CHAPTER 19

Attachment

ARTICLE 1

Issue of Attachments

**SECTION 15‑19‑10.** Grounds for attachment generally.

 In any action:

 (1) For the recovery of money;

 (2) For the recovery of property, whether real or personal, or damages for the wrongful conversion and detention of personal property;

 (3) For the recovery of damages for injury done to either person or property;

 (4) Against a corporation created by or under the laws of any other state, government or country;

 (5) Against a defendant who is not a resident of this State;

 (6) Against the master, captain or agent of any sailing vessel entering any of the ports of this State for pilotage services rendered such vessel;

 (7) Against a defendant who has absconded or concealed himself; or

 (8) When any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors as mentioned in this chapter;

 The plaintiff at the time of issuing the summons or any time afterwards may have the property of such defendant or corporation attached, in the manner prescribed in this chapter, as a security for the satisfaction of such judgment as the plaintiff may recover.

 For the purposes of this section an action shall be deemed commenced when the summons is issued, provided that personal service of such summons shall be made or publication thereof commenced within thirty days.

HISTORY: 1962 Code Section 10‑901; 1952 Code Section 10‑901; 1942 Code Section 527; 1932 Code Section 527; Civ. P. ‘22 Section 500; Civ. P. ‘12 Section 279; Civ. P. ‘02 Section 248; 1870 (14) 475 Section 250; 1879 (17) 23; 1897 (22) 450.

CROSS REFERENCES

Attachment of commercial fertilizer sold or shipped in violation of law, see Section 46‑25‑1100.

Attachment of motor vehicle to enforce lien for damages or wrongful‑death claim, see Section 29‑15‑20.

Enforcement of State’s lien on commercial fertilizer for fines and penalties for illegal sale, etc., see Section 46‑25‑1100.

Where and by whom actions against foreign corporations are brought, see Section 15‑5‑150.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k21 to 44k48.

Attachment 21 to 48.

C.J.S. Attachment Sections 23 to 38, 40 to 46.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 2, Statutory Nature.

S.C. Jur. Attachment Section 4, Grounds for Attachment.

S.C. Jur. Attachment Section 11, Sufficiency.

S.C. Jur. Attachment Section 30, Insufficiency or Want of Grounds for Attachment.

S.C. Jur. Equity Section 19, Injunction.

S.C. Jur. Shipping Law Section 96, Pilotage Services as Ground for Attachment.

S.C. Jur. Shipping Law Section 98, Joinder of Other State Ground for Attachment.

S.C. Jur. South Carolina Rules of Civil Procedure Section 64.2, Discussion.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 1 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: contracts: attachment. 27 S.C. L. Rev. 339.

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1. In general

Applied in Bonebrake v Morrow, 193 SC 170, 190 SE 506 (1937). Southeastern Equipment Co. v One 1954 Autocar Diesel Tractor, 234 SC 213, 107 SE2d 340 (1959).

Attachment is an extraordinary remedy and exists only by reason of the statute providing for same, and the courts have held almost without exception that the provisions of such statutes must be strictly construed. Glenn v One 1946 Tudor Ford, 222 SC 13, 71 SE2d 507 (1952). Brewer v Graydon, 233 SE 124, 103 SE2d 767 (1958).

An action commenced by attachment of property against a nonresident, in which the defendant is not personally served, and does not appear, is a proceeding in rem. Stanley v Stanley, 35 SC 94, 14 SE 675 (1892). Gibson v Everett, 41 SC 22, 19 SE 286 (1894).

An attachment proceeding by its very nature deprives the defendant of the lawful use and possession of his property until such time as the defendant either obtains a favorable judgment or posts a redelivery bond. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

The effect of an attachment is to create a lien or encumbrance on the property attached. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

The attachment lien is perfected when the suit ends in a judgment for plaintiff and the property is sued to satisfy that judgment. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142. Creditors’ Remedies 264

The attachment lien is not a fixed lien, and if, on final adjudication, no liability is adjudged against a defendant, there is no lien against the property. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

Attachment proceeding not a replevin action. See Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

In attachment the goods are strictly in the custody of the law, and the attaching creditor has no interest or property right in or right to possession of the attached goods, by reason of the levy. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

Attachment is a purely statutory remedy, the statutory provisions must be strictly construed, and an attachment lien arises only when the statutory procedure has been strictly followed. Maynard v. Phifer (S.C. 1985) 286 S.C. 76, 332 S.E.2d 99. Creditors’ Remedies 141; Creditors’ Remedies 264

Attachment of foreign respondent’s real property located in South Carolina gave court jurisdiction to hear claims for alimony, attorneys fees, and costs in “divisible divorce” action. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

Plaintiff, being an attaching creditor, can acquire no greater right in the proceeds of a draft attached than defendant had. Charles R. Allen, Inc. v. Island Co‑op. Services Co‑op. Ass’n, Limited (S.C. 1959) 234 S.C. 537, 109 S.E.2d 446. Creditors’ Remedies 261

Cited in Stewart v. Martin (S.C. 1958) 232 S.C. 483, 102 S.E.2d 886.

Where a bond is filed by defendant for the release of property upon which there is a lien originating by attachment, the bond is substituted for the lien. Stephenson Finance Co. v. Burgess (S.C. 1954) 225 S.C. 347, 82 S.E.2d 512.

The procedure by attachment to secure jurisdiction of the defendant under the provisions of this section [former Code 1962 Section 10‑901] is permissible in six circumstances, all referring to the absence or concealment of the defendant or the concealment or disposal of his property, and applies only when the summons is issued, and the service thereof personally or by publication thereof is effected within thirty days after the attachment, the express object of which is security for the satisfaction of such judgment as the plaintiff may recover. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683. Creditors’ Remedies 201

The section was doubtlessly enacted because, the defendant being a nonresident, the court could not obtain jurisdiction of the person of the defendant, and his creditors would be without remedy unless jurisdiction could be acquired over his property in some way. Hence, the attachment. It would seem, therefore, where jurisdiction may be acquired without an attachment, the reason for the rule ceasing, the rule itself would not exist. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840.

2. Purpose

The general purposes of an attachment are to induce the appearance of the defendant and to furnish security for the satisfaction of any judgment that may be rendered. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142. Creditors’ Remedies 141

The purpose of attachment generally is to take a defendant’s property into legal custody so that it may be applied to the plaintiff’s debt, when established. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc. (S.C. 2004) 361 S.C. 117, 603 S.E.2d 905. Creditors’ Remedies 141

The purpose of attachment is to conserve the property of the defendant debtor for eventual execution after the execution shall have proceeded to judgment, unless the debtor procures its release in the manner provided by law. 2 RCL 802, quoted in Lester v. Fox Film Corp. (S.C. 1920) 114 S.C. 414, 103 S.E. 775.

3. Construction with other statutes

The statute regulating the terms and conditions on which a foreign corporation can locate and carry on business within this State does not expressly or impliedly repeal the attachment act relative to attaching the property of a foreign corporation. As it was not expressly repealed, it could only be repealed by implication, and repeals by implication are not favored. Williamson v Eastern Bldg., etc., Ass’n, 54 SC 582, 32 SE 765 (1899). Scurry v Coleman, 14 SC 166 (1880).

This section [former Code 1962 Section 10‑901] and former Code 1962 Sections 10‑501 to 10‑505 must be read together when they refer to one matter common to both, to wit, an action to recover land, or, what is the same thing, an action where title to land comes into controversy. Armstrong v. Carwile (S.C. 1900) 56 S.C. 463, 35 S.E. 196.

4. When attachment issued—In general

An attachment is merely a provisional remedy in aid of an action and hence to make it available, an action must be commenced in regular form. Williamson v Eastern Bldg., etc., Ass’n, 54 SC 582, 32 SE 765 (1899). Stevenson v Dunlap, 33 SC 350, 11 SE 1017 (1890). Campbell v Home Ins. Co., 1 SC 158 (1869). Plowden v Mack, 217 SC 226, 60 SE2d 311 (1950). Harrison v Morris, 370 F Supp 142 (D SC 1974).

It is not necessary, in order to obtain an attachment, that the action be for the recovery of money only, but it may be obtained in many other cases. National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889). Carolina Agency Co. v Garlington, 85 SC 114, 67 SE 225 (1910).

An attachment may be issued under this section [former Code 1962 Section 10‑901] in an action by a creditor to set aside an assignment by his nonresident debtor because of fraudulent preferences. National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889). Ferst v Powers, 58 SC 398, 36 SE 744 (1900).

A nonresident creditor may proceed by attachment on a cause of action arising out of the State. Sheldon v Blauvelt, 29 SC 453, 7 SE 593 (1888). Ex parte Perry Stove Co., 43 SC 176, 20 SE 980 (1895). Gibson v Everett, 41 SC 22, 19 SE 286 (1894).

An attachment of a defendant’s property is permitted in any civil action when money damages are sought in the complaint against a non‑resident defendant who has removed or is about to remove any of his property from this State with intent to defraud his creditors. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

Attachment will not be granted in actions for alienation of affections or criminal conversation. Brewer v. Graydon (S.C. 1958) 233 S.C. 124, 103 S.E.2d 767, 67 A.L.R.2d 524. Creditors’ Remedies 147

The authority may be found under this section [former Code 1962 Section 10‑901] to authorize an attachment in a suit in equity against an agent for an accounting and to recover money only, pursuant thereto. Carolina Agency Co. v. Garlington (S.C. 1910) 85 S.C. 114, 67 S.E. 225.

The property of a foreign corporation may be attached in an action for unliquidated damages sounding in tort. Chitty v. Pennsylvania Ry. Co. (S.C. 1902) 62 S.C. 526, 40 S.E. 944. Creditors’ Remedies 148

A mortgage by a creditor on his stock of goods, having the effect, after a condition is broken, to divest him of the title and vest it in the mortgagee, is such an assignment of his property as would authorize the issue of an attachment under this section [former Code 1962 Section 10‑901] for disposing of property with the intent to defraud creditors. Tabb & Jenkins Hardware Co. v. Gelzer (S.C. 1895) 43 S.C. 342, 21 S.E. 261. Creditors’ Remedies 178

Attachment will not lie in action by resident administrator against nonresident guardian of infants residing in another state. Stevenson v. Dunlap (S.C. 1890) 33 S.C. 350, 11 S.E. 1017.

Attachment of a nonresident against a foreign corporation is valid to the extent that the cause of action arose in this State. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

Acts, made by this section [former Code 1962 Section 10‑901] ground for attachment, if done by an agent without the knowledge of the principal, will not support the statutory remedy of attachment against the property of the principal. Myers v. Whiteheart (S.C. 1886) 24 S.C. 196. Creditors’ Remedies 178

5. —— Statutory requirements must exist, when attachment issued

The legislature did not intend that the remedy by attachment could be resorted to in any action brought for any purpose against any one of the persons designated in the subsequent portions of the section, for, if such had been the intention, it would have been very easy and much more simple to say so in plain words. The very fact, therefore, that the legislature has chosen to specify actions brought for certain purposes as those in which the remedy by attachment could be resorted to affords an irresistible inference that there were actions for other purposes in which it was not intended that the remedy by attachment should be allowed. Addison v. Sujette (S.C. 1897) 50 S.C. 192, 27 S.E. 631.

Attachments are statutory proceedings, and they are intended to summarily dispossess a party of his property, and to hold it subject to the result of an action in progress; and being in direct conflict with that dominion and right which every one has at common law over his own, and which government is constructed to protect, statutes authorizing such proceedings have always been strictly construed, and all of their requirements absolutely demanded to be present. True, they are efficient and useful remedies, and very advantageous to commerce and trade, but still they are harsh and summary and are only allowed upon the conditions found in the statute, which must be made to appear in the affidavit submitted. Wando Phosphate Co. v. Rosenberg (S.C. 1889) 31 S.C. 301, 9 S.E. 969.

6. —— Hearing, when attachment issued

The attachment of the property under this section [former Code 1962 Section 10‑901] is not a final proceeding nor is it unduly harsh. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

There is no necessity for a prior notice or hearing since due process is satisfied by the subsequent preliminary hearing in the main action. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

Hearing at meaningful time is guaranteed. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

The attachment statutes do not, in themselves, assure the hearing, but the fact that the remedy is collateral or ancillary to the main suit guarantees the owner of the seized property due process of the main claim. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

7. Relation of attachment to main suit—In general

Where the motion to dissolve an attachment is on the grounds that the affidavit is not sufficient to sustain an attachment, the plaintiff cannot supplement the defective affidavit by facts stated in the complaint unless it is verified and made a part of the affidavit. Addison v Sujette, 50 SC 192, 27 SE 631 (1897). Addison v Sujette, 51 SC 305, 28 SE 948 (1898). Chitty v Pennsylvania Ry. Co., 62 SC 526, 40 SE 944 (1902). Fleming v Byrd, 78 SC 20, 58 SE 965 (1907).

Attachment now is only a provisional remedy in aid of an action; it follows necessarily that if such action fails for want of jurisdiction, the provisional remedy by attachment in aid of such action must fall with it. Central Railroad & Banking Co. v Georgia Constr., etc., Co., 32 SC 319, 11 SE 192 (1890). Hunter v Ruff, 47 SC 525, 25 SE 65 (1896).

An attachment is merely a provisional remedy in aid of an action, and hence, to make it available, an action must be commenced in regular form. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc. (S.C. 2004) 361 S.C. 117, 603 S.E.2d 905. Creditors’ Remedies 191

Dismissal of the complaint upon which the attachment is based causes the attachment to fall. Skalowski v. Joe Fisher, Inc. (S.C. 1929) 152 S.C. 108, 149 S.E. 340, 65 A.L.R. 1427.

A plaintiff is entitled to attach the property within the State of a defendant foreign corporation at any time during the pendency of the action and prior to the judgment, notwithstanding the defendant may have submitted his person to the jurisdiction of the court by appearance or answer. Lester v. Fox Film Corp. (S.C. 1920) 114 S.C. 414, 103 S.E. 775. Corporations And Business Organizations 3276

Formerly an action could be commenced by attachment, but now it is only a provisional remedy in aid of the action, and if the attachment proceedings should be set aside for some irregularity or other ground, it would not deprive the magistrate of jurisdiction to try the case on its merits, but if the plaintiff should fail to recover judgment, the attachment proceedings would become inoperative. Mims v. Garvin (S.C. 1917) 106 S.C. 381, 91 S.E. 289.

Where a motion is made to dissolve an attachment because the cause of action alleged in the complaint is not the same as that set forth in the affidavit, the complaint may be considered with the affidavit though not verified nor made a part thereof. Fleming v. Byrd (S.C. 1907) 78 S.C. 20, 58 S.E. 965. Creditors’ Remedies 283

After the appearances of the defendant, the jurisdiction of the court over the defendant is independent of the attachment proceedings. Light v. Isear (S.C. 1888) 28 S.C. 440, 6 S.E. 284.

The attachment can operate only on the interest of the debtor. It cannot divest any lien, incumbrance, or title of a third party or affect his interest in any way. If the debtor has no interest the proceeding is futile and its results will be fruitless. Metts v. Piedmont & Arlington Life Ins. Co. (S.C. 1882) 17 S.C. 120.

8. —— Collateral and distinct proceeding, relation of attachment to main suit

The attachment is a collateral proceeding and its sufficiency or regularity is not necessarily involved in the trial of the case. Savings Bank of Fort Mill v Sprunt & Son, 86 SC 8, 67 SE 955 (1910). Lester v Fox Film Corp., 114 SC 414, 103 SE 775 (1920). Cleveland v Cannady, 112 SC 477, 100 SE 147 (1919).

The right of the plaintiff to recover judgment on the alleged indebtedness and his right to attach the property of the defendant are entirely separate and distinct. Mims v. Garvin (S.C. 1917) 106 S.C. 381, 91 S.E. 289. Creditors’ Remedies 191

On a hearing of a motion to dissolve an attachment, the court may decide whether the plaintiff has a cause of action, but the merits of the cause cannot be considered. Williamson v. Eastern Building & Loan Ass’n (S.C. 1899) 54 S.C. 582, 32 S.E. 765, 71 Am.St.Rep. 822.

9. Property subject to attachment—In general

Under applicable federal law, Individual Retirement Account is not exempt from levy or attachment by judgment creditor. Rowland v. Strickland (S.C.App. 1987) 294 S.C. 119, 362 S.E.2d 892. Exemptions 49

If defendant, a Canadian corporation, had an interest in the proceeds of a draft drawn by it on a South Carolina customer, it was subject to attachment. Holding that the defendant had no interest, as title to the draft had passed to a bank which discounted it, Charles R. Allen, Inc. v. Island Co‑op. Services Co‑op. Ass’n, Limited (S.C. 1959) 234 S.C. 537, 109 S.E.2d 446.

Money forwarded to nonresident outside of State by means of telegraph before execution of warrant of attachment was not subject to attachment. Stricklin v. Hodgen (S.C. 1934) 172 S.C. 37, 172 S.E. 770. Creditors’ Remedies 73

A railroad freight car which is being used in interstate commerce is not subject to attachment. Seibels v. Northern Cent. Ry. Co. (S.C. 1908) 80 S.C. 133, 61 S.E. 435.

10. —— Partnership assets, property subject to attachment

Where the parties to an attachment agreed that the attachment would be dissolved, that the property would be sold, and that the funds from the sale would be escrowed, but after the property was sold and the funds escrowed, the parties realized that the property sold was not the same property which had been attached, the property which was sold was never subject to any attachment lien, and the party who had attempted to attach the property did not have an interest in the escrowed funds which could take priority over a judgment lien. Maynard v. Phifer (S.C. 1985) 286 S.C. 76, 332 S.E.2d 99.

The assets of partnership may be attached by the creditors of the partnership, though one of the members of the partnership has been declared a bankrupt. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

In an action against a partnership on a firm debt, which is a joint debt in this State, it was held that the interest of a nonresident partner in the firm assets could not be attached under this section [former Code 1962 Section 10‑901]. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840.

11. Service on nonresident defendants—In general

Affidavit made on February 22, 1932, could not sustain warrant of attachment against nonresident issued on May 31, 1933. Stricklin v. Hodgen (S.C. 1934) 172 S.C. 37, 172 S.E. 770. Creditors’ Remedies 304

The proceedings for publication of a summons to a nonresident before attachment of his property under this section [former Code 1962 Section 10‑901] are void. Little v. Christie (S.C. 1904) 69 S.C. 57, 48 S.E. 89.

A written admission of service of summons by a duly authorized attorney for the defendant is binding on the defendant, and such acceptance need not be in the firm’s name, nor need it be in the name of each member thereof. Sullivan v. Susong (S.C. 1893) 40 S.C. 154, 18 S.E. 268. Partnership 750

In a case where a railroad contractor from another state takes a contract within the State and stays for at least a year to finish such contract, and expects to remain permanently, and owns valuable property within the jurisdiction of the court, he is not a nonresident under this section [former Code 1962 Section 10‑901]. Munroe v. Williams (S.C. 1892) 37 S.C. 81, 16 S.E. 533. Creditors’ Remedies 303

Action is commenced when summons is issued in good faith. Montague v. Stelts (S.C. 1892) 37 S.C. 200, 15 S.E. 968, 34 Am.St.Rep. 736.

This section [former Code 1962 Section 10‑901] contains no limitation as to the character of persons, so far as residence is concerned, who may sue out an attachment. Central Railroad & Banking Co. v. Georgia Construction & Investment Co. (S.C. 1890) 32 S.C. 319, 11 S.E. 192, rehearing denied 11 S.E. 638.

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. A personal service out of the State may be quite as efficacious as a service by publication and deposit in the post office. George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103.

The Supreme Court said that “residence” and “domicile” are not identical and convertible terms, citing with approval Drake on Attachments, (7th Ed) Sections 58, 59. The court said “In determining whether a debtor is a resident of a particular state, the question as to his domicile is not necessarily always involved, for he may have a residence which is not in law his domicile. Domicile includes residence with an intention to remain; while no length of residence without the intention of remaining, constitutes domicile. A resident and an inhabitant mean the same thing. A person resident is defined to be one ‘dwelling or having his place of abode in any place.’ These terms are therefore used synonymously.” in the case of Munroe v. Williams (S.C. 1892) 37 S.C. 81, 16 S.E. 533.

12. —— Effect of irregularities in summons or process of service, service on nonresident defendants

The acceptance of service in an action involving an attachment does not waive irregularities relative to formalities of the attachment, but merely gives jurisdiction of the person of the defendant and is no waiver of any failure on the plaintiff’s part to comply with the statute. Lester v. Fox Film Corp. (S.C. 1920) 114 S.C. 414, 103 S.E. 775.

In an attachment of real property of a nonresident defendant, where a copy of the summons was not mailed to him at his correct place of residence but to a place where the judgment creditor was informed was his residence, such fact did not render the judgment absolutely void but at most only rendered the judgment voidable by subsequent proceedings instituted for that purpose. Hunter v. Ruff (S.C. 1896) 47 S.C. 525, 25 S.E. 65. Judgment 490(2)

An attachment is not void when the summons bears the same date as the attachment, but the sheriff’s endorsement shows service the next day. Cureton v. Dargan (S.C. 1879) 12 S.C. 122.

The attachment is not void because it bears a date before the date of the summons; the existence of the summons at the date of the attachment may be shown aliunde. Smith & Melton v. Walker (S.C. 1875) 6 S.C. 169. Creditors’ Remedies 282

13. Adequacy of remedy

Attachment was not an adequate remedy at law for alleged financial exploitation of vulnerable property owners by their caregiver and trustee, and, thus, attachment remedy did not preclude preliminary injunction to preserve, until the matter was adjudicated, the $2 million in accounts, monies, and personal property allegedly taken and any assets purchased with it; ownership of the property was disputed issue as caregiver/trustee alleged that the transfers were gifts, and approximately $1.4 million of the disputed funds was transferred to an unknown location such that money and property purchased with it could not be attached. Grosshuesch v. Cramer (S.C. 2005) 367 S.C. 1, 623 S.E.2d 833, rehearing denied, on subsequent appeal 377 S.C. 12, 659 S.E.2d 112. Injunction 1173

Golf course failed to establish that it lacked an adequate remedy at law to collect damages in breach of contract and negligence suit against developer, as required for preliminary injunction to escrow developer’s assets; statutory remedy of attachment was available to golf course to prevent developer from moving assets out of state in event golf course succeeded on claim that developer was liable for saltwater infiltration of irrigation lagoons. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc. (S.C. 2004) 361 S.C. 117, 603 S.E.2d 905. Injunction 1231

**SECTION 15‑19‑20.** Attachment in libel and slander actions against nonresidents or foreign corporations.

 Any and all attachments issued, made or levied in any of the courts of this State of the property, goods or credits of any nonresident of this State or of any foreign corporation in actions for libel and slander, if otherwise good and valid, shall stand as if the suit had been brought upon any other cause of action mentioned in Section 15‑19‑10 or otherwise provided by the law.

HISTORY: 1962 Code Section 10‑902; 1952 Code Section 10‑902; 1942 Code Section 527‑1; 1932 Code (37) 1116.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k22.

Attachment 22.

C.J.S. Attachment Sections 26, 37.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 4, Grounds for Attachment.

NOTES OF DECISIONS

In general 1

1. In general

As to attachment in actions for libel or slander, see former Code 1962 Section 10‑902. For cases decided prior to enactment of that section and holding that attachment would not be granted in such actions, see Addison v Sujette, 50 SC 192, 27 SE 631 (1897). Addison v Sujette, 51 SC 305, 28 SE 948 (1898). Sargent v Helmbold, Harp. (16 SCL) 219. Carolina Agency Co. v Garlington, 85 SC 114, 67 SE 225 (1910).

This section [former Code 1962 Section 10‑902] broadened the field in which attachments lie. Brewer v. Graydon (S.C. 1958) 233 S.C. 124, 103 S.E.2d 767, 67 A.L.R.2d 524.

**SECTION 15‑19‑30.** Attachment when debt is not due.

 Whenever a debt is not yet due and it appears to the satisfaction of a circuit judge, clerk of the court of common pleas or magistrate, by affidavit, that the debtor has departed from the State with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with a like intent or that such person has removed or is about to remove any of his property from this State with intent to defraud his creditors or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his property with like intent, the plaintiff forthwith may institute suit upon such debt or cause of action, and the circuit judge, clerk or magistrate may issue his warrant of attachment as if such debt were then due and payable. But no judgment shall be had thereon until after the maturity of the debt. The plaintiff shall pay the costs in case the debtor pays the debt on or before its maturity.

HISTORY: 1962 Code Section 10‑903; 1952 Code Section 10‑903; 1942 Code Section 536; 1932 Code Section 536; Civ. P. ‘22 Section 509; Civ. P. ‘12 Section 288; Civ. P. ‘02 Section 255b; 1883 (18) 491.

CROSS REFERENCES

Arrest in civil actions when defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors, see Section 15‑17‑20.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k26.

Attachment 26.

C.J.S. Attachment Section 24.

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1. In general

Cited in First Nat. Bank of Richmond, Ind. v Badham, 86 SC 170, 68 SE 536 (1910). Correll v Georgia Const., etc., Co., 35 SC 593, 14 SE 65 (1891).

Quoted in Bissonette v. Joseph (S.C. 1933) 170 S.C. 407, 170 S.E. 467.

Showing for attachment not necessarily identical with that for leave to sue on debt not due; nor does existence of one prove the other. Correll v. Georgia Const. & Inv. Co. (S.C. 1892) 37 S.C. 444, 16 S.E. 156.

The showing necessary under this section [former Code 1962 Section 10‑903] to support an attachment is not necessarily dependent upon the showing necessary to authorize a suit for debt not due. Light v. Isear (S.C. 1888) 28 S.C. 440, 6 S.E. 284.

The subsequent abatement of a warrant of attachment issued under the authority of this section [former Code 1962 Section 10‑903] does not affect a suit for a debt not due, as there is no necessary dependence of one upon the other. Light v. Isear (S.C. 1888) 28 S.C. 440, 6 S.E. 284.

2. Conditions precedent to action

These requirements as set out by this section [former Code 1962 Section 10‑903] were intended to be conditions precedent, and that they were to be complied with before the action could issue on the debt not due. Correll v Georgia Const., etc., Co., 37 SC 444, 16 SE 156 (1892). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929).

3. Affidavits

If nothing appears in the affidavit to show that part of the debt is not yet due or that the defendant was attempting any of the acts set out in this section [Code 1962 Section 10‑903], the case cannot be brought within the section. Correll v Georgia Const., etc., Co., 37 SC 444, 16 SE 156 (1892). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929).

It must first appear by affidavit to the satisfaction of the court that the debtor has removed or is about to remove any of his property from the State with the intent to defraud his creditors. Skalowski v. Joe Fisher, Inc. (S.C. 1929) 152 S.C. 108, 149 S.E. 340, 65 A.L.R. 1427. Creditors’ Remedies 212

4. Amendments to complaint

In an attachment proceeding under this section [former Code 1962 Section 10‑903], when amendments to the complaint were made alleging that the debt sued for was incurred by the defendant through his having obtained the property by fraud, false pretenses and representations, such amendments do not destroy the causes of action and create new ones, so as to destroy the attachments as incidents to the original causes of action. Ex parte Chase (S.C. 1901) 62 S.C. 353, 38 S.E. 718.

**SECTION 15‑19‑40.** Persons authorized to grant attachment.

 A warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought or from a circuit judge.

HISTORY: 1962 Code Section 10‑904; 1952 Code Section 10‑904; 1942 Code Section 528; 1932 Code Section 528; Civ. P. ‘22 Section 501; Civ. P. ‘12 Section 280; Civ. P. ‘02 Section 249; 1870 (14) 475 Section 251.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k70.

Attachment 70.

C.J.S. Attachment Section 64.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 14, Jurisdiction to Issue Warrant.

**SECTION 15‑19‑50.** Affidavit required.

 The warrant may be issued whenever it shall appear by affidavit that a cause of action exists against the defendant, specifying the amount of the claim and the grounds thereof, and that the defendant is:

 (1) A foreign corporation or not a resident of this State;

 (2) The master, captain or agent of any sailing vessel entering any of the ports of this State and is about to take such vessel out of any port of this State without paying the pilotage fees provided by law; or

 (3) (a) Has departed from the State with intent to defraud his creditors or to avoid service of a summons or keeps himself concealed therein with the like intent, (b) has removed or is about to remove any of his property from this State with intent to defraud his creditors or (c) has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his property with the like intent, whether such defendant be a resident of this State or not.

 But in cases in which the defendant is the master, captain or agent of any vessel entering any of the ports of this State it shall only be necessary that the affidavit show that a cause of action exists against such defendant for pilotage services, specifying the amount of the claim and the grounds thereof, and that the defendant is about to take such vessel out of any port of this State and refuses to pay or has not paid the fees provided by law for such pilotage services.

HISTORY: 1962 Code Section 10‑905; 1952 Code Section 10‑905; 1942 Code Section 529; 1932 Code Section 529; Civ. P. ‘22 Section 502; Civ. P. ‘12 Section 281; Civ. P. ‘02 Section 250; 1870 (14) 475 Section 252; 1897 (22) 451; 1899 (23) 31.

CROSS REFERENCES

Attachment of motor vehicle to enforce lien for damages or wrongful‑death claim, see Section 29‑15‑20.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k77 to 44k127.

Attachment 77 to 127.

C.J.S. Attachment Sections 72 to 113.

RESEARCH REFERENCES

ALR Library

129 ALR 779 , Attack Upon Attachment After Judgment, Because of Defects or Irregularities.

Encyclopedias

S.C. Jur. Attachment Section 10, Purpose.

S.C. Jur. Attachment Section 11, Sufficiency.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 2 , Introductory Comments.

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1. In general

Applied in Galletley v Strickland, 74 SC 394, 54 SE 576 (1906). Littlejohn v Southern Ry. Co., 45 SC 96, 22 SE 761 (1895). South Carolina Highway Department v Isthmian, S. S. Co., 210 SC 408, 43 SE2d 132 (1947). Harrison v Morris, 370 F Supp 142 (D SC 1974).

Cited in Alexander v Jamison, 56 SC 409, 34 SE 695 (1900). Ex parte Chase, 62 SC 353, 38 SE 718 (1901). Hall v Locke, 118 SC 267, 110 SE 385 (1921). McDowell v Kimbrell, 120 SC 251, 113 SE 75 (1922). Mims v Garvin, 106 SC 381, 91 SE 289 (1917).

There is no requirement that the affidavit must be made by a particular person. Thus, an affidavit need not be made by the plaintiff, but may be made by an agent or attorney on information and belief, and the same affidavit may be used in several cases. Grollman v Lipsitz, 43 SC 329, 21 SE 272 (1895). Guckenheimer v Libbey, 42 SC 162, 18 SE 999 (1894).

In an attachment case, it is sufficient that the complaint or affidavit set out a cause of action. The writ is not founded on the formal complaint but on the plaintiff’s affadivit as to the facts upon which the writ is prayed. Josey v. Reynolds (S.C. 1929) 152 S.C. 339, 150 S.E. 67.

The cause of action, which under this section [former Code 1962 Section 10‑905] is necessary to authorize attachment, consists in a right in the plaintiff, a correlative duty or obligation resting on the defendant, and some act of omission done by the latter in violation of that right. Skalowski v. Joe Fisher, Inc. (S.C. 1929) 152 S.C. 108, 149 S.E. 340, 65 A.L.R. 1427.

An automobile causing injury or damage while operated negligently or carelessly or in violation of law may be attached under former Code 1962 Section 45‑551, though none of the conditions required by this section [former Code 1962 Section 10‑905] are shown by affidavit. Richbourg v. Ragin (S.C. 1927) 140 S.C. 250, 138 S.E. 801.

While the affidavit must be signed by the affiant, the jurat thereto need not be signed by the officer administering the oath. Doty v. Boyd (S.C. 1896) 46 S.C. 39, 24 S.E. 59.

2. Definitions

An affidavit is: “A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.” Town of Mayesville v. Clamp (S.C. 1929) 149 S.C. 346, 147 S.E. 455.

3. Sufficiency of affidavit—In general

In a motion to vacate an attachment made under this section [former Code 1962 Section 10‑905], it is competent for the court to decide at chambers whether the affidavit shows that a cause of action exists against the defendant. Williamson v Eastern Bldg., etc., Ass’n, 54 SC 582, 32 SE 765 (1899). Seibels v Northern Central Ry. Co., 80 SC 133, 61 SE 435 (1908).

For affidavit held sufficient to meet requirements of this section [former Code 1962 Section 10‑905], see Melton v. Walker (S.C. 1946) 209 S.C. 330, 40 S.E.2d 161.

An affidavit that the property which the defendant is alleged to have fraudulently disposed of was not a part of the defendant’s homestead was not necessary for the issuing of an attachment. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 214

Where a railroad contractor from another state takes a contract within the State and stays for at least a year to finish such contract, and expects to remain permanently, and owns valuable property within the jurisdiction of the court, he is not a nonresident under this section [former Code 1962 Section 10‑905]. Munroe v. Williams (S.C. 1892) 37 S.C. 81, 16 S.E. 533. Creditors’ Remedies 303

An affidavit alleging a cause of action on a plain money demand against the assignor is sufficient to sustain an attachment over his objection, though the facts stated are not sufficient to sustain an action to set aside the conveyance to his codefendant, the assignee. National Exch. Bank v. Stelling (S.C. 1889) 31 S.C. 360, 9 S.E. 1028. Creditors’ Remedies 214

The attachment laws as laid down in the Code regulating attachments are fully answered when the exact language of the Code is stated. George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103.

On appeal from a refusal to vacate an attachment against a nonresident, the finding of the trial court as to the residence of the defendant is conclusive, since it is a question of fact. George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103. Appeal And Error 1008.1(8.1)

4. —— Cause of action must be shown, sufficiency of affidavit

The bare allegation of a wicked intent will not support the process of attachment. The affidavit must positively state the facts from which the inference of wicked intent may be drawn, or, if stated upon information and belief, the sources of that information. Smith & Melton v Walker, 6 SC 169 (1875). Brown v Morris, 10 SC 467 (1879). Claussen v Fultz, 13 SC 476 (1880). Burch v Brantley, 20 SC 503 (1884). Ivy v Caston, 21 SC 583 (1884). Myers v Whiteheart, 24 SC 196 (1886). Mixson v Holley, 26 SC 256, 2 SE 385 (1887). Monday v Elmore, 27 SC 126, 3 SE 65 (1887). Wando Phosphate Co. v Rosenberg, 31 SC 301, 9 SE 969 (1889). Roddey v Erwin, 31 SC 36, 9 SE 729 (1889). Sharp v Palmer, 31 SC 444, 10 SE 98 (1889). Virginia‑Carolina Chemical Co. v Wilkins, 105 SC 291, 89 SE 659 (1916). Witherspoon Co. v Bell, 132 SC 303, 128 SE 503 (1925). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929).

The affidavit is sufficient if it states a cause of action, or if it states facts from which, as a legal conclusion, it must be inferred that a cause of action does exist. Monday v Elmore, 27 SC 126, 3 SE 65 (1887). Central Railroad & Banking Co. v Georgia Constr., etc., Co., 32 SC 319, 11 SE 192 (1890). Roddey v Erwin, 31 SC 36, 9 SE 729 (1889). National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889). Ketchin v Landecker, 32 SC 155, 10 SE 936 (1890).

An affidavit required by this section must indicate that defendant is a foreign corporation and must state a cause of action or state facts from which it must be inferred, as a legal conclusion, that a cause of action exists. Maiworm & Associates, Inc. v. Maiworm GmbH & Co. (D.C.S.C. 1979) 467 F.Supp. 975. Creditors’ Remedies 214

An affidavit which may be interpreted as alleging an “intent to defraud” on the part of the corporate defendant, but which is unsupported by any allegations of fact, is a mere legal conclusion, insufficient to support the attachment and to bring the case within the terms of this section [Code 1962 Section 10‑905]. Kania v. Atlas Wire & Cable Co. (S.C. 1949) 214 S.C. 232, 51 S.E.2d 762, 8 A.L.R.2d 575. Creditors’ Remedies 214

An affidavit setting forth the fact that the plaintiff has sustained damages to an extent specified, because of a breach of contract, and that the defendant is a nonresident, shows the plaintiff is entitled to a writ of attachment, under this section [former Code 1962 Section 10‑905], where the complaint states a cause of action for breach of contract as set out in the affidavit, though the facts are mixed up with allegations appropriate to a different cause of action. Fleming v. Byrd (S.C. 1907) 78 S.C. 20, 58 S.E. 965. Creditors’ Remedies 217

An affidavit alleging that the defendant has committed certain acts from which a fraudulent intent may be inferred and setting forth admissions by the defendant tending to prove such intent is sufficient upon its face. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 214

5. —— Indefinite statement of claim, sufficiency of affidavit

Where the ground of attachment is the nonresidence of the defendant, the affidavit is sufficient if it states that fact without other facts or circumstances. Smith & Melton v Walker, 6 SC 169 (1875). Roddey v Erwin, 31 SC 36, 9 SE 729 (1889).

It might be conceded that the affidavit is, of itself, insufficient in form, by the reason of the omission of the statement that a cause of action existed, with the amount and grounds thereof as required by statute. Josey v. Reynolds (S.C. 1929) 152 S.C. 339, 150 S.E. 67.

An affidavit to obtain a warrant of attachment, which states that the claim of the plaintiff is about $325 “according to his best information and belief,” is not a sufficient compliance with this section [former Code 1962 Section 10‑905], which provides that the affidavits shall specify the amount of the claim and the ground thereof. Ketchin v. Landecker (S.C. 1890) 32 S.C. 155, 10 S.E. 936. Creditors’ Remedies 214

6. —— Effect of defective affidavit, sufficiency of affidavit

If the plaintiff does not sufficiently state one of the several items that go to make up the amount of his demand, he is liable to have the effect of his attachment limited to that portion of his claim which is capable of computation. Craven v. Akins (S.C. 1949) 215 S.C. 150, 54 S.E.2d 552.

Affidavit which fails to allege ground of the claim, and therefore states no cause of action, does not comply with this section [former Code 1962 Section 10‑905]. Such defect is not cured by reference to unverified statement on annexed sheet. Roberts v. One Intern. Tractor (S.C. 1948) 211 S.C. 488, 46 S.E.2d 62.

It must appear in the affidavit that a cause of action exists against the defendant. And an affidavit which fails to state the amount of the claim and the grounds thereof is fatally defective. Williams v. Carlson (S.C. 1921) 118 S.C. 46, 110 S.E. 69. Creditors’ Remedies 216

On a motion to vacate an attachment because issued upon an affidavit fatally defective, the defects in such affidavit cannot be supplied by the statements and admissions in the defendant’s affidavit submitted at the hearing, but which was not before the clerk at the time of the issuance of the attachment. Addison v. Sujette (S.C. 1897) 50 S.C. 192, 27 S.E. 631. Creditors’ Remedies 274

7. Verified complaint in lieu of affidavit

Where verified complaint states all necessary facts, it may take the place of affidavit. Ferst v Powers, 58 SC 398, 36 SE 774 (1900). Josey v Reynolds, 152 SC 339, 150 SE 67 (1929).

Where the affidavit in attachment purports to incorporate a verified complaint which is attached to and made a part of such affidavit, the complaint may be resorted to for the purpose of supplying any omissions in the affidavit. Addison v Sujette, 50 SC 192, 27 SE 631 (1897). Chitty v Pennsylvania Ry. Co., 62 SC 526, 40 SE 944 (1902). Josey v Reynolds, 152 SC 339, 150 SE 67 (1929).

An unverified complaint attached to the affidavit may not be used to augment the affidavit for the purpose of furnishing grounds for issuing the warrant of attachment. Josey v Reynolds, 152 SC 339, 150 SE 67 (1929). Addison v Sujette, 50 SC 192, 27 SE 631 (1897).

Verified complaint attached to affidavit may be used to augment affidavit for the purpose of furnishing grounds for issuing the warrant of attachment. Josey v. Reynolds (S.C. 1929) 152 S.C. 339, 150 S.E. 67. Creditors’ Remedies 214

**SECTION 15‑19‑60.** Form of affidavit.

 In all cases of attachment in this State the following form of affidavit shall be sufficient, to wit:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| State of South Carolina | ) |   |
|   | ) | Court of |
|   | ) |   |
|   | ) |   |
| Plaintiff, | ) |   |
| Against | ) | Affidavit. |
|   | ) |   |
| Defendant. | ) |   |

 Personally appeared before me \_\_\_\_\_\_\_\_\_\_ who on oath says:

 That \_\_\_\_\_\_\_\_\_\_ is justly and truly indebted to \_\_\_\_\_\_\_\_\_\_ in the sum of \_\_\_ dollars ($\_\_\_), and that \_\_\_\_\_\_\_\_\_\_ is entitled to an attachment against \_\_\_\_\_\_\_\_\_\_ upon the grounds: \_\_\_\_\_\_\_\_\_\_

 \_

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sworn to before me this the \_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
| day of \_\_\_\_\_\_\_\_\_\_ 19\_\_ | ) |   |
|   | ) |   |
|   |

HISTORY: 1962 Code Section 10‑906; 1952 Code Section 10‑906; 1942 Code Section 551; 1932 Code Section 551; 1929 (36) 201; 1931 (37) 205.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k77 to 44k127.

Attachment 77 to 127.

C.J.S. Attachment Sections 72 to 113.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 2 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

It was stated that this section [former Code 1962 Section 10‑906] expressed the manifest legislative intent to simplify and make uniform the procedure upon attachment, and that the ground necessary to be stated in the form of affidavit prescribed by this section [former Code 1962 Section 10‑906] need only be a statement of facts within the purview of former Code 1962 Section 45‑551, in Johnson v Hall, 208 SC 534, 38 SE2d 708 (1946). Cockrell v One 1946 Ford Tudor Sedan, 213 SC 299, 49 SE2d 215 (1948). Kania v Atlas Wire & Cable Co., Inc., 214 SC 232, 51 SE2d 762 (1949).

It was not intended that this section [former Code 1962 Section 10‑906] should relieve the plaintiff from stating in his affidavit the facts previously held by the Supreme Court as necessary to support an attachment upon the ground involved. Kania v. Atlas Wire & Cable Co. (S.C. 1949) 214 S.C. 232, 51 S.E.2d 762, 8 A.L.R.2d 575.

Where the affidavit under this section [Code 1962 Section 10‑906] sets forth that the defendant automobile was being operated in an unlawful, careless, negligent, and reckless manner, that it collided with the auto of the plaintiff, that such collision was due to the manner in which the automobile of the defendant was being operated, and that at such time the defendant, who was the driver of the defendant automobile, was intoxicated, such affidavit is sufficient even though the date of collision is omitted. Cockrell v. One 1946 Ford Tudor Sedan, Bearing Motor No. A‑987356 (S.C. 1948) 213 S.C. 299, 49 S.E.2d 215.

The manifest legislative intent of this section [former Code 1962 Section 10‑906] is to simplify and make uniform the procedure upon attachment. Johnson v. Hall (S.C. 1946) 208 S.C. 534, 38 S.E.2d 708.

WWhere attachment proceedings were brought against an automobile under former Code 1962 Section 45‑551, the ground necessary to be stated in the form of affidavit prescribed by this section [former Code 1962 Section 10‑906] need only be a statement of facts within the purview of former Code 1962 Section 45‑551. Johnson v. Hall (S.C. 1946) 208 S.C. 534, 38 S.E.2d 708.

**SECTION 15‑19‑70.** Filing of affidavit and serving copies thereof.

 The plaintiff procuring such warrant at the time of the issuing thereof shall cause the affidavit on which it was granted to be filed in the office of the clerk of the court of common pleas or with the magistrate in which or before whom the action is to be tried, within forty‑eight hours after the issuance of the attachment. He shall also cause copies thereof to be served on the defendant with the summons, if he can be found within the county.

HISTORY: 1962 Code Section 10‑907; 1952 Code Section 10‑907; 1942 Code Section 529; 1932 Code Section 529; Civ. P. ‘22 Section 502; Civ. P. ‘12 Section 281; Civ. P. ‘02 Section 250; 1870 (14) 475 Section 252; 1897 (22) 451; 1899 (23) 31.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k123; 44k205; 44k212.

Attachment 123, 205, 212.

C.J.S. Attachment Sections 82, 374 to 375, 380, 382.

RESEARCH REFERENCES

ALR Library

129 ALR 779 , Attack Upon Attachment After Judgment, Because of Defects or Irregularities.

NOTES OF DECISIONS

In general 1

1. In general

Prior to the amendment of 1899, this section [former Code 1962 Section 10‑907] provided for the filing of the affidavits within ten days from the issuance of the warrant, and unless so filed the attachment would be discharged on motion. Nor would service of copies on the defendant within that time suffice. Ketchin v Landecker, 32 SC 155, 10 SE 936 (1890). Doty v Boyd, 46 SC 39, 24 SE 59 (1896). Townsend v Sparks, 50 SC 380, 27 SE 801 (1897). Blair v Morgan, 59 SC 52, 37 SE 45 (1900). Ferst v Powers, 58 SC 398, 36 SE 744 (1900).

Where the affidavit on which the warrant of attachment was issued is not filed within the meaning of this section [former Code 1962 Section 10‑907] in the clerks’ office within 48 hours, the defendant is entitled to vacate and set aside the warrant of attachment and the levy made thereunder. Lester v. Fox Film Corp. (S.C. 1920) 114 S.C. 414, 103 S.E. 775. Creditors’ Remedies 214

But new affidavits do not have to be filed on successive warrants being issued, none but the last being served. Hall v. Lemmond (S.C. 1916) 105 S.C. 154, 89 S.E. 545.

Affidavit is filed when delivered to clerk and by him received to be kept on record. Townsend v. Sparks (S.C. 1897) 50 S.C. 380, 27 S.E. 801.

Stated in George Norris Co. v. S.H. Levin’s Sons (S.C. 1908) 81 S.C. 36, 61 S.E. 1103.

**SECTION 15‑19‑80.** Bond required before obtaining attachment.

 Before issuing the warrant, the judge, clerk or magistrate shall require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment or the attachment be set aside by order of the court the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a magistrate when it shall be at least twenty‑five dollars.

HISTORY: 1962 Code Section 10‑908; 1952 Code Section 10‑908; 1942 Code Section 530; 1932 Code Section 530; Civ. P. ‘22 Section 503; Civ. P. ‘12 Section 282; Civ. P. ‘02 Section 251; 1870 (14) 475 Section 253.

CROSS REFERENCES

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

Executing undertaking to third person claiming property attached, see Section 15‑19‑290.

Form of bond, see Section 15‑19‑90.

Proceedings against sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

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

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k128 to 44k139.

Attachment 128 to 139.

C.J.S. Attachment Sections 116 to 129.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 12, Purpose of Bond and Effect of Posting.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 352 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 502 , Introductory Comments.

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1. In general

Cited in Ford v Calhoun, 53 SC 106, 30 SE 830 (1898). Addison v Sujette, 60 SC 58, 38 SE 229 (1901). McDaniel v Patterson, 159 SC 378, 157 SE 72 (1931). Marshall Bros. Furniture Co. v Drawdy, 184 SC 492, 193 SE 49 (1937).

Where a cash bond is posted under this section [former Code 1962 Section 10‑908], there is no requirement that a surety bond also be taken out by the plaintiff. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142. Creditors’ Remedies 206

For additional related case, as to actions for wrongful attachment, see Forrest v. McBee (S.C. 1905) 72 S.C. 189, 51 S.E. 675.

And this is true though bond a nullity. Booker v. Smith (S.C. 1893) 38 S.C. 228, 16 S.E. 774.

The bond given in attachment was intended as additional security to the liability of the plaintiff at common law. Sanders v. Hughes (S.C. 1811).

A party aggrieved by the operation of an attachment improperly sued out or conducted, is not obliged to seek redress on the bond given by the plaintiff in attachment, but may proceed at common law. Sanders v. Hughes (S.C. 1811). Creditors’ Remedies 1144

2. Written undertaking for attachment—In general

The officer issuing the attachment, before issuing it, should have such facts before him as satisfy him that the undertaking is that of the plaintiff. Grollman v Lipsitz, 43 SC 329, 21 SE 272 (1895). Furness v Calhoun, 70 SC 537, 50 SE 194 (1905). Copeland Co. v Brown, 103 SC 177, 87 SE 1002 (1916).

The undertaking provided for under this section [former Code 1962 Section 10‑908] need not be under seal. Grollman v Lipsitz, 43 SC 329, 21 SE 272 (1895). Furness v Calhoun, 70 SC 537, 50 SE 194 (1905). Ferst v Powers, 58 SC 398, 36 SE 744 (1900).

Attachment bond valid though one surety had no property within and other surety lived without county where the attachment was issued. Prevost v. Post (S.C. 1934) 172 S.C. 228, 173 S.E. 628. Creditors’ Remedies 206

“Undertaking” in this section [former Code 1962 Section 10‑908] manifestly means engagement or obligation. National Exch. Bank v. Stelling (S.C. 1889) 31 S.C. 360, 9 S.E. 1028.

3. —— Signatures, written undertaking for attachment

The failure to file the authority to sign the plaintiff’s name to the undertaking provided for in this section [former Code 1962 Section 10‑908] is not fatal to the judgment. Grollman v Lipsitz, 43 SC 329, 21 SE 272 (1895). Furness v Calhoun, 70 SC 537, 50 SE 194 (1905). Copeland Co. v Brown, 103 SC 177, 87 SE 1002 (1916).

Undertaking may be signed by authorized agent of plaintiff. National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889). Furness v Calhoun, 70 SC 537, 50 SE 194 (1905).

A partnership may bind itself by its signature to an undertaking in attachment either by the name of the firm or by the signatures of the individual members composing such firm, provided it appears in the instrument that the intention is to bind the partnership. Grollman v Lipsitz, 43 SC 329, 21 SE 272 (1895). Hampton v Bogan, 55 SC 547, 33 SE 581 (1899).

The written undertaking required must be signed by the plaintiff before the warrant is issued, or the attachment based therein will be set aside. National Exch. Bank v Stelling, 31 SC 360, 9 SE 1028 (1889). Wagener v Booker, 31 SC 375, 9 SE 1055 (1889).

An undertaking as provided for by this section [former Code 1962 Section 10‑908] may be signed by an attorney of record on authority of a telegram from an associate attorney that the plaintiff authorizes the signature of such undertaking. Furness v. Calhoun (S.C. 1905) 70 S.C. 537, 50 S.E. 194.

The names of the plaintiffs may be signed by agents under the authority of telegrams from the plaintiffs which are attached to the undertaking. Ferst v. Powers (S.C. 1900) 58 S.C. 398, 36 S.E. 744. Creditors’ Remedies 206

The undertaking must be signed by all of the plaintiffs before a writ of attachment is issued, or the attachment will be set aside. Guckenheimer v. Dryfus (S.C. 1895) 43 S.C. 443, 21 S.E. 331.

One member of a firm can bind the firm by signing for the firm without special authority so to do. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Partnership 654

An undertaking is a nullity unless signed by plaintiff. Booker v. Smith (S.C. 1893) 38 S.C. 228, 16 S.E. 774.

A bond in attachment without the approval of the clerk endorsed thereon is valid. Watson v. Paschall & Co. (S.C. 1906) 73 S.C. 413, 53 S.E. 646.

4. Remedy when undertaking insufficient—In general

Attachment of bank accounts amounting to some $8,000.00 on $250.00 bond, and later increase of bond by court to $2,000.00, was valid. Prevost v. Post (S.C. 1934) 172 S.C. 228, 173 S.E. 628. Creditors’ Remedies 206

Where the undertaking filed by the plaintiff is insufficient in amount, the remedy is by motion to increase it, and the fact that such undertaking is insufficient is not a ground for the dissolution of the attachment predicated thereon. J.W. Copeland Co. v. Brown (S.C. 1916) 103 S.C. 177, 87 S.E. 1002. Creditors’ Remedies 274

5. —— Waiver, remedy when undertaking insufficient

Where an attachment was irregularly issued on inadequate allegations and insufficient statutory bond, such irregularity was waived by answering on the merits. Carter Grocery Co. v. Wilson (S.C. 1930) 156 S.C. 546, 153 S.E. 566, 72 A.L.R. 118. Creditors’ Remedies 208

6. Liability on written undertaking—In general

In action on a bond given pursuant to this section [former Code 1962 Section 10‑908], there need be no showing that the attachment was either improperly or maliciously sued out. The mere fact that the plaintiff failed to recover, or that the attachment is set aside, is sufficient to warrant a recovery. Frick Co. v. Deiter (S.C. 1933) 168 S.C. 289, 167 S.E. 499. Creditors’ Remedies 1120

And entry of voluntary nonsuit without prejudice effects liability on bond. Entry of voluntary nonsuit, though without prejudice, held dissolution, vacation, and setting aside of attachment, giving rise to liability on attachment bond. Frick Co. v. Deiter (S.C. 1933) 168 S.C. 289, 167 S.E. 499. Creditors’ Remedies 1114

Equity will not enforce liability on a bond in attachment when it appears that the plaintiff in the attachment suit, after he had discovered that the bond was irregular, moved to amend it so as to have it perfected according to law, which motion the defendant in the suit opposed, and the attachment was dissolved and judgment entered for the defendant in that suit for costs and disbursements, which judgment was paid. Booker v. Smith (S.C. 1893) 38 S.C. 228, 16 S.E. 774. Equity 65(1)

7. —— Damages, liability on written undertaking

Neither expressly nor by the slightest implication does this section [former Code 1962 Section 10‑908] provide for any summary procedure for assessment of damages sustained by defendant as the result of the wrongful issuance of an attachment. Walker v. Preacher (S.C. 1938) 188 S.C. 60, 198 S.E. 168.

Inasmuch as there is no special method or procedure for assessing damages prescribed in attachment cases by the statutory law of this State, a prevailing defendant must resort to the common‑law remedy of bringing a separate civil action on the attachment undertaking. Walker v. Preacher (S.C. 1938) 188 S.C. 60, 198 S.E. 168. Creditors’ Remedies 1120

Defendant is entitled to damages under attachment bond, where defendant recovers judgment or where judgment is set aside, dissolved, or vacated. Frick Co. v. Deiter (S.C. 1933) 168 S.C. 289, 167 S.E. 499. Creditors’ Remedies 1114

And all actual, compensatory damages recoverable in suit on bond. All actual damages, compensatory in nature, such as the loss or depreciation in value of the property attached and the costs and expenses which naturally and proximately result from the attachment, may be recovered in a suit on the attachment bond. Frick Co. v. Deiter (S.C. 1933) 168 S.C. 289, 167 S.E. 499. Creditors’ Remedies 1120

**SECTION 15‑19‑90.** Form of bond.

 In all cases of attachment in this State the following form of bond shall be sufficient, to wit:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| State of South Carolina | ) |   |
|   | ) | Court of |
| County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
|   | ) |   |
| Plaintiff, | ) |   |
| Against | ) | Bond |
|   | ) |   |
| Defendant | ) |   |

 We, \_\_\_\_\_\_\_\_\_\_, principal, and \_\_\_\_\_\_\_\_\_\_, surety, acknowledge ourselves bound unto the defendant in the sum of \_\_\_\_\_\_\_\_\_\_ dollars, subject to the following conditions: That the plaintiff is seeking an attachment against the defendant, which is now about to be sued out, returnable to the court above named; now, if the plaintiff shall pay all damages that the defendant may sustain and also all costs that may be incurred by him in consequence of the suing out such attachment, in the event that the plaintiff shall fail to recover in said case, then this bond to be void.

 Done this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signed, sealed and delivered | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal) |
| in the presence of: | ) |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal) |

|  |
| --- |
|  |
| State of South Carolina, |
| County of \_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_ being first duly sworn says: |

That he saw the above named \_\_\_\_\_\_\_\_\_\_, plaintiff, and \_\_\_\_\_\_\_\_\_\_, surety, sign, seal and as their act and deed deliver the foregoing instrument for the uses and purposes therein expressed and that he with \_\_\_\_\_\_\_\_\_\_ witnessed the execution thereof.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sworn to before me this the  | ) |   |
|   | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| day of \_\_\_\_\_\_\_\_\_\_ 19\_\_ | ) |   |

\_\_\_\_\_\_\_\_\_\_(Seal) The foregoing bond filed and approved this

\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |  |
| --- | --- |
|  |  |
|   |   |
|   |   |

HISTORY: 1962 Code Section 10‑910; 1952 Code Section 10‑910; 1942 Code Section 551; 1932 Code Section 551; 1929 (36) 201; 1931 (37) 205.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k132.

Attachment 132.

C.J.S. Attachment Sections 118, 122 to 124.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 352 , Introductory Comments.

**SECTION 15‑19‑100.** Persons to whom attachment shall be directed.

 The warrant shall be directed to any sheriff or constable of any county in which property of the defendant may be and shall require him to attach and safely keep all the property of such defendant within his county, or so much thereof as may be sufficient to satisfy the plaintiff’s demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses. Several warrants may be issued at the same time to the sheriffs or constables of different counties.

HISTORY: 1962 Code Section 10‑911; 1952 Code Section 10‑911; 1942 Code Section 531; 1932 Code Section 531; Civ. P. ‘22 Section 504; Civ. P. ‘12 Section 283; Civ. P. ‘02 Section 252; 1870 (14) Section 254.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k140 to 44k158.

Attachment 140 to 158.

C.J.S. Attachment Sections 64, 115, 156 to 169.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 7, Jurisdiction Over Property Interest Attached.

S.C. Jur. Attachment Section 15, Who May Execute Warrant.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Glenn v. One 1946 Tudor Ford (S.C. 1952) 222 S.C. 13, 71 S.E.2d 507.

If a personal defendant is a resident of the county in which an action is brought and has property which the plaintiff has the right to attach, the court’s jurisdiction of the personal defendant gives it jurisdiction to issue a warrant of attachment directed to the sheriff of any county in which the property of such defendant may be found. Brigman v. One 1947 Ford Convertible Coupe Auto., License No. D‑105,173 (S.C. 1948) 213 S.C. 546, 50 S.E.2d 688. Creditors’ Remedies 196; Creditors’ Remedies 237

A cause of action arose in one county whereby a resident of that county brought action in rem against an automobile. A writ of attachment was levied and the automobile was seized in another county where the owner resided. It was held that the court of the first county was correct in not dismissing the attachment and changing place of trial to the county of the owner’s residence. Brigman v. One 1947 Ford Convertible Coupe Auto., License No. D‑105,173 (S.C. 1948) 213 S.C. 546, 50 S.E.2d 688. Automobiles 250

And writ of attachment need not be served except in case of attachment of real property. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

Affidavits and warrant need not be served on defendant in attaching personalty. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 206

For additional related case as to moneys received on execution in hands of sheriff, see Blair v. Cantey (S.C. 1843) 42 Am.Dec. 360.

Cited in La Varre v. International Paper Co., 1929, 37 F.2d 141.

**SECTION 15‑19‑110.** Issuance and form of attachment.

 When the affidavit and bond are filed with the clerk of court of any county of this State or with a magistrate, when the amount involved is within his jurisdiction, he shall issue his warrant of attachment in the following form: State of South Carolina \_\_\_\_\_\_\_\_\_\_ County.

 Attachment.

To all and singular the sheriffs and constables of said State and county:

 You are hereby commanded to attach and seize \_\_\_\_\_\_\_\_\_\_ or so much of the property of \_\_\_\_\_\_\_\_\_\_ as will make the sum of \_\_\_\_\_\_\_\_\_\_ dollars and all costs, to serve such summons as may be placed in your hands and to make return of this attachment, with your actings and doings entered thereon, to this court. Hereof fail not.

 Witness my hand and seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |
| --- |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S.) |

HISTORY: 1962 Code Section 10‑912; 1952 Code Section 10‑912; 1942 Code Section 551; 1932 Code Section 551; 1929 (36) 201; 1931 (37) 205.

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: 44k140 to 44k158.

Attachment 140 to 158.

C.J.S. Attachment Sections 64, 115, 156 to 169.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 137 , Writ, Warrant, or Order of Attachment‑South Carolina.

ARTICLE 3

Service and Subsequent Proceedings

**SECTION 15‑19‑210.** Service and answer upon execution of warrant.

 Immediately upon the issuance of the warrant of attachment as provided for in Section 15‑19‑110 the sheriff or constable shall execute such warrant and the plaintiff, if the defendant shall not have been served with a copy of the complaint with the summons, shall within ten days after being required so to do by the defendant serve a copy of the complaint in the action on the defendant or his attorney at the address given in the notice requiring the complaint. The defendant shall have twenty days thereafter to answer the complaint, if in the court of common pleas, or to appear, if before a magistrate.

HISTORY: 1962 Code Section 10‑921; 1952 Code Section 10‑921; 1942 Code Section 551; 1932 Code Section 551; 1929 (36) 201; 1931 (37) 205.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k153.

Attachment 153.

C.J.S. Attachment Section 165.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 159 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Only an authorized officer may execute a warrant of attachment. Glenn v. One 1946 Tudor Ford (S.C. 1952) 222 S.C. 13, 71 S.E.2d 507. Creditors’ Remedies 244

A rural policeman of York County had no authority to serve a warrant of attachment directed to sheriffs and constables of the State and of York County. Such service was improper and should be set aside. Glenn v. One 1946 Tudor Ford (S.C. 1952) 222 S.C. 13, 71 S.E.2d 507.

**SECTION 15‑19‑220.** Property which is subject to attachment.

 The rights or shares which any defendant may have in any vessel or in the stock of any association or corporation, together with the interest and profits thereon, and all other property of such defendant in this State, except that exempt from attachment by the Constitution, shall be liable to be attached and levied upon and sold to satisfy the judgment and execution.

HISTORY: 1962 Code Section 10‑922; 1952 Code Section 10‑922; 1942 Code Section 537; 1932 Code Section 537; Civ. P. ‘22 Section 510; Civ. P. ‘12 Section 289; Civ. P. ‘02 Section 256; 1870 (14) 476 Section 258; 1883 (18) 491.

CROSS REFERENCES

Award from State Office of Victim Assistance as exempt from attachment, garnishment, or execution, see Section 16‑3‑1300.

Constitutional provisions pertaining to exemptions, see SC Const, Art 3, Section 28.

Homestead and other exemptions generally, see Sections 15‑41‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k49 to 44k65.

Attachment 49 to 65.

C.J.S. Attachment Sections 47 to 61.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 5, Types of Property Subject to Attachment.

S.C. Jur. Attachment Section 6, Jurisdiction Over Defendant.

S.C. Jur. Attachment Section 7, Jurisdiction Over Property Interest Attached.

NOTES OF DECISIONS

In general 1

Attachment of particular kinds of property 2‑4

In general 2

Debt due defendant by another person 4

Equitable interest 3

Debt due defendant by another person, attachment of particular kinds of property 4

Equitable interest, attachment of particular kinds of property 3

1. In general

Cited in Richardson v Wallace, 39 SC 216, 17 SE 725 (1893). Pelzer Mfg. Co. v Pitts & Hartzog, 76 SC 349, 57 SE 29 (1907).

Exemption referred to in this section [former Code 1962 Section 10‑922] is doubtless the homestead exemption. Lanahan v. Bailey (S.C. 1898) 53 S.C. 489, 31 S.E. 332, 69 Am.St.Rep. 884.

2. Attachment of particular kinds of property—In general

Sheriff cannot attach automobile of defendant in county other than his own. Whitworth v. Wing (S.C. 1923) 125 S.C. 146, 118 S.E. 177.

Alcoholic liquors kept contrary to the law cannot be attached, since it would defeat the State’s right of forfeiture. Lanahan v. Bailey (S.C. 1898) 53 S.C. 489, 31 S.E. 332, 69 Am.St.Rep. 884.

Where an attachment is set aside after sale, the proceeds of the sale may be attached for the same debt while in the sheriff’s hands. Roddey v. Erwin (S.C. 1889) 31 S.C. 36, 9 S.E. 729. Creditors’ Remedies 83

Property in hands of receiver cannot be attached. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

In an action against a partnership on a firm debt, which is a joint debt in this State, it was held that the interest of a nonresident partner in the firm assets could not be attached under this section [former Code 1962 Section 10‑922]. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840.

Where goods have been levied on by a sheriff under an execution in his hands and before they are sold a writ of foreign attachment against the same defendant is lodged in his office, he may levy the attachment on the goods. Day v. Becher (S.C. 1841). Creditors’ Remedies 83; Creditors’ Remedies 243

Under the former attachment act a claim for damages was held not to be the subject of attachment. Burrill v. Letson (S.C. 1844).

Money levied in execution by the sheriff upon fieri facias and in his hands is not subject to attachment. Blair v. Cantey (S.C. 1843) 42 Am.Dec. 360. Creditors’ Remedies 83

Interest of nonresident corporation in stock of South Carolina corporation, pledged to it as security for a debt, is property located in this State and under this section [former Code 1962 Section 10‑922] can only be attached and reached by a levy on the offices of the South Carolina corporation in this State. La Varre v. International Paper Co., 1929, 37 F.2d 141. Corporations And Business Organizations 3283; Creditors’ Remedies 197

3. —— Equitable interest, attachment of particular kinds of property

All property of debtor, legal or equitable, is subject to attachment. Pelzer Mfg. Co. v Pitts & Hartzog, 76 SC 349, 57 SE 29 (1907). Charles R. Allen, Inc. v Rhode Island Ins. Co., 217 SC 296, 60 SE2d 609 (1950). Charles R. Allen, Inc. v Island Cooperative Services Cooperative Ass’n Ltd., 234 SC 537, 109 SE2d 446 (1959).

The equitable interest of a firm in a certificate of stock, securing the note of a partner given as a contribution to the partnership capital, is subject to an attachment for a firm debt. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665. Creditors’ Remedies 29

4. —— Debt due defendant by another person, attachment of particular kinds of property

Debt due defendant by another person may be attached. McKelvey v South Carolina R. Co., 6 SC 446 (1876). Campbell v Home Ins. Co., 1 SC 158 (1869). LaVarre v International Paper Co., 37 F2d 141 (1929).

Books of account due defendant by another person may be attached. Reily v Middleton, Dud (23 SCL) 21. Waddle v Cureton, 2 Spears (29 SCL) 53.

The interest of the debtor subject to attachment includes any indebtedness owing to him by a third party. Charles R. Allen, Inc. v. Rhode Island Ins. Co. (S.C. 1950) 217 S.C. 296, 60 S.E.2d 609. Creditors’ Remedies 51

An unadjusted claim for loss under a policy of insurance is subject to attachment or garnishment in the hands of the insurance company. This is true even though the insurance company denies any indebtedness to the insured. Charles R. Allen, Inc. v. Rhode Island Ins. Co. (S.C. 1950) 217 S.C. 296, 60 S.E.2d 609.

For case holding that money taken from a prisoner by the Superintendent of the Penitentiary was subject to attachment, see Palmetto State Bank v. English (S.C. 1936) 181 S.C. 69, 186 S.E. 638.

Debts evidenced by notes and bonds may be attached. Williamson v. Eastern Building & Loan Ass’n (S.C. 1899) 54 S.C. 582, 32 S.E. 765, 71 Am.St.Rep. 822.

Indebtedness due by the plaintiff to a nonresident defendant is subject to an attachment in a suit by the plaintiff on the same basis as an attachment of such indebtedness by a third party. La Varre v. International Paper Co., 1929, 37 F.2d 141.

**SECTION 15‑19‑230.** Duty of officer to whom warrant is delivered.

 The sheriff or constable to whom such warrant is directed and delivered shall immediately attach all the real estate of the debtor and all his personal estate, including money and bank notes, except such real and personal estate as is exempt from attachment, levy or sale by the Constitution, and shall take into his custody all books of account, vouchers and papers relating to the property, debts, credits and effects of the debtor, together with all evidences of his title to real estate, all of which he shall safely keep, to be disposed of as directed in this article.

HISTORY: 1962 Code Section 10‑923; 1952 Code Section 10‑923; 1942 Code Section 532; 1932 Code Section 532; Civ. P. ‘22 Section 505; Civ. P. ‘12 Section 284; Civ. P. ‘02 Section 253; 1870 (14) 475 Section 255.

CROSS REFERENCES

Definition of personal property as used herein, see Section 15‑1‑40.

Property subject to attachment, see Sections 15‑19‑10, 15‑19‑220.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k159 to 44k185.

Attachment 159 to 185.

C.J.S. Attachment Sections 170 to 193, 203 to 216, 218 to 228.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

S.C. Jur. Attachment Section 17, Actual Attachment of Levy Required.

NOTES OF DECISIONS

In general 1

Attachment of particular kinds of property 4‑6

In general 4

Debt due defendant by another person 6

Equitable interest 5

Debt due defendant by another person, attachment of particular kinds of property 6

Effect of attachment levied on wrong property 3

Equitable interest, attachment of particular kinds of property 5

Service of writ of attachment 2

1. In general

Applied in Reily v Middleton, Dud (23 SCL) 21. Waddel v Cureton, 2 Spears (29 SCL) 53. Burrill v Letson, 2 Spears (29 SCL) 378.

Cited in Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

No duty exists to make reasonable effort to lessen storage costs where sheriff has obtained storage for attached property at such rates as are reasonable and necessary. Bank Repossessions v. Mobile America Corp. (S.C. 1977) 268 S.C. 622, 235 S.E.2d 709.

It is obvious that the intention of this section [former Code 1962 Section 10‑923] was to subject to attachment process every property interest of the debtor—not only that which is legal and that capable of actual seizure, but that which is equitable, and that requiring action either at law or in equity to make it available for the payment of the attachment debt. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

Where two attachments are levied upon the personal property of the same debtor at different hours of the same day, the one first levied has no priority of lien, but the two rank together. Steffens & Werner v. Wanboeker (S.C. 1882) 17 S.C. 475. Creditors’ Remedies 265

2. Service of writ of attachment

Writ of attachment need not be served except in case of attachment of real property. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

Warrant need not be served on defendant in attaching personality. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 206

3. Effect of attachment levied on wrong property

Where the jurisdiction of the lower court was obtained by virtue of an attachment of the proceeds of a draft, and defendant, a Canadian corporation, had no interest in the proceeds, it was fatal to jurisdiction and the attachment should have been set aside. Charles R. Allen, Inc. v. Island Co‑op. Services Co‑op. Ass’n, Limited (S.C. 1959) 234 S.C. 537, 109 S.E.2d 446.

Where the defendant is a nonresident, the attachment levied to obtain jurisdiction will be dissolved if the property attached is not the property of the defendant. 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.

4. Attachment of particular kinds of property—In general

Sheriff cannot attach automobile of defendant in county other than his own. Whitworth v. Wing (S.C. 1923) 125 S.C. 146, 118 S.E. 177.

Alcoholic liquors kept contrary to the law cannot be attached, since it would defeat the State’s right of forfeiture. Lanahan v. Bailey (S.C. 1898) 53 S.C. 489, 31 S.E. 332, 69 Am.St.Rep. 884.

Where an attachment is set aside after sale, the proceeds of the sale may be attached for the same debt while in the sheriff’s hands. Roddey v. Erwin (S.C. 1889) 31 S.C. 36, 9 S.E. 729. Creditors’ Remedies 83

Property in hands of receiver cannot be attached. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

In an action against a partnership on a firm debt, which is a joint debt in this State, it was held that the interest of a nonresident partner in the firm assets could not be attached under this section [former Code 1962 Section 10‑923]. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840.

Where goods have been levied on by a sheriff under an execution in his hands and before they are sold a writ of foreign attachment against the same defendant is lodged in his office, he may levy the attachment also on the goods. Day v. Becher (S.C. 1841). Creditors’ Remedies 83; Creditors’ Remedies 243

Under the former attachment act a claim for damages was held not to be the subject of attachment. Burrill v. Letson (S.C. 1844).

Money levied in execution by the sheriff upon fieri facias and in his hands is not subject to attachment. Blair v. Cantey (S.C. 1843) 42 Am.Dec. 360. Creditors’ Remedies 83

5. —— Equitable interest, attachment of particular kinds of property

All property of debtor, legal or equitable, subject to attachment. Pelzer Mfg. Co. v Pitts & Hartzog, 76 SC 349, 57 SE 29 (1907). Charles R. Allen, Inc. v Rhode Island Ins. Co., 217 SC 296, 60 SE2d 609 (1950). Charles R. Allen, Inc. v Island Cooperative Services Cooperative Ass’n Ltd., 234 SC 537, 109 SE2d 446 (1959).

The equitable interest of a firm in a certificate of stock, securing the note of a partner given as a contribution to the partnership capital, is subject to an attachment for a firm debt. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665. Creditors’ Remedies 29

6. —— Debt due defendant by another person, attachment of particular kinds of property

Debt due defendant by another person may be attached. McKelvey v South Carolina R. Co., 6 SC 446 (1876). Campbell v Home Ins. Co., 1 SC 158 (1869). LaVarre v International Paper Co., 37 F2d 141 (1929).

The interest of the debtor subject to attachment includes debts evidenced by books of account. Reily v Middleton, Dud (23 SCL) 21. Waddle v Cureton, 2 Spears (29 SCL) 53.

The interest of the debtor subject to attachment includes any indebtedness owing to him by a third party. Charles R. Allen, Inc. v. Rhode Island Ins. Co. (S.C. 1950) 217 S.C. 296, 60 S.E.2d 609. Creditors’ Remedies 51

An unadjusted claim for loss under a policy of insurance is subject to attachment or garnishment in the hands of the insurance company. This is true even though the insurance company denies any indebtedness to the insured. Charles R. Allen, Inc. v. Rhode Island Ins. Co. (S.C. 1950) 217 S.C. 296, 60 S.E.2d 609.

For case holding that money taken from a prisoner by the Superintendent of the Penitentiary was subject to attachment, see Palmetto State Bank v. English (S.C. 1936) 181 S.C. 69, 186 S.E. 638.

The interest of the debtor subject to attachment includes debts evidenced by notes and bonds. Williamson v. Eastern Building & Loan Ass’n (S.C. 1899) 54 S.C. 582, 32 S.E. 765, 71 Am.St.Rep. 822.

ndebtedness due by the plaintiff to a nonresident defendant is subject ot an attachment in a suit by the plaintiff on the same basis as an attachment of such indebtedness by a third party. La Varre v. International Paper Co., 1929, 37 F.2d 141.

**SECTION 15‑19‑240.** Attachment of real estate.

 When real estate is attached a true and attested copy of the attachment, together with a description of the real estate attached, shall be, by the officer serving the warrant of attachment, delivered to the party whose real estate is attached or left at his last and usual place of abode. And the officer making such service shall also leave a true and attested copy of such attachment, together with a description of the real estate so attached, in the office in which by law a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent, or attorney if any be known, and, if no such agent, tenant or attorney be known, then a copy of such warrant of attachment with the officer’s return thereon lodged in the office in which by law a deed of such real estate ought to be recorded shall be deemed sufficient service. The clerk or register of the office wherein any such warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer’s return thereon. Such attachment shall be a lien subject to all prior liens and bind the real estate attached from the date of lodgment. All attachments lodged upon the same day shall take rank together.

HISTORY: 1962 Code Section 10‑924; 1952 Code Section 10‑924; 1942 Code Section 532; 1932 Code Section 532; Civ. P. ‘22 Section 505; Civ. P. ‘12 Section 284; Civ. P. ‘02 Section 253; 1870 (14) 475 Section 255.

CROSS REFERENCES

Clerks of court in counties performing duties of registers, see Section 30‑5‑10.

Mortgages and other liens, generally, see Sections 29‑1‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k167.

Attachment 167.

C.J.S. Attachment Sections 184, 186.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

NOTES OF DECISIONS

In general 1

1. In general

Lien acquired by attachment not divested by subsequent occupation of the lands for homestead purposes. Ex parte Morrow (S.C. 1937) 183 S.C. 170, 190 S.E. 506, 110 A.L.R. 898.

Under this section [former Code 1962 Section 10‑924] the writ of attachment need not be served except in case of an attachment of real estate. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

**SECTION 15‑19‑250.** Effecting execution on property incapable of manual delivery.

 The execution of the attachment upon any rights or shares or any debts or other property incapable of manual delivery to the sheriff or constable shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation or the secretary, cashier or managing agent thereof or with the debtor or individual holding such property, with a notice showing the property levied on.

HISTORY: 1962 Code Section 10‑925; 1952 Code Section 10‑925; 1942 Code Section 538; 1932 Code Section 538; Civ. P. ‘22 Section 511; Civ. P. ‘12 Section 290; Civ. P. ‘02 Section 257; 1870 (14) 477 Section 259.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k162.

Attachment 162.

C.J.S. Attachment Section 177.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

NOTES OF DECISIONS

In general 1

1. In general

Section does not require that “notice” shall be served at instant of delivery of warrant, but service of attachment and notice showing property levied on within two days thereafter was sufficient. Prevost v. Post (S.C. 1934) 172 S.C. 228, 173 S.E. 628.

Cited in Miller & Barnhardt v. Gulf & Atlantic Ins. Co. (S.C. 1925) 132 S.C. 78, 129 S.E. 131.

The provisions of this section [former Code 1962 Section 10‑925] are broad enough by a liberal construction to cover the execution of an attachment on any property incapable of manual delivery to the sheriff, by leaving with the individual holding such property a certified copy of the warrant with a notice showing the property levied upon; and the section may be well construed to embrace such a bulky and unmanageable thing as a freight car. Seibels v. Northern Cent. Ry. Co. (S.C. 1908) 80 S.C. 133, 61 S.E. 435. Creditors’ Remedies 245(3)

An attachment, made under this section [former Code 1962 Section 10‑925] and former Code 1962 Section 10‑923, cannot be set aside merely because the affidavit and warrant were not served upon the defendant. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 240

**SECTION 15‑19‑260.** Certificate of defendant’s interest.

 Whenever the sheriff or constable shall with a warrant of attachment or execution against the defendant apply to such officer, debtor or individual for the purpose of attaching or levying upon such property, such officer, debtor or individual shall furnish him with a certificate, under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or encumbrance thereon, or the amount and description of the property held by such association, corporation or individual for the benefit of or debt owing to the defendant. If such officer, debtor or individual refuses to do so he may be required by the court or judge to attend before him and be examined on oath concerning such rights, shares, property or debt, and obedience to such order may be enforced by attachment.

HISTORY: 1962 Code Section 10‑926; 1952 Code Section 10‑926; 1942 Code Section 539; 1932 Code Section 539; Civ. P. ‘22 Section 512; Civ. P. ‘12 Section 291; Civ. P. ‘02 Section 258; 1870 (14) 477 Section 260.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k162.

Attachment 162.

C.J.S. Attachment Section 177.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 16, Mode and Sufficiency of Attachment.

S.C. Jur. Attachment Section 17, Actual Attachment of Levy Required.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

**SECTION 15‑19‑270.** Duties of officer upon seizure of property.

 The sheriff or constable shall, immediately on making seizure under the provisions of Section 15‑19‑230, with the assistance of two disinterested freeholders, make a just and true inventory of all the property so seized and of the books, vouchers and papers taken into custody, stating therein the estimated value of the several articles of personal property and enumerating such of them as are perishable. Such inventory, after being signed by the sheriff or constable and appraisers, shall within ten days after such seizure be returned to the officer who issued the warrant, and the sheriff or constable shall, under the direction of such officer, collect, receive and take into his possession all debts, credits and effects of such debtor and commence such suits and take such legal proceedings, either in his own name or in the name of such debtor, as may be necessary for that purpose and prosecute and discontinue such suits and proceedings at such times and on such terms as the court may direct. The property so seized or the proceeds of such as shall have been sold and debts collected shall be kept to answer any judgment which may be obtained in such action.

HISTORY: 1962 Code Section 10‑927; 1952 Code Section 10‑927; 1942 Code Section 533; 1932 Code Section 533; Civ. P. ‘22 Section 506; Civ. P. ‘12 Section 285; Civ. P. ‘02 Section 254; 1870 (14) 476 Section 256.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k186 to 44k203.

Attachment 186 to 203.

C.J.S. Attachment Sections 187, 229 to 256, 275 to 285.

NOTES OF DECISIONS

In general 1

1. In general

In an attachment proceeding the property is in the hands of the court and remains in the possession of the court until the main issue of the case is decided. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

The sheriff under this section [former Code 1962 Section 10‑927] acts as a “quasi receiver” under the direction of the officer who issued the warrant. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

An action may be brought by the sheriff on a note seized under this section [former Code 1962 Section 10‑927] while a motion to vacate the judgment is pending. Nichols v. Hill (S.C. 1894) 42 S.C. 28, 19 S.E. 1017. Creditors’ Remedies 249

In an action by a sheriff on a note seized under this section [former Code 1962 Section 10‑927], the note is subject to all of the defenses which could be set up in an action by the defendant in the attachment suit. Nichols v. Hill (S.C. 1894) 42 S.C. 28, 19 S.E. 1017. Bills And Notes 338

**SECTION 15‑19‑280.** Sale of personal property likely to deteriorate or expensive to keep.

 Whenever (a) any officer of this State shall have taken possession of any personal property under process of attachment and the defendant or other intervening party claiming the property fails to replevy such property within sixty days after such property has been attached or seized by such officer, (b) such property remains in the hands of such officer and (c) either such property is of a perishable nature, liable to deteriorate in value, or the keeping of it is attended with considerable expense as compared to the value of the property, such property may be sold by such officer under the direction of the court after giving not less than ten days’ advertisement of the manner, time and place of sale in three public places in the county, one of which shall be on the courthouse door. The court in its discretion may cause such additional notice or manner of advertisement as in its judgment the circumstances demand. The proceeds of any such sale after the payment of the legal expenses shall be turned over to the clerk of court to await the judgment of court.

HISTORY: 1962 Code Section 10‑928; 1952 Code Section 10‑928; 1942 Code Section 534; 1932 Code Section 534; Civ. P. ‘22 Section 507; Civ. P. ‘12 Section 286; Civ. P. ‘02 Section 255; 1870 (14) 476 Section 257; 1883 (18) 491; 1933 (38) 63, 445.

CROSS REFERENCES

Judicial sales generally, see Sections 15‑39‑610 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k194.

Attachment 194.

C.J.S. Attachment Section 275.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 403 , Introductory Comments.

Attorney General’s Opinions

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op Atty’s Gen, No 79‑81, p 107.

NOTES OF DECISIONS

In general 1

1. In general

For additional related cases as to the attachment of car, see Seibels v Northern Central R. Co., 80 SC 133, 61 SE 435 (1908). Shore & Bro. v Baltimore & O. R. Co., 76 SC 472, 57 SE 526 (1907).

Where a motion to vacate the attachment was made and refused, and appeal was taken to the Supreme Court and a stay of proceedings asked for, it was held that the court had a right to order the sale of personal property. Southern Ry. Co. v. Sheppard (S.C. 1894) 42 S.C. 543, 20 S.E. 481.

**SECTION 15‑19‑290.** Proceedings on claim of third person.

 If the person in whose possession property shall be attached shall appear at the return of the writ and file his answer thereto and deny the possession or control of any property belonging to the defendant or claim the money, lands, goods and chattels, debts and books of account as creditor in possession, or in his own right or in the right of some third person, or if any of the property be claimed by any other person than such defendant, then, if the plaintiff be satisfied therewith, the party in possession shall be dismissed and the plaintiff may pay the cost of his action. But if the plaintiff shall contest the return or the claim of such third person an issue shall be made up under the direction of the judge to try the question, and the party that shall prevail in the issue shall recover the cost of such proceeding of the opposite party, and judgment shall be given accordingly. If the party in possession or the third person claiming the property, as the case may be, resides in a different county from that in which the action is brought and an issue be made up between him and the plaintiff the action shall be tried in the county in which the party in possession resides. In case the property is claimed by a third person the plaintiff shall execute to such person the same undertaking that he is now required to give under Section 15‑19‑80. Such undertaking shall be executed within ten days after notice of such claim.

HISTORY: 1962 Code Section 10‑929; 1952 Code Section 10‑929; 1942 Code Section 535; 1932 Code Section 535; Civ. P. ‘22 Section 508; Civ. P. ‘12 Section 287; Civ. P. ‘02 Section 255a; 1883 (18) 491.

CROSS REFERENCES

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

Claim of property by third persons in claim and delivery actions, see Section 15‑69‑200.

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: 44k280 to 44k317.

Attachment 280 to 317.

C.J.S. Attachment Sections 287 to 318.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 18, Operation of Attachment Only as to Rights of Debtor.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 396 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 438 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Court’s discretion 2

Effect of failure to comply with statutory provisions 4

Propriety of motion by third party to vacate attachment 3

1. In general

Applied in Charles R. Allen, Inc. v. Island Co‑op. Services Co‑op. Ass’n, Limited (S.C. 1959) 234 S.C. 537, 109 S.E.2d 446.

This section [former Code 1962 Section 10‑929] clearly contemplates that the issue framed by the court shall be tried in the ordinary manner by the taking of testimony; and while the question as to whether a jury trial may be had as a matter of right is left undecided, it is ordinarily very unsatisfactory to undertake to determine the title or ownership of property by affidavits, and this mode of trying an issue cannot be followed without the consent of the parties. Charles R. Allen, Inc. v. Island Co‑op. Services Co‑op. Ass’n (S.C. 1956) 229 S.C. 313, 92 S.E.2d 851.

Cited in Davis v. W.H. Crozier & Co. (S.C. 1921) 121 S.C. 99, 113 S.E. 377.

The object of this section [former Code 1962 Section 10‑929] was not merely to allow an intervention by one in possession of the property claiming absolute ownership in his own right, but also by one in possession claiming a right to such possession, a special property interest being affected by the attachment. George D. Shore & Bro. v. Baltimore & O.R. Co. (S.C. 1907) 76 S.C. 472, 57 S.E. 526, 11 Am.Ann.Cas. 909.

Where a car loaded with interstate freight belonging to a foreign railroad was shipped into this State, and here attached, it was held that the railroad company in this State, in whose possession the car was, could intervene under the authority of this section [former Code 1962 Section 10‑929]. George D. Shore & Bro. v. Baltimore & O.R. Co. (S.C. 1907) 76 S.C. 472, 57 S.E. 526, 11 Am.Ann.Cas. 909. Creditors’ Remedies 1086

The provisions of this section [former Code 1962 Section 10‑929] apply only to proceedings by attachment and not to proceedings for the enforcement of an agricultural lien or a landlord’s lien for rent. Southern Ry. Co. v. Sarratt (S.C. 1900) 58 S.C. 98, 36 S.E. 504. Landlord And Tenant 1634

2. Court’s discretion

The clause, “an issue shall be made up under the direction of the judge to try the question,” implies discretion in the circuit judge, the liberal exercise of which may be very important in view of the infinite variety of relations the parties may sustain to the property in controversy. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

It is within the discretion of the court under the authority given by this section [former Code 1962 Section 10‑929] to make plaintiffs take the position of actors, thus placing upon them the burden of proof. Pelzer Mfg. Co. v. Pitts & Hartzog (S.C. 1907) 76 S.C. 349, 57 S.E. 29, 11 Am.Ann.Cas. 665.

3. Propriety of motion by third party to vacate attachment

This section [former Code 1962 Section 10‑929] does not provide that a third person who claims the attached property may move to vacate the attachment, but simply provides a mode by which such third person may retain or regain possession of such property, unless the person attaching gives the undertaking in the time prescribed by this section [former Code 1962 Section 10‑929]. Ford v. Calhoun (S.C. 1898) 53 S.C. 106, 30 S.E. 830.

Under this section [former Code 1962 Section 10‑929], assignee of defendant’s property, under deed of assignment, must establish his right to the property before he can move to discharge the attachment under former Code 1962 Section 10‑931. Bryce & Co. v. Foot (S.C. 1886) 25 S.C. 467.

4. Effect of failure to comply with statutory provisions

If the plaintiff should fail to give the undertaking to the third party as provided for under this section [former Code 1962 Section 10‑929] within the specified time, he shall be held to have conceded the rightfulness of the claim. Ex parte Sales, 126 SC 155, 117 SE 350 (1923). Ford v Calhoun, 53 SC 106, 30 SE 830 (1898). First Nat. Bank of Chillicothe v McSwain, 93 SC 30, 75 SE 1106 (1912).

Where the failure to file the bond, as provided for under this section [former Code 1962 Section 10‑929], within the prescribed time was due to mere inadvertence and excusable neglect, and where justice would be better subserved by permitting the filing of the bond, the court may give relief by extending the time under the authority of former Code 1962 Sections 10‑609, 10‑1212 and 10‑1213, in the case of Chesterfield Grocery Co. v. Birch & Donner (S.C. 1919) 101 S.E. 645.

The owner of property attached and sold as the property of the defendant in an attachment suit is not precluded from intervening and recovering from the plaintiff because of his failure to notify the sheriff and the plaintiff that he owned the property. First Nat. Bank v. H.L. & L.F. McSwain (S.C. 1912) 93 S.C. 30, 75 S.E. 1106, Am.Ann.Cas. 1914D,809. Creditors’ Remedies 1141

**SECTION 15‑19‑300.** Discharge or return of property on defendant’s appearance.

 Whenever the defendant shall have appeared in such action he may apply to the officer who issued the attachment or to the court for an order to discharge the attachment, and, if such order be granted, all the proceeds of sales and moneys collected by such officer and all property attached remaining in his hands shall be delivered or paid by him to the defendant or his agent and released from the attachment. And when there is more than one defendant and the several property of either of the defendants has been seized by virtue of the order of attachment any defendant whose several property has been seized may apply to the officer who issued the attachment for relief under this section.

HISTORY: 1962 Code Section 10‑930; 1952 Code Section 10‑930; 1942 Code Section 543; 1932 Code Section 543; Civ. P. ‘22 Section 516; Civ. P. ‘12 Section 295; Civ. P. ‘02 Section 262; 1870 (14) 478 Section 264.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k225 to 44k279.

Attachment 225 to 279.

C.J.S. Attachment Sections 210, 214, 216 to 217, 247 to 253, 255 to 258, 336 to 372.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 461 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Cureton v Dargan, 12 SC 122 (1879). Bates, Reed & Cooley v Killian & Bros., 17 SC 553 (1882). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929). Breedin v S. & H. X‑Ray Co., 173 SC 112, 174 SE 913 (1934). Cooke v McCants, 214 SC 534, 53 SE2d 651 (1949).

An attachment proceeding by its very nature deprives the defendant of the lawful use and possession of his property until such time as the defendant either obtains a favorable judgment or posts a redelivery bond. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

No deprivation where defendant may post redelivery bond immediately. See Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

An owner is not deprived of his property by attachment; the impact is to place the state in temporary possession until the issues can be litigated. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

In attachment the goods are strictly in the custody of the law, and the attaching creditor has no interest or property right in or right to possession of the attached goods, by reason of the levy. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

It is a necessary inference that the appearance provided for in this section [former Code 1962 Section 10‑930] must precede the giving of the bond as provided for in former Code 1962 Sections 10‑931 and 10‑932. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

Appearance of defendant provided for by this section [former Code 1962 Section 10‑930] may be general or special. Able v. Hall (S.C. 1915) 101 S.C. 24, 85 S.E. 165.

For additional related case, see 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.

Property attached may be released by agreement of the parties without an order of the court. Sullivan v. Williams (S.C. 1895) 43 S.C. 489, 21 S.E. 642.

**SECTION 15‑19‑310.** Undertaking on part of defendant.

 Upon application for an order to discharge the attachment, the defendant shall deliver to the court or officer an undertaking executed by at least two sureties who are residents and freeholders or householders in the State, approved by such court or officer, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be less than the amount claimed by the plaintiff the court or officer issuing the attachment may order the property to be appraised and the amount of the undertaking shall then be double the amount so appraised.

HISTORY: 1962 Code Section 10‑931; 1952 Code Section 10‑931; 1942 Code Section 544; 1932 Code Section 544; Civ. P. ‘22 Section 517; Civ. P. ‘12 Section 296; Civ. P. ‘02 Section 263; 1870 (14) 478 Section 265.

CROSS REFERENCES

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

Proceedings against sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

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

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

LIBRARY REFERENCES

Westlaw Key Number Search: 44k261.

Attachment 261.

C.J.S. Attachment Sections 247 to 251, 258.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 12, Purpose of Bond and Effect of Posting.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 352 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Bond on application to discharge attachment 4

Effect of proceedings upon right to seek impeachment of vacation of attachment 3

Purpose and intent 2

1. In general

Cited in Breedin v. S. & H. X‑Ray Co. (S.C. 1934) 173 S.C. 112, 174 S.E. 913.

Proceeding under this section [former Code 1962 Section 10‑931] and former Code 1962 Section 10‑930 is prompt, by which the defendant may at once release his property. Bates, Reed & Cooley v. Killian & Bros. (S.C. 1882) 17 S.C. 553.

2. Purpose and intent

There can be no doubt but that the relief provided for by this section [former Code 1962 Section 10‑931] and former Code 1962 Section 10‑930 was intended primarily to meet the cases where the attachments are regular and valid, yet where it would be a hardship to the debtor to be deprived of the use of his property during the pendency of the action. Bates, Reed & Cooley v. Killian & Bros. (S.C. 1882) 17 S.C. 553.

Remedy hereunder respects the rights and interests of both creditor and debtor, and while it releases the property to the use of the debtor, it gives the creditor a security in the undertaking, which it requires to be equally as reliable as the lien which it displaces. Bates, Reed & Cooley v. Killian & Bros. (S.C. 1882) 17 S.C. 553.

3. Effect of proceedings upon right to seek impeachment of vacation of attachment

When the purpose and intent of the proceeding under this section [former Code 1962 Section 10‑931] are considered, there is no good reason why the adoption of the proceeding provided for should forfeit the right on the part of the defendant to impeach the legality of the attachment afterwards. Bates, Reed & Cooley v Killian & Bros., 17 SC 553 (1882). Harrison v Morris, 370 F Supp 142 (D SC 1974).

The acceptance of service of summons and complaint and appearance by the defendant do not waive irregularities in the procurement of the attachment or destroy his right, under this section [former Code 1962 Section 10‑931], to move to vacate and discharge the attachment of his property on account of such irregularities. Lester v. Fox Film Corp. (S.C. 1920) 114 S.C. 414, 103 S.E. 775.

4. Bond on application to discharge attachment

The giving of such a bond as provided for by this section [former Code 1962 Section 10‑931] does not amount to waiver of the right to move to vacate the attachment. Bates, Reed & Cooley v Killian & Bros., 17 SC 553 (1882). Able v Hall, 101 SC 24, 85 SE 165 (1915). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929). Kennedy v Dunbar, 46 SC 517, 24 SE 383 (1896).

The purpose of attachment is to obtain security on a debt by obtaining a lien on property where a lien is not created by statute. The attachment creates the lien, and when a bond is filed for the release of the property so attached, such bond is substituted for the lien. Stephenson Finance Co. v. Burgess (S.C. 1954) 225 S.C. 347, 82 S.E.2d 512. Creditors’ Remedies 141; Creditors’ Remedies 285

Attachment bond must be couched in language of statute, and if it is not, the terms of the statute will be read into the bond. Kimbrell v. Heffner (S.C. 1931) 163 S.C. 35, 161 S.E. 175, 80 A.L.R. 591. Creditors’ Remedies 206

Agreement of attorneys of parties fixing value of attached automobile could not alter express conditions of attachment bond. Kimbrell v. Heffner (S.C. 1931) 163 S.C. 35, 161 S.E. 175, 80 A.L.R. 591. Stipulations 3

Where attachment bond is conditioned to satisfy any judgment recovered against defendant, judgment recovered fixes amount recoverable under bond, although exceeding value of property, up to amount of penalty. Kimbrell v. Heffner (S.C. 1931) 163 S.C. 35, 161 S.E. 175, 80 A.L.R. 591. Creditors’ Remedies 1119

The subsequent bankruptcy of the defendant, after the giving of the undertaking as required by this section [Code 1962 Section 10‑931], does not release the sureties on such undertaking. Straus v. Fidelity & Deposit Co. of Maryland (S.C. 1927) 143 S.C. 422, 141 S.E. 683.

This section [former Code 1962 Section 10‑931] comtemplates the appearance, as provided for by former Code 1962 Section 10‑930, before the execution of the bond provided for by this section [Code 1962 Section 10‑931]. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

The execution of the undertaking as provided for by this section [former Code 1962 Section 10‑931] does not constitute an act of appearance as contemplated by former Code 1962 Section 10‑930. Stephens v. Ringling (S.C. 1915) 102 S.C. 333, 86 S.E. 683.

It was held that a bond given for the release of attached property, while it did not possess the necessary requisites for a statutory bond such as provided for by this section [former Code 1962 Section 10‑931], might be sued upon as a common‑law bond, in the case of Sullivan v. Williams (S.C. 1895) 43 S.C. 489, 21 S.E. 642.

**SECTION 15‑19‑320.** Maximum undertaking in certain actions.

 In actions when the purpose is to collect a debt for the purchase price of any property when such property, or any part thereof, is attached and in all actions when property is permitted to be attached to secure the payment of a debt claimed to be due, the undertaking required of the defendant shall in no case be in excess of double the amount of the debt claimed by the plaintiff to be due in the action. But if there is an appeal the court from which any appeal is taken may increase the bond.

HISTORY: 1962 Code Section 10‑931.1; 1952 Code Section 10‑909; 1942 Code Section 551‑1; 1932 Code Section 557; 1930 (36) 1347.

CROSS REFERENCES

Proceedings against sureties under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

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

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

LIBRARY REFERENCES

Westlaw Key Number Search: 44k261.

Attachment 261.

C.J.S. Attachment Sections 247 to 251, 258.

**SECTION 15‑19‑330.** Undertaking when property of one of several defendants is attached.

 When there is more than one defendant and the several property of any defendant has been seized by virtue of the order of attachment the defendant whose several property has been seized may deliver to the court or officer an undertaking, in accordance with the provisions of Section 15‑19‑310, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant. And all the provisions of Section 15‑19‑310 applicable to such undertaking shall be applicable thereto.

HISTORY: 1962 Code Section 10‑932; 1952 Code Section 10‑932; 1942 Code Section 544; 1932 Code Section 544; Civ. P. ‘22 Section 517; Civ. P. ‘12 Section 296; Civ. P. ‘02 Section 263; 1870 (14) 478 Section 265.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Search: 44k261.

Attachment 261.

C.J.S. Attachment Sections 247 to 251, 258.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 352 , Introductory Comments.

**SECTION 15‑19‑340.** Motion by owner to discharge attachment.

 In all cases the defendant or any person who establishes a right to the property attached may move to discharge the attachment.

HISTORY: 1962 Code Section 10‑932.1; 1952 Code Section 10‑932.1; 1942 Code Section 544; 1932 Code Section 544; Civ. P. ‘22 Section 517; Civ. P. ‘12 Section 296; Civ. P. ‘02 Section 263; 1870 (14) 478 Section 265; 1960 (51) 1750.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k237.

Attachment 237.

C.J.S. Attachment Section 348.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attachment Section 25, Persons Entitled to Move to Dissolve.

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 461 , Introductory Comments.

NOTES OF DECISIONS

In general 1

Discharge of attachment 5‑6

In general 5

Granted at chambers 6

Granted at chambers, discharge of attachment 6

Notice requirements 4

Provisions as limited to parties to proceedings 3

Statute as including motion to discharge attachment on grounds of invalidity or irregularity 2

1. In general

The language of this section [former Code 1962 Section 10‑932.1] is broad and comprehensive, and includes expressly all cases. Bates, Reed & Cooley v Killian & Bros., 17 SC 553 (1882). Skalowski v Joe Fisher, Inc., 152 SC 108, 149 SE 340 (1929).

The owner is not deprived of his property by attachment; the impact is to place the State in temporary possession until the issues can be litigated. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

In attachment the goods are strictly in the custody of the law, and the attaching creditor has no interest or property right in or right to possession of the attached goods, by reason of the levy. Harrison v. Morris (D.C.S.C. 1974) 370 F.Supp. 142.

Where the defendants, without any reservation of the right to move to dissolve the attachment, executed the required bond, secured a release of the property on the day after it was attached, and then moved to dissolve the attachment a week later, the defendants waived any irregularities in the attachment. Cooke v. McCants (S.C. 1949) 214 S.C. 534, 53 S.E.2d 651. Creditors’ Remedies 239

2. Statute as including motion to discharge attachment on grounds of invalidity or irregularity

The language of this section [former Code 1962 Section 10‑932.1] includes, beyond doubt, the motion to discharge an attachment on the grounds of invalidity or irregularity, and refers to the general rules for the rules governing such an application. Cureton v Dargan, 12 SC 122 (1879). Darby & Co. v Shannon, 19 SC 526 (1883). Kerchner & Calder Bros. v McCormac, 25 SC 461 (1886). Claussen v Fultz, 13 SC 476 (1880). Brown v Morris, 10 SC 467 (1879). Smith & Melton v Walker, 6 SC 169 (1875).

Where defendants move on affidavits to vacate the attachment, and plaintiffs offer affidavits in reply, the judge should indicate what affidavits were considered by him, the weight to be given such affidavits being determined by the circuit court. Grollman v. Lipsitz (S.C. 1895) 43 S.C. 329, 21 S.E. 272. Creditors’ Remedies 283

3. Provisions as limited to parties to proceedings

The provision under this section [former Code 1962 Section 10‑932.1] providing for motions to discharge an attachment on account of irregularities, applies only to those who are parties to the proceeding. Copeland v Piedmont, etc., Ins. Co., 17 SC 116 (1882). Kincaid v Neall, 3 McC(14 SCL) 201.

A third party has no right to intervene and move to set aside an attachment upon the ground that the attached lands belong to him and not the defendant. Title to land cannot be so summarily tried. Metts v Piedmont, etc., Ins. Co., 17 SC 120 (1882). Central Railroad & Banking Co. v Georgia Constr., etc., Co. 32 SC 319, 11 SE 192 (1890).

The assignee under a deed of assignment cannot by motion before judgment vacate an attachment levied upon the assigned property after the recording of the assignment, he being no party to the action. Copeland v Piedmont, etc., Ins. Co., 17 SC 116 (1882). Sheldon v Blauvelt, 29 SE 453, 7 SE 593 (1888). Bryce & Co. v Foot, 25 SC 467 (1886).

It was said in a concurring opinion by Justice Cothran in the case of Eaves v Sales, 126 SC 155, 117 SE 350 (1923), that where a person by petition establishes a right to the property attached, and shows that such property does not belong to the defendant in attachment, then such claimant should be given relief in the attachment proceeding proper, and should not be made to resort to an action of claim and delivery for the recovery of the property. Ex parte Sales (S.C. 1923) 126 S.C. 155, 117 S.E. 350.

A creditor attaching his debtor’s property, but not claiming it except under the attachment, cannot question the regularity of another attachment against such property. Ex parte Perry Stove Co. (S.C. 1895) 43 S.C. 176, 20 S.E. 980.

The privilege to move for a discharge of the attachment as given by this section [former Code 1962 Section 10‑932.1] is not so extended as to allow a subsequent attachment creditor to move to vacate the prior attachment on the grounds that it was irregularly issued. Darby & Co. v. Shannon (S.C. 1883) 19 S.C. 526.

A subsequent attaching creditor may move to vacate a prior attachment when such prior attachment is founded on fraud, or what amounts to fraud. Darby & Co. v. Shannon (S.C. 1883) 19 S.C. 526.

4. Notice requirements

A motion, without notice, to vacate an attachment made after the jury are impaneled and sworn and the pleadings read should be refused. The foregoing conclusion was based on a construction of former Code 1962 Section 10‑2059, dealing with motions to vacate and modify injunctions. Savings Bank of Ft. Mill v. Alexander Sprunt & Son (S.C. 1910) 86 S.C. 8, 67 S.E. 955.

Notice that a motion will be made to vacate an attachment levied on the interest of a nonresident partner, on the affidavits and papers served therewith, sufficiently shows the grounds on which the motion will be made where the affidavits and papers show that the attachment defendant was sued on a partnership debt with his copartner, that he owned no property in the State except his interest in the partnership effects, and that this interest had beed attached. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840. Creditors’ Remedies 281

The notice need not expressly state that the motion will be made “on the ground” that the interest of a nonresident copartner in the partnership effects is not attachable. Whitfield v. Hovey (S.C. 1889) 30 S.C. 117, 8 S.E. 840.

5. Discharge of attachment—In general

Pendency of another action for same cause sufficient to vacate attachment. Ferst v. Powers (S.C. 1900) 58 S.C. 398, 36 S.E. 744.

The refusal to discharge the attachment is res adjudicata as to the party making the motion for such discharge, and he cannot afterwards raise the question again in a formal suit. Darby & Co. v. Shannon (S.C. 1883) 19 S.C. 526.

6. —— Granted at chambers, discharge of attachment

A circuit judge cannot decide questions of fact determining merits of case in chambers. Williamson v Eastern Bldg., etc., Ass’n, 54 SC 582, 32 SE 765 (1899). Moore v Rountree, 57 SC 75, 35 SE 386 (1900).

A circuit judge, on motion upon notice, may discharge an attachment at chambers. Cureton v Dargan, 12 SC 122 (1879). Bray Clothing Co. v Shealy, 53 SC 12, 30 SE 620 (1898).

Circuit judge may decide whether or not plaintiff has cause of action in chambers. Williamson v. Eastern Building & Loan Ass’n (S.C. 1899) 54 S.C. 582, 32 S.E. 765, 71 Am.St.Rep. 822.

**SECTION 15‑19‑350.** Satisfying judgment for plaintiff.

 In case judgment be entered for the plaintiff in any such action the sheriff or constable shall satisfy it out of the property attached by him, if it shall be sufficient for that purpose:

 (1) By paying over to such plaintiff the proceeds of all sales of perishable property and of any vessel or share or interest in any vessel sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment;

 (2) If any balance remain due and an execution shall have been issued on such judgment he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in item (4) of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association the sheriff or constable shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by the defendant;

 (3) If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff or constable without having been sold or converted into money the sheriff or constable shall repossess himself of such property and for that purpose shall have all the authority which he had to seize such property under the attachment; and any person who shall wilfully conceal or withhold such property from the sheriff or constable shall be liable to double damages at the suit of the party injured; and

 (4) Until the judgment against the defendant shall be paid the sheriff or constable may proceed to collect the notes and other evidences of debt and the debts that may have been seized or attached under the warrant of attachment and to prosecute any bond he may have taken in the course of such proceedings and apply the proceeds thereof to the payment of the judgment.

HISTORY: 1962 Code Section 10‑933; 1952 Code Section 10‑933; 1942 Code Section 540; 1932 Code Section 540; Civ. P. ‘22 Section 513; Civ. P. ‘12 Section 292; Civ. P. ‘02 Section 259; 1870 (14) 477 Section 261; 1935 (39) 151.

CROSS REFERENCES

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k217.

Attachment 217.

C.J.S. Attachment Sections 387 to 391.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 403 , Introductory Comments.

Attorney General’s Opinions

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op Atty’s Gen, No 79‑81, p 107.

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Cited in Ex parte Sales, 126 SC 155, 117 SE 350 (1923). Richardson v Wallace, 39 SC 216, 17 SE 725 (1893).

If the attachment is a foreign attachment, it is only a proceeding in rem, unless the defendant appear; and if he fail to appear, the court cannot render a judgment that would have any effect beyond the property attached and so subjected to a lien. Stanley v. Stanley (S.C. 1891) 35 S.C. 94, 35 S.C. 584, 14 S.E. 675.

**SECTION 15‑19‑360.** Satisfying judgment for plaintiff; proceedings after six months or when automobile has been attached.

 At the expiration of six months from the docketing of the judgment or forthwith upon the docketing of the judgment in cases in which an automobile has been attached under Section 29‑15‑20, the court may, upon the petition of the plaintiff accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff or constable since the service of the attachment, the property attached and the disposition thereof and also the affidavit of the sheriff or constable that he has used diligence and endeavored to collect the evidences of debt in his hands so attached and that there remains uncollected of the same any part or portion thereof, order the sheriff or constable to sell the property attached upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant the court shall make such rule or order as to the service of notice and the time of service as shall be deemed just.

HISTORY: 1962 Code Section 10‑934; 1952 Code Section 10‑934; 1942 Code Section 540; 1932 Code Section 540; Civ. P. ‘22 Section 513; Civ. P. ‘12 Section 292; Civ. P. ‘02 Section 259; 1870 (14) 477 Section 261; 1935 (39) 151.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k217.

Attachment 217.

C.J.S. Attachment Sections 387 to 391.

Attorney General’s Opinions

A magistrate’s constable is authorized to conduct sales as to distrained property and as to property attached which result from actions initiated in a magistrate’s court but is not authorized to conduct a sale to enforce a mechanic’s lien. While apparently there is authority for a magistrate’s constable to conduct a sale to satisfy a judgment rendered in a magistrate’s court, the preferred procedure is to have a sheriff conduct a sale resulting from such a judgment. 1979 Op Atty’s Gen, No 79‑81, p 107.

**SECTION 15‑19‑370.** Disposition of residue when judgment is paid.

 When the judgment and all costs of the proceedings shall have been paid the sheriff or constable, upon reasonable demand, shall deliver over to the defendant the residue of the attached property or the proceeds thereof.

HISTORY: 1962 Code Section 10‑935; 1952 Code Section 10‑935; 1942 Code Section 540; 1932 Code Section 540; Civ. P. ‘22 Section 513; Civ. P. ‘12 Section 292; Civ. P. ‘02 Section 259; 1870 (14) 477 Section 261; 1935 (39) 151.

CROSS REFERENCES

Foreclosure under South Carolina Rules of Civil Procedure, see Rule 71, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k217.

Attachment 217.

C.J.S. Attachment Sections 387 to 391.

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In general 1

1. In general

When judgment is entered for defendant on the merits, attachment is properly released, and reversal of that judgment on appeal restores the attachment. Nienow v. Nienow (S.C. 1977) 268 S.C. 161, 232 S.E.2d 504.

**SECTION 15‑19‑380.** Proceedings by plaintiff instead of sheriff or constable.

 The actions authorized in this article to be brought by the sheriff or constable may be prosecuted by the plaintiff or under his direction, upon the delivery by him to the sheriff or constable of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff or constable from all damages, costs and expenses on account thereof not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases when required by the sheriff or constable, justify by making an affidavit that each is a householder and worth double the amount of the penalty of the bond, over and above all demands and liabilities.

HISTORY: 1962 Code Section 10‑936; 1952 Code Section 10‑936; 1942 Code Section 541; 1932 Code Section 541; Civ. P. ‘22 Section 514; Civ. P. ‘12 Section 293; Civ. P. ‘02 Section 260; 1870 (14) 478 Section 262.

CROSS REFERENCES

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

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

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k86; 44k204; 44k237.

Attachment 86, 204, 237.

C.J.S. Attachment Sections 73, 348, 373, 381.

**SECTION 15‑19‑390.** Proceedings on judgment for defendant.

 If the foreign corporation or absent, absconding or concealed defendant recover judgment against the plaintiff in any such action any bond taken by the sheriff or constable, except such as are mentioned in Section 15‑19‑380, all the proceeds of sales and moneys collected by him and all the property attached remaining in his hands shall be delivered by him to the defendant or his agent, on request, and the warrant shall be discharged and the property released therefrom.

HISTORY: 1962 Code Section 10‑937; 1952 Code Section 10‑937; 1942 Code Section 542; 1932 Code Section 542; Civ. P. ‘22 Section 515; Civ. P. ‘12 Section 294; Civ. P. ‘02 Section 261; 1870 (14) 478 Section 263.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k194; 44k203.

Attachment 194, 203.

C.J.S. Attachment Sections 187, 275.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 403 , Introductory Comments.

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 461 , Introductory Comments.

**SECTION 15‑19‑400.** Time when sheriff or constable shall return attachment.

 When the warrant shall be fully executed or discharged the sheriff or constable shall return it, with his proceedings thereon, to the court in which the action was brought.

HISTORY: 1962 Code Section 10‑938; 1952 Code Section 10‑938; 1942 Code Section 545; 1932 Code Section 545; Civ. P. ‘22 Section 518; Civ. P. ‘12 Section 297; Civ. P. ‘02 Section 264; 1870 (14) 479 Section 266.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k318 to 44k329.

Attachment 318 to 329.

C.J.S. Attachment Sections 194 to 202.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Attachment and Garnishment Section 174 , Introductory Comments.

ARTICLE 5

Attachments in Actions for Purchase Money

**SECTION 15‑19‑510.** Authorization and issuance.

 In an action arising for the recovery of purchase money which is past due for any real or personal property, the plaintiff, at the time of the issuing of the summons or any time afterwards, may cause the property of the defendant for which the purchase money is payable to be attached in the manner prescribed in this article as a security for the satisfaction of such judgment as the plaintiff may recover. For the purposes of this section an action shall be deemed commenced when the summons is issued. The warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought, or from a circuit judge. The warrant of attachment may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claims and the grounds thereof, that the amount is due and that the action is brought for the purchase money of real estate or personal property which has been sold to the defendant and which he has refused or failed to pay. The plaintiff at the time of procuring such warrant of attachment shall file the affidavit upon which it is granted in the office of the clerk of court of common pleas or with the magistrate in which or before whom the action is to be tried.

HISTORY: 1962 Code Section 10‑951; 1952 Code Section 10‑951; 1942 Code Section 546; 1932 Code Section 546; Civ. P. ‘22 Section 519; Civ. P. ‘12 Section 298; 1904 (24) 452.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k66 to 44k139; 44k140 to 44k158.

Attachment 66 to 139, 140 to 158.

C.J.S. Attachment Sections 62 to 113, 115 to 129, 156 to 169.

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1. In general

Cited in Cheraw Motor Sales Co. v Rainwater, 125 SC 509, 119 SE 237 (1923). United Fabrics Corp. v Delaney, 241 SC 268, 128 SE2d 111 (1962).

This section [former Code 1962 Section 10‑951] authorizes the plaintiff, in an action arising for the recovery of the purchase money which is past due, to cause the property for which the purchase money is payable to be attached. It does not limit such right to the nominal grantor or vendor, but is evidently intended to protect the one who is the actual owner of the property, or to whom the purchase money is due. Ross v. Eddins (S.C. 1938) 187 S.C. 29, 196 S.E. 375. Creditors’ Remedies 149

The terms of this section [former Code 1962 Section 10‑951] are plain and mandatory. J.C. Hambright & Co. v. Robert R. Team Co. (S.C. 1923) 124 S.C. 500, 117 S.E. 717.

2. Requisites for attachment in actions for purchase money

Vendor must file necessary affidavit and bond. Seneca Grape Juice Corp. v. Palmetto Grape Marketing Ass’n, 1964, 234 F.Supp. 939.

This section [former Code 1962 Section 10‑951] was intended to aid and facilitate anyone to whom is due the purchase money for the real estate involved in the collection of the purchase money due and unpaid, the requisites being that the money sought to be recovered is purchase money, and that it is due to the party seeking the writ of attachment—that such party had such ownership therein as permitted him to extend credit for the payment of the purchase money or any balance thereof, it being immaterial whether the action for the recovery of the purchase money be legal or equitable. Ross v. Eddins (S.C. 1938) 187 S.C. 29, 196 S.E. 375. Creditors’ Remedies 145; Creditors’ Remedies 149

The right to attach property under this section [former Code 1962 Section 10‑951] depends upon whether or not the action is for the recovery of the purchase money of the property so attached. Twin City Motor Co. v. Fallaw (S.C. 1934) 173 S.C. 353, 175 S.E. 809.

The purchase money attachment proceeding is an addition to the old attachment law and the method of procedure is the same. Maxwell v. Greene (S.C. 1933) 171 S.C. 253, 172 S.E. 146.

The affidavit must be filed at the time of the issuance of the warrant, and for failure to do so the warrant may be set aside. J.C. Hambright & Co. v. Robert R. Team Co. (S.C. 1923) 124 S.C. 500, 117 S.E. 717.

3. Liens

Lien does not exist under this section [former Code 1962 Section 10‑951] until judgment obtained, execution issued, and levy made. Maxwell v Greene, 171 SC 253, 172 SE 146 (1933). Ross v Eddins, 187 SC 29, 196 SE 375 (1938).

A vendor of land or chattels in this State has no lien for the unpaid purchase price unless he takes a purchase money mortgage, or attaches under this article. Seneca Grape Juice Corp. v. Palmetto Grape Marketing Ass’n, 1964, 234 F.Supp. 939. Sales 1931; Vendor And Purchaser 246

4. Application in particular circumstances

Where a holder of a purchase money chattel mortgage, which was past due, sought to attach the property covered by the mortgage under this section [former Code 1962 Section 10‑951], it was held that the holder could not attach something to which he already had title, since by South Carolina law the title was vested in the holder upon default, and this section did not apply. John Deere Plow Co. of St. Louis v. L. D. Jennings, Inc. (S.C. 1943) 203 S.C. 426, 27 S.E.2d 571.

Sureties in claim and delivery bond could not discharge their liability thereunder by payment of proceeds derived from their own sale of property released, where proceeds were less than judgment against principal. Plumley v. Stewart (S.C. 1932) 165 S.C. 316, 163 S.E. 777. Replevin 123

Where the buyer of a black mule, who had given a note providing that title should remain in the seller until the price was paid, exchanged such mule with seller for a roan mule, paying the difference in the price in cash and agreeing to execute another similar note for the balance, which he failed to do, the debt due was for the purchase price of the roan mule; and in an action for the amount so due such mule could be attached and sold to satisfy the judgment. Hartzog‑Hagood Live Stock & Vehicle Co. v. Wilson (S.C. 1914) 97 S.C. 475, 81 S.E. 180. Creditors’ Remedies 22

The court held that attachment for unpaid portion of purchase money did not lie on furniture belonging to an estate and in the hands of the executrix, in Maxwell v. Greene (S.C. 1933) 171 S.C. 253, 172 S.E. 146. Creditors’ Remedies 84

**SECTION 15‑19‑520.** Plaintiff’s undertaking; contents of warrant.

 Before issuing the warrant of attachment the judge, clerk or magistrate shall require a written undertaking on the part of the plaintiff with sufficient surety to the effect that if the plaintiff shall fail to prove that the action is brought to recover the purchase money for the property which is about to be attached or if the defendant recovers judgment or the attachment be set aside by the order of the court the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a magistrate when it shall be at least twenty‑five dollars. The warrant shall be directed to any sheriff or constable of any county in which the property of such defendant may be, shall plainly describe the property and shall require such officer to attach and safely keep such property of the defendant or so much thereof as may be sufficient to satisfy plaintiff’s demand, together with costs and expenses.

HISTORY: 1962 Code Section 10‑952; 1952 Code Section 10‑952; 1942 Code Section 547; 1932 Code Section 547; Civ. P. ‘22 Section 520; Civ. P. ‘12 Section 299; 1904 (24) 452.

CROSS REFERENCES

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

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

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k128 to 44k139; 44k140 to 44k158.

Attachment 128 to 139, 140 to 158.

C.J.S. Attachment Sections 64, 115 to 129, 156 to 169.

**SECTION 15‑19‑530.** Effecting attachment.

 The sheriff or constable to whom such warrant is directed and delivered shall immediately attach the real estate or personal property of the defendant which is described in the warrant and hold it until further order of the court. When real estate is attached a true and attested copy of such warrant shall be, by the officer serving it, delivered to the defendant or left at his last or usual place of residence, and the officer making such service shall also leave a true and attested copy of such warrant of attachment in the office in which, by law, a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent or attorney, if any be known, and if no such agent, tenant or attorney be known then a copy of such warrant of attachment, with the officer’s return thereon, lodged in the office in which, by law, a deed of such real estate ought to be recorded, shall be deemed sufficient service. The clerk or register of the office wherein the warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer’s return thereon.

HISTORY: 1962 Code Section 10‑953; 1952 Code Section 10‑953; 1942 Code Section 548; 1932 Code Section 548; Civ. P. ‘22 Section 521; Civ. P. ‘12 Section 300; 1904 (24) 452.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k159 to 44k185.

Attachment 159 to 185.

C.J.S. Attachment Sections 170 to 193, 203 to 216, 218 to 228.

**SECTION 15‑19‑540.** Lien of attachment.

 The attachment shall be a lien subject to all prior liens and bind the real estate attached from the date of lodgment. It shall be a lien upon the personal property attached from the date of the levy thereon.

HISTORY: 1962 Code Section 10‑954; 1952 Code Section 10‑954; 1942 Code Section 548; 1932 Code Section 548; Civ. P. ‘22 Section 521; Civ. P. ‘12 Section 300; 1904 (24) 452.

LIBRARY REFERENCES

Westlaw Key Number Search: 44k185.

Attachment 185.

C.J.S. Attachment Section 218.

**SECTION 15‑19‑550.** Further proceedings.

 Further proceedings on the part of the sheriff or constable in reference to the appraisement of the personal property attached or the sale of such personal property as may be perishable shall be such as are required by Sections 15‑19‑270 and 15‑19‑280. Further proceedings in reference to the disposition of the bond given by the plaintiff in case of judgment for defendant, the discharge of the attachment and return of property or its proceeds to defendant and the undertaking on the defendant’s part shall be such as are required by Sections 15‑19‑300 to 15‑19‑340 and 15‑19‑390.

HISTORY: 1962 Code Section 10‑955; 1952 Code Section 10‑955; 1942 Code Section 549; 1932 Code Section 549; Civ. P. ‘22 Section 522; Civ. P. ‘12 Section 301; 1904 (24) 452.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k198; 44k236 to 44k260; 44k341.

Attachment 198, 236 to 260, 341.

C.J.S. Attachment Sections 276, 278 to 280, 337, 348 to 350, 353 to 366.

**SECTION 15‑19‑560.** Verdict or decision shall state whether amount found is for purchase money; order of sale.

 In all actions tried by a jury when the plaintiff claims that the action is brought for the recovery of the purchase money for the property attached if the jury find for the plaintiff they shall also state in their verdict whether or not the amount found is for the purchase money of the property attached. And in all cases tried by a judge, he shall, if he decides in favor of the plaintiff, certify whether or not the debt so found by him is for the purchase money of the property seized under the warrant of attachment. In such cases the judge shall direct that the attached property shall be sold by the sheriff or constable and the proceeds arising from such sale be applied in payment of the plaintiff’s debt and costs and the surplus, if any, paid over to the defendant.

HISTORY: 1962 Code Section 10‑956; 1952 Code Section 10‑956; 1942 Code Section 550; 1932 Code Section 550; Civ. P. ‘22 Section 523; Civ. P. ‘12 Section 302; 1904 (24) 452.

LIBRARY REFERENCES

Westlaw Key Number Searches: 44k216; 44k217.

Attachment 216, 217.

C.J.S. Attachment Sections 386 to 391.