applicable. Renney v. Dobbs House, Inc. (S.C. 1981) 275 S.C. 562, 274 S.E.2d 290.

An agent is one appointed by a principal as his representative and to whom the principal confides the management of some business to be transacted in the principal’s name, or on his account, and who brings about or effects legal relationships between the principal and third parties. Peeples v. Orkin Exterminating Co. (S.C. 1964) 244 S.C. 173, 135 S.E.2d 845. Principal And Agent 1

Though the sufficiency of service to convey notice of the proceeding is not decisive of its validity, it may be pertinent in determining the legality of service upon one whose representative character or agency is in question. Bass v. American Products Export & Import Corp. (S.C. 1923) 124 S.C. 346, 117 S.E. 594, 30 A.L.R. 168. Process 58

A finding in a law case, whether process has been legally served on defendant’s agent, is not reviewable on appeal, unless wholly unsupported by evidence or manifestly influenced or controlled by error of law. Bass v. American Products Export & Import Corp. (S.C. 1923) 124 S.C. 346, 117 S.E. 594, 30 A.L.R. 168. Appeal And Error 1024.3

**SECTION 15‑9‑220.** Service on corporations generally; who is deemed to be agent of railroad.

Service upon any person occupying an office or room in any railway station and attending to and transacting therein any business of any railroad shall be deemed service upon the corporation under the charter of which such railroad is authorized by law. Any such person shall be deemed the agent of the corporation, notwithstanding he may claim to be the agent of some other person or corporation claiming to operate the railroad by virtue of any lease, contract or agreement.

HISTORY: 1962 Code Section 10‑422; 1952 Code Section 10‑422; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) 456 Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k507.

Corporations 507.

C.J.S. Corporations Section 721.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

**SECTION 15‑9‑230.** Service on corporations generally; qualification as to foreign corporations.

Service can be made in respect to a foreign corporation under the provisions of Section 15‑9‑210 only (a) when it has property within the State, (b) when the cause of action arose therein or (c) when such service shall be made in this State personally upon the president, cashier, treasurer, attorney, secretary or any other agent thereof.

HISTORY: 1962 Code Section 10‑423; 1952 Code Section 10‑423; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k668.

Corporations 668.

C.J.S. Corporations Section 952.

United States Supreme Court Annotations

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

Appeals 4

Requirements for obtaining jurisdiction 2

Supervision and control of dealer in state 3

1. In general

This section [former Code 1962 Section 10‑423] means that if a foreign corporation has property in the State it may be brought into the jurisdiction of the courts by the proper service of process upon it. Dyar v Georgia Power Co., 173 SC 527, 176 SE 711 (1934). Thompson v Ford Motor Co., 200 SC 393, 21 SE2d 34 (1942).

The fact that the cause of action arose in this State is not material to the question of doing business. Zeigler v. Puritan Mills (S.C. 1938) 188 S.C. 367, 199 S.E. 420.

The provisions of the Code, providing for the mode of making a foreign corporation a party to an action, must be construed as applying only to such actions as may be regarded as a proceeding in rem, and not applying to merely personal actions in which only a personal judgment is sought or can be obtained. Tillinghast v. Boston & Port Royal Lumber Co. (S.C. 1893) 39 S.C. 484, 18 S.E. 120.

Cited in Snyder v. Eastern Auto Distributors, Inc., 1965, 239 F.Supp. 240, reversed 357 F.2d 552, 2 A.L.R. Fed. 984, certiorari denied 86 S.Ct. 1889, 384 U.S. 987, 16 L.Ed.2d 1004.

2. Requirements for obtaining jurisdiction

In order to obtain jurisdiction of a foreign corporation so as to render a judgment in personam against it, at least two things must occur; first, the corporation must be doing business in this State and, second, that there must be service of process upon a duly authorized officer or agent of the corporation within the State, under the statutes authorizing and providing for such service. Bargesser v. Coleman Co. (S.C. 1957) 230 S.C. 562, 96 S.E.2d 825.

Where a defendant foreign corporation appears specially for the purpose of objecting to the jurisdiction of the court, it is error for the county judge to hold that it is a question of fact for a jury as to whether the defendant is doing business in or has an agent in this State upon whom service of summons and complaint can be made. It is a question of law which the county judge should determine, which includes the finding of the facts which relate to jurisdiction. Bargesser v. Coleman Co. (S.C. 1957) 230 S.C. 562, 96 S.E.2d 825.

Policy contracts constitute property of the insurance company. Gibbes v. National Hospital Service (S.C. 1943) 202 S.C. 304, 24 S.E.2d 513.

Foreign power company owning property in State consisting of lands, dams, and reservoirs, but which owned its generating plant and offices outside of the State and had no offices or place of business in the State, was not “doing business” within State so as to be subject to service upon corporation’s alleged agent. Dyar v. Georgia Power Co. (S.C. 1934) 173 S.C. 527, 176 S.E. 711. Corporations And Business Organizations 3266(2)

3. Supervision and control of dealer in state

The extensive control and supervision exercised by defendant over its dealer, by reason of which defendant is deemed to have had sufficient contacts with South Carolina, is sufficient to constitute that dealer the agent of defendant for service of process. Szantay v. Beech Aircraft Corp. (C.A.4 (S.C.) 1965) 349 F.2d 60, 7 A.L.R. Fed. 99.

Under its agreements with its franchise dealers in South Carolina, defendant exercised such extensive control and supervision over them, as to constitute such dealers agents of the defendant for service of process. Hughes v. Kaiser Jeep Corp., 1965, 246 F.Supp. 557.

4. Appeals

Finding by the circuit court as to jurisdiction or lack of jurisdiction will not be disturbed on appeal unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law. Bargesser v. Coleman Co. (S.C. 1957) 230 S.C. 562, 96 S.E.2d 825.

**SECTION 15‑9‑240.** Service of process on authorized foreign corporation.

(a) The registered agent of a foreign business or nonprofit corporation authorized to transact business in this State is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign business or nonprofit corporation may be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or office of the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report. Service is effective upon the date of delivery as shown on the return receipt. Entry of default and default judgments shall be subject to the conditions of Rule 4(d)(8).

(c) If the foreign business or nonprofit corporation:

(1) has no registered agent or its registered agent cannot be served with reasonable diligence by other means authorized by rule or statute, other than under Section 15‑9‑710 service by publication;

(2) has withdrawn from transacting business in this State as provided by law; or

(3) has had its certificate of authority revoked as provided by law, and such appears by affidavit, the court or judge, the clerk of court of common pleas, or the master may grant an order that the corporation may be served by registered or certified mail, return receipt requested, addressed to the office of the secretary of the corporation at its principal office. The summons shall state the date it was mailed under this subsection and that service is perfected five days after its deposit in the United States mail.

(d) Service is perfected under subsection (c) five days after its deposit in the United States mail, as evidenced by the postmark, or other evidence of the date the summons and complaint was mailed pursuant to this subsection, if mailed postpaid and correctly addressed to the address of the company’s principal office which is listed on the filed annual report of a business corporation or listed on the last filed notice of change of principal office for a nonprofit corporation (or in its application for certificate of authority if no annual report or notice of change of principal office has ever been filed).

(e) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation.

HISTORY: 1962 Code Section 10‑424; 1952 Code Section 10‑424; 1942 Code Section 7765; 1932 Code Section 7765; Civ. C. ‘22 Section 4029; Civ. C. ‘12 Section 2665; Civ. C. ‘02 Section 1780; R. S. 1466; 1893 (21) 409; 1922 (32) 1023; 1933 (38) 486; 1964 (53) 1830; 1981 Act No. 146, Section 5; 1988 Act No. 444, Section 3; 1993 Act No. 42, Section 2; 1994 Act No. 384, Section 3.

SOUTH CAROLINA REPORTERS’ COMMENTS

The reasons for the amendments in this section are explained in the South Carolina Reporters’ Comments to Section 33‑15‑110 in Section 2 of this act.

CROSS REFERENCES

Registered office and registered agent of corporation, see Section 33‑5‑101.

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k668.

Corporations 668.

C.J.S. Corporations Section 952.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 27, Other Executive Department Offices‑Constitutional Origin.

S.C. Jur. South Carolina Rules of Civil Procedure Section 4.2, Discussion.

LAW REVIEW AND JOURNAL COMMENTARIES

The 1981 Revision of the South Carolina Business Corporation Act. 33 S.C. L. Rev. 405, March 1982.

Annual Survey of South Carolina Law: practice and procedure: personal jurisdiction. 28 S.C. L. Rev. 369.

Personal jurisdiction in cyberspace: Something more is required on the electronic stream of commerce, 49 S.C. L. Rev. 925, Summer 1998.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

1. In general

For discussion of South Carolina’s interpretation of her service of process statutes, see Shealy v. Challenger Mfg. Co. (C.A.4 (S.C.) 1962) 304 F.2d 102.

Those foreign corporations who would come within the protection and benefit of the laws of this State to transact business within its borders cannot be heard to disclaim the State when those to whom they sell their wares or who allegedly have been injured or damaged by some activity in this State would look to the courts of the State for a redress of their grievances. Ard v. State Stove Mfrs., Inc. (D.C.S.C. 1967) 263 F.Supp. 699. Courts 13.4(3)

South Carolina court could not exercise general personal jurisdiction over out‑of‑state bank holding company, relating to loan by the bank holding company’s out‑of‑state subsidiary, even though the bank holding company also had a South Carolina subsidiary and the subsidiaries allegedly used a unified advertising strategy; any South Carolina presence through the activities of the South Carolina subsidiary was unrelated to the present litigation. Builder Mart of America, Inc. v. First Union Corp. (S.C.App. 2002) 349 S.C. 500, 563 S.E.2d 352. Banks And Banking 528

Service of process on a foreign corporation was improper where it was not made on the corporation’s registered agent and none of the circumstances described in Section 15‑9‑240(b) existed. Kreke v. Ohio Gear‑Wallace Murray Corp. (S.C. 1986) 287 S.C. 388, 339 S.E.2d 115.

**SECTION 15‑9‑245.** Service of process on foreign corporation not authorized to do business in state.

(a) Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business, including any business activity for which authority need not be obtained as provided by Section 33‑15‑101, is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

(b) Service of the process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

(c) Proof of service must be by affidavit of compliance with this section and filed, together with a copy of the process, with the clerk of court in which the action or proceeding is pending. There must be filed with the affidavit of compliance the return receipt signed by the foreign business or nonprofit corporation or other official proof of delivery or, if acceptance was refused, there must be filed the original or a photostated or certified copy of the envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process, together with notice of the mailing by certified mail and of refusal to accept must be sent promptly to the foreign business or nonprofit corporation. If this section is complied with, the refusal to accept delivery of the certified mail or to sign the return receipt shall not affect the validity of the service, and the foreign corporation refusing to accept the certified mail must be charged with knowledge of the contents thereof.

(d) Service under this section may be made also by delivery of a copy of the process to any foreign business or nonprofit corporation outside the State. Proof of the delivery must be made by affidavit of the person making delivery, and the affidavit must be filed with the clerk of court in which the action or proceeding is pending.

(e) The Secretary of State shall charge a fee of ten dollars for the service.

(f) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation not authorized to do business in this State.

HISTORY: 1981 Act No. 146, Section 6; 1988 Act No. 444, Section 3; 1994 Act No. 384, Section 4.

SOUTH CAROLINA REPORTERS’ COMMENTS

The changes in this statute are technical in nature. The change in subsection (a) is necessary because the section numbers in the South Carolina Business Corporation Act of 1988 differ from those in the prior act. The addition of subsection (f) makes this section consistent with the other service of process statutes. See Sections 15‑9‑210 and 15‑9‑240 supra.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k668.

Corporations 668.

C.J.S. Corporations Section 952.

LAW REVIEW AND JOURNAL COMMENTARIES

The 1981 Revision of the South Carolina Business Corporation Act. 33 S.C. L. Rev. 405, March 1982.

Annual Survey of South Carolina Law: Practice and Procedure: In Personam Jurisdiction. 33 S.C. L. Rev. 103, August 1981.

NOTES OF DECISIONS

In general 1

1. In general

In an action brought in Georgia to domesticate a default judgment rendered in South Carolina, substituted service by delivery of copies of the complaint and summons to the South Carolina Secretary of State and subsequent forwarding of the documents by the Secretary of State to defendant by certified mail was sufficient to satisfy the requirements of due process. G & H Const. Co., Inc. v. Daniels Flooring Co., Inc., 1984, 173 Ga.App. 181, 325 S.E.2d 773.

**SECTION 15‑9‑250.** Service on foreign rural electric cooperatives.

Service of process may be made upon the Secretary of State as agent for a foreign rural electric cooperative pursuant to his appointment as such under the provisions of Section 33‑49‑1320. In the event of such service, the Secretary of State shall forthwith forward it by registered mail to such corporation at the address specified in the instrument appointing the Secretary of State as such agent.

HISTORY: 1962 Code Section 10‑424.2; 1952 Code Section 10‑424.2; 1942 Code Section 8555‑116; 1939 (41) 240.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k77; 360k73.

Process 77.

States 73.

C.J.S. Process Section 50.

C.J.S. States Sections 130 to 136, 140.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

**SECTION 15‑9‑270.** Service on insurance companies.

The summons and any other legal process in any action or proceeding against it must be served on an insurance company as defined in Section 38‑1‑20, including fraternal benefit associations, by delivering two copies of the summons or any other legal process to the Director of the Department of Insurance, as attorney of the company with a fee of ten dollars, of which five dollars must be retained by the director to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State. A company shall appoint the director as its attorney pursuant to the provisions of Section 38‑5‑70. This service is considered sufficient service upon the company. When legal process against any company with the fee provided in this section is served upon the director, he shall immediately forward by registered or certified mail one of the duplicate copies prepaid directed toward the company at its home office or, in the case of a fraternal benefit association, to its secretary or corresponding officer at the head of the association.

HISTORY: 1962 Code Section 10‑425; 1952 Code Section 10‑425; 1947 (45) 322; 1960 (51) 1646; 1964 (53) 1746; 1971 (57) 709; 1979 Act No. 15, Section 1; 1987 Act No. 155, Section 15; 1988 Act No. 366, Section 1; 1993 Act No.181, Section 259.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 27, Other Executive Department Offices‑Constitutional Origin.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Meyers‑Arnold Co. v. Maryland Cas. Co. (D.C.S.C. 1965) 248 F.Supp. 140.

The purpose of insurance service statutes is to provide an insured with a method to obtain service of process on insurance companies; it is not to serve as a shield for insurance companies, protecting them from their own policy terms. White Oak Manor, Inc. v. Lexington Ins. Co. (S.C. 2014) 407 S.C. 1, 753 S.E.2d 537. Insurance 3569

Trial court did not abuse its discretion in holding that nursing home substantially complied with the service‑of‑suit clause set forth in its liability policy, even though the clause allowed for service on insurer’s counsel’s “representative,” and the pleadings were not addressed to “counsel”; nursing home addressed the pleadings to the “legal department,” and insurer acknowledged that the complaint was received by its claims counsel. White Oak Manor, Inc. v. Lexington Ins. Co. (S.C. 2014) 407 S.C. 1, 753 S.E.2d 537. Insurance 3570(1)

It would have been inequitable to set aside a default judgment entered in favor of nursing home on its declaratory judgment action against its liability insurer on the basis that nursing home failed to serve a courtesy copy of its complaint on insurer’s attorney, where nursing home served insurer in accordance with its own service‑of‑suit clause. White Oak Manor, Inc. v. Lexington Ins. Co. (S.C. 2014) 407 S.C. 1, 753 S.E.2d 537. Judgment 138(3)

Service of process on the Director of the Department of Insurance was not a requirement that could not be waived, and thus, even though receipt of any legal process involving an insurance company might have been helpful to the director in carrying out his duties, nursing home’s liability insurer was precluded from prescribing a method of service in its policy and then declaring its own provision invalid under statutory provision that provided for service of process on an insurer through the Director; the purpose of the insurance notice statute was to provide insured with a method to obtain service on its insurer, not to serve as a shield for insurer to protect it from its own policy terms. White Oak Manor, Inc. v. Lexington Ins. Co. (S.C. 2014) 407 S.C. 1, 753 S.E.2d 537. Insurance 3570(2)

Service of process on foreign insurer under the applicable substituted service statute was the only proper and exclusive method of obtaining jurisdiction over insurer, and thus, inclusion of service clause in insurance policy did not constitute a waiver of foreign insurance company’s right to insist on statutory service of process in insured’s declaratory judgment action against insurer, where statute did not allow service to be accomplished by other methods. White Oak Manor, Inc. v. Lexington Ins. Co. (S.C.App. 2011) 394 S.C. 375, 715 S.E.2d 383, rehearing denied, reversed 407 S.C. 1, 753 S.E.2d 537. Insurance 3570(1)

Amendments to statute governing service on insurers and to statute governing uninsured motorist (UM) coverage that were effective July 1, 1995 would not be applied retroactively. Franklin v. Devore (S.C.App. 1997) 327 S.C. 418, 489 S.E.2d 651, rehearing denied, certiorari denied. Insurance 2772

Service of a summons and cross‑complaint on a foreign insurance company by way of the Chief Insurance Commissioner of South Carolina was null and void where the insurance company had already been made subject to the jurisdiction of the South Carolina courts by service on it of the summons and complaint pursuant to Section 38‑52‑50; the summons and cross‑complaint should have been served on the insurance company’s attorneys pursuant to Section 15‑9‑990 and not upon the company itself under the substituted service and constructive service statutes (Sections 15‑9‑270, 38‑52‑80). Equilease Corp. v. Weathers (S.C. 1980) 275 S.C. 478, 272 S.E.2d 789.

**SECTION 15‑9‑280.** Service on unauthorized insurer.

(a) Any act of transacting an insurance business as set forth in Section 38‑25‑110 by an unauthorized insurer is equivalent to and constitutes an irrevocable appointment by the insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the Secretary of State or his successor in office to be the true and lawful attorney of the insurer upon whom may be served all lawful process in any action, suit, or proceeding in any court by the Director of the Department of Insurance or his designee, or by the State and upon whom may be served any notice, order, pleading, or process in any proceeding before the Department of Insurance and which arises out of transacting an insurance business in this State by the insurer. Any act of transacting an insurance business in this State by an unauthorized insurer is signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the Department of Insurance so served are of the same legal force and validity as personal service of process in this State upon the insurer.

(b) Service of process in such action is made by delivering to and leaving with the Secretary of State, or some person in apparent charge of his office, two copies thereof and by payment to the Secretary of State of the fee prescribed by law. Service upon the Secretary of State as attorney is service upon the principal.

(c) The Secretary of State shall immediately forward by certified mail one of the copies of the process or the notice, order, pleading, or process in proceedings before the Department of Insurance to the defendant in the court proceeding or to whom the notice, order, pleading, or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. The service is sufficient if:

(1) notice of the service and a copy of the court process or the notice, order, pleading, or process in the administrative proceeding are sent within ten days thereafter by certified mail by the plaintiff or the plaintiff’s attorney in the court proceeding or by the Department of Insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and

(2) the defendant’s receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff’s attorney in a court proceeding or of the Department of Insurance in an administrative proceeding, showing compliance therewith, are filed with the clerk of court in which the action, suit, or proceeding is pending or with the Department of Insurance in administrative proceedings, by the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within any further time as the court or the Department of Insurance may allow.

(d) No plaintiff is entitled to a judgment by default, a judgment with leave to prove damages, or a judgment pro confesso in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the Department of Insurance is served under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

(e) Nothing in this section limits or affects the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

HISTORY: 1962 Code Section 10‑426; 1952 Code Section 10‑426; 1947 (45) 322; 1960 (51) 1646; 1987 Act No. 155, Section 2; 1993 Act No. 181, Sections 260‑262.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

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S.C. Jur. Constitutional Law Section 27, Other Executive Department Offices‑Constitutional Origin.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑285.** Service on unauthorized insurer through service on Chief Insurance Commissioner.

(a) The issuance and delivery of a policy of insurance or contract of insurance or indemnity to any person in this State or the collection of a premium thereon by an insurer not licensed in this State, as required, irrevocably constitutes the Chief Insurance Commissioner, and his successors in office, the true and lawful attorney in fact upon whom service of any and all processes, pleadings, actions, or suits arising out of the policy or contract in behalf of the insured may be made.

(b) Service of process in the action is made by delivering to and leaving with the Chief Insurance Commissioner or some person in apparent charge of his office two copies of it and by payment to the Chief Insurance Commissioner of a fee of ten dollars, of which five dollars must be retained by the Chief Insurance Commissioner to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State.

(c) The Chief Insurance Commissioner shall immediately mail by registered mail one of the copies of the process to the defendant at its last known principal place of business and shall keep a record of all process serviced upon him. The service of process is sufficient if:

(1) Notice of the service and a copy of the process are sent within ten days thereafter by registered mail by the plaintiff’s attorney to the defendant at its last known principal place of business; and

(2) The defendant’s receipt or a receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff’s attorney showing compliance herewith are filed with the clerk of court in which the action is pending by the date the defendant is required to appear or within such further time as the court may allow.

(d) No plaintiff is entitled to a judgment by default, a judgment with leave to prove damages, or a judgment pro confesso under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

(e) Nothing in this section limits or abridges the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

HISTORY: 1987 Act No. 155, Section 3; 1988 Act No. 366, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

**SECTION 15‑9‑290.** Service on unauthorized insurer; alternative method.

Service of process in any action, suit, or proceeding involving an unauthorized insurer is, in addition to the manners provided in Section 15‑9‑280 and Section 15‑9‑285, valid if served upon any person within this State who, in this State on behalf of the insurer, is:

(1) soliciting insurance,

(2) making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or

(3) collecting or receiving any premium for any such insurer, or adjusting any loss or claim for such insurance, and if counsel, within ten days after service upon such person, causes to be sent by registered mail to the last known address of the insurer a copy of the process with proper postage affixed to the envelope containing it and files an affidavit with the clerk of court or magistrate in whose court the cause is pending, of compliance herewith, with leave to the court to extend the time for the mailing of process and filing of affidavit.

HISTORY: 1962 Code Section 10‑426.1; 1952 Code Section 10‑426.1; 1947 (45) 322; 1987 Act No. 155, Section 4.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑300.** Service on unauthorized insurer; other methods of service unaffected by foregoing provisions.

Nothing contained in Section 15‑9‑280, Section 15‑9‑285, or Section 15‑9‑290 limits or abridges the right to serve any process, notice, or demand upon any insurer in any other manner permitted by law.

HISTORY: 1962 Code Section 10‑426.2; 1952 Code Section 10‑426.2; 1947 (45) 322; 1987 Act No. 155, Section 13.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

**SECTION 15‑9‑310.** Service on attorney of reciprocal insurance subscribers.

Service of process on the attorney, as defined in Section 38‑45‑20, for subscribers, as defined in Section 38‑45‑10, to reciprocal or interinsurance contracts shall be made by serving three copies thereof upon the Director of the Department of Insurance as the agent of such attorney pursuant to the provisions of Section 38‑45‑60. The director shall file one copy, forward one copy to the attorney and return one copy with his acceptance of service.

HISTORY: 1962 Code Section 10‑426.3; 1952 Code Section 10‑426.3; 1947 (45) 322; 1960 (51) 1646; 1987 Act No. 155, Section 14; 1993 Act No. 181, Section 263.

Editor’s Note

In the opinion of the Code Commissioner, the text references to Sections 38‑45‑10 and 38‑45‑60 should be to Sections 38‑17‑10 and 38‑17‑60, respectively. The reference to Section 38‑45‑20 cannot be correlated; that section no longer exists.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 217k3568.

Insurance 3568.

C.J.S. Insurance Section 1728.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑320.** Service on joint‑stock companies.

In suits brought against any joint‑stock company formed after December 23, 1879 service upon the president, chief manager, purser or other principal officer named in such articles of agreement shall be good service upon each and every one of the company or association at that time recorded as shareholders therein or who were so at the time the cause of action arose, and no change or transfer of the shares pending the action shall cause any abatement thereof.

HISTORY: 1962 Code Section 10‑428; 1952 Code Section 10‑428; 1942 Code Section 7792; 1932 Code Section 7792; Civ. C. ‘22 Section 5066; Civ. C. ‘12 Section 3332; Civ. C. ‘02 Section 2225; G. S. 1406; R. S. 1772; 1879 (17) 70.

CROSS REFERENCES

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

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Joint‑Stock Companies and Business Trusts 19.

C.J.S. Business Trusts Sections 39 to 47.

C.J.S. Joint Stock Companies Sections 31 to 35.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑330.** Service on unincorporated associations.

Process served on any agent of any unincorporated association doing business in this State under the name and style by which it is usually known shall be sufficient to make such association a party in any court of record in the county in which such agent may be served.

HISTORY: 1962 Code Section 10‑429; 1952 Code Section 10‑429; 1942 Code Section 7797; 1932 Code Section 7797; Civ. C. ‘22 Section 5071; Civ. C. ‘12 Section 3337; Civ. C. ‘02 Section 2230; G. S. 1411; R. S. 1777; 1863 (13) 215.

CROSS REFERENCES

Name by which unincorporated association may be sued, see Section 15‑5‑160.

Service of process under South Carolina Rules of Civil Procedure, see Rule 4, SCRCP.

Unincorporated association being barred from doing business in state upon conviction of barratry, see Section 16‑17‑40.

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Associations 20(4).

C.J.S. Associations Section 49.

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

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

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

NOTES OF DECISIONS

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1. Constitutionality

This section [former Code 1962 Section 10‑429] 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.

2. In general

Quoted in 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 remedy of this section [Code 1962 Section 10‑429] is exclusive. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651.

Cited in Southern Ry. Co. v. Order of Ry. Conductors of America, 1945, 63 F.Supp. 306.

3. Construction with other sections

There is no authority for the proposition that an unincorporated association can be sued in this State only in the county where service of process is had on its agent and that the provisions of this section [former Code 1962 Section 10‑429] as to venue are exclusive, for this section must be construed with former Code 1962 Section 10‑303. Edgar v. Southern Ry. Co. (S.C. 1948) 213 S.C. 445, 49 S.E.2d 841.

4. Service on member of unincorporated association

Service on member of unincorporated association is insufficient. Service of process on a member of an unincorporated association is insufficient to give jurisdiction over such association, for service of process must be made on an agent of the association. Edgar v Southern Ry. Co., 213 SC 445, 49 SE2d 841 (1948). Medlin v Ebenezer Methodist Church, 132 SC 498, 129 SE 830 (1925).

As to valid service of process on agent of unincorporated association, see Edgar v. Southern Ry. Co. (S.C. 1948) 213 S.C. 445, 49 S.E.2d 841.

Under this section [former Code 1962 Section 10‑429] and former Code 1962 Section 10‑215, service of process on the executor of a deceased treasurer of an unincorporated association is ineffective against the association. Medlin v. Ebenezer Methodist Church (S.C. 1925) 132 S.C. 498, 129 S.E. 830. Associations 20(4)

This section [former Code 1962 Section 10‑429] does not violate the due process clause of the Constitution on account of substituted service. Appeal of Baylor (S.C. 1913) 93 S.C. 414, 77 S.E. 59.

5. Union

A union is an unincorporated association and its liability to suit and process is fixed by this section [former Code 1962 Section 10‑429] and former Code 1962 Section 10‑215. 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. Labor And Employment 1978; Labor And Employment 1984

6. Army officers mess

Army officers’ mess is immune from suit under Federal law, by which State and its courts are bound. Brame v. Garner (S.C. 1957) 232 S.C. 157, 101 S.E.2d 292.

7. Burial aid association

This section [former Code 1962 Section 10‑429] 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)

**SECTION 15‑9‑350.** Service on Director of Department of Motor Vehicles as attorney of nonresident motorists.

The acceptance by a nonresident of the rights and privileges conferred by the laws in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways, the streets of any incorporated municipality or the public roads of this State or anywhere within this State, or the operation by such nonresident of a motor vehicle on any such public highways, streets or public roads or anywhere within the State other than as so permitted or regulated shall be deemed equivalent to the appointment by such nonresident of the Director of the Department of Motor Vehicles or of his successor in office to be his true and lawful attorney upon whom may be served all summons or other lawful process in any action or proceeding against him growing out of any accident or collision in which such nonresident may be involved by reason of the operation by him, for him or under his control or direction, express or implied, of a motor vehicle on such public highways, streets or public roads or anywhere within this State. Such acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally.

HISTORY: 1962 Code Section 46‑104; 1952 Code Section 46‑104; 1949 (46) 342; 1962 (52) 2159; 1993 Act No. 181, Section 264; 1996 Act No. 459, Section 26.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

CROSS REFERENCES

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: 48Ak235; 48Ak235.

Automobiles 235.

C.J.S. Motor Vehicles Sections 989 to 997, 1005 to 1006.

RESEARCH REFERENCES

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United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

Attorney General’s Opinions

The service under consideration by the Department of Motor Vehicles, which generates a detailed report of an electronic signature designating acceptant of receipt, would likely be considered by a court as adequate evidence of delivery of statutory notices of suspension or service of process as are the ink‑signed copies of the green card. If a law requires that a record of a signature be retained, the requirement is satisfied by retaining the electronic form of the signature as a record by the government entity. To hold otherwise simply because technological advances have allowed for electronic records and signatures would run afoul of the expressed intent of our Legislature in enacting the Uniform Electronic Transactions Act of 2004. S.C. Op.Atty.Gen. (Jan. 10, 2012) 2012 WL 440546.

NOTES OF DECISIONS

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1. In general

Residence is a more elastic and flexible term than domicil or citizenship, and a person may have only one domicil but may have several residences. Cook v. Federal Ins. Co. (S.C. 1975) 263 S.C. 575, 211 S.E.2d 881. Domicile 2

Automobile owner was amenable to service under the nonresident motorists’ statute, although his family resided within the state, since he had an out of state license plate on vehicle, had an out of state driver’s license, and gave an out of state address at the scene of an accident. Cook v. Federal Ins. Co. (S.C. 1975) 263 S.C. 575, 211 S.E.2d 881.

Applied in Moorer v. Underwood (S.C. 1940) 194 S.C. 73, 9 S.E.2d 29.

2. Constitutionality

Constitutionality of statutes providing for constructive or substituted service on nonresident motorists. Ward v. Miller (S.C. 1956) 230 S.C. 288, 95 S.E.2d 482.

3. Scope of statute; construction

This method of service may be resorted to by a nonresident plaintiff if the cause of action arises in South Carolina. Peeples v. Ramspacher, 1939, 29 F.Supp. 632.

This section [former Code 1962 Section 46‑104] contemplates the presence of the nonresident’s car within the State, operated by him or for him, under his control or direction. It is a derogation of common right, and cannot be extended by implication to accomplish that which the legislature could have done but failed in express terms to do. Kirchner v. N. & W. Overall Co., 1936, 16 F.Supp. 915. Automobiles 235

In an action for injuries sustained in an automobile collision, the statute of limitations was tolled under Section 15‑3‑30 from the date the defendant left the state of South Carolina and absented himself for a period in excess of one year, notwithstanding the fact that the defendant remained amenable to substitute service on the Chief Highway Commissioner as his statutory agent under Section 15‑9‑350, et seq. Cutino v. Ramsey (S.C. 1985) 285 S.C. 74, 328 S.E.2d 72. Limitation Of Actions 85(2)

This section [former Code 1962 Section 46‑104] and former Code 1962 Section 10‑431 make the Chief Highway Commissioner agent of nonresident motorist. Ward v. Miller (S.C. 1956) 230 S.C. 288, 95 S.E.2d 482.

This section [former Code 1962 Section 46‑104] does not contain specific provisions as to venue. Hence, recourse must be had to the general laws relating to the subject, Courtney v. Meyer (S.C. 1943) 202 S.C. 437, 25 S.E.2d 481.

This section [former Code 1962 Section 46‑104] does not place the venue of actions against nonresident motorists in the county of the residence of the Chief Highway Commissioner. It makes him the agent of a nonresident in any county of the State in which the action is otherwise properly brought. Courtney v. Meyer (S.C. 1943) 202 S.C. 437, 25 S.E.2d 481.

4. Operation of vehicle for nonresident

In order to sustain service under the words “for him, or under his control or direction,” it must appear that the vehicle was being operated “for” the nonresident defendant, on the allegation that it was being used to further the defendant’s business. Kirchner v. N. & W. Overall Co., 1936, 16 F.Supp. 915.

One making sales on commission on his own time, in his own way, using and “operating” his own conveyance, not subject to control or direction of the nonresident corporation for which he is making sales, is not operating his car “for” the nonresident corporation as contemplated by the provisions of this section [Code 1962 Section 46‑104]. Kirchner v. N. & W. Overall Co., 1936, 16 F.Supp. 915.

Constructive service under this section [former Code 1962 Section 46‑104] on a nonresident owner sued in this State under the family purpose doctrine would not be set aside on the owner’s motion, although complaint showed automobile was being operated at the time of the accident by a companion of the son of the owner for whom it was maintained and to whom it was furnished. Norwood v. Parthemos (S.C. 1956) 230 S.C. 207, 95 S.E.2d 168. Automobiles 195(5)

When a nonresident drives upon the South Carolina roads, he accepts the terms of this section [former Code 1962 Section 46‑104] and thereby appoints the Chief Highway Commissioner as his true and lawful attorney upon whom process can be served. By so doing, he waives the question of jurisdiction of person. Krueger v. Hider, 1943, 48 F.Supp. 708.

5. Deceased nonresident motorist

The enactment of former Code 1962 Section 10‑212 is evidence that this section [former Code 1962 Section 46‑104] 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.

No provision is made in this section [former Code 1962 Section 46‑104] for substituted service on the administrator or personal representative of a deceased nonresident motorist. Gregory v. White, 1957, 151 F.Supp. 761.

**SECTION 15‑9‑360.** Service on Director of Department of Motor Vehicles as attorney for nonresident motor carriers.

The acceptance by a nonresident motor carrier of the rights and privileges conferred by the laws now or hereafter in force in this State, permitting the operation of motor vehicles as evidenced by the operation of a motor vehicle by such nonresident either personally or through an agent or employee on the public highways in this State, or the operation of such nonresident either personally or through an agent, lessee, or employee, of a motor vehicle on the public highways of this State other than as so permitted or regulated, shall be deemed equivalent to the appointment by such nonresident motor carrier of the Director of the Department of Motor Vehicles, or his successor in office, to be his true and lawful attorney and the attorney of his executor or administrator, upon whom may be served all summonses or other lawful process or notice in any action, assessment proceeding, or other proceeding against him or his executor or administrator, arising out of or by reason of any provisions in Chapter 31 of Title 12 relating to such vehicle or relating to the liability for tax with respect to operation of such vehicle on the highways of this State. Acceptance or operation shall be a signification by such nonresident motor carrier of his agreement that any such process against or notice to him or his executor or administrator shall be of the same legal force and validity as if served on him personally or on his executor or administrator. All of the provisions of Sections 15‑9‑370, 15‑9‑380, and 15‑9‑350 shall be applicable with respect to the service of process or notice pursuant to this section.

HISTORY: 1962 Code Section 65‑1231.5; 1956 (49) 1635; 1962 (52) 2309; 1993 Act No. 181, Section 265; 1996 Act No. 459, Section 27.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

LIBRARY REFERENCES

Westlaw Key Number Search: 48Ak235.

Automobiles 235.

C.J.S. Motor Vehicles Sections 989 to 997, 1005 to 1006.

RESEARCH REFERENCES

ALR Library

139 ALR, Federal 331 , When Does Period for Filing Petition for Removal of Civil Action from State Court to Federal District Court Begin to Run Under 28 U.S.C.A. Section 1446(B).

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

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1. In general

Time for filing notice of removal did not commence running, in state court suit in which service of process was made on state motor vehicles department under nonresident motorist statute, until such time as defendant actually received summons and complaint, and thus notice of removal filed less than 30 days thereafter was timely. Cox v. Sprung’s Transport & Movers, Ltd., 2006, 407 F.Supp.2d 754. Removal Of Cases 79(1)

**SECTION 15‑9‑370.** Service on nonresident motor vehicle drivers and motor carriers.

Service of process upon the Director of the Department of Motor Vehicles, as agent of a: (a) nonresident driver under the provisions of Section 15‑9‑350; (b) resident driver who subsequently becomes a nonresident; (c) nonresident motor carrier under the provisions of Section 15‑9‑360; or (d) nonresident unregulated motor carriers engaged in transporting persons, hauling farm or dairy products, hauling any other perishable products or haulers of lumber or logs, shall be made by leaving a copy thereof, with an appropriate fee, in the hands of the Director of the Department of Motor Vehicles or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the Director of the Department of Motor Vehicles to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint, and other papers in the cause. The Director of the Department of Motor Vehicles shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the Director of the Department of Motor Vehicles, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1962 Code Section 10‑431; 1952 Code Section 10‑431; 1949 (46) 342; 1959 (51) 54; 1962 (52) 2309; 1965 (54) 77; 1993 Act No. 181, Section 266; 1996 Act No. 459, Section 28.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

CROSS REFERENCES

Appointment of local representative for a deceased nonresident motor vehicle operator causing death or injury in this State, see Sections 15‑5‑130, 15‑5‑140.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 48Ak235.

Automobiles 235.

C.J.S. Motor Vehicles Sections 989 to 997, 1005 to 1006.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Stewart v Combs, 206 F Supp 19 (1962). Miller v Miller, 248 SC 125, 149 SE2d 336 (1966); King v McMillan, 252 F Supp 390 (DSC 1966). Evans v American Home Assurance Co., 252 SC 417, 166 SE2d 811 (1969).

Applied in Macri v Flaherty, 115 F Supp 739 (1953). Dow v Belden, 245 SC 321, 140 SE2d 473 (1965).

Quoted in Howard v. Allen (D.C.S.C. 1973) 368 F.Supp. 310, affirmed 487 F.2d 1397, certiorari denied 94 S.Ct. 2611, 417 U.S. 912, 41 L.Ed.2d 216.

While the service of a summons and complaint under this section [former Code 1962 Section 10‑431] by a nonresident plaintiff injured in an automobile accident in this State may be valid, such service does not obviate the requirements of 28 USC Section 1391(a), wherein it is provided that the action can be brought “only in the judicial district where all plaintiffs or all defendants reside.” Finger v. Masterson, 1957, 152 F.Supp. 224.

The method of service provided for in this section [former Code 1962 Section 10‑431] may be resorted to by a nonresident plaintiff if the cause of action arises in this State. Construing similar section in 1932 Code, Peeples v. Ramspacher, 1939, 29 F.Supp. 632.

Under the provisions of this section [former Code 1962 Section 10‑431], actual service having been made upon the director (now Chief Highway Commissioner), neither delay in return of the registry receipt nor delay in delivery of the registry receipt to the plaintiff upon request, by the director if the forwarding was done by him, need delay the filing of the summons and complaint with the clerk of court. Construing similar section in 1932 Code, Peeples v. Ramspacher, 1939, 29 F.Supp. 632.

Residence is a more elastic and flexible term than domicil or citizenship, and a person may have only one domicil but may have several residences. Cook v. Federal Ins. Co. (S.C. 1975) 263 S.C. 575, 211 S.E.2d 881. Domicile 2

Automobile owner was amenable to service under the nonresident motorists’ statute, although his family resided within the state, since he had an out of state license plate on vehicle, had an out of state driver’s license, and gave an out of state address at the scene of an accident. Cook v. Federal Ins. Co. (S.C. 1975) 263 S.C. 575, 211 S.E.2d 881.

Constitutionality of statutes providing for constructive or substituted service on nonresident motorists. Ward v. Miller (S.C. 1956) 230 S.C. 288, 95 S.E.2d 482.

This section [former Code 1962 Section 10‑431] and former Code 1962 Section 46‑104 make the Chief Highway Commissioner the agent of the nonresident motorist. Ward v. Miller (S.C. 1956) 230 S.C. 288, 95 S.E.2d 482.

Where a summons and complaint is served upon a statutory agent for a nonresident motorist, double time within which to answer is not allowed under the provision of former Code 1962 Section 10‑465. Ward v. Miller (S.C. 1956) 230 S.C. 288, 95 S.E.2d 482.

**SECTION 15‑9‑380.** Procedure when nonresident motorist or motor carrier defendant does not accept and receipt for notice sent by certified mail.

If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1962 Code Section 10‑431.1; 1952 Code Section 10‑431.1; 1949 (46) 342; 1962 (52) 2309; 1993 Act No. 181, Section 267.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “motor vehicle records division of the Department of Public Safety”.

CROSS REFERENCES

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Search: 48Ak235.

Automobiles 235.

C.J.S. Motor Vehicles Sections 989 to 997, 1005 to 1006.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

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Quoted in Howard v. Allen (D.C.S.C. 1973) 368 F.Supp. 310, affirmed 487 F.2d 1397, certiorari denied 94 S.Ct. 2611, 417 U.S. 912, 41 L.Ed.2d 216.

Cited in King v. McMillan (D.C.S.C. 1966) 252 F.Supp. 390.

Applied in Dow v. Bolden (S.C. 1965) 245 S.C. 321, 140 S.E.2d 473.

**SECTION 15‑9‑390.** Service on nonresident operators of aircraft.

Service of process upon the Secretary of Commerce, as agent of the nonresident operator of any aircraft which has set down in South Carolina, shall be made by leaving a copy thereof, with a fee of four dollars, in the hands of the Secretary of Commerce or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the Secretary of Commerce or his designee to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint and other papers in the cause. The Secretary of Commerce or his designee shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the Secretary of Commerce or his designee, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1962 Code Section 10‑431.2; 1971 (57) 132; 1993 Act No. 181, Section 268; 1994 Act No. 361, Sections 8, 9.

CROSS REFERENCES

Duties and powers of South Carolina Aeronautics Division, see Section 55‑5‑70.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

LAW REVIEW AND JOURNAL COMMENTARIES

1981 Survey: Practice and procedure; in personam jurisdiction. 34 S.C. L. Rev. 173, August 1982.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

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This section [former Code 1962 Section 10‑431.2], based on the fiction of implied consent, may not be applied retroactively to validate a substituted service of process to a nonresident where the accident complained of occurred before this section’s [former Code 1962 Section 10‑431.2] enactment since consent cannot be implied retroactively. Howard v. Allen (D.C.S.C. 1973) 368 F.Supp. 310, affirmed 487 F.2d 1397, certiorari denied 94 S.Ct. 2611, 417 U.S. 912, 41 L.Ed.2d 216.

**SECTION 15‑9‑400.** Procedure when nonresident aircraft operator defendant does not accept and receipt for notice sent by certified mail.

If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or Director, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1962 Code Section 10‑431.3; 1971 (57) 132.

CROSS REFERENCES

Duties and powers of South Carolina Aeronautics Division, see Section 55‑5‑70.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

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Quoted in Howard v. Allen (D.C.S.C. 1973) 368 F.Supp. 310, affirmed 487 F.2d 1397, certiorari denied 94 S.Ct. 2611, 417 U.S. 912, 41 L.Ed.2d 216.

**SECTION 15‑9‑410.** Provisions as to nonresident aircraft operators are not applicable to certain air carriers.

The provisions of Sections 15‑9‑390 and 15‑9‑400 shall not apply to any incorporated air carrier holding a certificate of public convenience and necessity from the Division of Aeronautics of the Department of Commerce.

HISTORY: 1962 Code Section 10‑431.4; 1971 (57) 132; 1993 Act No. 181, Section 269.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

United States Supreme Court Annotations

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

**SECTION 15‑9‑415.** Service on nonresident vessel operators.

Service of process upon the Director of the South Carolina Department of Natural Resources, as agent of the nonresident operator of any vessel as defined in Section 50‑21‑10 in the waters of this State as defined in Section 50‑21‑10, shall be made by leaving a copy thereof, with a fee of four dollars, in the hands of the director or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the director to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint and other papers in the cause. The director shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the director, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1980 Act No. 470, Section 1; 1993 Act No. 181, Section 270.

CROSS REFERENCES

Department of Natural Resources, see Sections 50‑3‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

**SECTION 15‑9‑416.** Procedure when nonresident vessel operator defendant does not accept and receipt for notice sent by certified mail.

If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or Executive Director, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1980 Act No. 470, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

**SECTION 15‑9‑420.** Service on certain traveling shows.

Service of any process in any action or proceeding against any circus or other traveling show exhibiting under canvas or outdoors for gain may be made upon any clerk of court appointed agent or attorney of such show under the provisions of Section 52‑1‑60 and such service must be in duplicate. When so made it shall be deemed sufficient service upon any such circus or traveling show. When legal process against any such circus or show is served upon any such clerk of court he shall forthwith forward by certified mail one of the duplicate copies prepaid directed to the person and the address as furnished him in the power of attorney referred to in Section 52‑1‑60.

HISTORY: 1962 Code Section 10‑432; 1952 Code Section 10‑432; 1942 Code Section 6335; 1939 (41) 102, 1962 (52) 2309.

CROSS REFERENCES

Agent for service of process with respect to circus or traveling show exhibited under canvas or outdoors, see Section 52‑1‑60.

Use of certified mail, see Section 2‑7‑90.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑430.** Service on nonresident directors of domestic corporations.

(a) Each director of a domestic business corporation who is a nonresident of this State at the time of his election or who becomes a nonresident during his term in office, shall by his acceptance of election or by continuing in office as director, be deemed to have appointed the Secretary of State as an agent to receive service of process upon him in any action or proceeding relating to actions of such corporation and arising while he held office as director of such corporation.

(b) Service of such process shall be made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of such process. The Secretary of State shall thereupon immediately cause one of such copies to be forwarded to the nonresident director by certified mail. Proof of service shall be by affidavit of compliance with this section filed, together with a copy of the process, with the clerk of court in which the action or proceeding is pending.

(c) Service under this section may also be made by delivery of a copy of the process to the nonresident director at his address outside the State. Proof of such delivery shall be made by affidavit of the person making delivery and the affidavit shall be filed with the clerk of court in which the action or proceeding is pending.

(d) The resignation in good faith of any nonresident director, effective as of the date of filing with the Secretary of State a notice of his resignation, shall terminate the application to him of the provisions of this section, except for any cause of action already accrued.

(e) Every domestic business corporation which has any director who is or becomes a nonresident of this State after the corporation has filed its most recent annual report pursuant to Section 12‑19‑20 shall file with the Secretary of State the names and addresses of its directors and shall file supplementary reports showing any change of address or residence of any director. The reports must be filed within ten days from the date of election, removal from this State, or change of address of any director. The Secretary of State shall compile and maintain a current list, indexed by corporation, of all nonresident directors of domestic business corporations which are listed on such interim filings. Delivery of copies of service as required in subsections (b) and (c) to the nonresident director must be made by delivering the copy to the most recent address on file with the company’s most current annual report or any more current interim report which has been filed with the Secretary of State pursuant to this subsection.

(f) The Secretary of State shall charge a fee of ten dollars to accompany service thereunder.

HISTORY: 1962 Code Section 10‑432.1; 1952 Code Section 10‑432.1; 1947 (45) 561; 1981 Act No. 146, Section 7; 1988 Act No. 444, Section 3; 1994 Act No. 384, Section 5.

SOUTH CAROLINA REPORTERS’ COMMENTS

This section deals with the service of process on nonresident directors of South Carolina corporations. The amendments to subsection (e) are designed to clarify how the name and address of nonresident directors are determined and how service of process of them is made. For further discussion, see the South Carolina Reporters’ Comments to Section 33‑5‑104 in Section 2 of this act.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k507.

Corporations 507.

C.J.S. Corporations Section 721.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 27, Other Executive Department Offices‑Constitutional Origin.

LAW REVIEW AND JOURNAL COMMENTARIES

Adams, The 1981 Revision of the South Carolina Business Corporation Act. 33 S.C. L. Rev. 405, March 1982.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

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Validity 1

1. Validity

This section [Code 1962 Section 10‑432.1] is constitutional and not in violation of the due process clause of the Fourteenth Amendment. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745.

Serving non‑resident director of domestic corporation by delivering copies to Secretary of State was sufficient in action against limited partnership, its corporate managing partner, and director individually, even though the Secretary sent copy to partnership and employee at the address signed for the summons and complaint; the rule requiring delivery restricted to addressee was inapplicable since statute applied on serving non‑resident of domestic business corporation and the statute did not require delivery to addressee or mailing to corporation. Wetzel v. Woodside Development Ltd. Partnership (S.C. 2005) 364 S.C. 589, 615 S.E.2d 437, rehearing denied, on remand 2007 WL 7950215. Corporations And Business Organizations 2546(4); Partnership 1184(5); Process 80

2. In general

Where a state has an interest in regulating operations and transactions by nonresidents, it has the power to enact appropriate legislation for the bringing of a nonresident into its forum in actions affecting his transactions in that state. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745. Process 2

A defendant is in no position to complain that a copy of the summons and complaint was not sent by registered mail where he actually received the copy of the summons and moved to set aside the service thereof. Nor is he in a position to attack this section [former Code 1962 Section 10‑432.1] because it made no provision for the sending of the process by registered mail, inasmuch as he has not been injured because of the failure of such provision. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745.

Statute on serving non‑resident director of domestic business corporation through Secretary of State does not require mailing of service to the corporation’s address; the statute states only that the copies must be delivered or mailed to a non‑resident director at his most recent address on file. Wetzel v. Woodside Development Ltd. Partnership (S.C. 2005) 364 S.C. 589, 615 S.E.2d 437, rehearing denied, on remand 2007 WL 7950215. Process 80

3. Mailing of notice

Although 1947 Act No 277 [1947 (45) 561] provides that the copy of the summons and complaint shall be sent by registered mail, the 1952 Code, which the legislature declared to be the “only general statutory law of the State on the 8th day of January, 1952” made no provision for the sending of the process by registered mail. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745.

The sending of notice by ordinary mail has always been recognized in this State as sufficient. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745.

**SECTION 15‑9‑440.** Service on trustees of inter vivos trusts.

(1) Service on resident trustee constitutes service on all other trustees. —Service upon one resident trustee of an inter vivos trust shall constitute service on all other trustees, resident and nonresident, of the same trust, for the purpose of adjudicating any action or proceeding in a court of this State involving, directly or indirectly, such trust.

(2) Trustee served to notify other trustees. —The resident trustee, so served, shall within five days, give prompt notice to such nonresident trustee and other resident trustee of the action. The failure of notification to the other trustees shall in no way impair the action.

(3) Service on nonresident trustee when there is no resident trustee. —When there is no resident trustee, the nonresident trustee of an inter vivos trust shall be deemed to have consented to the service of any summons, notice or other legal process in connection with any proceeding in the courts of this State involving such trust, directly or indirectly, when served upon the Secretary of State, when the trust was created under the laws of this State or, in the case of a foreign trust, when part of the trust property is situated in this State.

(4) Time allowed for answer. —The time within which to answer under the provisions of this section shall be the same as that provided for by law for substituted service.

(5) Penalties. —Any trustee responsible for notifying another trustee, who fails to comply with the provisions of this section, shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 10‑432.2; 1962 (52) 1955.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83; 390k367.

Process 69 to 83.

Trusts 367.

C.J.S. Process Sections 50 to 57, 73 to 75.

C.J.S. Trover and Conversion Section 697.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 870, Jurisdiction to Enforce Trust‑Actions Available.

NOTES OF DECISIONS

In general 1

1. In general

Part of trust property was situated in state for purposes of Code 1976 Section 15‑9‑440(3), where trust owned mortgage on South Carolina real estate, and South Carolina corporation owed trust substantial sums of money. Long v. Baldt (D.C.S.C. 1979) 464 F.Supp. 269.

In action charging trust mismanagement, proper statutory and constitutional bases for personal jurisdiction under Code 1976 Sections 15‑9‑440 and 36‑2‑803 existed, where defendants engaged in continuous financial transactions with several South Carolina residents, committed allegedly tortious activities in whole or in part in state, and owned interests in property in state, and one defendant made repeated visits to state, all such contacts appearing to be connected with underlying cause of action. Long v. Baldt (D.C.S.C. 1979) 464 F.Supp. 269. Federal Courts 2739

Assumption of in personam jurisdiction. In an action alleging trust mismanagement, defendant trustees’ motion to dismiss for lack of personal jurisdiction would be denied where, inter alia, repeated visits to the state by one defendant, continuous financial transactions with several state residents, as well as defendants’ ownership interests in property in the state provided proper statutory and constitutional bases for personal jurisdiction. Long v. Baldt (D.C.S.C. 1979) 464 F.Supp. 269.

**SECTION 15‑9‑450.** Service on nonresident individual fiduciaries.

Service, upon any individual nonresident executor, administrator, guardian, conservator, or trustee, of any claim, demand, debt, dues, summons, or any other process, or pleading in suits or actions relating to the administration of the estate in his charge may be made upon the resident of this State appointed by such fiduciary as his agent for such purpose pursuant to the provisions of the South Carolina Probate Code or, in the event of the death, removal, resignation or absence from the State of such agent, or the inability of the person desiring to serve such agent so to do for any other reason, then upon the probate judge or the clerk of the court of common pleas of the county wherein the application of such fiduciary for appointment was made.

HISTORY: 1962 Code Section 10‑433; 1952 Code Section 10‑433; 1942 Code Section 8952; 1932 Code Section 8952; Civ. C. ‘22 Section 5368; Civ. C. ‘12 Section 3591; 1902 (23) 1064; 1933 (38) 200; 1934 (38) 1402; 1935 (39) 387; 1937 (40) 523; 1955 (49) 456; 1986 Act No. 539, Section 3(1)(C).

LIBRARY REFERENCES

Westlaw Key Number Searches: 162k441; 313k69 to 313k83.

Executors and Administrators 441.

Process 69 to 83.

C.J.S. Executors and Administrators Sections 782 to 784.

C.J.S. Process Sections 50 to 57, 73 to 75.

United States Supreme Court Annotations

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

1. In general

Where a suit is brought by an administrator, the citizenship and residence of the administrator himself governs, rather than that of the estate or the deceased whom he represents, even though it is obvious that the administrator was appointed to prevent removal to the Federal court. Breeden v Atlantic Coast Line R. Co., 86 F Supp 964 (1949). Mason v Helms, 97 F Supp 312 (1951).

**SECTION 15‑9‑460.** Service on certain nurserymen.

Service of process on any person who shall have appointed the Secretary of State as his agent to accept service under the provisions of Section 46‑33‑40 may be made by serving such process upon the Secretary of State.

HISTORY: 1962 Code Section 10‑433.1; 1952 Code Section 10‑433.1; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

**SECTION 15‑9‑510.** Service of legal papers on patient in state mental health facility; duties of director of facility.

The director of a state mental health facility must not accept service of legal papers, or consent to the appointment of a guardian ad litem, for any patient. When a legal paper is served on a patient in a facility, a copy of the legal paper must be filed with the director who shall cause it to be made a part of the permanent record of the patient. The director immediately, in writing, shall inform the court, out of which the process issued, of the date of service of the process, the procedure under which the patient was admitted to the facility, and the present mental and physical condition of the person.

HISTORY: 1962 Code Section 10‑437; 1952 Code Section 10‑437; 1942 Code Section 6240; 1932 Code Section 6240; Civ. C. ‘22 Section 5101; 1920 (31) 704; 1952 (47) 2042; 2008 Act No. 266, Section 1, eff June 4, 2008.

Effect of Amendment

The 2008 amendment substituted “director” for “superintendent”, deleted “or trainee”, and made nonsubstantive changes throughout.

CROSS REFERENCES

Release, discharge, and reconfinement of mentally ill persons, see Sections 44‑17‑810 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k69 to 313k83.

Process 69 to 83.

C.J.S. Process Sections 50 to 57, 73 to 75.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 4.0, Rule 4. Process.

S.C. Jur. South Carolina Rules of Civil Procedure Section 4.1, Reporter’s Notes.

ARTICLE 5

Service by Publication or Out of State

**SECTION 15‑9‑710.** When service by publication may be had.

When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons in any one or more of the following cases:

(1) when the defendant is a foreign corporation and has property within the State or the cause of action arose therein;

(2) when the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with like intent;

(3) when the defendant is a resident of this State and after a diligent search cannot be found;

(4) when the defendant is not a resident of this State but has property therein and the court has jurisdiction of the subject of the action;

(5) when the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest, actual or contingent, therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

(6) when the defendant is a party to an adoption proceeding and is either a nonresident or a person upon whom service cannot be had within the State after due diligence;

(7) when the defendant is a party to a proceeding for the determination of parental rights and is either a nonresident or a person upon whom service cannot be had within the State after due diligence; and

(8) when the defendant is a party to an annulment proceeding or where the subject of the matter involves the custody of minor children, support of minor children or wife, separate maintenance, or a legal separation.

HISTORY: 1962 Code Section 10‑451; 1952 Code Section 10‑451; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 1959 (51) 409; 1961 (52) 429; 1988 Act No. 531, Section 1.

CROSS REFERENCES

Judgment after service by publication under South Carolina Rules of Civil Procedure, see Rule 55, SCRCP.

Service on nonresidents and unknown parties in actions to determine adverse claims to real property, see Sections 15‑67‑30, 15‑67‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k84 to 313k111.

Process 84 to 111.

C.J.S. Process Sections 58 to 73, 76.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 70, Absence of Defendant at Time of Accrual.

S.C. Jur. Limitation of Actions Section 71, Absence of Defendant After Accrual.

S.C. Jur. Mortgages Section 118, Reference to Master or Referee.

Forms

Am. Jur. Pl. & Pr. Forms Process Section 92 , Introductory Comments.

South Carolina Litigation Forms and Analysis Section 4:10 , Motion for Service by Publication.

South Carolina Litigation Forms and Analysis Section 4:11 , General Form of Affidavit for Service by Publication.

South Carolina Litigation Forms and Analysis Section 4:12 , Order of Publication.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

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Resident of State who cannot be found 11

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Statute limited to proceedings in rem 3

Strict construction 2

1. In general

Cited in Pollock v Carolina Interstate Building & Loan Ass’n, 48 SC 65, 25 SE 977 (1896). Cleveland v Spartanburg, 54 SC 83, 31 SE 871 (1899). Abbeville Elec. Light & Power Co. v Western Electrical Supply Co., 61 SC 361, 39 SE 559 (1901). Twin City Power Co. v Savannah R. Elec. Co., 163 SC 438, 161 SE 750 (1930). Cheraw v Turnage, 184 SC 76, 191 SE 831 (1937). Stein v Xepapas, 204 SC 239, 29 SE2d 257 (1944). Hensley v Green, 36 F Supp 671 (1940). H. S. Chisholm, Inc. v Klinger, 229 SC 8, 91 SE2d 538 (1956). Cannon v Cannon, 260 SC 204, 195 SE2d 176 (1973).

Stated in Best v Seaboard Air Line Ry., 72 SC 479, 52 SE 223 (1905). Singleton v Singleton, 232 SC 441, 102 SE2d 747 (1958).

Applied in Parklands, Inc. v. Gibson (S.C. 1969) 253 S.C. 367, 170 S.E.2d 669.

It will be noted that the statute is general in its terms. It does not mention any particular action or actions by name, but merely describes several classes of actions which may be brought under it. But that is no objection to the statute, for, clearly, if the legislature has power to enact such a statute at all, it may do so in general as well as in specific terms, and if the action comes within any one or more of the classes described it may be maintained, just as if it had been named. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922.

While this section [former Code 1962 Section 10‑451] does not, in express terms, confer the power to render a judgment vesting legal title to land in one party and divesting another of such title without any conveyance from him or act on his part, it does so by necessary implication, because its sole purpose is to subject the property to the jurisdiction and control of the court. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922.

In view of this section [former Code 1962 Section 10‑451], as to purchasers in good faith under judgments, judgment in a partition suit, and sale made thereunder, must be sustained against collateral attack in an action to recover possession of the land, unless it affirmatively appears on the face of the record that the court had no jurisdiction of the subject of the action and of the parties; a purchaser in good faith at a judicial sale being bound only to see that the court has jurisdiction of the subject of the action and the parties, and not being affected by irregularities or errors in the record for which the judgment may be vacated on direct attack or reversed on appeal, or by secret vices affecting the judgment, which are not disclosed by examination of the record. Gladden v. Chapman (S.C. 1917) 106 S.C. 486, 91 S.E. 796.

2. Strict construction

Service by publication of the summons upon a nonresident is in derogation of the common law, and the statute must be strictly construed. Tenney v. American Pipe Mfg. Co., 1899, 96 F. 919.

The proof of service must show affirmatively that the service of the process was correctly made. This is imperatively necessary to give the court jurisdiction of the person thus sought to be brought into court. Matheson v. McCormac (S.C. 1938) 186 S.C. 93, 195 S.E. 122. Process 137

3. Statute limited to proceedings in rem

The service of summons upon residents of other states, both of individuals and of corporations on personal actions as distinguished from actions bottomed upon attachments and like provisional remedies in actions, cannot run beyond our borders. Dyar v Georgia Power Co., 173 SC 527, 176 SE 711 (1934). Emanuel v Ferris, 63 SC 104, 41 SE 20 (1902).

The provisions of this section [former Code 1962 Section 10‑451] apply only to such action as may be regarded as a proceeding in rem, and do not apply to merely personal actions in which only a personal judgment is sought or can be obtained. Dyar v Georgia Power Co., 173 SC 527, 176 SE 711 (1934). Tillinghast v Boston & Port Royal Lumber Co., 39 SC 484, 18 SE 120 (1893).

Sections 15‑9‑710 and 15‑9‑750 do not apply only to in rem actions, but apply with equal force to actions in personam as long as the due process minimum contacts requirement is satisfied. Hendrix v. Hendrix (S.C. 1988) 296 S.C. 200, 371 S.E.2d 528.

4. Affidavit

In the absence of fraud or collusion, if the affidavit satisfies the officer granting order of publication, his order is final. Yates v Gridley, 16 SC 496 (1882). National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889).

Owners’ association’s affidavit evidenced fact that it failed to comply with service‑by‑publication statute in foreclosure action, and therefore, overruling of clerk’s order of publication was warranted; documents attached to the affidavit demonstrated that association attempted service on wrong defendant. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Process 98

Generally, when the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion. Belle Hall Plantation Homeowner’s Association, Inc. v. Murray (S.C.App. 2017) 419 S.C. 605, 799 S.E.2d 310, rehearing denied. Process 96(2); Process 159

Affidavit supporting order of publication was not rendered facially defective by its erroneous assertion that county sheriff attempted service upon defendant but could not locate him. Wachovia Bank of South Carolina, N.A. v. Player (S.C.App. 1999) 334 S.C. 200, 512 S.E.2d 129, rehearing denied, certiorari granted, reversed 341 S.C. 424, 535 S.E.2d 128. Process 96(4)

An affidavit in support of an order of publication containing only a conclusory statement that due diligence had been exercised in attempting to ascertain whereabouts of party is not facially defective. Wachovia Bank of South Carolina, N.A. v. Player (S.C.App. 1999) 334 S.C. 200, 512 S.E.2d 129, rehearing denied, certiorari granted, reversed 341 S.C. 424, 535 S.E.2d 128. Process 96(4)

The affidavit supporting service by publication is facially defective where it purports to show due diligence in ascertaining the whereabouts of someone other than the person to be served; the appellate court cannot presume that due diligence was exercised in any way other than as shown in the record. Miles v. Lee (S.C.App. 1995) 319 S.C. 271, 460 S.E.2d 423, rehearing denied.

Default judgment was properly granted against person served by publication where such person was nonresident property owner, court had subject matter jurisdiction, and person could not, with due diligence, be located within state; publication affidavit is not insufficient merely because it only contains conclusory statements. Additionally, factual statements in order of publication different from those in publication affidavit does not constitute jurisdictional defect which will support collateral attack on default judgment. Yarbrough v. Collins (S.C. 1987) 293 S.C. 290, 360 S.E.2d 300.

This section [former Code 1962 Section 10‑451] does not specify the character of the facts and circumstances which must be stated in the affidavit, or the quantity of the evidence necessary to satisfy the officer, before ordering publication. It simply requires that it must appear by affidavit to his satisfaction. Dow v. Bolden (S.C. 1965) 245 S.C. 321, 140 S.E.2d 473.

The provision of subdivision (2) as to concealment refers only to concealment within the State. Dow v. Bolden (S.C. 1965) 245 S.C. 321, 140 S.E.2d 473.

Once the judge found as a fact that the defendant had departed with the intent to avoid the service of a summons, it was unnecessary for him to make any additional finding of fact with respect to concealment. Dow v. Bolden (S.C. 1965) 245 S.C. 321, 140 S.E.2d 473.

The affidavit on which the order of publication is based is not insufficient for want of venue, or for failing to state facts showing the court’s jurisdiction of the subject matter, where reference is made therein to the complaint which shows such jurisdiction. Clemson Agricultural College of South Carolina v. Pickens (S.C. 1894) 42 S.C. 511, 20 S.E. 401. Process 96(2)

5. Order of publication

Service of summons out of State without order of publication and attachment is void. Emanuel v Ferris, 63 SC 104, 41 SE 20 (1902). Wren v Johnson, 62 SC 533, 40 SE 937 (1902).

When publication has been ordered, personal service out of the State is equivalent to publication and deposit in post office. Darby v Shannon, 19 SC 526 (1883). Norris Co. v Levin’s Sons, 81 SC 36, 61 SE 1103 (1908).

In order to obtain service by publication, an order for publication must be obtained, and before the order of publication, “filing” must first occur. Cain v. Secretary of Health, Ed. and Welfare (C.A.4 (S.C.) 1967) 377 F.2d 55. Process 92; Process 98

Service is not complete until the expiration of the full six (now three) weeks. Tenney v. American Pipe Mfg. Co., 1899, 96 F. 919.

Substituted service by publication in mortgage foreclosure action was proper, even though petition for order of publication asserted that sheriff attempted service upon mortgagor, when in fact, service was attempted only by private process server; there was no evidence of fraud or collusion in obtaining order for service by publication. Wachovia Bank of South Carolina, N.A. v. Player (S.C. 2000) 341 S.C. 424, 535 S.E.2d 128, rehearing denied. Mortgages And Deeds Of Trust 1781

Generally, absent fraud or collusion, the decision of the clerk of court to issue an order of publication is final; only exception to the general rule is when an order of publication is premised upon a facially defective affidavit. Wachovia Bank of South Carolina, N.A. v. Player (S.C.App. 1999) 334 S.C. 200, 512 S.E.2d 129, rehearing denied, certiorari granted, reversed 341 S.C. 424, 535 S.E.2d 128. Process 97

Service of process by publication is authorized by statute where defendant is resident of state but after diligent search cannot be found in state. Montgomery v. Mullins (S.C.App. 1997) 325 S.C. 500, 480 S.E.2d 467. Process 84; Process 90

Trial court lacks authority to overrule determination of clerk of court that defendant could not, after due diligence, be found in county and state of last known residence and that service of process by publication is therefore permissible. Montgomery v. Mullins (S.C.App. 1997) 325 S.C. 500, 480 S.E.2d 467. Process 90

Whether or not plaintiff made service by publication on defendant within reasonable period of time after filing of pleadings and delivery of pleadings to sheriff, as required by Rules of Civil Procedure, is matter addressed to trial judge’s discretion, and reviewing court will not disturb that determination absent abuse of that discretion. Montgomery v. Mullins (S.C.App. 1997) 325 S.C. 500, 480 S.E.2d 467. Appeal And Error 949; Process 106

Motorist who brought action arising from automobile accident and who sought to obtain service by publication after being unable to locate defendants, but who did not complete service of publication until over two months after providing sheriff with pleadings, failed to obtain service within reasonable time after filing of pleadings, as required by Rules of Civil Procedure. Montgomery v. Mullins (S.C.App. 1997) 325 S.C. 500, 480 S.E.2d 467. Process 106

In an action to recover for injuries received in an automobile accident, service of process by publication pursuant to Section 15‑9‑710 was sufficient since the affidavit attached to the petition for publication recited that the professional process server had diligently attempted to locate the defendant at his last known address as well as another address, had contacted the mail carriers who delivered mail to the defendant, had contacted the defendant’s stepmother, had made several neighborhood inquiries, and contacted power and water utilities, all to no avail. Ingle v. Whitlock (S.C. 1984) 282 S.C. 391, 318 S.E.2d 367. Process 90

The fact that the order of publication is not in the judgment roll, where good practice would place it, does not overcome the presumption that the court would not have acted without the existence of such order; and that there is such a presumption is elementary. Fleming v. Chappell (S.C. 1921) 118 S.C. 290, 110 S.E. 148.

The order of publication of the clerk is valid, though bearing neither date nor seal. Clemson Agricultural College of South Carolina v. Pickens (S.C. 1894) 42 S.C. 511, 20 S.E. 401. Process 98

It is not necessary that there should be a service of summons by publication, or a deposit of papers in the post office, in order to establish an effective service. They are but two of the methods to effect a service. George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103.

6. Effect of compliance with statute

Full compliance with this section [former Code 1962 Section 10‑451] will be considered by the court in upholding the presumption in a collateral proceeding that the court would not have acted in ordering and confirming a sale in partition against a minor defendant without the existence of an order for publication, even though such order is not in the judgment roll where good practice would place it. Fleming v. Chappell (S.C. 1921) 118 S.C. 290, 110 S.E. 148.

7. Cause of action

A promise to pay, contained in a telegram sent from Massachusetts to South Carolina, is a contract made in Massachusetts; and no cause of action can arise thereon in South Carolina, as the place of making is, presumably, the place of performance. Tillinghast v. Boston & Port Royal Lumber Co. (S.C. 1893) 39 S.C. 484, 18 S.E. 120.

An agreement was made in this State between a citizen thereof and a foreign mutual assessment life insurance association, whereby application was made for membership and the amount then paid was to be refunded if the application was rejected; the rules of the association required proof of death claims to be made at the home office when an assessment was to be made, and the claims paid there. It was held that the claim of the beneficiaries under such citizen’s certificate after his death was not a cause of action that arose in this State. Rodgers v. Mutual Endowment Assessment Ass’n (S.C. 1882) 17 S.C. 406. Courts 13.5(14)

8. Service by publication in particular cases

Three‑year statute of limitations for negligence and wrongful death action against nursing home was not equitably tolled in case in which personal representative of deceased patient attempted service by sheriff on nursing home’s registered agent before making delayed personal service on administrator of entity that purchased nursing home and that was located at same address, where personal representative did not diligently investigate the relationship between nursing home and the purchasing entity soon after filing to see if personal service could be accomplished at site and, after determining that nursing home’s registered agent was not at the provided address, personal representative did not seek leave from the court to effect service by publication. Hooper v. Ebenezer Senior Services and Rehabilitation Center (S.C.App. 2008) 377 S.C. 217, 659 S.E.2d 213, rehearing denied, certiorari granted, reversed 386 S.C. 108, 687 S.E.2d 29. Death 39; Limitation Of Actions 104.5

Court cannot presume that due diligence was exercised in attempting to ascertain whereabouts of party, as will allow service of process by publication, in any way other than as shown in record. Wachovia Bank of South Carolina, N.A. v. Player (S.C.App. 1999) 334 S.C. 200, 512 S.E.2d 129, rehearing denied, certiorari granted, reversed 341 S.C. 424, 535 S.E.2d 128. Process 145

The service by publication provided by this section [former Code 1962 Section 10‑451] is valid on a person resident in a foreign country at war with the United States. Meier v. Meier (S.C. 1946) 208 S.C. 520, 38 S.E.2d 762.

9. Foreign corporations

The courts of this State cannot acquire jurisdiction of a foreign corporation which has no property in the State simply by personal service on such corporation in another state. Tillinghast v Boston & Port Royal Lumber Co., 39 SC 484, 18 SE 120 (1893). Pennoyer v Neff, 95 US 714, 24 L Ed 565 (1877).

Receiver cannot be appointed under this section [former Code 1962 Section 10‑451]. Porter v. Brown (S.C. 1929) 149 S.C. 151, 146 S.E. 810.

10. State resident who has left state

Plaintiff sustained burden of establishing that defendants departed from this State “with intent \* \* \* to avoid the service of a summons” and kept themselves concealed in this State “with like intent,” and the defendants being residents of this State at the time of the commencement of the action and at the time service was attempted to be made on them in this State, the personal service of the summons and complaint in this case upon the defendants in Orlando, Florida, was good and proper service. Harrison v. Kovats, 1963, 224 F.Supp. 581.

The burden is upon the plaintiff to establish that the defendant has departed from the State for the purpose of avoiding the service of a summons. Dow v. Bolden (S.C. 1965) 245 S.C. 321, 140 S.E.2d 473.

Having invoked subsection (2) of this section [former Code 1962 Section 10‑451] as authority for serving defendant in another state, the burden was on plaintiff to establish that defendant had departed from this State for the purpose of avoiding the service of a summons in the action. King v. Moore (S.C. 1953) 224 S.C. 400, 79 S.E.2d 460.

11. Resident of State who cannot be found

Service of process by publication is authorized where the defendant is a resident of the state, but, after a diligent search, cannot be found in the state. Wachovia Bank of South Carolina, N.A. v. Player (S.C.App. 1999) 334 S.C. 200, 512 S.E.2d 129, rehearing denied, certiorari granted, reversed 341 S.C. 424, 535 S.E.2d 128. Process 87; Process 90

12. Nonresident with property within state

Default judgment was properly granted against person served by publication where such person was nonresident property owner, court had subject matter jurisdiction, and person could not, with due diligence, be located within state; publication affidavit is not insufficient merely because it only contains conclusory statements. Additionally, factual statements in order of publication different from those in publication affidavit does not constitute jurisdictional defect which will support collateral attack on default judgment. Yarbrough v. Collins (S.C. 1987) 293 S.C. 290, 360 S.E.2d 300.

Where order for publication of notice on a nonresident recited the filing of the affidavit and complaint, the fact that the date of filing was not endorsed on the affidavit and complaint at the time is immaterial. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922. Process 92

Under this section [former Code 1962 Section 10‑451], as amended by 1914 Act No 305 [1914 (28) 534], as to service by publication, when a nonresident defendant claims an interest in real property, the court of common pleas has jurisdiction to compel specific performance of a contract of the nonresident to convey lands within the State and within the jurisdiction of the court. Bush v. Aldrich (S.C. 1918) 110 S.C. 491, 96 S.E. 922. Specific Performance 131

Attachment of the property of a nonresident is essential to jurisdiction. Greenwood Grocery Co. v. Canadian County Mill & Elevator Co. (S.C. 1905) 72 S.C. 450, 52 S.E. 191, 110 Am.St.Rep. 627.

Under this section [former Code 1962 Section 10‑451] the court, by proceedings to foreclose and the filing of a list pendens, has jurisdiction, though the mortgagor was a nonresident, where the subject of the action was real property in the State. Greenwood Loan & Guarantee Ass’n v. Williams (S.C. 1905) 71 S.C. 421, 51 S.E. 272. Mortgages And Deeds Of Trust 1775

Proceedings for publication of summons to a nonresident before attachment of his property are void. Little v. Christie (S.C. 1904) 69 S.C. 57, 48 S.E. 89.

This section [former Code 1962 Section 10‑451] is not sufficiently complied with by levying an attachment on land within the State belonging to a nonresident defendant, and leaving a copy at his place of residence out of the State, in his absence, without publishing the summons. Armstrong v. Brant (S.C. 1895) 44 S.C. 177, 21 S.E. 634. Creditors’ Remedies 304

On foreclosure of realty, where defendant, a nonresident, is served by publication, it is unnecessary to comply with the requirement of this section [former Code 1962 Section 10‑451] that the summons, as published, shall state the time and place of filing the complaint, if the defendant is furnished with a copy of the complaint as well as the summons. Clemson Agricultural College of South Carolina v. Pickens (S.C. 1894) 42 S.C. 511, 20 S.E. 401. Process 104

In an action on a money demand against a nonresident defendant, where an attachment warrant is issued when the summons is filed, and property of defendant situated in the county where the action is brought in the county where the action is brought is attached, and summons is had against such defendant both by publication under order obtained therefor and by actual service on him within the State, the court acquires jurisdiction of him to the extent that the attached property is subject to any judgment that may be rendered against him. Gibson v. Everett (S.C. 1894) 41 S.C. 22, 19 S.E. 286. Creditors’ Remedies 196

In the absence of an attachment, service of a summons without the State on a nonresident will not give jurisdiction. Toms v. Richmond & D.R. Co. (S.C. 1894) 40 S.C. 520, 19 S.E. 142. Courts 21

The court within the territorial jurisdiction of which the land was situated and the contract relative thereto was made, has jurisdiction of an action to collect from the property the value of the improvements, the infant and his mother who had become nonresidents being served with summons by publication under the provisions of this section [former Code 1962 Section 10‑451] allowing service in such manner on nonresidents where the subject of the action is property within the State. Shumate v. Harbin (S.C. 1892) 35 S.C. 521, 15 S.E. 270. Courts 17

Where all the parties in interest are nonresidents, they can be made parties by publication in an action to set aside an assignment as to real property situated within the State. National Exch. Bank v. Stelling (S.C. 1889) 31 S.C. 360, 9 S.E. 1028.

Service of summons on a nonresident by publication and deposit in the post office is not necessary in an attachment suit against a nonresident, notwithstanding an order for service in that manner; but a personal service outside the State will answer in view of former Code 1962 Section 10‑455. George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103. Creditors’ Remedies 304

Acceptance or acknowledgment of service out of the State by a nonresident is equivalent to personal service, and a sufficient service, only where there has been an order for publication. Riker v. Vaughan (S.C. 1885) 23 S.C. 187. Process 67

13. Nonresident infant

“The mode of making infants parties to an action in a court of record is clearly and expressly prescribed by statute, and a due and tender regard for the rights and welfare of infants requires that this statute shall be strictly followed.” is said in Finley v Robertson, 17 SC 436 (1882). Riker v Vaughan, 23 SC 187 (1885). Lanham v Bomar, 123 SC 483, 116 SE 926, 124 SE 635 (1923).

Jurisdiction of the person of a nonresident infant can only be obtained by pursuing the mode prescribed by statute. Riker v. Vaughan (S.C. 1885) 23 S.C. 187. Infants 1286

14. Father in adoption case

In an adoption proceeding, the Family Court did not have jurisdiction over the biological father where the affidavit supporting the service by publication on the father was facially defective in that the name in the affidavit was not the name of the father. Miles v. Lee (S.C.App. 1995) 319 S.C. 271, 460 S.E.2d 423, rehearing denied.

**SECTION 15‑9‑720.** Service on unknown parties by publication for certain real property actions.

(A) For the purposes of this section, “court” means a court, judge, clerk of court, master‑in‑equity, special referee, or judge of probate of competent jurisdiction in the county where the action is pending.

(B)(1) A court shall grant an order allowing a party with an interest in or lien on a parcel of real property subject to a partition action, mortgage foreclosure action, or other action affecting the property’s title to serve by publication any unknown party to the action and who has an interest in or lien on the real property, any such legal notice as will accomplish the underlying purposes set forth in this section, if the:

(a) residence of the unknown party cannot, with a reasonably diligent effort, be ascertained by the plaintiff; and

(b) plaintiff presents an affidavit to the court stating he has been unable to ascertain the residence of the unknown party after making a reasonably diligent effort.

(2) A court order allowing a party to serve an unknown party by publication must require the party serving by publication to publish the service once a week for three weeks in a newspaper of general circulation in the county where the property is situated. Service by publication under this section is equal to personal service on the unknown party.

(C) A party may accomplish service by publication pursuant to this section for multiple units in a single horizontal property regime by consolidating the services into a single service that identifies each apartment included in the action based on the apartment’s description in the master deed. This consolidated service must comply with the other requirements of this section and other applicable statutes, including the requirement that publication must take place once a week for three weeks in a newspaper of general circulation in the county where the property is situated.

HISTORY: 1962 Code Section 10‑452; 1952 Code Section 10‑452; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 2010 Act No. 164, Section 1, eff May 12, 2010.

Effect of Amendment

The 2010 amendment rewrote the section.

CROSS REFERENCES

Service on nonresidents and unknown parties in actions to determine adverse claims to real property, see Sections 15‑67‑30, 15‑67‑40.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k84 to 313k111.

Process 84 to 111.

C.J.S. Process Sections 58 to 73, 76.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Partition Section 71 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Hazardous Waste: Third Party Compensation for Contingencies Arising from Inactive and Abandoned Hazardous Waste Disposal Sites. 33 S.C. L. Rev. 543, March 1982.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

Attorney General’s Opinions

Since both the Star Reporter and Osceola are published in Richland County, they meet the requirements of Code 1962 Sections 10‑452, 2403‑2404 [Code 1976 Sections 15‑9‑720, 15‑67‑30, 15‑67‑40]; State and county officials are prohibited from placing legal advertisement in The State or any other newspapers refusing to publish legal advertisements at the legal rate. Therefore, effective service by publication may be had only by advertising in newspapers subscribing to the legal rates; by naming a particular newspaper in an order of publication, the officer before whom application for such order is made necessarily has made the determination that the named paper is the one most likely to give notice to the person to be served. Consequently, the officer issuing the order of publication may include such an express finding, but where a particular newspaper is designated, no such finding is required; Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100] appears to be mandatory only where all newspapers in any particular county refuse to insert such advertisements at the rate allowed in Code 1962 Section 10‑1310 [Code 1976 Section 15‑29‑100]. 1974‑75 Op Atty Gen, No 4144.

**SECTION 15‑9‑730.** Service on certain domestic corporations by publication.

In any action or proceeding in this State in which the defendant is a corporation created by or organized under the laws of this State when no officer or agent thereof upon whom service of process can be made can, after due diligence, be found in this State and this is made to appear by affidavit, process may be served upon such corporation by publication.

HISTORY: 1962 Code Section 10‑453; 1952 Code Section 10‑453; 1942 Code Section 435; 1932 Code Section 435; Civ. P. ‘22 Section 391; 1920 (31) 797.

CROSS REFERENCES

Service of summons by publication, see Probate Ct Rules of Practice, Rule 5.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k507.

Corporations 507.

C.J.S. Corporations Section 721.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

NOTES OF DECISIONS

In general 1

1. In general

The sending of notice by ordinary mail has always been recognized in this State as sufficient. Wagenberg v. Charleston Wood Products, 1954, 122 F.Supp. 745.

**SECTION 15‑9‑740.** Publication and mailing of summons.

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In case of minors, persons imprisoned outside of this State, lunatics confined outside of this State or in like cases, a similar order shall be made and like proceedings be had as in case of adults not under disabilities.

In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing. When service is made by publication the ten days’ notice of application for judgment to be made at chambers as required in contested cases of certain kinds as provided by law may be inserted in the first or any subsequent publication mailed to the last known residence of the defendant. In case of publication of summons upon a minor under Section 15‑9‑480, or on a person non compos mentis under Section 15‑9‑490 when an order nisi has been passed and filed appointing a guardian ad litem it shall be sufficient publication of such order to publish with the summons, and it shall be a sufficient service of such order out of the State to serve with the summons, a notice giving the name and address of the guardian, the date when the appointment becomes absolute and the office in which the order is filed.

HISTORY: 1962 Code Section 10‑454; 1952 Code Section 10‑454; 1942 Code Sections 37, 402, 436; 1932 Code Sections 37, 402, 436; Civ. P. ‘22 Sections 35, 359, 392; Civ. C. ‘12 Section 3833; Civ. P. ‘12 Sections 165, 185; Civ. C. ‘02 Section 2736; Civ. P. ‘02 Sections 137, 156; G. S. 2115; R. S. 2247; 1818 (7) 321; 1870 (14) 451 Section 139, 456 Section 158; 1876 (16) 190; 1882 (17) 38; 1887 (19) 813; 1891 (20) 1123; 1898 (22) 698; 1899 (23) 30; 1901 (23) 635; 1904 (24) 379; 1908 (25) 1055; 1912 (27) 623; 1913 (28) 40; 1914 (28) 534; 1920 (31) 806; 1921 (32) 281; 1925 (34) 94; 1930 (36) 1247; 1933 (28) 50, 452; 1937 (40) 79; 1940 (41) 1825; 1941 (42) 275; 1944 (43) 1326; 1956 (49) 1600.

Code Commissioner’s Note

At the direction of the Code Commissioner, “as provided by law” was substituted for “by Section 15‑27‑30” in the second sentence of the second paragraph.

CROSS REFERENCES

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

Detention, confinement, and transfer of confined persons, see Sections 44‑23‑210 et seq.

Release, discharge, and reconfinement of mentally ill persons, see Sections 44‑17‑810 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k84 to 313k111.

Process 84 to 111.

C.J.S. Process Sections 58 to 73, 76.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

1. In general

In order to obtain service by publication, an order for publication must be obtained, and before the order of publication, “filing” must first occur. Cain v. Secretary of Health, Ed. and Welfare (C.A.4 (S.C.) 1967) 377 F.2d 55. Process 92; Process 98

Foreclosure sale purchasers were bona fide purchasers for value without notice such that claims of defective service in the foreclosure action did not affect purchaser’s title; at the time of the foreclosure sale, the court file reflected that property owners had been served, were in default, had received notice, were not in the military, and the foreclosure sale purchasers had made actual payment of the purchase price at the foreclosure sale and had acquired title through the master‑in‑equity deed. Bloody Point Property Owners Ass’n, Inc. v. Ashton (S.C.App. 2014) 410 S.C. 62, 762 S.E.2d 729. Judicial Sales 53

Affidavits requesting service of process by publication against driver whose alleged negligence in operating her motor vehicle resulted in injuries to affiants were deficient on their face; statutory provision that permitted service by publication required that driver could not be found within the state, and affidavits provided only that driver could not be served within county, contained no information regarding whether or not she could be found in the state, and did not include any factual basis upon which the court issuing the order of service by publication could find that the driver could not, after due diligence, be found within the state. Caldwell v. Wiquist (S.C.App. 2013) 402 S.C. 565, 741 S.E.2d 583. Automobiles 235

To avoid resolving litigation by default, strict compliance with the publication statutes is appropriate. Caldwell v. Wiquist (S.C.App. 2013) 402 S.C. 565, 741 S.E.2d 583. Process 85

An affidavit requesting service of process by publication must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state. Caldwell v. Wiquist (S.C.App. 2013) 402 S.C. 565, 741 S.E.2d 583. Process 96(4)

In the absence of fraud or collusion, the decision of the officer ordering service by publication is final. Caldwell v. Wiquist (S.C.App. 2013) 402 S.C. 565, 741 S.E.2d 583. Process 98

Order of publication that gave “John Doe” notice of a pending adoption was not procured through fraud or collusion or premised on a facially defective affidavit, even though birth mother designated the wrong county as birth father’s residence; birth mother did not intentionally misrepresent county of birth father’s residence, county designated by birth mother and actual county of birth father’s residence were minutes apart, and birth mother did not intentionally misrepresent birth father’s failure to accept parental responsibility for child. Brown v. Malloy (S.C.App. 2001) 345 S.C. 113, 546 S.E.2d 195. Adoption 12

Cited in Cannon v. Cannon (S.C. 1973) 260 S.C. 204, 195 S.E.2d 176.

**SECTION 15‑9‑750.** Effect of personal service out of State.

Personal service of the summons out of State shall be equivalent to publication and deposit in the post office, and when such service is had no affidavit, as provided for in Section 15‑9‑710, order for publication or deposit in the post office shall be necessary. Such personal service so made shall be complete and final on the day of the date of the personal service of the summons as fully as if such personal service had been made under the provisions of statutes providing personal service within the State.

HISTORY: 1962 Code Section 10‑455; 1952 Code Section 10‑455; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 1960 (51) 1753.

LIBRARY REFERENCES

Westlaw Key Number Search: 313k68.

Process 68.

C.J.S. Process Sections 48 to 49.

United States Supreme Court Annotations

Necessity and sufficiency of service of process under due process clause of Federal Constitution’s Fourteenth Amendment—Supreme Court cases. 100 L Ed 2d 1015.

State regulation of judicial proceedings as violating commerce clause (Art I, Section 8, cl 3) of Federal Constitution—Supreme Court cases. 100 L Ed 2d 1049.

NOTES OF DECISIONS

In general 1

1. In general

Plaintiff sustained burden of establishing that defendants departed from this State “with intent \* \* \* to avoid the service of a summons” and kept themselves concealed in this State “with like intent,” and the defendants being residents of this State at the time of the commencement of the action and at the time service was attempted to be made on them in this State, the personal service of the summons and complaint in this case upon the defendants in Orlando Florida was good and proper service. Harrison v. Kovats, 1963, 224 F.Supp. 581.

Sections 15‑9‑710 and 15‑9‑750 do not apply only to in rem actions, but apply with equal force to actions in personam as long as the due process minimum contacts requirement is satisfied. Hendrix v. Hendrix (S.C. 1988) 296 S.C. 200, 371 S.E.2d 528.

Former Code 1962 Section 20‑107, regarding service of summons on nonresidents in divorce proceedings, has the effect of adopting this section [former Code 1962 Section 10‑455]. Cannon v. Cannon (S.C. 1973) 260 S.C. 204, 195 S.E.2d 176.

Cited in Parklands, Inc. v. Gibson (S.C. 1969) 253 S.C. 367, 170 S.E.2d 669.

This section [former Code 1962 Section 10‑455] authorizes personal service outside of the State only as the “equivalent” of publication and mailing. The applicability of this section [former Code 1962 Section 10‑455] is limited to those cases in which service by publication is elsewhere authorized by law. King v. Moore (S.C. 1953) 224 S.C. 400, 79 S.E.2d 460.