CHAPTER 37

Costs

**SECTION 15‑37‑10.** Costs generally.

 In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party as prescribed in Sections 15‑37‑20, 15‑37‑60, 15‑37‑70, and 15‑37‑120 to 15‑37‑160, and Chapter 21 of Title 8, Article 3 of Chapter 11 of Title 14, Chapter 19 of Title 14, Article 7 of Chapter 23 of Title 14, Chapter 19 of Title 19, Chapter 7 of Title 22, Article 3 of Chapter 9 of Title 22, and Article 1 of Chapter 19 of Title 23, such costs to be allowed as of course to the attorneys for the plaintiff or defendant and all officers of the court thereto entitled accordingly as the action may terminate and to be inserted in the judgment against the losing party. In cases in chancery the same rule as to costs shall prevail unless otherwise ordered by the court.

HISTORY: 1962 Code Section 10‑1601; 1952 Code Section 10‑1601; 1942 Code Section 756; 1932 Code Section 756; Civ. C. ‘22 Section 5721; Civ. P. ‘22 Section 623; Civ. C. ‘12 Section 4204; Civ. P. ‘12 Section 361; Civ. C. ‘02 Section 3096; Civ. P. ‘02 Section 323; G. S. 2425; R. S. 2547; 1870 (14) 498 Section 335; 1883 (18) 449; 1892 (21) 30.

CROSS REFERENCES

Adjustment cost on judgments of Supreme Court under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Costs and fees when judgment by confession entered, see Section 15‑35‑370.

Costs in action to annul charter of corporation or against persons acting as corporation, see Section 15‑63‑180.

Costs in actions brought in the original jurisdiction of the Supreme Court, see Section 14‑3‑420.

Costs in declaratory judgment actions, see Section 15‑53‑100.

Costs in proceedings supplementary to execution, see Section 15‑39‑480.

Costs in receivership, see Sections 15‑65‑90, 15‑65‑100.

Costs of appeal to the circuit court from an inferior court, see Sections 18‑7‑100, 18‑7‑220 to 18‑7‑300.

Costs of former suits under South Carolina Rules of Civil Procedure, see Rule 41, SCRCP.

Fees of magistrates, sheriffs and constables for issuing and executing warrants for ejectment of trespassers, see Section 15‑67‑630.

Fees of officers making judicial sales of real estate, see Section 15‑39‑770.

Fees of sheriffs in judicial sales, see Section 15‑39‑640.

Judgments for costs against married women, see Section 15‑35‑160.

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

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S.C. Jur. Costs Section 19, Costs Generally Available Only to the Prevailing Party.

S.C. Jur. Costs Section 28, Filing Fees.

S.C. Jur. Costs Section 29, Service of Process Expenses.

S.C. Jur. Costs Section 30, Legal Advertisements in Newspapers.

S.C. Jur. Costs Section 31, Depositions.

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NOTES OF DECISIONS

In general 1

Allowance of costs in civil actions 3‑7

In general 3

Costs attributable to litigation between rival defendants 6

Costs taxed only as against parties to record 5

Effect of discontinuance or dismissal upon liability for costs 4

Interest on costs 7

Allowance of costs in equity cases 8‑10

In general 8

Discretion of court 9

Review of court’s exercise of discretion 10

Costs attributable to litigation between rival defendants, allowance of costs in civil actions 6

Costs taxed only as against parties to record, allowance of costs in civil actions 5

Deposition costs 12

Discretion of court, allowance of costs in equity cases 9

Distinction between costs and disbursements 2

Effect of discontinuance or dismissal upon liability for costs, allowance of costs in civil actions 4

Interest on costs, allowance of costs in civil actions 7

Pleading and practice 11

Review of court’s exercise of discretion, allowance of costs in equity cases 10

1. In general

At common law judgments did not carry costs. The provisions of this section [former Code 1962 Section 10‑1601] and the following sections are thus entirely statutory, and being so, claims for costs not coming within their provisions cannot be allowed. Matheson v Rogers, 84 SC 458, 65 SE 1054, 67 SE 476 (1909). Kershaw County v Richland County, 61 SC 75, 39 SE 263 (1901). Whittle v Saluda County, 56 SC 505, 35 SE 203 (1900). Green v Anderson County, 56 SC 411, 34 SE 691 (1900). Hightower v Bamberg County, 54 SC 536, 32 SE 576 (1899). Sease v Dobson, 36 SC 554, 15 SE 703, 704 (1892). Scott v Alexander, 27 SC 15, 2 SE 706 (1887). People’s Bank v Aetna Ins. Co., 76 F 548 (1907). State v County Treasurer, 10 SC 40 (1878). Church v Washington, 3 Rich (37 SCL) 380. Trenholm v Bumpfield, 3 Rich (37 SCL) 376. Carolina Nat. Bank v Senn, 25 SC 572 (1886).

For cases discussing the effect on this section of the act of 1892 which repealed acts in relation to attorney’s costs except to causes then pending or to existing liquidated contracts, see McElwee v Dickson, 55 SC 307, 33 SE 365 (1899). Powell v Pearlstine, 43 SC 403, 21 SE 328 (1895). Salley v Seaboard Air Line Ry., 79 SC 454, 60 SE 1123 (1908). Addison v Sujette, 50 SC 192, 27 SE 631 (1897). Addison v Sujette, 51 SC 305, 28 SE 948 (1898). Durham Fertilizer Co. v Glenn, 48 SC 494, 26 SE 796 (1897). Bartless v Beaufort, 47 SC 225, 25 SE 38 (1896). Lewis v Brown, 16 SC 58 (1881).

It is said that costs are in the nature of penalties. Kershaw County v Richland County, 61 SC 75, 39 SE 263 (1901). State v County Treasurer, 10 SC 40 (1878). Lancaster v Barnwell County, 40 SC 445, 19 SE 74 (1894). Thompson v Farr, 1 Rich (30 SCL) 4. People’s Bank v Aetna Ins. Co., 76 F 548 (1896). Kapp & Rothschild v Loyns, 13 SC 288 (1880).

Costs are governed by fee bill in force at time of verdict or order of judgment. Benbow v Richardson, 21 SC 601 (1884). Kapp & Rothschild v Loyns, 13 SC 288 (1880). Stegall v Bolt, 11 SC 522 (1879).

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The limitations of an injunction bond apply only to damages and do not apply to taxable costs and disbursements incurred in a proceeding to determine the damages sustained under such bond. Hyler v. Wheeler (S.C. 1962) 240 S.C. 386, 126 S.E.2d 173, 95 A.L.R.2d 1182.

There is nothing in this section [former Code 1962 Section 10‑1601] which permits, in an action brought by a receiver of bank to enforce stockholder’s liability, a direction on the part of the court that a person who is a resident of this State may be required to furnish in advance security for the costs in action. Griffin v. Allendale Bank (S.C. 1933) 170 S.C. 212, 170 S.E. 149.

Under this section [former Code 1962 Section 10‑1601] the taxable costs are not the creatures of the contract of the parties, but of statute. Matheson v. Rogers (S.C. 1909) 84 S.C. 458, 65 S.E. 1054, 19 Am.Ann.Cas. 1066, rehearing denied 84 S.C. 458, 67 S.E. 476, 19 Am.Ann.Cas. 1066. Costs 3

In taxing costs under this section [former Code 1962 Section 10‑1601] in a partition suit, it is improper for the clerk to hold in abeyance taxation of costs incurred solely in a contest between plaintiff and attorneys, until the determination of another independent suit between plaintiff and the attorneys, it being proper to tax such costs against either plaintiff or the attorneys. Cauthen v. Cauthen (S.C. 1908) 81 S.C. 313, 62 S.E. 319. Partition 114(6)

Under this section [former Code 1962 Section 10‑1601] costs are not allowed in place of damages caused by expense of carrying on the litigation. Loeb v. Mann (S.C. 1893) 39 S.C. 465, 18 S.E. 1.

The words “the court” as used in this section [former Code 1962 Section 10‑1601] in the sentence beginning “In cases in chancery,” are to be construed as meaning the court trying the case. Cooke v. Poole (S.C. 1887) 26 S.C. 321, 2 S.E. 609.

This section [former Code 1962 Section 10‑1601] contains the provisions in the Code regulating the right to costs in all civil actions, either legal or equitable. Cooke v. Poole (S.C. 1887) 26 S.C. 321, 2 S.E. 609.

Where a submission to arbitration of a pending cause refers all issues of law and fact to the arbitrators, they have power to award as to who shall pay the costs under this section [former Code 1962 Section 10‑1601]. Bollmann v. Bollmann (S.C. 1875) 6 S.C. 29. Costs 9

Under the provisions of this section [former Code 1962 Section 10‑1601], costs are not allowable in special proceedings, but only in actions. Columbia Water Power Co. v. City of Columbia (S.C. 1873) 4 S.C. 388.

2. Distinction between costs and disbursements

Where fees of officers of the court and witnesses are paid by the party himself, they are to be taxed as “disbursements” in favor of the prevailing party. Mitchell v Barrs, 64 SC 197, 41 SE 962 (1902). Dauntless Mfg. Co. v Davis, 24 SC 536 (1886). Cureton v Westfield, 24 SC 457 (1886). Lewis v Brown, 16 SC 58 (1881).

Under this section [former Code 1962 Section 10‑1601] the prevailing party is entitled to have the amount of officers’ and witnesses’ fees taxed to him; but if, as set down in the bill of disbursements, they appear to be due to them, rather than to such prevailing party, it is not prejudicial error. Dauntless Mfg. Co. v Davis, 24 SC 536 (1886). Cureton v Westfield, 24 SC 457 (1886). Lewis v Brown, 16 SC 58 (1881).

The act of December 22, 1892, repealing all acts relating to attorney’s costs, does not apply to attorney’s “disbursements,” as provided for in this section [former Code 1962 Section 10‑1601], which are expenditures of money which an attorney is authorized by law to make in the conduct of a cause, while his costs were fixed amounts, authorized by prior statutes to be taxed for specified services rendered in a cause. Durham Fertilizer Co. v. Glenn (S.C. 1897) 48 S.C. 494, 26 S.E. 796. Attorney And Client 152

Regard must be had in the sense in which the terms “costs” and “disbursements,” as contained in this section [from Code 1962 Section 10‑1601], are intended to be used, more than to their strict technical signification. Dauntless Mfg. Co. v. Davis (S.C. 1886) 24 S.C. 536. Costs 169

It was said in this case: “We suppose that a good deal of the confusion in the use of the terms ‘costs’ and ‘disbursements’ has arisen from this conflict between the theory and the practice—the theory being that the fees of the several officers of court and the witnesses are paid by the plaintiff or defendant, as the case may be, at the time the services are rendered, in which case they would very properly be termed disbursements and taxed as such, in order to reimburse the party for the outlay he has been required to make; while the practice, in many cases, is that such fees are not paid at the time, but remaining due to the several officers at the termination of the action, are taxed as costs due to such officers.” Dauntless Mfg. Co. v. Davis (S.C. 1886) 24 S.C. 536.

3. Allowance of costs in civil actions—In general

Under this section [former Code 1962 Section 10‑1601] a judgment covers the costs of the case and entitles the prevailing party to recover them from the losing party. Shuford v Shingler, 30 SC 612, 8 SE 799 (1888). People’s Bank v Aetna Ins. Co., 76 F 548 (1896).

Under this section [former Code 1962 Section 10‑1601] the defendant is in no sense liable for these costs until and because he has lost his case. People’s Bank of Greenville v. Aetna Ins. Co., 1896, 76 F. 548.

Landowner who prevailed in plaintiffs’ action arising from landowner’s construction of fence and gate across easement was entitled to costs, even though landowner did not specifically request award of costs in pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Costs 198

Assessment of costs against party does not violate due process even in absence of specific request for costs in opposing party’s pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Constitutional Law 4018

The State’s liability for costs in a civil action is not limited to Section 15‑37‑200; the State may be assessed costs the same as any other defendant. Additionally, costs may be assessed against the prevailing party. Under Section 15‑37‑10, there is no mandate that costs be taxed against the losing party; liability for costs is in the court’s discretion. Dunn v. Dunn (S.C. 1989) 298 S.C. 365, 380 S.E.2d 836.

An insurance company appealed from an adverse judgment on an automobile collision policy, which judgment held that such policy was not cancelled prior to the accident. In rendering its opinion, the Supreme Court decided that the insurer was entitled to two deductions of fifty dollars each under the policy’s terms and that the policy was in force at the time of the collision. And in view of these facts, the defendant insurance company was held to be the “losing party” under the terms of this section [former Code 1962 Section 10‑1601]. Dill v. Lumbermens Mutual Ins. Co. (S.C. 1949) 215 S.C. 216, 54 S.E.2d 787.

This section [former Code 1962 Section 10‑1601] gives costs “accordingly as the action may terminate,” and where, in an action of claim and delivery of personal property, each party has a verdict for the part of the property in controversy, as both parties have verdicts both should recover costs. Stoney v. Bailey (S.C. 1888) 28 S.C. 156, 5 S.E. 347. Replevin 117

Where public functionaries who are exercising special public trusts or functions, or trustees of private individuals, by their malfeasance or other misconduct render a suit against them necessary, they may be required personally to pay costs. Scott v. Alexander (S.C. 1885) 23 S.C. 120.

4. —— Effect of discontinuance or dismissal upon liability for costs, allowance of costs in civil actions

An action which is commenced but thereafter discontinued is within the purview of this section [former Code 1962 Section 10‑1601], and in such cases a party may have his costs taxed and an execution issued therefor. But where the action is discontinued because of lack of jurisdiction over the defendant’s person or of the subject matter of the suit, then the court itself may not, in such cases, provide for the payment of costs. Duncan v. Duncan (S.C. 1912) 93 S.C. 487, 76 S.E. 1099.

Where a complaint is dismissed, the plaintiff is liable for the costs, under this section [former Code 1962 Section 10‑1601], of all the references in the action. Huffman v. Stork (S.C. 1886) 25 S.C. 267. Costs 158

5. —— Costs taxed only as against parties to record, allowance of costs in civil actions

This section [former Code 1962 Section 10‑1601] does not allow a person brought in as a party after the commencement of an action to be charged with costs which had previously accrued. Williams v. Washington (S.C. 1895) 43 S.C. 355, 21 S.E. 259. Costs 98

The provisions of this section [former Code 1962 Section 10‑1601] that costs shall be allowed “accordingly as the action may terminate, and shall be inserted in the judgment against the losing party,” indicate that costs are to be taxed, as a matter of course, only against those who are parties on the record, and therefore may be reached by a judgment entered thereon. State v. Marshall (S.C. 1888) 28 S.C. 559, 6 S.E. 564.

Under this section [former Code 1962 Section 10‑1601] where an action is commenced against a board of aldermen, in which there is involved but one issue, which is finally determined in the plaintiff’s favor, and afterwards this board is succeeded in office by a new board, when, by amendment, other parties are brought in and other issues are raised and litigated, the original defendants are properly chargeable with the costs incurred in the determination of the first issue only. Scott v. Alexander (S.C. 1885) 23 S.C. 120. Costs 34

6. —— Costs attributable to litigation between rival defendants, allowance of costs in civil actions

Where a bank and a surety company were both defendants in the original action to settle the affairs of an insolvent corporation, wherein it was held that the surety company was not liable to the bank upon an indemnity bond, and on appeal by the bank from this holding the surety company was held liable to the bank less a certain sum for setoff, the bank was within the meaning of the phrase “prevailing party” as used in this section [former Code 1962 Section 10‑1601] and entitled to costs. Murray v. Aiken Mining & Porcelain Mfg. Co. (S.C. 1893) 39 S.C. 457, 18 S.E. 5.

A plaintiff should not be required to pay the costs, under this section [former Code 1962 Section 10‑1601], of an action attributable entirely to litigation between rival defendants. McCrady v. Jones (S.C. 1892) 36 S.C. 136, 15 S.E. 430.

7. —— Interest on costs, allowance of costs in civil actions

This section [former Code 1962 Section 10‑1601] is not affected by former Code 1962 Section 8‑2, [now Section 34‑31‑20] providing that, “in all money decrees and judgments of courts enrolled or entered. . . the legal interest shall be at six per centum per annum,” so as to allow interest to run on costs in civil actions. People’s Bank of Greenville v. Aetna Ins. Co., 1896, 76 F. 548.

That plaintiff assigned to attorney as compensation interest in judgment did not defeat defendant’s right to offset costs of former appeal against judgment. Black v. B.B. Kirkland Seed Co. (S.C. 1931) 163 S.C. 222, 161 S.E. 489. Judgment 883(13)

Defendant, obtaining reversal on former appeal, was entitled to have Supreme Court costs offset against judgment of plaintiff for amount of verdict and costs paid by plaintiff, legally taxable against defendant. Black v. B.B. Kirkland Seed Co. (S.C. 1931) 163 S.C. 222, 161 S.E. 489. Judgment 883(13)

There is no law which authorizes the charge of interest on disbursements to maintain horses attached. Holding it was error for the clerk to include interest on such disbursements when taxing the costs, Addison v. Sujette (S.C. 1901) 60 S.C. 58, 38 S.E. 229.

Where the clerk in an action to foreclose a mortgage entered the costs and disbursements in the judgment as required by former Code 1962 Section 10‑1606 [now Section 15‑37‑40], provision for which act had been made in the decree of the circuit judge, it was held not to be error to decree that the sheriff pay plaintiffs interest from the date of the decree upon the costs and charges in the action, in Johnson v. Masters (S.C. 1897) 49 S.C. 525, 27 S.E. 474.

8. Allowance of costs in equity cases—In general

With respect to Supreme Court costs and disbursements, it has been settled by a number of decisions that, even in equity cases, costs and disbursements in the Supreme Court are taxed in favor of the prevailing party against the losing party on appeal, and that the circuit judge or chancellor has no power or discretion to make a contrary direction. Ex parte Miller, 192 SC 164, 5 SE2d 865 (1939). Cauthen v Cauthen, 81 SC 313, 62 SE 319 (1908).

In absence of order to the contrary, same rule exists in chancery as at law. Lockwood v Lockwood, 73 SC 18, 52 SE 735 (1905). Cooke v Poole, 26 SC 321, 2 SE 609 (1887).

Even in equity cases, under this section [former Code 1962 Section 10‑1601], costs and disbursements in the Supreme Court are taxed against the losing party on appeal, irrespective of the result below, and the circuit judge or chancellor has no power or discretion to make a contrary direction. Cauthen v Cauthen, 81 SC 313, 62 SE 319 (1908). Sullivan v Latimer, 43 SC 262, 21 SE 3 (1895). Cleveland v Cohrs, 13 SC 397 (1880).

The circuit court properly ordered defendant in an action for specific performance of a contract to pay the master’s fee, pursuant to Sections 15‑37‑10 and 15‑37‑20, where the costs were awarded to the prevailing party and against the losing party. Segars v. Segars (S.C.App. 1983) 279 S.C. 564, 310 S.E.2d 156.

Order directing each party to boundary dispute to pay his respective surveyor’s cost was not erroneous where there was no definite prevailing party and trial judge addressed the issue of costs, ordering the division of costs because the established line was not asserted by either party in the pleadings and both derived benefit from the action in establishing the line. Wilson v. Padgett (S.C. 1976) 266 S.C. 556, 225 S.E.2d 185.

The ordinary rule that costs must be taxed in favor of the prevailing party against the losing party is not necessarily binding on the chancellor, and is only effective in equity cases when not otherwise ordered by the court. South Orange Trust Co. v. Conner (S.C. 1955) 228 S.C. 218, 89 S.E.2d 372. Costs 32(1)

For a case holding that costs should be borne in equal parts by plaintiff and defendant, although plaintiff was losing party, see Greene v. Brown (S.C. 1942) 199 S.C. 218, 19 S.E.2d 114.

Attorneys having lost in a contest with plaintiff in partition respecting their fees, costs incurred solely in that contest should have been taxed against them, under this section [former Code 1962 Section 10‑1601], in the absence of a contrary direction by the circuit court based on equitable grounds. Cauthen v. Cauthen (S.C. 1908) 81 S.C. 313, 62 S.E. 319. Partition 114(6)

9. —— Discretion of court, allowance of costs in equity cases

Payment of costs in chancery within discretion of the court. Brown v Brown, 44 SC 378, 22 SE 412 (1895). Younger v Massey, 41 SC 50, 19 SE 125 (1894). Geddes v Hutchinson, 40 SC 402, 19 SE 9 (1894). Dial v Tappan, 20 SC 167 (1883). Cooke v Pennington, 15 SC 185 (1881). Nimmons v Stewart, 13 SC 445 (1880). Alexander v Meroney, 30 SC 335, 9 SE 266 (1889). Bean v Bean, 28 SC 607, 5 SE 827 (1888). McAfee v McAfee, 28 SC 218, 5 SE 593 (1888). Gary v Barnwell, 24 SC 595 (1885). Johnson v Pelot, 24 SC 255 (1886). Covar v Sallat, 22 SC 265 (1885). Hand v Savannah C. R. Co., 21 SC 162 (1884). Lake v Shumate, 20 SC 23 (1883). Pearson v Carlton, 18 SC 47 (1882). Jacobs v Bush, 17 SC 594 (1882). Childs v Frazee, 15 SC 612 (1880). Winsmith v Winsmith, 15 SC 611 (1880). Mars v Conner, 9 SC 70 (1877). Nash v Gardner, 232 SC 215, 101 SE2d 283 (1957).

Where, in an action in equity by persons unable to contract, or by one of a class for the benefit of all, the decision is unfavorable, the costs and disbursements may be apportioned and paid out of the fund in court. Cauthen v Cauthen, 81 SC 313, 62 SE 319 (1908). Roberts v Johns, 24 SC 580 (1886). Nimmons v Stewart, 13 SC 445 (1880). Baxter v Baxter, 23 SC 114 (1885).

Under this section [former Code 1962 Section 10‑1601] a pretended purchaser who resists action for foreclosure is liable for costs on his title being adjudged bad. Dendy v. Waite (S.C. 1892) 36 S.C. 569, 15 S.E. 712.

Under this section [former Code 1962 Section 10‑1601] one commencing a suit in equity, which he is not entitled to maintain, and which is afterwards dismissed, may properly be required to pay the costs. McCrady v. Jones (S.C. 1892) 36 S.C. 136, 15 S.E. 430. Costs 48

Some doubt was intimated in the early case of Scott v Alexander, 23 SC 120 (1885), as to the discretionary power of a judge in chancery to enter an order for costs where the cause had not proceeded to a final judgment on the merits; but all doubt on this question has been removed as to a cause in which such final judgment has been reached. Cooke v. Poole (S.C. 1887) 26 S.C. 321, 2 S.E. 609.

Under the provision of this section [former Code 1962 Section 10‑1601] that costs in equity are within the discretion of the court as a part of the relief granted, in a suit by an endorser of a note to restrain the holder from selling his property under attachment process on the ground that the holder had attached property of the maker sufficient to pay the debt, and had negligently discharged part of it, where an order is granted restraining the sale, and the cause is referred to a referee to ascertain the value of the property so released, the complainant is not entitled to costs. The principal matter in controversy having been referred back, the question of costs is premature. Twiggs v. Augusta Sav. Bank (S.C. 1887) 26 S.C. 612, 2 S.E. 398.

Under this section [former Code 1962 Section 10‑1601], in action for specific performance of an agreement to purchase a city lot, the circuit judge may, in his discretion, decree that each party pay his own costs. Webb v. Chisolm (S.C. 1886) 24 S.C. 487. Costs 60

10. —— Review of court’s exercise of discretion, allowance of costs in equity cases

In a cause of equity, liability for the costs of the circuit court is generally controlled by the decision of the circuit judge. ,The exercise of the court’s discretion in such matters will not be interfered with, except for a clear abuse of discretion, or for violation of some principle of law. The ordinary rule that costs must be taxed in favor of the prevailing party against the losing party is not necessarily binding on the chancellor, and is only effective in equity cases when not otherwise ordered by the court. Ex parte Miller, 192 SC 164, 5 SE2d 865 (1939). Cauthen v Cauthen, 81 SC 313, 62 SE 319 (1908).

Under the provisions of this section [former Code 1962 Section 10‑1601], the Supreme Court will not interfere with a decree fixing costs in an equity decree, except in a clear case of abuse of discretion or the violation of some rule of law. Matheson v Rogers, 84 SC 458, 65 SE 1054, 67 SE 476 (1909). Cauthen v Cauthen, 81 SC 313, 62 SE 319 (1908). Dendy v Waite, 36 SC 569, 15 SE 712 (1892). Scott v Scott, 29 SC 414, 7 SE 811 (1888). Young v Edwards, 33 SC 404, 11 SE 1066 (1890). Bredenberg v Landrum, 32 SC 215, 10 SE 956 (1890). Anderson v Butler, 31 SC 183, 9 SE 797 (1889). Miller v Stark, 29 SC 325, 7 SE 501 (1888). Booker v Wingo, 29 SC 116, 7 SE 49 (1888). Hunter v Mills, 29 SC 72, 6 SE 907 (1888). Finch v Finch, 28 SC 164, 5 SE 348 (1888). Graveley v Graveley, 25 SC 1 (1886).

Where the circuit judge in an equity case exercises his discretion as to costs by omitting to make any order therefor, the Supreme Court will not direct the judge to make such an order. Harbin v Parker, 19 SC 598 (1882). Walker v Walker, 17 SC 329 (1882). Johnson v Pelot, 24 SC 255 (1886).

In equity actions the awarding of costs is discretionary with the trial judge and will not be disturbed absent a clear abuse of discretion. State ex rel. McLeod v. C & L Corp., Inc. (S.C.App. 1984) 280 S.C. 519, 313 S.E.2d 334. Appeal And Error 984(1)

In boundary dispute case where there was no prevailing party because trial court found for plaintiff on one disputed tract and for defendant on another, and trial court taxed a large majority of costs to plaintiff, the Supreme Court held that the record indicated no sound reason for such action, but rather that it was arbitrary and that the burden of costs should be equalized. Nash v. Gardner (S.C. 1957) 232 S.C. 215, 101 S.E.2d 283.

In a suit for partition, and to establish a claim against the common estate, on judgment for plaintiff, the chancellor did not abuse his discretion in taxing the costs against the estate, under this section [former Code 1962 Section 10‑1601], rather than against defendants’ interest therein. Cauthen v. Cauthen (S.C. 1908) 81 S.C. 313, 62 S.E. 319. Partition 114(2)

Costs, under this section [former Code 1962 Section 10‑1601], of readvertising a sale in partition were improperly taxed against plaintiff because he failed to pay in his whole bid in cash, he being justified in claiming a credit for the amount of his distributive share in the proceeds of the sale, and the balance due him on his judgment. Cauthen v. Cauthen (S.C. 1908) 81 S.C. 313, 62 S.E. 319. Partition 114(2)

Where a decree, which was not appealed from, adjudges that defendant B. recover his costs, under this section [former Code 1962 Section 10‑1601] against defendant W. alone, and leaves open for future adjustment the costs between the other parties, it is error to subsequently charge another defendant with “all” the costs in the case. Williams v. Washington (S.C. 1895) 43 S.C. 355, 21 S.E. 259. Costs 76

Upon the rendition of a decree in chancery, in favor of one or the other party, it is within the discretion of the judge rendering the decree, under this section [former Code 1962 Section 10‑1601], either to direct, by an order, who shall pay the costs, or tacitly allow them to be taxed by the clerk in favor of the prevailing party; and his action in that respect is not reviewable by any subsequent circuit judge. Cooke v. Poole (S.C. 1887) 26 S.C. 321, 2 S.E. 609.

No interpretation of equity’s discretionary powers to tax costs under this section [former Code 1962 Section 10‑1601] will preclude the Supreme Court from hearing an appeal from the decision of a judge who only heard the question of costs, where it is alleged that he awarded costs against parties not in law liable therefor. Scott v. Alexander (S.C. 1885) 23 S.C. 120.

11. Pleading and practice

If appellant succeeds in modifying decree in equity, Supreme Court may allow him costs as prevailing party, under this section [former Code 1962 Section 10‑1601]. Sullivan v Latimer, 43 SC 262, 21 SE 3 (1895). Salley v Seaboard Air Line Ry., 79 SC 388, 60 SE 938 (1908).

The general rule in cases at law, where the Supreme Court is reviewing the decision of the circuit court, is that such court can only affirm or reverse, as to costs, and has no power to modify the decision. Salley v Seaboard Air Line Ry., 79 SC 388, 60 SE 938 (1908). Hosford v Wynn, 22 SC 309 (1885).

Costs form a part of the judgment under this section [former Code 1962 Section 10‑1601], as much so as the interest which may accrue “from the time of the verdict or report, until judgment be finally entered,” as provided in former Code 1962 Sections 10‑1605, 10‑1606, and 10‑1613 [now Sections 15‑37‑30, 15‑37‑40, and 15‑37‑110], and, like such interest, must be inserted in the judgment. And there is dictum in the case cited below to the effect that if costs are illegally inserted in, or omitted from, the judgment, to that extent the judgment is erroneous and illegal, and may be corrected by the Supreme Court. Stegall v Bolt, 11 SC 522 (1879). Harbin v Parker, 19 SC 598 (1882). Walker v Walker, 17 SC 329 (1882).

Under this section [former Code 1962 Section 10‑1601] alleged errors in the taxation of costs by the clerk are not reviewable by an appellate court until passed upon and decided in the court below, by a motion to correct such errors. Cooke v Poole, 26 SC 321, 2 SE 609 (1887). Dauntless Mfg. Co. v Davis, 24 SC 536 (1886). Armstrong v Friesleben, 28 SC 605, 5 SE 479 (1888). Hecht v Friesleben, 28 SC 181, 5 SE 475 (1888). Dilling, Baker & Co. v Foster, 21 SC 334 (1884). Bradley v Rodelsperger, 6 SC 290 (1875).

Assessment of costs against party does not violate due process even in absence of specific request for costs in opposing party’s pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Constitutional Law 4018

Landowner who prevailed in plaintiffs’ action arising from landowner’s construction of fence and gate across easement was entitled to costs, even though landowner did not specifically request award of costs in pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Costs 198

Under this section [former Code 1962 Section 10‑1601] the usual method of taxing costs and disbursements is by motion before the clerk of the court, and if anyone is not satisfied with the action of the clerk, the remedy is appeal or motion to correct before the circuit court, from which an appeal may be taken to the Supreme Court. Lockwood v. Lockwood (S.C. 1905) 73 S.C. 18, 52 S.E. 735.

Where, on appeal, it was held that contested land belonged to the plaintiff, and that one of the two mortgages held by the defendant should be delivered up for cancellation, but that the defendant should have a lien on the land for the amount of the other mortgage, payment of which he had refused, it was not error under this section [former Code 1962 Section 10‑1601] to tax all the costs of the appeal against the defendant. Williams v. Washington (S.C. 1895) 43 S.C. 355, 21 S.E. 259.

A party in a case does have the right to tax his costs on appeals in which he prevails, but he cannot enforce judgment therefor until final judgment in the action. Heath v. Town of Darlington (S.C. 1935) 176 S.C. 252, 180 S.E. 52. Costs 268

Where, on appeal in a law action from a judgment of $42, the amount was reduced $5, the judgment was affirmed, entitling the respondent, as the “prevailing” party under this section [former Code 1962 Section 10‑1601], to recover Supreme Court costs. Sally v. Seaboard Air Line Ry. (S.C. 1908) 79 S.C. 388, 60 S.E. 938. Costs 233

In equity where an appeal is had upon the merits, as well as upon the question of costs, and the appeal below is reversed upon some point affecting the merits, the order for costs will likewise be reversed. Scott v. Alexander (S.C. 1885) 23 S.C. 120.

Where it is desired to review a taxation of costs by the clerk under this section [former Code 1962 Section 10‑1601], the proper practice is by motion in the court below to correct such taxation, and the appeal should be from the decision on such motion; but where the clerk has undertaken to carry out an erroneous order of a circuit judge in reference to the taxation of costs, such erroneous order may be appealed from, and the taxation thereby corrected. Dilling, Baker & Co. v. Foster (S.C. 1884) 21 S.C. 334.

The right to tax costs under this section [former Code 1962 Section 10‑1601] or the manner of adjusting them is a matter not within the original jurisdiction of the Supreme Court, and cannot be there adjudged except on appeal from rulings in the court below. Huff v. Watkins (S.C. 1884) 20 S.C. 477. Costs 215

Where, on appeal from a circuit decree overruling a demurrer, with costs allowed under this section [former Code 1962 Section 10‑1601], to be paid out of certain proceeds of sale, the decree is reversed and the complaint dismissed, the direction for the payment of costs falls with the decree, although not mentioned in the exceptions or in the opinion of the court. Bratton v. Massey (S.C. 1883) 18 S.C. 555. Costs 243

12. Deposition costs

Company which owned the line of track and railroad which owned the train were entitled to deposition costs since they were the prevailing parties in Federal Employer’s Liability Act (FELA) action brought by service attendant on train, who was injured when train derailed. Peterson v. National R.R. Passenger Corp. (S.C. 2005) 365 S.C. 391, 618 S.E.2d 903. Costs 32(1); Costs 154

**SECTION 15‑37‑20.** Costs allowed only to successful party.

 No costs shall be allowed to any party unless he succeed, in whole or in part, in his claim or defense, unless otherwise directed by the judge hearing the cause.

HISTORY: 1962 Code Section 10‑1602; 1952 Code Section 10‑1602; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897(22) 429.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k32.

Costs 32.

C.J.S. Costs Section 10.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 19, Costs Generally Available Only to the Prevailing Party.

S.C. Jur. Costs Section 31, Depositions.

S.C. Jur. Costs Section 58, Trial Court Clerk to Tax Costs.

S.C. Jur. South Carolina Rules of Civil Procedure Section 54.2, Discussion.

NOTES OF DECISIONS

In general 1

1. In general

Company which owned the line of track and railroad which owned the train were entitled to deposition costs since they were the prevailing parties in Federal Employer’s Liability Act (FELA) action brought by service attendant on train, who was injured when train derailed. Peterson v. National R.R. Passenger Corp. (S.C. 2005) 365 S.C. 391, 618 S.E.2d 903. Costs 32(1); Costs 154

Because appellate court reversed the portion of the special referee’s order requiring homeowners to tear down their garage and to alter the “mother‑in‑law wing,” neighbors no longer succeeded on any issue they brought before the special referee, and thus, neighbors were not entitled to recover any attorney fees or costs from homeowners in action brought by neighbors to enforce restrictive covenants. Anderson v. Buonforte (S.C.App. 2005) 365 S.C. 482, 617 S.E.2d 750, rehearing denied, certiorari denied. Appeal And Error 1172(5)

Landowner who prevailed in plaintiffs’ action arising from landowner’s construction of fence and gate across easement was entitled to costs, even though landowner did not specifically request award of costs in pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Costs 198

Assessment of costs against party does not violate due process even in absence of specific request for costs in opposing party’s pleadings. Ballington v. Paxton (S.C.App. 1997) 327 S.C. 372, 488 S.E.2d 882. Constitutional Law 4018

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The circuit court properly ordered defendant in an action for specific performance of a contract to pay the master’s fee, pursuant to Sections 15‑37‑10 and 15‑37‑20, where the costs were awarded to the prevailing party and against the losing party. Segars v. Segars (S.C.App. 1983) 279 S.C. 564, 310 S.E.2d 156.

Applied in Welborn v. Page (S.C. 1966) 247 S.C. 554, 148 S.E.2d 375.

**SECTION 15‑37‑30.** Interest from time of verdict or report.

 When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment be finally entered shall be computed by the clerk and added to the costs of the party entitled thereto.

HISTORY: 1962 Code Section 10‑1605; 1952 Code Section 10‑1605; 1942 Code Section 761; 1932 Code Section 761; Civ. P. ‘22 Section 626; Civ. P. ‘12 Section 364; Civ. P. ‘02 Section 325; 1870 (14) 498 Section 336.

LIBRARY REFERENCES

Westlaw Key Number Searches: 219k1; 219k39(2).

Interest 1, 39(2).

C.J.S. Interest and Usury.

C.J.S. Consumer Credit Sections 2 to 3, 5 to 6, 49 to 50.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 42, Interest.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

Where trial judge was reversed for granting judgment n.o.v. on favorable jury verdict, judgment was enrolled nunc pro tunc as of time of original jury verdict, which was “time of the verdict” for purposes of Section 15‑37‑30; interest runs between time of judgment and entry of judgment and does not start at point of entry. Vance v. Jacobs (S.C.App. 1988) 294 S.C. 377, 364 S.E.2d 755. Interest 39(1)

Quoted in Crook v. State Farm Mut. Auto. Ins. Co. (S.C. 1960) 235 S.C. 452, 112 S.E.2d 241.

**SECTION 15‑37‑40.** Clerk shall insert costs and disbursements in judgment.

 The clerk shall insert in the entry of judgment, on the application of the prevailing party upon five days’ notice to the other except when the attorneys reside in the same city, village or town and then upon two days’ notice, the sum of the allowances for costs and disbursements as provided by law and the necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the reasonable compensation of commissioners in taking depositions, the fees of referees and the expense of printing the papers for any hearing when required by a rule of the court. The disbursements shall be stated in detail and verified by affidavit. A copy of the items of the costs and disbursements shall be served with a notice of adjustment.

HISTORY: 1962 Code Section 10‑1606; 1952 Code Section 10‑1606; 1942 Code Section 762; 1932 Code Section 762; Civ. P. ‘22 Section 627; Civ. P. ‘12 Section 365; Civ. P. ‘02 Section 326; 1870 (14) 498 Section 337.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k146.

Costs 146.

C.J.S. Costs Section 94.

RESEARCH REFERENCES

Encyclopedias

84 Am. Jur. Trials 367, Using Taxation of Costs to Collect Some Litigation Expenses and Maximize Client Recovery.

S.C. Jur. Costs Section 31, Depositions.

S.C. Jur. Costs Section 32, Experts.

S.C. Jur. Costs Section 33, Witness Expenses.

S.C. Jur. Costs Section 58, Trial Court Clerk to Tax Costs.

S.C. Jur. Costs Section 59, Bills, Affidavits, or Memoranda of Costs.

S.C. Jur. Costs Section 31.1, Costs of Printing Pages.

NOTES OF DECISIONS

In general 1

Allowance or disallowance of costs 3

Verification 2

1. In general

Cited in Campbell v Sanders, 42 SC 522, 20 SE 415 (1894). Loeb v Mann, 39 SC 465, 18 SE 1 (1893). Stegall v Bolt, 11 SC 522 (1879). Huffman v Stork, 25 SC 267 (1886).

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

One of the purposes of the notice required by this section [former Code 1962 Section 10‑1606] would seem to be for the “adjustment” of the costs. Since the costs should not be taxed until after the final determination of the case, and only after giving the required notice, it would seem that judgment should not be entered until all the costs are taxed and properly adjusted. Otherwise, it could not be a final determination of the rights of the parties. Black v. B.B. Kirkland Seed Co. (S.C. 1931) 163 S.C. 222, 161 S.E. 489.

Costs for witnesses may be paid directly to witnesses. Mitchell v. Barrs (S.C. 1902) 64 S.C. 197, 41 S.E. 962.

Though the costs are to be inserted in the judgment as a matter of course, it is not error to direct in the decree that the clerk shall so enter them. Johnson v. Masters (S.C. 1897) 49 S.C. 525, 27 S.E. 474.

The notice of taxation required by this section [former Code 1962 Section 10‑1606] may be given by the clerk as well as by the attorneys. Cureton v. Westfield (S.C. 1886) 24 S.C. 457. Costs 201

There is nothing inconsistent with the duty of the clerk under this section [former Code 1962 Section 10‑1606] to insert costs and disbursements, that the circuit judge in an equity case should, preparatory to an insertion into the judgment of the costs in such a case, order the master of the court to estimate the costs and disbursements. Dial v. Tappan (S.C. 1883) 20 S.C. 167.

2. Verification

Disbursements must be verified by affidavit. Mitchell v Barrs, 64 SC 197, 41 SE 962 (1902). Cureton v Westfield, 24 SC 457 (1886).

When disbursements are not verified by affidavit, in accordance with the provision of this section [former Code 1962 Section 10‑1606], the costs will be regarded as taxed in favor of the witnesses, in which case the witnesses have the right to execute a valid receipt for their costs. Mitchell v. Barrs (S.C. 1902) 64 S.C. 197, 41 S.E. 962.

This section [former Code 1962 Section 10‑1606] also makes a distinction between “costs” and “disbursements” in the adjustment of the same before the clerk, disbursements being required to be verified by affidavit, while costs need not be so verified. Durham Fertilizer Co. v. Glenn (S.C. 1897) 48 S.C. 494, 26 S.E. 796.

Costs of clerk and sheriff, when not paid by the attorneys, are not strictly speaking disbursements, and if charged as due to the several officers, the need not be verified by affidavit nor certified to by the officers claiming such. Cureton v. Westfield (S.C. 1886) 24 S.C. 457. Costs 205

3. Allowance or disallowance of costs

Defendant driver’s appeal claiming that plaintiff motorist was not “prevailing party” and was not entitled to award of costs was moot, in that plaintiff was contractually obligated to mark judgment she received against defendant as satisfied, where plaintiff agreed that if she received judgment that did not entitle her to receive underinsured motorist (UIM) benefits, she would mark judgment obtained satisfied, and verdict received by plaintiff did not entitle her to any UIM benefits. Sessions v. Withers (S.C.App. 1997) 327 S.C. 409, 488 S.E.2d 888. Appeal And Error 781(7)

The trial court did not abuse its discretion in refusing to award the prevailing party deposition costs where the prevailing party failed to specify whether any portion of the $10,744.76 requested was for the only deposition costs recoverable: commissioners compensation or witness per diem and mileage expenses. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied. Costs 198

The only deposition costs recoverable by a prevailing party are (1) the reasonable compensation of commissioners in taking depositions as authorized by Section 15‑37‑40, and (2) a per diem of $25.00 and mileage for witnesses attending depositions as authorized by Rule 30, SCRCP. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The trial court did not abuse its discretion in denying the prevailing defendant costs for the copying of documents where the defendant failed to present supporting documents showing that the copying was required by rule of court; Section 15‑37‑40, SCRCP allows only for the recovery of copying expenses when required by a rule of court. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The trial court erred in including expert witness fees and expenses for trial exhibits in an award of costs since (1) costs are allowed to be taxed only by statute, and cost statutes are strictly construed, (2) Section 15‑37‑40 refers only generally to the taxing of witness fees as a cost, without specifically addressing expert witness fees or trial exhibits, and (3) Rule 45(g), SCRCP, places a fixed dollar amount on witness fees in the amount of $25 per day, plus mileage. Oliver v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 309 S.C. 313, 422 S.E.2d 128, rehearing denied.

The trial court properly included the expense of copying medical records as a recoverable cost since Section 15‑37‑40 allows for the taxing of costs to the losing party for “the expense of printing the papers for any hearing when require by a rule of court,” and the cost of copying the medical records was incurred in response to interrogatories and requests for production. Oliver v. South Carolina Dept. of Highways and Public Transp. (S.C. 1992) 309 S.C. 313, 422 S.E.2d 128, rehearing denied.

This section [former Code 1962 Section 10‑1606] does not, of itself, sanction as an item of costs or disbursement the expense of a transcript of testimony before the board of referees under the State Authorities Eminent Domain Act. South Carolina Public Service Authority v. Spearwant Liquidating Co. (S.C. 1942) 201 S.C. 207, 22 S.E.2d 252.

Additional taxation of costs for printing of brief and transcript of record of respondent, who had judgment sustained, could be imposed under this section [former Code 1962 Section 10‑1606], even though costs had already been imposed by the clerk of the United States Supreme Court. Ford v. Atlantic Coast Line R. Co. (S.C. 1933) 170 S.C. 93, 169 S.E. 834.

Defendant’s right to offset for costs of former appeal cannot extend to costs and witnesses’ fees unless plaintiff has paid them. Black v. B.B. Kirkland Seed Co. (S.C. 1931) 163 S.C. 222, 161 S.E. 489. Judgment 883(13)

In equity and under this section, a defendant, in a proceeding to foreclose an agricultural lien, who claims one half of the crops free from the lien and makes out his case and shows that he was without fault in bringing about the litigation, is entitled to his costs. Baird v. Weatherford (S.C. 1915) 100 S.C. 490, 85 S.E. 59.

Under this section [former Code 1962 Section 10‑1606] a 46‑page statement of points and authorities was properly allowed, where there was no specification of any surplus statements. McElwee v. Kennedy (S.C. 1901) 59 S.C. 335, 37 S.E. 920.

The trial judge, being unable to separate the costs as provided for in this section [former Code 1962 Section 10‑1606], incurred under the original issues, from those incurred under issues of the amended complaint, was held not to err in allowing them as if under the original issue. Scott v. Alexander (S.C. 1887) 27 S.C. 15, 2 S.E. 706. Costs 146

This section [former Code 1962 Section 10‑1606] allows “the expense of printing the papers for any hearing, when required by a rule of the court,” to be taxed as disbursements; but an order of the court that the report of a certain referee be printed is merely an order pro hac vice and not a “rule” within the meaning of the section, and therefore does not bring the expense within the provision. Scott v. Alexander (S.C. 1887) 27 S.C. 15, 2 S.E. 706. Costs 190

The expense of printing the briefs and of employing a stenographer will be disallowed. Scott v. Alexander (S.C. 1887) 27 S.C. 15, 2 S.E. 706.

The expenses of printing papers in the circuit court cannot be taxed by the clerk under this section [former Code 1962 Section 10‑1606]. And neither will expenses of notices to creditors under new issues framed after amendment of complaint be allowed. Scott v. Alexander (S.C. 1887) 27 S.C. 15, 2 S.E. 706.

The adjustment of costs by the clerk in accordance with the terms of this section [former Code 1962 Section 10‑1606] is not a reference, and it may not be taxed as such in the costs. Cureton v. Westfield (S.C. 1886) 24 S.C. 457. Costs 153

And points and authorities in Supreme Court are taxable as disbursements. Elder & Co. v. Charlotte, C. & A.R.R. Co. (S.C. 1881) 15 S.C. 610.

**SECTION 15‑37‑50.** Limitation on costs when tort judgment is less than one hundred dollars.

 When in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, alienation of affections, or seduction or in any other action for damages for a tort the amount recovered is less than one hundred dollars, the total amount of costs and disbursements may not exceed the amount so recovered in the action.

HISTORY: 1962 Code Section 10‑1607; 1952 Code Section 10‑1607; 1942 Code Section 756; 1932 Code Section 756; Civ. C. ‘22 Section 5721; Civ. P. ‘22 Section 623; Civ. C. ‘12 Section 4204; Civ. P. ‘12 Section 361; Civ. C. ‘02 Section 3096; Civ. P. ‘02 Section 323; G. S. 2425; R. S. 2547; 1870 (14) 498 Section 335; 1883 (18) 449; 1892 (21) 30; 1988 Act No. 391, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Searches: 102k146 to 102k194.

Costs 146 to 194.

C.J.S. Costs Sections 6, 94 to 97, 99 to 101, 105 to 124.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 24, Limitation on Costs in Certain Tort Actions.

S.C. Jur. Libel and Slander Section 103, Nominal Damages.

S.C. Jur. Seduction Section 10, Types of Damages Available.

Forms

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

NOTES OF DECISIONS

In general 1

1. In general

Special damages require a showing that a person suffers either a pecuniary or material loss, whereas, general damages need not be proved, they are damages that are legally presumed. Hampton v. Conso Products, Inc., 1992, 808 F.Supp. 1227. Damages 5; Damages 163(1)

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

An action of trespass quare clausum fregit is not within the purview of the proviso of this section [former Code 1962 Section 10‑1607], as there is nothing in the general expression “any other action for damages for a tort” which compels an extension of meaning to cover classes of torts unlike those personal torts enumerated. Vassey v. Spake (S.C. 1909) 83 S.C. 566, 65 S.E. 825.

**SECTION 15‑37‑60.** Costs in certain small partition and foreclosure cases.

 The costs allowed by law in all cases of partition in which the property sought to be partitioned does not exceed one thousand dollars in value and in actions for foreclosure of a mortgage when the amount claimed does not exceed five hundred dollars shall be one half of the costs allowed in cases when the value exceeds those sums, and this provision shall apply to all costs in the cause.

HISTORY: 1962 Code Section 10‑1608; 1952 Code Section 10‑1608; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897 (22) 429.

CROSS REFERENCES

Foreclosure of mortgages generally, see Sections 29‑3‑610 et seq.

LIBRARY REFERENCES

Westlaw Key Number Searches: 266k580; 288k114.

Mortgages 580.

Partition 114.

C.J.S. Mortgages Sections 978 to 984.

C.J.S. Partition Section 197.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 22, Limitation on Costs in Partition and Foreclosure Actions of Minor Value.

Forms

South Carolina Litigation Forms and Analysis Section 39:8 , Attorney’s Fees.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The term “all costs,” used in this section [former Code 1962 Section 10‑1608], providing that in certain cases the costs shall be one half of the usual costs and declaring that this provision shall apply to “all costs” in the cause, includes fees allowed to officers, including the commission allowed to the master by former Code 1962 Section 27‑201 [now Section 14‑11‑310] for making the sale. Bryan v. Reams (S.C. 1901) 59 S.C. 340, 37 S.E. 921. Partition 114(3)

Costs are not taxable under the provision of this section [former Code 1962 Section 10‑1608] as to half costs, where the pleadings show there was no necessity for an action for partition or an action for the foreclosure of a mortgage, it appearing that there was no objection to a division of the land and no obstacle in the way of making a partition by the act of the parties. Williams v. Washington (S.C. 1895) 43 S.C. 355, 21 S.E. 259.

Where a mortgagor sues to determine his title to the mortgaged land after a void sale under the mortgage, offering to pay the mortgage, and a defendant claims under a mortgage made by the purchasers at such void sale, and asks foreclosure thereof, the action is not one to foreclose a mortgage in which, under this section [former Code 1962 Section 10‑1608], only half costs can be allowed. Williams v. Washington (S.C. 1895) 43 S.C. 355, 21 S.E. 259. Costs 68

**SECTION 15‑37‑80.** Costs on postponement of trial.

 When an application shall be made to a court or referee to postpone a trial the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

HISTORY: 1962 Code Section 10‑1610; 1952 Code Section 10‑1610; 1942 Code Section 763; 1932 Code Section 763; Civ. P. ‘22 Section 628; Civ. P. ‘12 Section 366; Civ. P. ‘02 Section 327; 1870 (14) 499 Section 340.

LIBRARY REFERENCES

Westlaw Key Number Search: 307Ak725.

Pretrial Procedure 725.

C.J.S. Continuances Sections 112 to 123.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 17, Costs for Postponement of Trial.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements, do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

This section [former Code 1962 Section 10‑1610], in designating the terms on which continuances may be ordered, by fair implication excludes authority to impose others; and if others are named as conditions upon which the order is entered, these are in excess of authority, and may be challenged as any other like rulings. Kirk v. Clark (S.C. 1947) 210 S.C. 359, 42 S.E.2d 587.

Under this section [former Code 1962 Section 10‑1610] and former Code 1962 Section 27‑603, [see now SCRCP, Rule 45] a court in granting a continuance cannot impose more than ten dollars as payment, in addition to $1.00 for every day’s attendance for each witness, and five cents per mile for coming to court and returning by the shortest practical route. Kirk v. Clark (S.C. 1947) 210 S.C. 359, 42 S.E.2d 587. Pretrial Procedure 725

This section [former Code 1962 Section 10‑1610] does not include or authorize expenses of traveling, such as lodging and meals. Kirk v. Clark (S.C. 1947) 210 S.C. 359, 42 S.E.2d 587.

The fact that a witness comes from outside the State does not prevent taxation of mileage for his travel within the State, which mileage is to be taxed from the State line to the place of trial and return to the State line on the most direct route. Kirk v. Clark (S.C. 1947) 210 S.C. 359, 42 S.E.2d 587. Costs 185

**SECTION 15‑37‑90.** Costs on motion.

 Costs may be allowed on a motion, in the discretion of the court or judge, not exceeding ten dollars, and may be absolute or directed to abide the event of the action.

HISTORY: 1962 Code Section 10‑1611; 1952 Code Section 10‑1611; 1942 Code Section 764; 1932 Code Section 764; Civ. P. ‘22 Section 629; Civ. P. ‘12 Section 367; Civ. P. ‘02 Section 328; 1870 (14) 499 Section 341.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k57.

Costs 57.

C.J.S. Costs Sections 28 to 29.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 48, Costs on Motion.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements, do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

This section [former Code 1962 Section 10‑1611], which provides that “costs may be allowed on a motion, in the discretion of the court or judge, not exceeding ten dollars,” applies only to motions, and not to an appeal to the circuit judge from the decision of the clerk, in which latter case no such allowance should be made. State v. Marshall (S.C. 1888) 28 S.C. 559, 6 S.E. 564. Costs 57

The costs provided for in this section [former Code 1962 Section 10‑1611] are discretionary with the court and cannot be taxed by the clerk without an order allowing them. Dauntless Mfg. Co. v. Davis (S.C. 1886) 24 S.C. 536.

**SECTION 15‑37‑100.** Costs on review of decision of inferior court in special proceeding.

 When the decision of a court of inferior jurisdiction in a special proceeding, including appeals from probate courts, shall be brought before the circuit court for review such proceeding shall, for all purposes of costs, be deemed an action at issue on a question of law from the time the proceeding shall be brought into court, and costs thereon shall be awarded and collected as provided by law.

HISTORY: 1962 Code Section 10‑1612; 1952 Code Section 10‑1612; 1942 Code Section 767; 1932 Code Section 767; Civ. P. ‘22 Section 632; Civ. P. ‘12 Section 370; Civ. P. ‘02 Section 331; 1870 (14) 499 Section 344.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k227.

Costs 227.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements, do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The commissioner provided by an act providing for the distribution of direct taxes collected by the United States during the war and returned to the State in trust, before whom direct tax claims are to be proved, is not a “court of inferior jurisdiction,” within the meaning of this section [former Code 1962 Section 10‑1612], providing for costs when the jurisdiction of such court in a special proceeding shall be brought before the court for review. Campbell v. Sanders (S.C. 1894) 42 S.C. 522, 20 S.E. 415.

**SECTION 15‑37‑110.** Adjustment of costs in interlocutory and special proceedings.

 Whenever it shall be necessary to adjust costs in any interlocutory proceeding in an action or in any special proceedings, they shall be adjusted by the judge before whom the proceeding may be heard or the court before which the proceeding may be decided or pending or in such other manner as the judge or court may direct.

HISTORY: 1962 Code Section 10‑1613; 1952 Code Section 10‑1613; 1942 Code Section 762; 1932 Code Section 762; Civ. P. ‘22 Section 627; Civ. P. ‘12 Section 365; Civ. P. ‘02 Section 326; 1870 (14) 499 Section 337.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k227.

Costs 227.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements, do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

**SECTION 15‑37‑120.** Costs for mileage.

 No constructive mileage shall be allowed, but in all cases costs for mileage shall only be taxed for the number of miles actually traveled.

HISTORY: 1962 Code Section 10‑1614; 1952 Code Section 10‑1614; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897 (22) 429.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k185.

Costs 185.

C.J.S. Costs Section 117.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 33, Witness Expenses.

Forms

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

**SECTION 15‑37‑130.** Costs for references.

 Costs for references shall only be taxed for the number of days which the master shall certify to have been unavoidably necessary, and no costs shall be taxed for references in which no testimony has been taken or argument had.

HISTORY: 1962 Code Section 10‑1615; 1952 Code Section 10‑1615; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897 (22) 429.

CROSS REFERENCES

Dismissal of actions under South Carolina Rules of Civil Procedure, see Rule 41, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k191.

Costs 191.

C.J.S. Costs Section 122.

C.J.S. Costs Section 122.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 40, Master’s and Referee’s Fees.

Attorney General’s Opinions

Fee of $5.00 should be charged when Master in Equity issues an order dismissing a supplemental proceeding referred to it. 1983 Op Atty Gen, No. 83‑26, p. 44.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements, do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

**SECTION 15‑37‑140.** Costs to master, special master or referee.

 The master, special master or referee shall be entitled to not less than twenty‑five dollars for each reference, and the work of one day shall constitute a reference, without regard to the number of claims presented and passed upon.

HISTORY: 1962 Code Section 10‑1616; 1952 Code Section 10‑1616; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897 (22) 429; 1972 (57) 2355.

CROSS REFERENCES

Fees of masters, see Section 14‑11‑310.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k191.

Costs 191.

C.J.S. Costs Section 122.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 40, Master’s and Referee’s Fees.

**SECTION 15‑37‑160.** Costs on uncontested claims.

 No costs shall be allowed for proving uncontested claims; except for the days in which the court, master or referee is occupied in taking proof for or against such claim.

HISTORY: 1962 Code Section 10‑1618; 1952 Code Section 10‑1618; 1942 Code Section 757; 1932 Code Section 757; Civ. C. ‘22 Section 5723; Civ. C. ‘12 Section 4206; Civ. C. ‘02 Section 3097; R. S. 2548; 1897 (22) 429; 1972 (57) 2534.

LIBRARY REFERENCES

Westlaw Key Number Searches: 102k1 to 102k77.

Costs 1 to 77.

C.J.S. Costs Sections 2 to 45, 98, 102 to 104, 134 to 141.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 26, Limitation on Costs for Proving Uncontested Claims.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

**SECTION 15‑37‑170.** Costs against infant plaintiff.

 When costs and disbursements are adjudged against an infant plaintiff the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be enforced by attachment.

HISTORY: 1962 Code Section 10‑1619; 1952 Code Section 10‑1619; 1942 Code Section 765; 1932 Code Section 765; Civ. P. ‘22 Section 630; Civ. P. ‘12 Section 368; Civ. P. ‘02 Section 329; 1870 (14) 499 Section 342.

LIBRARY REFERENCES

Westlaw Key Number Search: 211k116.

Infants 116.

C.J.S. Infants Sections 237, 239, 242, 270.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

**SECTION 15‑37‑180.** Costs against fiduciaries.

 In an action prosecuted or defended by an executor, administrator, trustee of an express trust or a person expressly authorized by statute costs shall be recovered as in an action by and against a person prosecuting or defending in his own right. But such costs shall be chargeable only upon or collected of the estate, fund, or party represented unless the court shall direct the costs to be paid by the plaintiff or defendant personally for mismanagement or bad faith in such action or defense.

HISTORY: 1962 Code Section 10‑1620; 1952 Code Section 10‑1620; 1942 Code Section 766; 1932 Code Section 766; Civ. P. ‘22 Section 631; Civ. P. ‘12 Section 369; Civ. P. ‘02 Section 330; 1870 (14) 499 Section 343.

CROSS REFERENCES

Liability for costs of executor or administrator bringing wrongful death action, see Section 15‑51‑50.

LIBRARY REFERENCES

Westlaw Key Number Searches: 162k456; 390k268.

Executors and Administrators 456.

Trusts 268.

C.J.S. Executors and Administrators Section 895.

C.J.S. Trover and Conversion Sections 556, 586.

RESEARCH REFERENCES

Treatises and Practice Aids

Bogert ‑ the Law of Trusts and Trustees Section 975, Compensation of Trustees.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

Attorneys’ fees of $200,000 allowed counsel for plaintiffs where record revealed testimony abundantly substantiating and justifying figure, and where master’s report showed that litigation was made necessary by failure of defendants to perform fiduciary obligations as executors and trustees. Segall v. Shore (S.C. 1977) 269 S.C. 31, 236 S.E.2d 316.

Applied in Long v. Conroy (S.C. 1965) 246 S.C. 225, 143 S.E.2d 459.

Security for costs may not be required under this section [former Code 1962 Section 10‑1620]. Griffin v. Allendale Bank (S.C. 1933) 170 S.C. 212, 170 S.E. 149.

In the absence of an order making an executrix personally liable for costs, such costs and disbursements in the case are chargeable under this section [former Code 1962 Section 10‑1620] upon the funds of the estate, and where the fund is still in the court of equity, it is proper for an order to issue that it remain there until such costs, disputed, are adjusted. Lockwood v. Lockwood (S.C. 1905) 73 S.C. 18, 52 S.E. 735.

A committee is liable for cost of suit maliciously prosecuted by him without cause. Ashley v. Holman (S.C. 1895) 44 S.C. 145, 21 S.E. 624.

Court should charge the assigned estate with costs where the assignee has not made himself liable “for mismanagement or bad faith” in the conduct of the business. Akers v. Rowan (S.C. 1892) 36 S.C. 87, 15 S.E. 350.

This section [former Code 1962 Section 10‑1620] provides that, in an action prosecuted or defended by an administrator, costs may be recovered, chargeable upon the estate, unless the court shall direct the same to be paid by the administrator for mismanagement or bad faith in such action; but when there is no evidence of mismanagement or bad faith in such action, it is error for the court to make such a direction. Clark v. Wright (S.C. 1887) 26 S.C. 196, 1 S.E. 814. Executors And Administrators 456(3)

This section [former Code 1962 Section 10‑1620] does not cover a case in which an administrator, under cover of his representative character, prosecutes or defends an action really for his own benefit, and not for the benefit of the estate of his intestate. If such case does not really involve mismanagement or bad faith in such action, the section does not apply. Clark v. Wright (S.C. 1887) 26 S.C. 196, 1 S.E. 814.

Under this section [former Code 1962 Section 10‑1620], where an administrator brings an action for death by wrongful act, decedent leaving no estate, judgment for defendant for costs of an appeal may be deducted by him from a judgment procured by plaintiff at a subsequent trial. Rookard v. Atlanta & C. Air Line Ry. Co. (S.C. 1911) 89 S.C. 371, 71 S.E. 992.

**SECTION 15‑37‑190.** Costs against assignee after action brought.

 In actions in which the cause of action shall, by assignment after the commencement of the action or in any other manner, become the property of a person not a party to the action such person shall be liable for the costs and disbursements in the same manner as if he were a party, and payment thereof may be enforced by attachment.

HISTORY: 1962 Code Section 10‑1621; 1952 Code Section 10‑1621; 1942 Code Section 770; 1932 Code Section 770; Civ. P. ‘22 Section 635; Civ. P. ‘12 Section 373; Civ. P. ‘02 334; 1870 (14) 500 Section 347.

LIBRARY REFERENCES

Westlaw Key Number Search: 38k139.

Assignments 139.

C.J.S. Assignments Section 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assignments Section 44, Obligations of Assignee.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

Where a claim due a firm under agreement becomes the property of one of the partners, who sues it to judgment, and then on settlement of the partnership affairs, it is sold as a partnership asset and bought by another member of the firm, the purchaser is not liable to the judgment creditor, under this section [former Code 1962 Section 10‑1621], for costs accruing in an action to set aside the judgment, pending at the time of the sale, but of which he had no notice and to which action he was not made a party. Walker v. Doty (S.C. 1907) 76 S.C. 464, 57 S.E. 181. Costs 99

Under this section [former Code 1962 Section 10‑1621], providing that in certain cases a person not a party to an action shall be liable for the costs thereof, and that payment may be enforced by attachment, the clerk of the court has no right to tax the costs against such person, but it can only be done by the court after rule to show cause, and opportunity given the party sought to be so made liable to be heard thereon. State v. Marshall (S.C. 1888) 28 S.C. 559, 6 S.E. 564. Costs 199

**SECTION 15‑37‑200.** Costs in action prosecuted by the State.

 In all civil actions prosecuted in the name of the State by an officer duly authorized for that purpose the State shall be liable for costs in the same cases and to the same extent as private parties. If a private person be joined with the State as plaintiff he shall be liable in the first instance for the defendant’s costs, which shall not be recovered of the State until after execution issued therefor against such private party shall have been returned unsatisfied.

HISTORY: 1962 Code Section 10‑1622; 1952 Code Section 10‑1622; 1942 Code Section 768; 1932 Code Section 768; Civ. P. ‘22 Section 633; Civ. P. ‘12 Section 371; Civ. P. ‘02 Section 332; 1870 (14) 499 Section 345.

CROSS REFERENCES

Suits involving state, state agencies and officials and United States, see Sections 15‑77‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k215.

States 215.

C.J.S. States Section 328.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 62, When a Private Person is Joined With the State as Plaintiff.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

The State’s liability for costs in a civil action is not limited to Section 15‑37‑200; the State may be assessed costs the same as any other defendant. Additionally, costs may be assessed against the prevailing party. Under Section 15‑37‑10, there is no mandate that costs be taxed against the losing party; liability for costs is in the court’s discretion. Dunn v. Dunn (S.C. 1989) 298 S.C. 365, 380 S.E.2d 836.

Although Department of Social Services is not liable for attorney fees for indigent parents whose parental rights it is seeking to terminate, it is liable for guardian ad litem fees ordered by lower court; in fixing amount of compensation for guardian ad litem, court should consider character of litigation, issues involved, services performed, care and diligence exhibited, and results achieved, additionally, court should consider customary fee for similar services, and financial condition of party ordered to make payment, or where State agencies involved, amount of funds available to make such payments. South Carolina Dept. of Social Services v. Hyatt (S.C. 1981) 277 S.C. 152, 283 S.E.2d 445.

**SECTION 15‑37‑210.** Costs in action prosecuted in name of the State.

 In an action prosecuted in the name of the State for the recovery of money or property or to establish a right of claim for the benefit of any county, city, town, village, corporation or person costs awarded against the plaintiff shall be a charge against the party for whose benefit the action was prosecuted and not against the State.

HISTORY: 1962 Code Section 10‑1623; 1952 Code Section 10‑1623; 1942 Code Section 769; 1932 Code Section 769; Civ. P. ‘22 Section 634; Civ. P. ‘12 Section 372; Civ. P. ‘02 Section 333; 1870 (14) 499 Section 346.

CROSS REFERENCES

Suits involving state, state agencies and officials and United States, see Sections 15‑77‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 360k215.

States 215.

C.J.S. States Section 328.

**SECTION 15‑37‑220.** Officers may take out execution for costs.

 Whenever a case may be (a) settled or determined at the mutual costs of parties or (b) discontinued or settled by plaintiff, or whenever (a) the judgment shall be for defendant or (b) the execution against the defendant shall be returned nulla bona, any of the officers entitled to receive any portion of such costs may issue an execution for his costs, or the clerk may issue for the whole, directed to the sheriff who shall execute such process as in other cases of execution delivered to him.

HISTORY: 1962 Code Section 10‑1624; 1952 Code Section 10‑1624; 1942 Code Section 760; 1932 Code Section 760; Civ. P. ‘22 Section 625; Civ. P. ‘12 Section 363; Civ. P. ‘02 Section 324; 1878 (16) 631.

LIBRARY REFERENCES

Westlaw Key Number Search: 102k279.

Costs 279.

C.J.S. Costs Section 202.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 53, Offers of Judgment.

NOTES OF DECISIONS

In general 1

1. In general

Rule 54(d), SCRCP and Sections 15‑37‑10 through 15‑37‑220, although allowing the recovery of certain costs and disbursements do not allow for the recovery of attorney’s fees. Black v. Roche Biomedical Laboratories, a Div. of Hoffman‑LaRoche, Inc. (S.C.App. 1993) 315 S.C. 223, 433 S.E.2d 21, rehearing denied.

An action which is commenced but thereafter discontinued is within the purview of this section [former Code 1962 Section 10‑1624], and in such cases a party may have his costs taxed and an execution issued therefor. But where the action is discontinued because of lack of jurisdiction over the defendant’s person or of the subject matter of the suit, then the court itself may not, in such cases, provide for the payment of costs. Duncan v. Duncan (S.C. 1912) 93 S.C. 487, 76 S.E. 1099.