CHAPTER 17

Arrest and Bail in Civil Actions

ARTICLE 1

Arrest

**SECTION 15‑17‑10.** Person shall not be arrested in civil action except as prescribed.

No person shall be arrested in a civil action except as prescribed by this Code. But this shall not apply to proceedings for contempt.

HISTORY: 1962 Code Section 10‑801; 1952 Code Section 10‑801; 1942 Code Section 499; 1932 Code Section 499; Civ. P. ‘22 Section 441; Civ. P. ‘12 Section 229; Civ. P. ‘02 Section 199; 1870 (14) 466 Section 201.

CROSS REFERENCES

Arrest in proceedings supplementary to execution, see Section 15‑39‑320.

Exemption from certain arrests of State Guard personnel while on duty, see Section 25‑3‑120.

Exemption of Military personnel from civil arrest, see Section 25‑1‑2170.

Sheriff filing affidavit on arrest under South Carolina Rules of Civil Procedure, see Criminal Practice Appendix, Rule 1, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k4.

Arrest 4.

C.J.S. Arrest Sections 76 to 78.

C.J.S. Arrest Sections 76 to 78.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Arrest Section 1 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Arrest Section 35 , Introductory Comments.

Attorney General’s Opinions

Magistrates may award default judgments only in contract actions pursuant to section 22‑3‑270, 1976 Code; in tort actions in magistrate’s courts, according to section 22‑3‑70, 1976 Code, plaintiff may recover only upon appearing and proving his case; defendant need not be personally present to defend tort actions in magistrate’s courts, provided he has been properly served with summons and complaint as required by law; arrest and bail in civil actions applies in magistrate’s courts as well as circuit courts according to Sections 15‑17‑20 and 15‑17‑40, 1976 Code; provisions of arrest and bail statutes must be strictly complied with pursuant to Sections 15‑17‑10 to 15‑17‑90, 1976 Code. 1978 Op Atty Gen, No 78‑90, p 117.

NOTES OF DECISIONS

In general 1

1. In general

Cited in General Motors Acceptance Corp. v Hutto, 136 SC 207, 134 SE 232 (1926). National Bank of Greenville v Jennings, 38 SC 372, 17 SE 16 (1893). Palmetto Motor Car Co. v Brooks, 156 SC 137, 152 SE 763 (1930).

This section [Code 1962 Section 10‑801] abolished the writ of ne exeat republico. Ex parte Messervy (S.C. 1908) 80 S.C. 285, 61 S.E. 445.

**SECTION 15‑17‑20.** Arrest in civil actions permitted in certain cases.

The defendant may be arrested, as prescribed in this article, in the following cases:

(1) In an action for money received or property embezzled or fraudulently misapplied by a public officer, an attorney, solicitor or counsellor, an officer or agent of a corporation or banking association in the course of his employment as such or a factor, agent, broker or other person in a fiduciary capacity or in an action for any misconduct or neglect in office or in a professional employment;

(2) In an action to recover the possession of personal property fraudulently detained or when property has been fraudulently concealed, removed or disposed of so that it cannot be found or taken by the sheriff or constable and with intent that it should not be so found or taken or with intent to deprive the plaintiff of the benefit thereof;

(3) When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit;

(4) When the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors;

(5) Whenever a person domiciled in this State, indebted by bond, note or otherwise, is about to remove or abscond from the limits of this State and the debt is not yet due but payable at some future date, the obligee, payee or holder of such demand, or his assignee or endorsee, as the case may be, upon swearing

(a) that such person is indebted to him,

(b) that the demand is just and owing but not yet due,

(c) that the debtor is about to abscond or remove without the limits of this State and

(d) that such creditor was not aware that the debtor had any intention to remove from the State at the time when the original contract was made or at the time of such assignment or endorsement, as the case may be,

May commence an action by issuing a summons and complaint and shall have power to arrest and hold to bail in such manner as is prescribed in this chapter in cases of debts actually due; and

(6) In an action for the recovery of damages in a cause of action not arising out of contract when the defendant is a nonresident of the State or is about to remove therefrom or when the action is for an injury to person or character or for injury to or for wrongfully taking, detaining or converting property.

HISTORY: 1962 Code Section 10‑802; 1952 Code Section 10‑802; 1942 Code Section 500; 1932 Code Section 500; Civ. P. ‘22 Section 442; Civ. P. ‘12 Section 230; Civ. P. ‘02 Section 200; 1870 (14) 467 Section 202.

CROSS REFERENCES

Arrest in proceedings supplementary to execution, see Section 15‑39‑320.

Proceedings for relief of persons arrested in civil actions, see Sections 15‑17‑410 et seq.

When execution against the person of the judgment debtor may be issued, see Section 15‑39‑50.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k4.

Arrest 4.

C.J.S. Arrest Sections 76 to 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 4, Civil Actions in Which a Defendant May be Arrested.

Forms

Am. Jur. Pl. & Pr. Forms Arrest Section 2 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Evans & Dorvee, Attorney liability for assisting clients with wrongful conduct: established and emerging bases of liability. 45 S.C. L. Rev. 803 (Summer 1994).

Attorney General’s Opinions

Magistrates may award default judgments only in contract actions pursuant to section 22‑3‑270, 1976 Code; in tort actions in magistrate’s courts, according to section 22‑3‑70, 1976 Code, plaintiff may recover only upon appearing and proving his case; defendant need not be personally present to defend tort actions in magistrate’s courts, provided he has been properly served with summons and complaint as required by law; arrest and bail in civil actions applies in magistrate’s courts as well as circuit courts according to Sections 15‑17‑20 and 15‑17‑40, 1976 Code; provisions of arrest and bail statutes must be strictly complied with pursuant to Sections 15‑17‑10 to 15‑17‑90, 1976 Code. 1978 Op Atty Gen, No 78‑90, p 117.

NOTES OF DECISIONS

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Actions against nonresident defendant, action for injury to person or character and action for injury to property 9

Allegations in complaint 4

Constitutionality 2

Fraud in contracting debt 6

Fraud in disposition of property 7

Removal of property by defendant with intent to defraud creditor 8

Strict compliance required 3

1. In general

Cited in Addison v Sujette, 50 SC 192, 27 SE 631 (1897). Hartsville Oil Mill v DuBose, 104 SC 120, 88 SE 446 (1916). Ex parte Hutto, 78 SC 560, 60 SE 34 (1907).

Return of execution against property unsatisfied is a prerequisite to arrest under this section [former Code 1962 Section 10‑802]. Martin v Hutto, 82 SC 432, 64 SE 421 (1909). Martin v Hodge, 87 SC 214, 69 SE 225 (1910).

Mandamus is the proper remedy to compel a sheriff to serve a body execution issued under this section [former Code 1962 Section 10‑802] and to arrest the judgment debtor. Doty v. Reed (S.C. 1948) 212 S.C. 231, 47 S.E.2d 451.

Proceedings for the arrest of a debtor in a civil case are closely analogous to attachment proceedings. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

The authority of a sheriff to arrest and hold a debtor under this section [former Code 1962 Section 10‑802] is at an end when it is found on appeal that the order for arrest was erroneously issued by the lower court. Martin v. Hodge (S.C. 1910) 87 S.C. 214, 69 S.E. 225.

2. Constitutionality

An order of arrest arising out of an action of tort under this section [former Code 1962 Section 10‑802] is not for a “debt,” within the meaning of SC Const 1895, Art 1, Section 24, providing that “no person shall be imprisoned for debt except in cases of fraud.” Stidham v Dubose, 128 SC 318, 121 SE 791 (1924). Kimbrell v Berry, 85 SC 243, 67 SE 225 (1910).

This section [former Code 1962 Section 10‑802] does not conflict with the provision of SC Const 1895, Art 1, Section 24, that “no person shall be imprisoned for debt except in cases of fraud,” and is constitutional. Ex parte Berry (S.C. 1910) 85 S.C. 243, 67 S.E. 225, 20 Am.Ann.Cas. 1344. Constitutional Law 1106

3. Strict compliance required

Statutes authorizing arrest in civil actions and executions against the person must be strictly followed when invoked. Ramantainin v Miller, 225 SC 77, 80 SE2d 925 (1954). Baker Wholesale Co. v Fleming, 227 SC 312, 87 SE2d 876 (1955).

The subjection of a party to arrest and imprisonment on process for the recovery of a pecuniary demand confers on the creditor a large and dangerous power, the exercise of which should not be permitted without strict compliance with the requirements of this section [former Code 1962 Section 10‑802], nor be permitted without restraint or responsibility. The least restraint should require that the complaint state the facts and circumstances showing the grounds of belief and the sources of information, and that the allegations be sufficiently specific so as to give the defendant notice that he must be prepared to contest with the plaintiff the facts involving the right of arrest as well as the alleged indebtedness. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

4. Allegations in complaint

The allegations of the complaint, where arrest is sought, should be sufficiently specific so as to give the defendant notice that he must be prepared to contest with the plaintiff the facts involving the right of arrest as well as the alleged indebtedness. Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876.

The mere statement of a statutory ground of arrest upon the belief of the affiant is insufficient to support an order of arrest. Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876.

5. Action for money received or property embezzled or fraudulently misapplied by public officer and the like

Under subdivision (1) of this section [former Code 1962 Section 10‑802], providing for arrest where property is embezzled by a person acting in a fiduciary capacity, a judgment given for “One third of the crop \_ the amount of the judgment being \_” is not an ordinary money judgment, but a judgment whereby the plaintiff is entitled to execution against the person of the defendant on the return of an unsatisfied execution against the property. Maxwell v Horton, 107 SC 380, 93 SE 4 (1917). Malcolm Mercantile Co. v Britt, 102 SC 499, 87 SE 143 (1915).

Where defendant was entrusted with funds for the specific purpose of making certain purchases, which he promised to do, but instead he converted and appropriated the trust fund to his own use, he was clearly within the terms of subdivision (1) of this section [former Code 1962 Section 10‑802] as an “agent, broker or other person in a fiduciary capacity.” Baker Wholesale Co. v. Fleming (S.C. 1955) 227 S.C. 312, 87 S.E.2d 876.

A defendant in an action for division of crops who disposes of the whole crop pending the action is guilty of a breach of a fiduciary relationship, within the meaning of subdivision (1) of this section [former Code 1962 Section 10‑802]. Maxwell v. Horton (S.C. 1917) 107 S.C. 380, 93 S.E. 4. Creditors’ Remedies 631

Under this section [former Code 1962 Section 10‑802], where a landlord consents to the mortgage by his tenant of the tenant’s share crops on the land, and releases all his right and interest to the tenant’s share in such crops, and then subsequently takes possession of the entire crop against the unpaid mortgagor’s demands, he is not liable to arrest on the mortgagee’s demand, and an order for his arrest so issued will be reversed. Malcolm Mercantile Co. v. Britt (S.C. 1915) 102 S.C. 499, 87 S.E. 143.

Where a partner and manager of defendant firm undertook to collect moneys due on choses in action pledged to plaintiff to secure a debt but left with the defendant for collection, he voluntarily assumed a trust which he was bound to perform, and when he misapplied the money intrusted to him in such fiduciary capacity, he not only received money in a fiduciary capacity, within the meaning of subdivision (1), but also was guilty of fraud in contracting the debt, within the meaning of subdivision (3) of this section [former Code 1962 Section 10‑802]. National Bank of Greenville v. Jennings (S.C. 1893) 38 S.C. 372, 17 S.E. 16.

Under this section [former Code 1962 Section 10‑802], where plaintiff’s action is against a partnership firm, he may select for arrest a single member of such firm who was mainly responsible for the fraudulent misappropriation of plaintiff’s money for the use of such firm. National Bank of Greenville v. Jennings (S.C. 1893) 38 S.C. 372, 17 S.E. 16. Arrest 8

6. Fraud in contracting debt

An allegation that the defendant, after executing a conditional sales agreement, induced the plaintiff to accept a worthless order on another party by false representation is not sufficient to support an action for fraud and justify an arrest under subdivision (3) of this section [former Code 1962 Section 10‑802]. Palmetto Motor Car Co. v. Brooke (S.C. 1930) 156 S.C. 137, 152 S.E. 763. Arrest 13

An affidavit stating that defendant had bought lumber to be paid for on the receipt of installments paid on the building of a house, and after such purchase had resorted to misrepresentations concerning such payments, does not state sufficient facts to secure his arrest as being guilty of fraud in contracting the debt, within the meaning of subdivision (3) of this section [former Code 1962 Section 10‑802]. Davis v. Cardue (S.C. 1893) 38 S.C. 471, 17 S.E. 247.

Resorts to evasions and subterfuges by a debtor in order to escape the payment of a just debt do not bring him within the provisions of subdivision (3) of this section [former Code 1962 Section 10‑802]. Davis v. Cardue (S.C. 1893) 38 S.C. 471, 17 S.E. 247.

7. Fraud in disposition of property

Under this subdivision the question of fraud in the disposition of property is for the jury. Bonnette v Clow, 118 SC 376, 110 SE 794 (1922). Hurst v Samuels, 29 SC 476, 7 SE 822 (1888).

Under this section [former Code 1962 Section 10‑802] a defendant who transfers property to defraud his creditors is liable to arrest, though the property is transferred to pay a valid obligation. Bonnette v. Clow (S.C. 1922) 118 S.C. 376, 110 S.E. 794. Arrest 16

This subdivision is not limited to and does not refer to creditors as a class; and a transfer with intent to defraud an individual creditor suffices to bring the defendant within its terms. Bonnette v. Clow (S.C. 1922) 118 S.C. 376, 110 S.E. 794.

8. Removal of property by defendant with intent to defraud creditor

Under subdivision (4), the mere statement by a debtor that as soon as he gets certain moneys he intends to leave the State will not support an order for his arrest. Davis v. Cardue (S.C. 1893) 38 S.C. 471, 17 S.E. 247.

9. Actions against nonresident defendant, action for injury to person or character and action for injury to property

Under subdivision (6) of this section [former Code 1962 Section 10‑802] the defendant may be arrested and held to bail in cases of personal injury where only negligence is alleged. Stidham v Dubose, 128 SC 318, 121 SE 791 (1924). Brown v Nix, 208 SC 230, 37 SE2d 579 (1946).

As subdivision (6) is explicitly limited to actions “for the recovery of damages in a cause of action not arising out of contract,” and as SC Const, Art 1, Section 24 (now Art 1, Section 19), relates solely to debts ex contractu, civil arrest and imprisonment arising from a debt ex delicto does not fall within the State Constitution’s proscription. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

While undoubtedly harsh in implementation, the arrest and release sections—subdivision (6) of this section [former Code 1962 Section 10‑802] and former Code 1962 Sections 10‑841 through 10‑859—are well within the State’s power to secure enforcement of the judgments of its courts. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

Detention of the debtor under subdivision (6) for noncompliance leads to the question of how long the detention may continue. The answer is that this is a balance to be struck by the trial judge from time to time. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

Defendant, soon after a judgment was awarded the plaintiff in another action for a tort, filed a petition in bankruptcy and was adjudged a bankrupt. The plaintiff sought relief under this section [former Code 1962 Section 10‑802] and also filed a petition with the referee in bankruptcy to have her claim exempted. Upon the referee’s refusing to pass on the question, it was held that this section [former Code 1962 Section 10‑802] could be applied after a discharge in bankruptcy was granted the defendant, since the tort committed by the defendant was willful and malicious. Doty v. Rogers (S.C. 1948) 213 S.C. 361, 49 S.E.2d 594.

Judgment for actual and punitive damages in a State court for willful and malicious injury to a person is not dischargeable, nor is its enforcement under subdivision (6) of this section [former Code 1962 Section 10‑802] affected, by a bankruptcy court. Doty v. Reed (S.C. 1948) 212 S.C. 231, 47 S.E.2d 451.

“Property” refers only to personal property in subdivision (6) of this section [former Code 1962 Section 10‑802]. D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791.

Subdivision (G) applied in Blackmon v. Kirven (S.C. 1934) 173 S.C. 322, 175 S.E. 814.

The provision of subdivision (6) of this section [former Code 1962 Section 10‑802] pertaining to the remedy in case of injury to persons contemplates the arrest of a nonresident temporarily in the State, who sold to a resident of the State timber on lands within the State and then subsequently sold the same timber to a second purchaser, fraudulently concealing his knowledge of the first sale, not recorded. Davis v. Reynolds (S.C. 1907) 77 S.C. 255, 57 S.E. 850.

Under this section [former Code 1962 Section 10‑802] and former Code 1962 Section 10‑1705 the court may issue an order providing that execution shall issue against the defendant’s person, if execution against his property is returned unsatisfied in an action for damages for wrongfully causing plaintiff’s discharge from his employment. Castles v. South Carolina Law & Collection Agency (S.C. 1916) 104 S.C. 81, 88 S.E. 273.

**SECTION 15‑17‑30.** Females shall be arrested only in certain cases.

No female shall be arrested in any civil action except for a wilful injury to persons, character or property.

HISTORY: 1962 Code Section 10‑803; 1952 Code Section 10‑803; 1942 Code Section 3523; 1932 Code Section 3523; Civ. C. ‘22 Section 2066; Civ. C. ‘12 Section 1173; Civ. C. ‘02 Section 848; G. S. 663; R. S. 728; 1931 (37) 78.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k7.

Arrest 7.

C.J.S. Arrest Section 79.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 23, Females.

NOTES OF DECISIONS

In general 1

1. In general

For an opinion holding constitutional a prior provision of item (4) of former Code 1962 Section 10‑802 to the effect that no female should be arrested in any action, see Harrison v. Caudle (S.C. 1927) 141 S.C. 407, 139 S.E. 842.

**SECTION 15‑17‑40.** By whom order for arrest is made.

An order for the arrest of the defendant must be obtained from a judge, magistrate or clerk of the court in which or before whom the action is brought.

HISTORY: 1962 Code Section 10‑804; 1952 Code Section 10‑804; 1942 Code Section 501; 1932 Code Section 501; Civ. P. ‘22 Section 443; Civ. P. ‘12 Section 231; Civ. P. ‘02 Section 201; 1870 (14) 467 Section 203.

CROSS REFERENCES

Providing for the issuance of execution against the person, see Section 15‑39‑50.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k37.

Arrest 37.

C.J.S. Arrest Section 101.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 5, Procedure for Civil Arrest.

United States Supreme Court Annotations

Requirement under Federal Constitution that person issuing warrant for arrest or search be neutral and detached magistrate. 32 L Ed 2d 970.

Attorney General’s Opinions

Magistrates may award default judgments only in contract actions pursuant to section 22‑3‑270, 1976 Code; in tort actions in magistrate’s courts, according to section 22‑3‑70, 1976 Code, plaintiff may recover only upon appearing and proving his case; defendant need not be personally present to defend tort actions in magistrate’s courts, provided he has been properly served with summons and complaint as required by law; arrest and bail in civil actions applies in magistrate’s courts as well as circuit courts according to Sections 15‑17‑20 and 15‑17‑40, 1976 Code; provisions of arrest and bail statutes must be strictly complied with pursuant to Sections 15‑17‑10 to 15‑17‑90, 1976 Code. 1978 Op Atty Gen, No 78‑90, p 117.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Jenrette v. Seaboard Coast Line R. Co. (D.C.S.C. 1969) 308 F.Supp. 642.

**SECTION 15‑17‑50.** Affidavit to obtain order for arrest.

The order may be made when it shall appear to the proper officer by the affidavit of the plaintiff or of any other person that a sufficient cause of action exists and that the case, from the facts stated, is one of those mentioned in Section 15‑17‑20.

HISTORY: 1962 Code Section 10‑805; 1952 Code Section 10‑805; 1942 Code Section 502; 1932 Code Section 502; Civ. P. ‘22 Section 444; Civ. P. ‘12 Section 232; Civ. P. ‘02 Section 202; 1870 (14) 467 Section 204.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k21.

Arrest 21.

C.J.S. Arrest Section 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 6, Procedure for Civil Arrest‑ the Plaintiff’s Supporting Affidavits.

NOTES OF DECISIONS

In general 1

Bail 4

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Incorporation of complaint 3

1. In general

Cited in Hurst v Samuels, 29 SC 476, 7 SE 822 (1888). Malcolm Mercantile Co. v Britt, 102 SC 499, 87 SE 143 (1915). Martin v Hutto, 82 SC 432, 64 SE 421 (1909).

Affidavit and security must precede order of arrest. A judgment decreeing that a person shall be arrested, where the plaintiff did not make an affidavit and give security as provided for in this section [Code 1962 Section 10‑805] and the following section, will be reversed. Palmetto Motor Car Co. v. Brooke (S.C. 1930) 156 S.C. 137, 152 S.E. 763.

2. Contents of affidavit

The verified complaint or the affidavit should set forth the grounds of arrest with the positiveness and certainty, and all material circumstances attending it. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602.

The mere statement of the statutory ground of arrest in the language of the statute upon the belief of the affiant is not sufficient to support the order of arrest. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602. Creditors’ Remedies 632

If the facts constituting the cause of action are stated upon information and belief, the source of plaintiff’s information and the grounds of his belief must be shown in order to support the order of arrest. Four County Agr. Credit Corp. v. Matthews (S.C. 1942) 199 S.C. 71, 18 S.E.2d 602. Creditors’ Remedies 632

Under this section [former Code 1962 Section 10‑805] affidavits are sufficient to warrant an order of arrest when showing that the defendant was fully cognizable of all the facts in the case, had admitted that he had misappropriated moneys of the plaintiff which he held in a fiduciary relationship, and had stated that he expected to repay them when able. National Bank of Greenville v. Jennings (S.C. 1893) 38 S.C. 372, 17 S.E. 16.

The provision of this section [former Code 1962 Section 10‑805] that it must appear by affidavit “that a sufficient cause of action exists” is satisfied where the affidavit contains a statement of facts showing that a cause of action exists, without a formal allegation to that effect in the language of the statute. National Bank of Greenville v. Jennings (S.C. 1893) 38 S.C. 372, 17 S.E. 16. Arrest 28

3. Incorporation of complaint

A duly verified complaint, if attached to the affidavit and therein referred to as a part thereof, may be regarded as a part of such affidavit. Addison v. Sujette (S.C. 1897) 50 S.C. 192, 27 S.E. 631.

An affidavit which does not purport to set forth the cause of action except by reference to the sworn complaint thereto annexed as a part of the affidavit is fatally defective where the essential condition, that the complaint has been duly verified, is wanting. Addison v. Sujette (S.C. 1897) 50 S.C. 192, 27 S.E. 631.

Under this section [former Code 1962 Section 10‑805] an affidavit incorporating an attached complaint not duly verified and stating that all matters therein are true to the affiant’s own knowledge “except the statement and allegations therein made on information and belief” is fatally insufficient where no allegations or statements are made in the complaint on information or belief. Addison v. Sujette (S.C. 1897) 50 S.C. 192, 27 S.E. 631.

Where the inquiry on appeal is whether the affidavits relied upon state sufficient facts to come within this section [former Code 1962 Section 10‑805], the complaint cannot be considered as an affidavit unless it has been verified. National Bank of Greenville v. Jennings (S.C. 1893) 38 S.C. 372, 17 S.E. 16.

4. Bail

The giving of bail prior to making a motion to vacate the arrest or answering, does not waive defects in the affidavit on which the arrest was based. D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791. Arrest 42

**SECTION 15‑17‑60.** Security by plaintiff before obtaining order for arrest.

Before making the order the judge or other officer shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that, if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars. If the undertaking be executed by the plaintiff without sureties he shall annex thereto an affidavit that he is a resident and householder or freeholder within the State and worth double the sum specified in the undertaking over all his debts and liabilities.

HISTORY: 1962 Code Section 10‑806; 1952 Code Section 10‑806; 1942 Code Section 503; 1932 Code Section 503; Civ. P. ‘22 Section 445; Civ. P. ‘12 Section 233; Civ. P. ‘02 Section 203; 1870 (14) 467 Section 205.

CROSS REFERENCES

Bonds in judicial proceedings, see Sections 15‑1‑230 et seq.

Filing undertakings, see Section 15‑1‑220.

Security and form of undertaking under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k34.

Arrest 34.

C.J.S. Arrest Section 100.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Arrest Section 28 , Introductory Comments.

**SECTION 15‑17‑70.** Making and serving order for arrest; contents.

The order may be made to accompany the summons or at any time afterwards before judgment. It shall require the sheriff or constable of the county in which the defendant may be found forthwith to arrest him and hold him to bail in a specified sum and to return the order at a place and time therein mentioned to the plaintiff or attorney by whom it shall be subscribed or endorsed. But the order of arrest shall be of no avail and shall be vacated or set aside, on motion, unless it is served upon the defendant, as provided by law, before the docketing of any judgment in the action. The defendant shall have twenty days, after the service of the order of arrest, in which to answer the complaint.

HISTORY: 1962 Code Section 10‑807; 1952 Code Section 10‑807; 1942 Code Section 504; 1932 Code Section 504; Civ. P. ‘22 Section 446; Civ. P. ‘12 Section 234; Civ. P. ‘02 Section 204; 1870 (14) 467 Section 206.

CROSS REFERENCES

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

Sheriff filing affidavit on arrest under South Carolina Rules of Civil Procedure, see Criminal Practice Appendix, Rule 1, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 35k33; 35k37.

Arrest 33, 37.

C.J.S. Arrest Sections 99, 101.

NOTES OF DECISIONS

In general 1

1. In general

An order of arrest was held valid although it was not subscribed or endorsed by the plaintiff or his attorney, but by other means sufficiently complied with this statutory requirement, in D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791.

**SECTION 15‑17‑80.** Affidavit and order shall be delivered to sheriff or constable; copy to defendant.

The affidavit and order of arrest shall be delivered to the sheriff or constable who, upon arresting the defendant, shall deliver to him a copy thereof.

HISTORY: 1962 Code Section 10‑808; 1952 Code Section 10‑808; 1942 Code Section 505; 1932 Code Section 505; Civ. P. ‘22 Section 447; Civ. P. ‘12 Section 235; Civ. P. ‘02 Section 205; 1870 (14) 468 Section 207.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 35k21; 35k33; 35k37.

Arrest 21, 33, 37.

C.J.S. Arrest Sections 95, 99, 101.

**SECTION 15‑17‑90.** Execution of order.

The sheriff or constable shall execute the order by arresting the defendant and keeping him in custody until discharged by law and may call the power of the county to his aid in the execution of the arrest, as in case of process.

HISTORY: 1962 Code Section 10‑809; 1952 Code Section 10‑809; 1942 Code Section 506; 1932 Code Section 506; Civ. P. ‘22 Section 448; Civ. P. ‘12 Section 236; Civ. P. ‘02 Section 206; 1870 (14) 468 Section 208.

LIBRARY REFERENCES

Westlaw Key Number Searches: 35k37; 35k39.

Arrest 37, 39.

C.J.S. Arrest Sections 101, 103.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 5, Procedure for Civil Arrest.

Attorney General’s Opinions

Magistrates may award default judgments only in contract actions pursuant to section 22‑3‑270, 1976 Code; in tort actions in magistrate’s courts, according to Section 22‑3‑70, 1976 Code, plaintiff may recover only upon appearing and proving his case; defendant need not be personally present to defend tort actions in magistrate’s courts, provided he has been properly served with summons and complaint as required by law; arrest and bail in civil actions applies in magistrate’s courts as well as circuit courts according to Sections 15‑17‑20 and 15‑17‑40, 1976 Code; provisions of arrest and bail statutes must be strictly complied with pursuant to Sections 15‑17‑10 to 15‑17‑90, 1976 Code. 1978 Op Atty Gen, No 78‑90, p 117.

ARTICLE 3

Giving Bail

**SECTION 15‑17‑210.** Defendant shall be discharged on giving bail or making a deposit.

The defendant, at any time before execution, shall be discharged from the arrest either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article, or under the provisions of Sections 15‑17‑410 to 15‑17‑590.

HISTORY: 1962 Code Section 10‑821; 1952 Code Section 10‑821; 1942 Code Section 507; 1932 Code Section 507; Civ. P. ‘22 Section 449; Civ. P. ‘12 Section 237; Civ. P. ‘02 Section 207; 1870 (14) 468 Section 209.

CROSS REFERENCES

Prohibition on excessive bail, see SC Const Art 1, Section 15.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k3; 49k17.

Bail 3, 17.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Section 192.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

The giving of bail prior to making a motion to vacate the arrest or answering does not waive defects in the affidavit on which the arrest was based. D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791. Arrest 42

**SECTION 15‑17‑220.** Manner of giving bail.

The defendant may give bail by causing a written undertaking to be executed by two or more sufficient bail, stating their places of residence and occupations, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action and to such as may be issued to enforce the judgment therein or, if he be arrested for cause mentioned in item (2) of Section 15‑17‑20, by an undertaking to the same effect as that provided in Section 15‑69‑140.

HISTORY: 1962 Code Section 10‑822; 1952 Code Section 10‑822; 1942 Code Section 508; 1932 Code Section 508; Civ. P. ‘22 Section 450; Civ. P. ‘12 Section 238; Civ. P. ‘02 Section 208; 1870 (14) 468 Section 210.

CROSS REFERENCES

Bonds in judicial proceedings, see Sections 15‑1‑230 et seq.

Filing undertakings, see Section 15‑1‑220.

Security and form of undertaking under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 80, Chapter 17 Arrest and Bail in Civil Actions.

Forms

Am. Jur. Pl. & Pr. Forms Arrest Section 44 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Barnett v Gottlieb, 98 SC 180, 82 SE 406 (1914). Kimbrell v Berry, 85 SC 243, 67 SE 225 (1910).

Where a bond given under the provisions of this section [former Code 1962 Section 10‑822] fails to meet the requirements of this section [former Code 1962 Section 10‑822], and is not therefore good as a statutory construction, it may nevertheless be good as a common‑law undertaking. General Motors Acceptance Corp. v. Hutto (S.C. 1926) 136 S.C. 207, 134 S.E. 232.

The omission, in a bond given under this section [former Code 1962 Section 10‑822], to designate a person as obligee will not render the bond void, where the identity of the obligee may be gathered from the whole instrument. General Motors Acceptance Corp. v. Hutto (S.C. 1926) 136 S.C. 207, 134 S.E. 232.

Where, under this section [former Code 1962 Section 10‑822], a bond was given to secure the appearance of a judgment debtor incarcerated in accordance with former Code 1962 Section 10‑802, subd (1), if the Supreme Court found that such debtor had been illegally committed, and the court found the order erroneously issued, the sureties on the undertaking were immediately released from liability. Martin v. Hodge (S.C. 1910) 87 S.C. 214, 69 S.E. 225.

**SECTION 15‑17‑230.** Qualification of bail.

The qualification of bail must be as follows:

(1) Each of them must be a resident and householder or freeholder within the State; and

(2) Each of them must be worth the amount specified in the order of arrest, exclusive of property exempt from execution.

But the judge or clerk of the court, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order if the whole justification be equivalent to that of two sufficient bail.

HISTORY: 1962 Code Section 10‑823; 1952 Code Section 10‑823; 1942 Code Sections 258, 515; 1932 Code Sections 258, 516; Civ. P. ‘22 Sections 214, 457; Civ. P. ‘12 Sections 81, 245; Civ. P. ‘02 Sections 72, 215; 1870 (14) 438 Section 75, 469 Section 217.

CROSS REFERENCES

Not taking attorneys or officers of court as bail, see Section 15‑1‑240.

Sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑240.** Substituting bail for deposit.

If money be deposited, as provided in Section 15‑1‑250, bail may be given and justified upon notice, as prescribed in Section 15‑17‑260, at any time before judgment. Thereupon the judge before whom the justification is had shall direct in the order of allowance that the money deposited be refunded by the sheriff or constable to the defendant, and it shall be refunded accordingly.

HISTORY: 1962 Code Section 10‑827; 1952 Code Section 10‑827; 1942 Code Section 520; 1932 Code Section 520; Civ. P. ‘22 Section 462; Civ. P. ‘12 Section 250; Civ. P. ‘02 Section 220; 1870 (14) 469 Section 222.

CROSS REFERENCES

Cash deposit in lieu of bond, see Sections 15‑1‑250 et seq.

Disposition of deposit after judgment, see Section 15‑17‑760.

Security and form of undertaking under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑250.** Delivery of bail to plaintiff and acceptance by him.

Within the time limited for that purpose the sheriff or constable shall deliver the order of arrest to the plaintiff or attorney by whom it is subscribed, with his return endorsed and a certified copy of the undertaking of the bail. The plaintiff within ten days thereafter may serve upon the sheriff or constable a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff or constable shall be exonerated from liability.

HISTORY: 1962 Code Section 10‑828; 1952 Code Section 10‑828; 1942 Code Section 513; 1932 Code Section 513; Civ. P. ‘22 Section 455; Civ. P. ‘12 Section 243; Civ. P. ‘02 Section 213; 1870 (14) 468 Section 215.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑260.** Notice of justification; new bail.

On the receipt of notice that the plaintiff does not accept the bail the sheriff or constable or the defendant may, within ten days thereafter, give to the plaintiff or attorney by whom the order of arrest is subscribed notice of the justification of such bail or other bail, specifying the places of residence and occupation of the latter, before a judge or clerk of the court at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case other bail be given there shall be a new undertaking in the form prescribed in Section 15‑17‑220.

HISTORY: 1962 Code Section 10‑829; 1952 Code Section 10‑829; 1942 Code Section 514; 1932 Code Section 514; Civ. P. ‘22 Section 456; Civ. P. ‘12 Section 244; Civ. P. ‘02 Section 214; 1870 (14) 469 Section 216.

CROSS REFERENCES

Security and form of undertaking under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑270.** Justification of bail.

For the purpose of justification each of the bail shall attend before the judge, magistrate or clerk of the court at the time and place mentioned in the notice and may be examined on oath on the part of the plaintiff touching his sufficiency in such manner as the judge, magistrate or clerk of the court, in his discretion, may think proper. The examination shall be reduced to writing and subscribed by the bail if required by the plaintiff.

HISTORY: 1962 Code Section 10‑830; 1952 Code Section 10‑830; 1942 Code Sections 259, 516; 1932 Code Sections 259, 516; Civ. P. ‘22 Sections 215, 458; Civ. P. ‘12 Sections 82, 246; Civ. P. ‘02 Sections 73, 216; 1870 (14) 438 Section 76, 469 Section 218.

CROSS REFERENCES

Sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑280.** Allowance of bail.

If the judge, magistrate or clerk of the court find the bail sufficient he shall annex the examination to the undertaking, endorse his allowance thereon and cause them to be filed in the office of the clerk. The sheriff shall thereupon be exonerated from liability.

HISTORY: 1962 Code Section 10‑831; 1952 Code Section 10‑831; 1942 Code Sections 260, 517; 1932 Code Sections 260, 517; Civ. P. ‘22 Sections 216, 459; Civ. P. ‘12 Sections 83, 247; Civ. P. ‘02 Sections 74, 217; 1870 (14) 438 Section 77, 469 Section 219.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

ARTICLE 5

Release on Surrender of Property

**SECTION 15‑17‑410.** Petition for release.

Any person arrested on mesne or final process in any civil action as provided by this chapter, being unable or unwilling to give the bail therein provided, may petition the court of common pleas of the county wherein he is confined, certifying the causes of his arrest together with an account of his real and personal estate with the dates of the securities wherein any part of it consists and the deeds, notes or vouchers relating thereto and the names of the witnesses to such instruments as far as his knowledge extends therein.

HISTORY: 1962 Code Section 10‑841; 1952 Code Section 10‑841; 1942 Code Section 851; 1932 Code Section 851; Civ. P. ‘22 Section 799; Civ. C. ‘12 Section 4176; Civ. C. ‘02 Section 3072; G. S. 2405; R. S. 2524; 1759 (4) 86; 1788 (5) 79; Const. Art. I Section 20.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 2

Filing of schedule 3

Validity 1

1. Validity

This article does not offend the Fourteenth Amendment in that it allows continued incarceration despite the absence of the ordinary criminal processes, because for deprivations of liberty to offend the Federal Constitution, it is imperative that they be accomplished without “due process of law,” and there is no such offense here. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

2. In general

Cited in State v Brewer, 38 SC 263, 16 SE 1001 (1893). Rayborn v Reid, 139 SC 529, 138 SE 294 (1927).

Section does not apply to one not in confinement. Where the defendant has been discharged from arrest after he has filed his schedule and given notice to his creditors, he is not entitled to the benefit of this section [former Code 1962 Section 10‑841]. Clarke v Simpson, 1 McM (26 SCL) 286. Hurst v Samuels, 29 SC 476, 7 SE 822 (1888).

While undoubtedly harsh in implementation, the arrest and release sections—former Code 1962 Section 10‑802(6) and this article—are well within the State’s power to secure enforcement of the judgments of its courts. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

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

The provisions of this section [former Code 1962 Section 10‑841] and the following sections for modification of imprisonment or discharge of one arrested under the provisions of former Code 1962 Section 10‑802 are illustrative of the principle that such imprisonment is a punishment for the misconduct of a debtor and lies at the pleasure of the legislature to change without in any way affecting the contract. Lowden v. Moses (S.C. 1825).

As well as a debtor surrendered by his bail. Ex parte Ridgill (S.C. 1852) 5 Rich. 427.

A debtor may take advantage of this section [former Code 1962 Section 10‑841], although guilty of fraud in obtaining goods for the value of which he is sued. Fleming v. Close (S.C. 1849).

3. Filing of schedule

The schedule filed under this section [former Code 1962 Section 10‑841] may be amended after filing. Bingley v Smart, 1 McC (12 SCL) 29. Prescott v Hubbell, 2 McC (13 SCL) 64.

Where the description of property in a schedule filed under this section [Code 1962 Section 10‑841] is vague and uncertain, it is no ground to oppose the debtor’s discharge, unless he refuse to amend it. Yeakle, Cobb & Co. v. George (S.C. 1859) 12 Rich. 153. Creditors’ Remedies 1184

Under this section [former Code 1962 Section 10‑841], where a debtor files his schedule for release from confinement, he need not file another when under arrest in a second case. Banks v. Ingram (S.C. 1856) 10 Rich. 28.

**SECTION 15‑17‑420.** Creditors shall be summoned by public notice.

Upon such petition the clerk shall, by order or rule, cause the petitioner to be brought before the court and also the creditors at whose suit such person shall stand charged, as well as all other creditors to whom he shall be indebted, to be summoned by public notice, to be given three weeks at least in some newspaper of the county wherein the debtor is confined and, if there be no newspaper published in such county, then in some newspaper of general circulation therein, personally or by their attorney, to appear before him at a day for that purpose appointed at or after the expiration of such period of three weeks.

HISTORY: 1962 Code Section 10‑842; 1952 Code Section 10‑842; 1942 Code Section 852; 1932 Code Section 852; Civ. P. ‘22 Section 800; Civ. C. ‘12 Section 4177; Civ. C. ‘02 Section 3073; G. S. 2406; R. S. 2525; 1759 (4) 87.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

NOTES OF DECISIONS

In general 1

1. In general

Under this section [former Code 1962 Section 10‑842] the debtor is not entitled to the benefits provided for in this article until after three weeks’ notice to his creditors. Alexander v Gibson, 1 N & McC (10 SCL) 480. George v Catherwood, 1 McC (12 SCL) 339.

Notice need not be published immediately after filing of petition. Ex parte Cantey (S.C. 1858) 11 Rich. 520.

Notice must be published as required. Mordecai v. Larissey (S.C. 1845) 1 Rich. 192.

A debtor, under this section [former Code 1962 Section 10‑842] is allowed to swear at the time of his discharge nunc pro tunc. Brevard v. Wylie (S.C. 1844) 1 Rich. 38.

The clerk may issue such order or rule as is required by this section [former Code 1962 Section 10‑842]. Bettis v. Nixon (S.C. 1846).

The notice provided for in this section [former Code 1962 Section 10‑842] should certainly fix the day for appearance before the clerk. Bettis v. Nixon (S.C. 1846).

**SECTION 15‑17‑430.** Clerk shall examine as to discharge of prisoner.

Upon the day of such appearance if any of the creditors so summoned shall neglect or refuse to appear, upon affidavit made of the service of such rule or order in manner provided in Section 15‑17‑420, the clerk shall in a summary way examine into the matter of the petition, and hear what shall be alleged for or against the discharge of the petitioner from arrest and confinement.

HISTORY: 1962 Code Section 10‑843; 1952 Code Section 10‑843; 1942 Code Section 853; 1932 Code Section 853; Civ. P. ‘22 Section 801; Civ. C. ‘12 Section 4178; Civ. C. ‘02 Section 3074; G. S. 2407; R. S. 2526; 1759 (4) 87; 1952 (47) 1688.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

**SECTION 15‑17‑440.** Oath of petitioner.

Upon such examination the clerk shall administer or tender to the petitioner an oath in the following words:

“I, (A. B.), do solemnly swear that the account by me delivered into this honorable court with my petition doth contain a true and full account of all my real and personal estate, debts, credits and effects whatsoever, without exception, which I or any person in trust for me have or at the time of my petition had, or am or was, in any respect, entitled unto, in possession, remainder or reversion; and that I have not at any time since my being sued, arrested or imprisoned, or before, directly or indirectly sold, leased, assigned or otherwise disposed of or made over, in trust for myself or otherwise, other than is mentioned in such account, any part of my lands, estate, goods, stock, money, debts or other real or personal estate whereby to have or expect any benefit or profit to myself or to defraud any of my creditors to whom I am indebted; and that I will, to the utmost of my power, endeavor to collect all and singular the title deeds to my lands, together with the remainder of my goods and effects contained in said account and the vouchers relating to or concerning the same, wheresoever or in whosesoever hands they may be within this State, and will surrender the same to my assignee or assignees as soon as possible after my discharge from arrest and confinement. So help me God.”

HISTORY: 1962 Code Section 10‑844; 1952 Code Section 10‑844; 1942 Code Section 853; 1932 Code Section 853; Civ. P. ‘22 Section 801; Civ. C. ‘12 Section 4178; Civ. C. ‘02 Section 3074; G. S. 2407; R. S. 2526; 1759 (4) 87; 1952 (47) 1688.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

**SECTION 15‑17‑450.** Order for assignment of property; exemptions.

In case the prisoner shall take such oath and upon examination the clerk shall be satisfied with the truth thereof he shall order the lands, goods and effects contained in such account, or so much of them as may be sufficient to satisfy the debts wherewith such petitioner shall be charged and the fees of the keeper of the jail where he shall be in custody together with the costs of suit which shall be incurred on the suit or prosecution commenced against him and all other costs and fees which shall arise or become due upon prosecuting and obtaining his discharge from arrest and confinement, by a short endorsement on the back of his petition, signed by the petitioner, to be assigned to some suitable person to be selected by the clerk, as assignee for the benefit of the plaintiff and such creditors as may appear or establish claims against the debtor. But if the petitioner be the head of a family there shall be reserved to him out of his real and personal property a homestead and such articles as are exempt from attachment, levy and sale under the provisions of the Constitution and laws of this State.

HISTORY: 1962 Code Section 10‑845; 1952 Code Section 10‑845; 1942 Code Section 854; 1932 Code Section 854; Civ. P. ‘22 Section 802; Civ. C. ‘12 Section 4179; Civ. C. ‘02 Section 3075; G. S. 2408; R. S. 2527; 1759 (4) 87; 1952 (47) 1688; Const. Art. II Section 32.

CROSS REFERENCES

Homestead exemption, see Sections 15‑41‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

The assignment vests in the assignee all the estate capable of being conveyed, provided assignee accepts the trust. Tunno v Edwards, 3 Brev (5 SCL) 510. Belden v Plate, 12 Rich (46 SCL) 358. Brooks v Brooks, 12 SC 422 (1879).

The assignee, under this section [former Code 1962 Section 10‑845], takes the property subject to all the circumstances and applies it to the debts in their order of rank. Mairs v Smith, 3 McC (14 SCL) 52. McLeish v Tylee, 4 Strob (35 SCL) 287.

An assignment as provided for in this section [former Code 1962 Section 10‑845] vests in the assignee all the estate capable of being conveyed, whether vested or contingent. Cohen v. Gibbes (S.C. 1833). Creditors’ Remedies 1174

The assignee, under this section [former Code 1962 Section 10‑845], takes property subject to any rights of setoff existing before assignment. Lowrie’s Assignees v. Williamson (S.C. 1825).

**SECTION 15‑17‑460.** Prisoner shall be discharged on making assignment.

The petitioner upon executing such assignment and delivering unto the hands of the assignee or assignees all and singular his title deeds, vouchers and effects listed in his account, so far as in his power so to do, shall be forthwith discharged, by order, from arrest and confinement.

HISTORY: 1962 Code Section 10‑846; 1952 Code Section 10‑846; 1942 Code Section 855; 1932 Code Section 855; Civ. P. ‘22 Section 803; Civ. C. ‘12 Section 4180; Civ. C. ‘02 Section 3076; G. S. 2409; R. S. 2528; 1759 (4) 88; 1952 (47) 1688.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

**SECTION 15‑17‑470.** Prisoner shall be remanded for refusal to assign.

In case any such debtor shall neglect or refuse within a reasonable time to comply with his oath as set out in Section 15‑17‑440 and the provisions of Sections 15‑17‑450 and 15‑17‑460 the judge of the court, upon application upon oath of the assignee or assignees, may again remand the debtor to prison, unless good cause shall be shown by him to the contrary, until he shall fully comply with the terms of his oath and those sections.

HISTORY: 1962 Code Section 10‑847; 1952 Code Section 10‑847; 1942 Code Section 856; 1932 Code Section 856; Civ. P. ‘22 Section 804; Civ. C. ‘12 Section 4181; Civ. C. ‘02 Section 3077; G. S. 2410; R. S. 2529; 1759 (4) 88; 1952 (47) 1688.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

Order of court is necessary to rearrest. Aiken v. Moore (S.C. 1833).

**SECTION 15‑17‑480.** Penalty for false schedules.

Any person who shall deliver in a false schedule of his effects shall suffer the penalties of wilful perjury and shall be liable to be arrested again for the same action.

HISTORY: 1962 Code Section 10‑848; 1952 Code Section 10‑848; 1942 Code Section 857; 1932 Code Section 857; Civ. P. ‘22 Section 805; Civ. C. ‘12 Section 4182; Civ. C. ‘02 Section 3078; G. S. 2411; R. S. 2530; 1759 (4) 93; 1788 (5) 79; 1952 (47) 1688.

CROSS REFERENCES

The penalties for wilful perjury, see Section 16‑9‑10.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

The penalties of perjury under this section [former Code 1962 Section 10‑848] partake of a criminal cast and a serious constitutional question might arise if they were applied when they are not preceded by traditional criminal processes. Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

Cited in Hartsville Oil Mill v. Du Rose (S.C. 1916) 104 S.C. 120, 88 S.E. 446.

**SECTION 15‑17‑490.** Summoning jury in cases of alleged fraud.

Whenever a debtor in custody under the provisions of this chapter shall be accused by the plaintiff (a) of fraud, (b) of having given an undue preference to one creditor to the prejudice of another or (c) of having made a false return, the clerk of the circuit court, who shall hear the prisoner’s application, may place the names of twenty‑four persons qualified as jurors in a box and from them draw eighteen and direct the sheriff of the county to summon the eighteen whose names shall be thus drawn to attend at the place where the prisoner is confined and at such time as the clerk shall appoint. In the same manner from them shall be drawn twelve, who shall be empaneled to try the facts required by this article.

HISTORY: 1962 Code Section 10‑849; 1952 Code Section 10‑849; 1942 Code Section 858; 1932 Code Section 858; Civ. P. ‘22 Section 806; Civ. C. ‘12 Section 4183; Civ. C. ‘02 Section 3079; G. S. 2412; R. S. 2531; 1833 (6) 491.

CROSS REFERENCES

Drawing and summoning jurors in circuit courts, see Sections 14‑7‑110 et seq.

Submitting issues to a jury already empaneled, see Section 15‑17‑580.

Summons for jurors under South Carolina Rules of Civil Procedure, see App. of Forms, SCRCP, Form 2.

LIBRARY REFERENCES

Westlaw Key Number Searches: 230k57 to 230k82.

Jury 57 to 82.

C.J.S. Juries Sections 268, 271 to 272, 279 to 282, 305 to 310, 312 to 323, 326 to 331, 333 to 338, 340 to 344, 346 to 353, 422, 511 to 512.

NOTES OF DECISIONS

In general 1

Clerk’s discretion with respect to jury trial 3

Court’s discretion with respect to jury trial 2

False return 6

Fraud 4

Undue preference to one creditor 5

1. In general

Accusations should be upon suggestion, stating the facts. Fabre v Zylstra, 2 Bay (2 SCL) 147. Sherman v Barrett, 1 McM (26 SCL) 147. Rosser v Noye, 1 Rich (30 SCL) 62. Ex parte Maffett, 11 Rich (45 SCL) 359.

Cited in Carter v. Lynch (C.A.4 (S.C.) 1970) 429 F.2d 154.

Where a defendant, arrested under the provisions of former Code 1962 Section 10‑802, providing for arrest in civil actions, seeks to be released under the general provisions of this article, the plaintiff may demand a jury trial on these issues: Fraud, giving undue preference to one creditor, and making a false schedule. Hartsville Oil Mill v. Du Rose (S.C. 1916) 104 S.C. 120, 88 S.E. 446.

Defendant may waive the requirement that accusations should be upon suggestion. Baker, Johnson & Co. v. Bushnell (S.C. 1840).

2. Court’s discretion with respect to jury trial

If a case is complicated, it should be tried by a jury, but otherwise it may be tried by a court. Fabre v. Zylstra (S.C. 1798).

3. Clerk’s discretion with respect to jury trial

Under this section [former Code 1962 Section 10‑849] the question of continuance is addressed to the discretion of the clerk. Bentley v. Page (S.C. 1841).

4. Fraud

Fraudulent removal of goods bars benefit of article. Wiley v Lawson, 7 Rich (41 SCL) 152. Branden v Gowing, 7 Rich (41 SCL) 459.

Under this section [former Code 1962 Section 10‑849], after accusation by suggestion of fraud has been filed, an applicant cannot withdraw his application for discharge. Sherman & Debruhl v. Barrett (S.C. 1841).

After suggestion of fraud has been entered as prescribed by this section [former Code 1962 Section 10‑849], an applicant may withdraw his application for discharge on payment of the debt for which he is arrested, and costs. Sleeper & Fenner v. Cohen (S.C. 1859) 12 Rich. 112.

Any fraudulent device to swindle creditors is such fraud as is contemplated by this section [former Code 1962 Section 10‑849]. Hyams v. Valentine (S.C. 1850).

Debtor is not barred from benefits of article for fraud in contracting the debt. Fleming v. Close (S.C. 1849).

5. Undue preference to one creditor

“Preference” must be fraudulent to deprive debtor of benefit of article. Stover v Duren, 2 McC (13 SCL) 266. Creyton v Dickerson, 3 McC (14 SCL) 438. Dobson v Teasdale, 4 McC (15 SCL) 81. Bulwinkle v Grube, 5 Rich (39 SCL) 286.

The question of “undue preference,” as provided for in this section [former Code 1962 Section 10‑849], must be decided by a jury. Weed & Fanning v. Evans (S.C. 1843).

6. False return

Conviction of false return prevents discharge. Dixon v Vanezara, McC(12 SCL) 373. Mc Elmoyle v Florence, 2 McC (13 SCL) 29.

No new suggestions may be added after issue made up. Bentley v Page, 2 Mcm (27 SCL) 52. Morein v Solomons, 7 Rich (41 SCL) 97.

Under this section [former Code 1962 Section 10‑849] the schedule may be amended at the trial, if it appear that the omissions in it arose from ignorance, inadvertence, or mistake, and such amendment will not suprise or delay. Sherman v Barrett, McM (26 SCL) 147. Craig v Pinson, 2 Spears (29 SCL) 176.

Omission to mention fraudulent assignment is not a false return. Brandon & Nethers v. Rogers (S.C. 1856) 10 Rich. 9.

**SECTION 15‑17‑500.** Filling vacancies in jury panel.

If from the eighteen persons so summoned twelve cannot from any cause be empaneled then the clerk may complete that number from the other freeholders originally selected.

HISTORY: 1962 Code Section 10‑850; 1952 Code Section 10‑850; 1942 Code Section 859; 1932 Code Section 859; Civ. P. ‘22 Section 807; Civ. C. ‘12 Section 4184; Civ. C. ‘02 Section 3080; G. S. 2413; R. S. 2532; 1833 (6) 491.

LIBRARY REFERENCES

Westlaw Key Number Search: 230k66.

Jury 66.

C.J.S. Juries Sections 271, 312.

**SECTION 15‑17‑510.** Liability for nonattendance of jurors.

The freeholders so summoned shall be liable to the same objections to be made by either party in the case which may be made to jurors in the court of common pleas and shall be liable to the same fines for nonattendance without sufficient cause to which jurors are for nonattendance at the courts. Such fines shall be imposed by the court of common pleas of the county. It shall be the duty of the clerk to return to the court the names of the freeholders who shall so neglect to attend, to be proceeded against as in the case of nonattending jurors.

HISTORY: 1962 Code Section 10‑851; 1952 Code Section 10‑851; 1942 Code Section 860; 1932 Code Section 860; Civ. P. ‘22 Section 808; Civ. C. ‘12 Section 4185; Civ. C. ‘02 Section 3081; G. S. 2414; R. S. 2533; 1833 (6) 492.

CROSS REFERENCES

Objections to jurors, see Section 14‑7‑1020.

Penalty for nonattendance, see Section 14‑7‑1390.

LIBRARY REFERENCES

Westlaw Key Number Search: 230k74.

Jury 74.

C.J.S. Juries Section 350.

**SECTION 15‑17‑520.** Issues on exceptions to clerk’s rulings shall be summarily heard by judge.

In case exceptions be taken to any order or ruling of the clerk while discharging the duties imposed by this article, the issues therein may be summarily heard and tried by the judge of the circuit or by any circuit judge then holding the courts in such circuit or, if there be no judge within such circuit, by any other circuit judge named in the notice for such hearing.

HISTORY: 1962 Code Section 10‑852; 1952 Code Section 10‑852; 1942 Code Section 861; 1932 Code Section 861; Civ. P. ‘22 Section 809; Civ. C. ‘12 Section 4186; Civ. C. ‘02 Section 3082; G. S. 2415; R. S. 2534.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑530.** Fees allowed clerk for hearing application.

The clerk who may hear and determine the application of a debtor for the benefit of the provisions of this article shall, if the application be unlitigated, be entitled to receive as a compensation for his services the sum of two dollars out of the property that may be assigned, and whenever the application is litigated the clerk shall be entitled to receive the sum of four dollars as a compensation for his services out of the property of the debtor if the final decision be against him, but if it be in his favor, then such sum shall be paid by the plaintiff.

HISTORY: 1962 Code Section 10‑853; 1952 Code Section 10‑853; 1942 Code Section 862; 1932 Code Section 862; Civ. P. ‘22 Section 810; Civ. C. ‘12 Section 4187; Civ. C. ‘02 Section 3083; G. S. 2416; R. S. 2535; 1833 (6) 491.

LIBRARY REFERENCES

Westlaw Key Number Search: 79k10.

Clerks of Courts 10.

C.J.S. Courts Section 242.

**SECTION 15‑17‑540.** Fees allowed sheriff.

The sheriff shall receive the sum of five dollars as a compensation for summoning the freeholders, to be paid out of the property of the debtor, if his application be refused, and, if granted, to be paid by the plaintiff.

HISTORY: 1962 Code Section 10‑854; 1952 Code Section 10‑854; 1942 Code Section 863; 1932 Code Section 863; Civ. P. ‘22 Section 811; Civ. C. ‘12 Section 4188; Civ. C. ‘02 Section 3084; G. S. 2417; R. S. 2536; 1833 (6) 491.

CROSS REFERENCES

Fees of sheriffs, generally, see Section 23‑19‑10.

LIBRARY REFERENCES

Westlaw Key Number Search: 353k53.

Sheriffs and Constables 53.

**SECTION 15‑17‑550.** Proceedings in cases of appeal.

If the verdict of the jury provided in Section 15‑17‑490 is in favor of the debtor and the plaintiff should appeal, the debtor shall be entitled to be discharged from confinement on his giving bond and sufficient sureties to the plaintiff to be forthcoming and to abide by the decision of the court of appeals or the Supreme Court. If the appeal shall be determined against the debtor and he be not surrendered, which the surety may do, before the first day of the circuit court next succeeding the determination of the appeal, then the clerk of the court, on the application of the plaintiff or his agent, shall issue an order on the bond against the prisoner and his sureties, as in cases of estreated recognizances. But if the prisoner should appear or be surrendered, as aforesaid, then the clerk shall proceed with the case as provided in the preceding sections.

HISTORY: 1962 Code Section 10‑855; 1952 Code Section 10‑855; 1942 Code Section 864; 1932 Code Section 864; Civ. p. ‘22 Section 812; Civ. C. ‘12 Section 4189; Civ. C. ‘02 Section 3085; G. S. 2418; R. S. 2537; 1833 (6) 491; 1999 Act No. 55, Section 20.

CROSS REFERENCES

Bonds in judicial proceedings, see Sections 15‑1‑220 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

LAW REVIEW AND JOURNAL COMMENTARIES

Berger, The Scope of Judicial Review: A Continuing Dialogue. 31 S.C. L. Rev. 171.

NOTES OF DECISIONS

In general 1

1. In general

Upon judgment granting his discharge, the prisoner is entitled to go at large, pending appeal. Baker v Bushnell, 1 McM (26 SCL) 272. Bulwinkle v Grube, 5 Rich (39 SCL) 286.

Notice of appeal may be given after judgment on verdict. Bulwinkle v. Grube (S.C. 1852) 5 Rich. 286.

But upon renewal of appeal he must return to prison or forfeit his right to discharge. Bulwinkle v. Grube (S.C. 1852) 5 Rich. 286.

No appeal lies except from verdict of jury. Martin & Walker v. Stribling (S.C. 1843).

**SECTION 15‑17‑560.** Creditors allowed to examine applicants for discharge; penalty for refusal to answer.

Any creditor of any person applying for the benefit of this article, either in person or by attorney, may examine and cross‑examine such applicant on oath in the presence of the judge or the clerk of the court before whom he shall move for his discharge from imprisonment, touching the truth of his schedule and touching the nature and extent of his property, rights and credits liable to be assigned for the benefit of his creditors. And the refusal of any such applicant to answer, fully and directly, all or any proper questions put to him in the course of such examination shall prevent his discharge, if otherwise entitled thereto, until he shall have fully answered such questions.

HISTORY: 1962 Code Section 10‑856; 1952 Code Section 10‑856; 1942 Code Section 865; 1932 Code Section 865; Civ. P. ‘22 Section 813; Civ. C. ‘12 Section 4190; Civ. C. ‘02 Section 3086; G. S. 2419; R. S. 2538; 1836 (6) 556.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, see Rosser v Moye, 1 Rich (30 SCL) 62. Fleming v Close, 3 Strob (34 SCL) 362.

Examination by creditor may be followed by his filing suggestions of fraud to be tried by jury. Ex parte McDonald (S.C. 1861) 13 Rich. 250.

**SECTION 15‑17‑570.** Debtor required to produce books.

If on such examination it should appear that the debtor has kept books in relation to his trade, profession or occupation he shall be required to produce them, if in his possession or power. On failure to do so he shall be deprived of his discharge until he shall produce such books.

HISTORY: 1962 Code Section 10‑857; 1952 Code Section 10‑857; 1942 Code Section 866; 1932 Code Section 866; Civ. C. ‘22 Section 814; Civ. C. ‘12 Section 4191; Civ. C. ‘02 Section 3087; G. S. 2420; R. S. 2539; 1836 (6) 556.

CROSS REFERENCES

Production of documents under South Carolina Rules of Civil Procedure, see Rule 34, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

**SECTION 15‑17‑580.** Submission of issues to jury already empaneled.

Nothing contained in this article shall be construed to deprive a judge, sitting in open court, of the power to submit to the jury already empaneled all issues arising under Section 15‑17‑490. But in all cases in which the plaintiff shall appeal the defendant shall be entitled to his enlargement, pending the appeal, on the terms prescribed in Section 15‑17‑550.

HISTORY: 1962 Code Section 10‑858; 1952 Code Section 10‑858; 1942 Code Section 867; 1932 Code Section 867; Civ. P. ‘22 Section 815; Civ. C. ‘12 Section 4192; Civ. C. ‘02 Section 3088; G. S. 2421; R. S. 2540; 1833 (6) 493.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

LAW REVIEW AND JOURNAL COMMENTARIES

Berger, The Scope of Judicial Review: A Continuing Dialogue. 31 S.C. L. Rev. 171.

**SECTION 15‑17‑590.** No discharge shall be granted until property is delivered to assignee.

In all cases in which a debtor applies for his discharge the judge or clerk of the court before whom the application shall be made shall not discharge him from confinement until the property contained in his schedule is produced and delivered to the assignee, if it be or has been within the power of the debtor to deliver such property since the time of his arrest.

HISTORY: 1962 Code Section 10‑859; 1952 Code Section 10‑859; 1942 Code Section 868; 1932 Code Section 868; Civ. P. ‘22 Section 816; Civ. C. ‘12 Section 4193; Civ. C. ‘02 Section 3089; G. S. 2422; R. S. 2541; 1833 (6) 493.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

It is not in the power of debtor to deliver property removed to another state, and he must be discharged unless such property was fraudulently removed. Martin & Walker v. Stribling (S.C. 1843).

ARTICLE 7

Other Proceedings Subsequent to Arrest or Bail

**SECTION 15‑17‑710.** Vacating order of arrest or reducing bail.

A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail.

HISTORY: 1962 Code Section 10‑871; 1952 Code Section 10‑871; 1942 Code Section 525; 1932 Code Section 525; Civ. P. ‘22 Section 467; Civ. P. ‘12 Section 255; Civ. P. ‘02 Section 225; 1870 (14) 470 Section 227.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k46.

Westlaw Key Number Searches: 49k1 to 49k25.

Arrest 46.

Bail 1 to 25.

C.J.S. Arrest Section 105.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arrest Section 7, Discharge from Civil Arrest.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in D. W. Alderman & Sons Co. v. Kirven (S.C. 1946) 209 S.C. 446, 40 S.E.2d 791.

**SECTION 15‑17‑720.** Affidavits on motion to vacate order of arrest or reduce bail.

If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the motion by affidavits or other proofs in addition to those on which the order of arrest was made.

HISTORY: 1962 Code Section 10‑872; 1952 Code Section 10‑872; 1942 Code Section 526; 1932 Code Section 526; Civ. P. ‘22 Section 468; Civ. P. ‘12 Section 256; Civ. P. ‘02 Section 226; 1870 (14) 470 Section 228.

LIBRARY REFERENCES

Westlaw Key Number Search: 35k46.

Westlaw Key Number Searches: 49k1 to 49k25.

Arrest 46.

Bail 1 to 25.

C.J.S. Arrest Section 105.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

NOTES OF DECISIONS

In general 1

1. In general

Under this section [former Code 1962 Section 10‑872], matter in the plaintiff’s affidavits not in reply to the defendant’s affidavits will not be considered. Myers v Whiteheart, 24 SC 196 (1886). Davis v Cardue, 38 SC 471, 17 SE 247 (1893).

**SECTION 15‑17‑730.** Surrender of defendant.

At any time before a failure to comply with the undertaking the bail may surrender the defendant in their exoneration or he may surrender himself to the sheriff of the county in which he was arrested in the following manner:

(1) A certified copy of the undertaking of the bail shall be delivered to the sheriff or constable who shall, by a certificate in writing, acknowledge the surrender; and

(2) Upon the production of a copy of the undertaking and the sheriff’s or constable’s certificate a judge or clerk of the court may, upon notice to the plaintiff of eight days with a copy of the certificate, order that the bail be exonerated.

And on filing the order and papers used on such application they shall be exonerated accordingly. But this section shall not apply to an arrest for the cause mentioned in item (2) of Section 15‑17‑20, so as to discharge the bail from an undertaking given to the effect provided by Section 15‑69‑140.

HISTORY: 1962 Code Section 10‑873; 1952 Code Section 10‑873; 1942 Code Section 509; 1932 Code Section 509; Civ. P. ‘22 Section 451; Civ. P. ‘12 Section 239; Civ. P. ‘02 Section 209; 1870 (14) 468 Section 211.

LIBRARY REFERENCES

Westlaw Key Number Search: 49k24.

Bail 24.

NOTES OF DECISIONS

In general 1

1. In general

Under this section [former Code 1962 Section 10‑873] and former Code 1962 Section 10‑874, the defendant, when released on bail, remains in the custody of the bail, subject to arrest by the bail, and surrender into the custody of the court at the option of the bail, the bail being substituted for the sheriff or marshal. The Bremena v. Card (D.C.S.C. 1889) 38 F. 144.

**SECTION 15‑17‑740.** Bail may authorize arrest of defendant.

For the purpose of surrendering the defendant the bail, at any time or place before they are finally charged, may themselves arrest him or by a written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

HISTORY: 1962 Code Section 10‑874; 1952 Code Section 10‑874; 1942 Code Section 510; 1932 Code Section 510; Civ. P. ‘22 Section 452; Civ. P. ‘12 Section 240; Civ. P. ‘02 Section 210; 1870 (14) 468 Section 212.

CROSS REFERENCES

Surrender of defendant, see Section 15‑17‑730.

LIBRARY REFERENCES

Westlaw Key Number Searches: 35k1 to 35k57.

Arrest 1 to 57.

C.J.S. Arrest Sections 2, 73 to 111.

**SECTION 15‑17‑750.** Exoneration of bail.

The bail may be exonerated either (a) by the death of the defendant, (b) his imprisonment in a State prison, (c) his legal discharge from the obligation to render himself amenable to the process or (d) by his surrender to the sheriff or constable of the county in which he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail or within such further time as may be granted by the court.

HISTORY: 1962 Code Section 10‑875; 1952 Code Section 10‑875; 1942 Code Section 512; 1932 Code Section 512; Civ. P. ‘22 Section 454; Civ. P. ‘12 Section 242; Civ. P. ‘02 Section 212; 1870 (14) 468 Section 214.

LIBRARY REFERENCES

Westlaw Key Number Search: 49k22.

Bail 22.

**SECTION 15‑17‑760.** Disposal of deposit after judgment in the action.

When money shall have been deposited under Section 15‑17‑240, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply such deposit to the satisfaction thereof and after satisfying the judgment shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant the clerk shall refund to him the whole sum deposited and remaining unapplied.

HISTORY: 1962 Code Section 10‑876; 1952 Code Section 10‑876; 1942 Code Section 521; 1932 Code Section 521; Civ. P. ‘22 Section 463; Civ. P. ‘12 Section 251; Civ. P. ‘02 Section 221; 1870 (14) 469 Section 223.

LIBRARY REFERENCES

Westlaw Key Number Search: 49k17.

Bail 17.

**SECTION 15‑17‑770.** Proceeding against the bail.

In case of failure to comply with the undertaking the bail may be proceeded against by an action only.

HISTORY: 1962 Code Section 10‑877; 1952 Code Section 10‑877; 1942 Code Section 511; 1932 Code Section 511; Civ. P. ‘22 Section 453; Civ. P. ‘12 Section 241; Civ. P. ‘02 Section 211; 1870 (14) 468 Section 213.

LIBRARY REFERENCES

Westlaw Key Number Search: 49k25.

Bail 25.

**SECTION 15‑17‑780.** Sheriff or constable may be liable as bail.

If after being arrested the defendant escape or be rescued or bail be not given or justified or a deposit made instead thereof the sheriff or constable shall himself be liable as bail. But he may discharge himself from such liability by the giving and justification of bail, as provided in Sections 15‑17‑230 and 15‑17‑260 to 15‑17‑280, at any time before process against the person of the defendant to enforce an order or judgment in the action.

HISTORY: 1962 Code Section 10‑878; 1952 Code Section 10‑878; 1942 Code Section 522; 1932 Code Section 522; Civ. P. ‘22 Section 464; Civ. P. ‘12 Section 252; Civ. P. ‘02 Section 222; 1870 (14) 470 Section 224.

CROSS REFERENCES

Exoneration of sheriff or constable by plaintiff’s acceptance of bail, see Section 15‑17‑250.

LIBRARY REFERENCES

Westlaw Key Number Search: 353k103.

Sheriffs and Constables 103.

**SECTION 15‑17‑790.** Proceedings on judgment against sheriff or constable.

If a judgment be recovered against the sheriff or constable upon his liability as bail and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on the official bond of the sheriff or constable to collect the deficiency as in other cases of delinquency.

HISTORY: 1962 Code Section 10‑879; 1952 Code Section 10‑879; 1942 Code Section 523; 1932 Code Section 523; Civ. P. ‘22 Section 465; Civ. P. ‘12 Section 253; Civ. P. ‘02 Section 223; 1870 (14) 470 Section 225.

LIBRARY REFERENCES

Westlaw Key Number Search: 353k103.

Sheriffs and Constables 103.

**SECTION 15‑17‑800.** Bail may be liable to sheriff or constable.

The bail taken upon the arrest shall, unless they justify or other bail be given or justified, be liable to the sheriff or constable by action for damages which he may sustain by reason of such omission.

HISTORY: 1962 Code Section 10‑880; 1952 Code Section 10‑880; 1942 Code Section 524; 1932 Code Section 524; Civ. P. ‘22 Section 466; Civ. P. ‘12 Section 254; Civ. P. ‘02 Section 224; 1870 (14) 470 Section 226.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑810.** In what cases plaintiff shall be liable for maintenance of debtor.

When any person shall be taken on mesne or final process in any civil suit and, from inability to pay the demand, debt or damages or find bail, be committed to the jail and such person has no lands, tenements, goods, chattels or choses in action whereby his maintenance in jail can be defrayed, the plaintiff or person at whose instance such party shall be imprisoned shall pay and satisfy his maintenance. If such person or his attorney shall refuse or neglect, after ten days’ previous notice, to pay or give security to pay the prisoner’s maintenance when demanded, the sheriff or jailer in whose custody such prisoner is may discharge him from such confinement. But such prisoner shall, before he is discharged, render on oath a schedule of all his estate and assign it.

HISTORY: 1962 Code Section 10‑881; 1952 Code Section 10‑881; 1942 Code Section 3536; 1932 Code Section 3536; Civ. C. ‘22 Section 2079; Civ. C. ‘12 Section 1186; Civ. C. ‘02 Section 861; G. S. 679; R. S. 741; 1839 (11) 46 Section 30.

LIBRARY REFERENCES

Westlaw Key Number Searches: 49k1 to 49k25.

Bail 1 to 25.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings Sections 2, 191 to 196.

**SECTION 15‑17‑820.** Charges for keeping debtor in jail.

The charges for keeping such debtor in the common jail shall be such as are allowed by law for dieting prisoners confined under process in the court of general sessions. And if the plaintiff recover judgment against the debtor or an assignment of his effects be made as provided in this chapter such charges may be recovered as disbursements in the action or paid out of the estate assigned before any dividend is declared.

HISTORY: 1962 Code Section 10‑882; 1952 Code Section 10‑882; 1942 Code Section 869; 1932 Code Section 869; Civ. P. ‘22 Section 817; Civ. C. ‘12 Section 4194; Civ. C. ‘02 Section 3090; G. S. 2423; R. S. 2542.

LIBRARY REFERENCES

Westlaw Key Number Search: 310k18.

Prisons 18.

C.J.S. Prisons and Rights of Prisoners Section 6.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases, see Schroter v Crawford, 1 Hill (19 SCL) 422. Love v Lowry, 1 McC (12 SCL) 181. Brien v Ellis, Dud (23 SCL) 71.

The provisions of this section [former Code 1962 Section 10‑882] as to deposit by the plaintiff of jail fees for the confinement of the debtor are not available as a defense to such debtor on mandamus proceedings to compel the sheriff to incarcerate the debtor. Harrison v. Caudle (S.C. 1927) 141 S.C. 407, 139 S.E. 842.