CHAPTER 65

Receivership and Other Provisional Remedies

**SECTION 15‑65‑10.** Appointment of receiver.

 A receiver may be appointed by a judge of the circuit court, either in or out of court:

 (1) Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired, except in cases when judgment upon failure to answer may be had without application to the court;

 (2) After judgment, to carry the judgment into effect;

 (3) After judgment, to dispose of the property according to the judgment or to preserve it during the pendency of an appeal or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;

 (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and

 (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

HISTORY: 1962 Code Section 10‑2301; 1952 Code Section 10‑2301; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

The appointment of a receiver on the dissolution of a corporation, see Section 33‑14‑320.

The appointment of receivers in supplementary proceedings, see Sections 15‑39‑430 et seq.

Cases in which attachment may be granted, see Sections 15‑19‑10, 15‑19‑50.

Intervention under South Carolina Rules of Civil Procedure, see Rule 24, SCRCP.

Powers of judges in chambers, see SC Const, Art 5, Section 20 and Section 14‑5‑350.

Receiver in action to annul charter of corporation, see Section 15‑63‑190.

Receivers under South Carolina Rules of Civil Procedure, see Rule 66, SCRCP.

Sale of real estate by master, see Section 15‑39‑630.

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1. In general

The effect of the appointment of a receiver is to take property at the instance of the moving party, out of the possession of the person in whose possession it is found and place it in the hands of a third party pending litigation. Truesdell v Johnson, 144 SC 188, 142 SE 343 (1928). Pelzer v Hughes, 27 SC 408, 3 SE 781 (1887).

Section was applied in Powell v. Gary (S.C. 1942) 200 S.C. 154, 20 S.E.2d 391.

The power to appoint a receiver is vested in every circuit court of the State, and nowhere in the body of the law is there any limitation upon this authority, or any repeal of the provisions of this section [former Code 1962 Section 10‑2301], express or implied. Petition of State ex rel. Hutchinson (S.C. 1937) 182 S.C. 369, 189 S.E. 475.

Court may order receiver instead of master to dispose of assets of bankrupt. Buist v. Merchants’ & Planters’ Bank (S.C. 1903) 65 S.C. 487, 43 S.E. 958.

Receivers may be appointed by the court to make sales under its orders. Clyburn v. Reynolds (S.C. 1889) 31 S.C. 91, 9 S.E. 973. Receivers 32

Admissions in answer are sufficient evidence on motion for appointment of receiver. Meinhard v. Strickland (S.C. 1888) 29 S.C. 491, 7 S.E. 838.

The appointment of a receiver under the provisions of this section [former Code 1962 Section 10‑2301] is a stronger remedy than that of a temporary injunction alone. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

The appointment of a receiver is not so much in the nature of an attachment as of a sequestration. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

The jurisdiction to appoint a receiver under this section [former Code 1962 Section 10‑2301] lies exclusively in equity. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

It is improper, in the appointment of a receiver, to inquire into or express any opinion as to the general merits of the case before judgment. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

In view of the strict necessity required for the appointment of a receiver before judgment, under this section [former Code 1962 Section 10‑2301], it is necessary, upon an application therefor, to take a general view of the scope of the pleadings and the issues made. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

Where, on appeal, the Supreme Court finds that an appointment of a receiver by the circuit court was an abuse of discretion, it has no jurisdiction to appoint a new receiver, but may only direct the lower court to fill the vacancy. In re Citizens’ Exchange Bank of Denmark (S.C. 1927) 140 S.C. 471, 139 S.E. 135. Appeal And Error 1176(2)

2. Constitutionality

This section [former Code 1962 Section 10‑2301] is not invalid as an attempt on the part of the State to exercise the bankruptcy power, as there is no power under this section to discharge the debtor from his debts. Stevens v. Carolina Scenic Stages (C.A.4 (S.C.) 1953) 208 F.2d 332, certiorari denied 74 S.Ct. 515, 347 U.S. 917, 98 L.Ed. 1072.

3. Drastic remedy

The appointment of a receiver is a drastic remedy, to be exercised with great circumspection. Truesdell v Johnson, 144 SC 188, 142 SE 343 (1928). Pelzer v Hughes, 27 SC 408, 3 SE 781 (1887).

The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535.

Receivership is a drastic course, allowed only under pressing circumstances and granted only with reluctance and caution; and refusal of revocation of receiver, under changed circumstances, is drastic. Vasiliades v. Vasiliades (S.C. 1957) 231 S.C. 366, 98 S.E.2d 810. Receivers 1; Receivers 58

4. Court’s discretion

The appointment of a receiver is within the discretion of the circuit judge. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535.

A circuit judge did not abuse his discretion in declining to appoint a receiver to take possession and control of a utility’s assets until compliance with its permits and Department of Health and Environmental Control (DHEC) regulations was achieved where DHEC did not present the circuit court with any plan relating to the appointment of a receiver. Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control (S.C. 1989) 301 S.C. 224, 391 S.E.2d 535. Receivers 8

The appointment of a receiver and the revocation of such appointment rests in the discretion of the court. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764. Receivers 8; Receivers 58

Both the appointment and revocation of a receiver are largely discretionary with the court to which application is made. Vasiliades v. Vasiliades (S.C. 1957) 231 S.C. 366, 98 S.E.2d 810. Receivers 8; Receivers 58

The circuit judge has a large discretion in the matter of selecting and designating a receiver. In re Citizens’ Exchange Bank of Denmark (S.C. 1927) 140 S.C. 471, 139 S.E. 135. Receivers 49

5. Receiver’s commissions

Any assignment of commissions before court fixes same must be held to include in its terms any order of the court touching their distribution. In re Rock Hill Cotton Factory Co. (S.C. 1904) 68 S.C. 436, 47 S.E. 728.

This section [former Code 1962 Section 10‑2301] does not fix any commissions to be allowed a receiver, such commissions being left to the discretion of the court. Mann v. Poole (S.C. 1897) 48 S.C. 154, 26 S.E. 229. Receivers 198(2)

6. Effect of bankruptcy

The erroneous appointment of a receiver under this section [former Code 1962 Section 10‑2301] would not be subject to collateral attack in a court of bankruptcy where the appointing court had jurisdiction of the subject matter and the parties. Stevens v. Carolina Scenic Stages (C.A.4 (S.C.) 1953) 208 F.2d 332, certiorari denied 74 S.Ct. 515, 347 U.S. 917, 98 L.Ed. 1072.

There was error in entering a turn over order under Chapter XI of the Federal Bankruptcy Act where the property involved was held by a State court through its receiver, and had been so held for approximately twenty‑one months prior to the filing of the petition in bankruptcy. Stevens v. Carolina Scenic Stages (C.A.4 (S.C.) 1953) 208 F.2d 332, certiorari denied 74 S.Ct. 515, 347 U.S. 917, 98 L.Ed. 1072.

7. Caution exercised in appointment

The power to appoint a receiver should be exercised with great caution. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764. Receivers 1

An application for a receiver is not entitled to favorable consideration when the plaintiff has lain for a long period of years and quietly acquiesced in a condition of affairs which he seeks to change by obtaining a receiver. Brookshire v. Farmers’ Alliance Exch. (S.C. 1905) 73 S.C. 131, 52 S.E. 867.

Where, on the vote of the stockholders, a solvent corporation is being dissolved, a stockholder’s application for a receiver on the ground that certain transactions of the directors, long acquiesced in, were ultra vires, will be denied, where no fraud, mismanagement, or neglect is charged. Brookshire v. Farmers’ Alliance Exch. (S.C. 1905) 73 S.C. 131, 52 S.E. 867.

As a rule, a receiver will not be appointed during the progress of a cause unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and that there is danger that the property will be materially injured before the case can be determined. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

8. Appointment at chambers

A receiver may be appointed at chambers. Truesdell v Johnson, 144 SC 188, 142 SE 343 (1928). Harman v Wagener, 33 SC 487, 12 SE 98 (1890). Regenstein v Pearlstein, 30 SC 192, 8 SE 850 (1889). Pelzer v Hughes, 27 SC 408, 3 SE 781 (1887). Kilgore v Hair, 19 SC 486 (1883).

Where there is no resident judge in the circuit in which the cause arises, a nonresident judge, located in another circuit, may, in case of default or consent of the parties, appoint a receiver within the provisions of this section [former Code 1962 Section 10‑2301]. Truesdell v. Johnson (S.C. 1928) 144 S.C. 188, 142 S.E. 343. Receivers 29(1)

9. Bond

It is proper that when a receiver is appointed he should be required to give bond, but there is no statute or rule of law which requires that a bond should be exacted from a plaintiff before granting an order for the appointment of a receiver. De Walt v. Kinard (S.C. 1883) 19 S.C. 286.

Where a master, a bonded officer of the court, is practically, though not nominally, made a receiver, it is not necessary that he be required to give a special bond. De Walt v. Kinard (S.C. 1883) 19 S.C. 286.

10. Attachment after appointment

After a receiver has been duly appointed and qualified, an attachment cannot be levied on the property in his possession, for it is then in the custody of the law. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

Attachment will not lie against property under receiver’s control, even before he has filed his bond. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

11. Unilateral appointment by court

A circuit judge may not, on his own motion, appoint a receiver as provided for in this section [former Code 1962 Section 10‑2301]. White v. Britton (S.C. 1905) 72 S.C. 175, 51 S.E. 547. Receivers 48

It is error to appoint a receiver where no application for such is made by either party. White v. Britton (S.C. 1905) 72 S.C. 175, 51 S.E. 547. Receivers 48

12. Nature of appointee’s authority

Where the president and directors of a railroad were ordered by the court to remain in control of the property but under the direction of the court, such order made them receivers—that is, officers of the court, and not of the company. In re Fifty‑Four First Mortg Bonds, 15 SC 304 (1881). Ex parte Brown, 15 SC 518 (1881).

A receiver is an executive officer of the court, administering the assets of the estate under the direction of the court, his authority resting only in the orders by which he is appointed. In re Fifty‑Four First Mortg Bonds, 15 SC 304 (1881). Gadsden v Whaley, 14 SC 210 (1880).

Receiver has no general authority as a receiver to sue or be sued, or defend. In re Fifty‑Four First Mortg Bonds, 15 SC 304 (1881). Gadsden v Whaley, 14 SC 210 (1880).

The appointment of a receiver works no metamorphosis in the title or interest to, or in the assets of, the insolvent; the receiver takes possession of them as the arm of the court, subject to all existing liens and encumbrances, having due regard to the legal and equitable rights of the parties. A receiver stands in the shoes of the debtor with respect to the property of the latter and the appointment of a receiver will not change any existing contractual relation or create any new contractual relation or right of action thereon. A receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver and becomes merely the assignee of the insolvent, having exactly the same rights. Jeffcoat v. Morris (S.C.App. 1989) 300 S.C. 526, 389 S.E.2d 159.

A receiver represents the court appointing him, and he is an officer of the court and is the agency through which the court acts. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764. Receivers 81; Receivers 82

As a receiver has no power other than that given him by the order of appointment, his authority is derived solely from the court, and he is subject only to the court’s direction. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764. Receivers 81; Receivers 82

The acts of a receiver acting under orders of the court should not be nullified except for grave and sufficient reasons. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764. Receivers 98

13. Particular persons appointed—In general

A receiver must be impartial and capable and as a general rule should not be connected in interest with any party to the cause. Ex parte Citizens’ Exch. Bank of Denmark, 140 SC 471, 139 SE 135 (1927). Virginia‑Carolina Chemical Co. v Hunter, 84 SC 214, 66 SE 177 (1909).

A master of the court should not be appointed a receiver under this section [former Code 1962 Section 10‑2301], in any case. White v Britton, 72 SC 175, 51 SE 547 (1905). Kilgore v Hair, 19 SC 486 (1883).

It is improper to appoint as receiver the agent of the petitioning creditor, in absence of circumstances showing his special fitness or the propriety of appointing one so closely connected with the parties in interest. Virginia‑Carolina Chemical Co. v. Hunter (S.C. 1909) 84 S.C. 214, 66 S.E. 177. Receivers 48

The appointment of the clerk of the court as receiver is not permissible under this section [former Code 1962 Section 10‑2301]. White v. Britton (S.C. 1905) 72 S.C. 175, 51 S.E. 547.

The appointment of an attorney for a bank examiner as a receiver is not an abuse of the court’s discretion where special fitness is shown and he was neither an applicant for the position nor the nominee of any interested person. In re Citizens’ Exchange Bank of Denmark (S.C. 1927) 140 S.C. 471, 139 S.E. 135.

14. —— Attorney, particular persons appointed

An attorney actively engaged in securing or opposing receivership should not ordinarily be appointed as receiver. In re Citizens’ Exchange Bank of Denmark (S.C. 1927) 140 S.C. 471, 139 S.E. 135. Receivers 48

15. Appointment before judgment

Until there had been a final determination of all issues at the trial, the right to possession of the property remained in the defendants, and as they apparently did not have possession when they applied for the appointment of the receiver, the trial judge properly, under subdivision (1), by an exercise of his discretion, appointed the receiver. Kirven v. Lawrence (S.C. 1964) 244 S.C. 572, 137 S.E.2d 764.

A receiver may not be appointed under subd (1) of this section [former Code 1962 Section 10‑2301] to manage mortgaged property on the request of the mortgagee or person holding under the mortgagee without notice to mortgagor, since legal title is always in the mortgagor, or person claiming under him, precluding one claiming under the mortgagee from establishing an “apparent right” to the property, unless the mortgagor is insolvent or the mortgaged premises insufficient. Greenwood Loan & Guarantee Ass’n v. Childs (S.C. 1903) 67 S.C. 251, 45 S.E. 167.

16. Appointment after judgment

For additional related cases, as to appointment of receivers in supplementary proceedings, see Dilling, Baker & Co. v Foster, 21 SC 334 (1884). Dauntless Mfg. Co. v Davis, 22 SC 584 (1884). Sparks v Davis, 25 SC 381 (1886).

The duty of the receiver is, “after judgment, to carry the judgment into effect,” and, under the order of the judge, to recover by litigation the title and possession of the property. Gardner v. Kirven (S.C. 1934) 173 S.C. 302, 175 S.E. 637.

The provisions of this section [former Code 1962 Section 10‑2301] as to receivers do not apply to receivers appointed, under Code 1962 Sections 10‑1732 to 10‑1734 [see now Sections 15‑39‑430 to 15‑39‑450], to secure the fruits of a judgment. This section prescribes a remedy toward the prosecution of a civil action in the procurement of a judgment, as distinguished from a remedy toward the execution of a judgment. Deer Island Lumber Co. v. Virginia‑Carolina Chemical Co. (S.C. 1919) 111 S.C. 299, 97 S.E. 833.

17. Appointment for corporation—In general

Court of equity may order receivership when corporation is insolvent or in imminent danger of insolvency, when such receivership is for the purpose of bona fide liquidation of rights of creditors according to their respective priorities. Montgomery & Crawford v Arcadia Mills, 173 SC 464, 176 SE 589 (1934). Stevens v Carolina Scenic Stages, 208 F2d 332 (1953), cert denied 347 US 917, 74 S Ct 515, 98 L Ed 1072 (1954).

Cited in Clark v. Preferred Acc. Ins. Co. of N. Y. (S.C. 1957) 231 S.C. 167, 97 S.E.2d 498.

The court has no authority to appoint a receiver in a proceeding without institution of an action against the corporation for which the receiver is sought. Porter v. Brown (S.C. 1929) 149 S.C. 151, 146 S.E. 810. Receivers 5

A receiver should not be appointed where the appointment is opposed by all creditors except one, to whom the amount due has been tendered and refused. Miller v. Southern Land & Lumber Co. (S.C. 1898) 53 S.C. 364, 31 S.E. 281. Receivers 12

18. —— “Insolvency”, appointment for corporation

“Insolvency” exists only where assets will not meet liabilities. The “insolvency” provided for in subdivision (4) of this section [former Code 1962 Section 10‑2301] is that condition of the debtor where his entire property and assets are insufficient to pay his debts. Miller v. Southern Land & Lumber Co. (S.C. 1898) 53 S.C. 364, 31 S.E. 281.

Where the assets of a corporation, as shown, were about three times the stated indebtedness of a corporation, and there was no showing that the corporation’s property was seriously depreciated; but, on the contrary, it was shown that large additions had been recently made to its plant; and it was not found that the corporation was endeavoring to dispose of its property in defraud of its creditors, it was error to provide for a receiver under subdivision (4) of this section [former Code 1962 Section 10‑2301]. Miller v. Southern Land & Lumber Co. (S.C. 1898) 53 S.C. 364, 31 S.E. 281.

19. —— “Imminent danger of insolvency”, appointment for corporation

“Imminent danger of insolvency” as used in subdivision (4) of this section [former Code 1962 Section 10‑2301] means danger of insolvency from the standpoint of preserving the assets of the involved corporation. In re Maplecroft Mills, 1914, 218 F. 659, reversed 226 F. 415, 141 C.C.A. 245.

Where a corporation has ceased to be a “going concern,” the assets are scant, there exist some creditors, with the possibility of others, and the main asset is an uncertain claim at law involving the expense of litigation, there is such “imminent danger of insolvency” as to warrant the appointment of a receiver under subdivision (4) of this section [Code 1962 Section 10‑2301]. Chisolm v. Carolina Agency Co. (S.C. 1911) 88 S.C. 438, 70 S.E. 1035.

20. Appointment in other cases—In general

Proof of insolvency, and nothing more, is not sufficient to warrant the appointment of a receiver under this section [former Code 1962 Section 10‑2301]. Virginia‑Carolina Chemical Co. v Hunter, 84 SC 214, 66 SE 177 (1909). Whilden v Chapman, 80 SC 84, 61 SE 249 (1908).

A mortgagee, having only a lien on the mortgaged property, has no claim whatsoever to rents and profits, and pending foreclosure proceedings, a receiver will not be appointed to apply such rents and profits to the payment of the mortgage debt, notwithstanding the insufficiency of the land to pay the same, and the present insolvency of the mortgagor. Hardin v Hardin, 34 SC 77, 12 SE 936 (1891). Seignious v Pate, 32 SC 134, 10 SE 880 (1890).

A receiver was properly appointed within the meaning of 15‑65‑10 to take possession of a disputed piece of real estate and collect the rents and profits during the pendency of litigation, where purchasers were in possession of the property in question, the vendor held title to the property and had an apparent right to the rents and profits, the purchasers had no apparent right to take control of the property and collect the rents and profits over the vendor’s objection, there was a likelihood that the rents and profits would be dissipated or the property materially impaired in that the purchasers refused to account to the vendor for rents received, and there was no assurance that regime fees, taxes, and other maintenance charges on the property would be paid during the pendency of the litigation. Andrick Development Corp. v. Maccaro (S.C.App. 1984) 280 S.C. 103, 311 S.E.2d 95. Receivers 16

Applied in Southern Trust Co. v. Cudd (S.C. 1932) 166 S.C. 108, 164 S.E. 428.

If a solvent debtor adopts a course of conduct showing a fraudulent intent to defeat or hinder his creditors, a receiver may be appointed. Virginia‑Carolina Chemical Co. v. Hunter (S.C. 1909) 84 S.C. 214, 66 S.E. 177.

An executor holds assets of the testator as quasi trustee for his creditors, and it is competent for the court to appoint a receiver at the instance of such creditors upon its being shown that the executor is mismanaging the assets, and it is not essential that the creditors first obtain judgment and have their executions returned unsatisfied. Harman v. Wagner (S.C. 1890) 33 S.C. 487, 12 S.E. 98. Receivers 19

It is not necessary, under the provisions of this section [former Code 1962 Section 10‑2301] and Code 1962 Section 57‑353, that the plaintiff recover judgment and exhaust his legal remedies, to have a receiver appointed over property assigned by the debtor, it only being necessary to prove that the assignee is insolvent or incompetent. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

No receiver will be appointed under this section [former Code 1962 Section 10‑2301] to take over property assigned and sold to third persons by the insolvent, where it does not appear that there is any danger of loss or injury to the property during litigation. Pelzer v. Hughes (S.C. 1887) 27 S.C. 408, 3 S.E. 781.

21. —— Partnership matters, appointment in other cases

A receiver may be appointed in a partnership dissolution, but the facts of the particular case should govern. Wrenn v. Wrenn (S.C. 1956) 228 S.C. 588, 91 S.E.2d 267. Partnership 1020

Where a creditor seeks to have a receiver appointed over partnership assets, he must show that he cannot enforce payment of his debt by judgment and execution, either against the firm or the individual partners. Whilden v. Chapman (S.C. 1908) 80 S.C. 84, 61 S.E. 249.

Where, on a complaint by a creditor against a partnership, it does not appear that he is entitled to such receiver, but on the answer of one of the partners it appears that he has a good cause for a receiver under subdivision (1) of this section [former Code 1962 Section 10‑2301] by prima facie case of fraudulent management and collusion to deprive him of his share in the assets, the answer stated a cause which justified the court in appointing a receiver. Whilden v. Chapman (S.C. 1908) 80 S.C. 84, 61 S.E. 249.

The insolvency of a partnership is sufficiently averred in an action for a receiver, where it is shown that an execution against one partner has been returned nulla bona, and that the other has no attachable property. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634. Receivers 32

Where the remaining partner on the dissolution of a partnership, retains the assets and assumes the liabilities of the firm, the retiring partner becomes a surety for such liabilities, and may, on showing that the assets are being dissipated by the remaining partner, have a receiver appointed under this section [Code 1962 Section 10‑2301]. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634. Partnership 816

22. —— Cases involving title to real property, appointment in other cases

Where one of the alleged tenants in common claims the right to the entire property in fee simple, is seeking to collect all the rents thereof on a bill of partition, and is insolvent, it is proper to appoint a receiver to collect the rents and pay taxes and insurance during the litigation. Christ Church, Charleston, v. Fishburne (S.C. 1909) 83 S.C. 304, 65 S.E. 238. Partition 53

A receiver was properly appointed in an action for partition where the party in possession was insolvent. McCrady v. Jones (S.C. 1892) 36 S.C. 136, 15 S.E. 430.

A claim of title in the complaint, together with an allegation of defendant’s insolvency and of danger of loss of rents, all of which are denied in the answer, present a question of title triable by jury, and not a case warranting the appointment of a receiver. De Walt v. Kinard (S.C. 1883) 19 S.C. 286.

23. Removal of receiver

The removal of a receiver under this section [former Code 1962 Section 10‑2301] because he is the agent of the petitioning creditor and the appointment of another receiver will not invalidate any proper act of the original receiver. Virginia‑Carolina Chemical Co. v. Hunter (S.C. 1909) 84 S.C. 214, 66 S.E. 177. Receivers 62

An order made on the discharge of a receiver, referring to the amount found by the clerk to be in the hands of receiver, and providing for his discharge after payment of certain amounts, is res judicata of the account of the receiver. Sarratt v. Gaffney Carpet Mfg. Co. (S.C. 1907) 77 S.C. 85, 57 S.E. 616. Judgment 725(1)

A change of incumbent in the office of a receiver does not affect the status of claims against the property arising during the receivership. Ex parte Brown (S.C. 1881) 15 S.C. 518. Receivers 108

**SECTION 15‑65‑20.** Notice of appointment shall be given.

 No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days’ notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.

HISTORY: 1962 Code Section 10‑2302; 1952 Code Section 10‑2302; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

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NOTES OF DECISIONS

In general 1

1. In general

A successor receiver was validly appointed by the court, and was an agent of the court and not the judgment creditor, notwithstanding lack of notice of the appointment to the debtor, since Section 15‑65‑20 did not require notice to the debtor once the property was in the court’s possession; therefore, the judgment creditor was not liable to one whose property had been negligently attached by the successor receiver. Bates v. South Carolina Nat. Bank (S.C.App. 1984) 280 S.C. 599, 313 S.E.2d 361.

Cited in Wrenn v. Wrenn (S.C. 1956) 228 S.C. 588, 91 S.E.2d 267.

A receiver may not be appointed under this section [former Code 1962 Section 10‑2302] without notice to any party to the cause. White v. Britton (S.C. 1905) 72 S.C. 175, 51 S.E. 547.

Notice of receiver’s application for instructions need not be given. Where a receiver makes application to the court for instructions as to the disposal of the property in his hands, it is not necessary that the defendants have notice of such application. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634.

An order directing a receiver in the performance of his duties is not beyond the jurisdiction of the court, though notice of an appeal from the order appointing such officer has been given, where the return on appeal has not been filed. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634. Receivers 110

**SECTION 15‑65‑30.** Notice to nonresident.

 When the party whose property is sought to be placed in the hands of a receiver cannot be found within the State, then notice of the application to the party in possession of such property shall be sufficient. And when the property is abandoned and not in possession of anyone and the party claiming the property cannot be found within the State, then the appointment may be made without notice of the application. But whenever a receiver is appointed and the party claiming the property cannot be found within the State, notice of such appointment shall be forthwith given by publication or personal service without the State as prescribed by law in the case of a summons in a civil action.

HISTORY: 1962 Code Section 10‑2303; 1952 Code Section 10‑2303; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

Service by publication out of state, see Sections 15‑9‑710 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 323k35.

Receivers 35.

C.J.S. Receivers Section 49.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 10, Notice of Appointment.

NOTES OF DECISIONS

In general 1

1. In general

Where receiver was appointed after proper notice as required by statute, after all parties had been heard on the receivership issue, a motion asking that the time for answering be extended until 20 days after the receiver should furnish a list of assets and liabilities was properly denied, since a receivership may be vacated if a showing warranting such action is later made. Wadsworth Industries, Inc. v. Westgate Knitting, Inc. (S.C. 1975) 264 S.C. 106, 212 S.E.2d 571. Corporations And Business Organizations 2915(5)

Under this section [former Code 1962 Section 10‑2303] the styling of a corporation as “incorporated under the laws of New York” in the complaint, and personal service out of the State in such style, is fatally defective, where such corporation is in fact incorporated in Florida. Porter v. Brown (S.C. 1929) 149 S.C. 151, 146 S.E. 810.

Under Code former 1962 Section 10‑2302 [see Section 15‑65‑20] providing for notice of application for a receiver, and this section [former Code 1962 Section 10‑2303] further providing for notice of appointment of receiver where the party claiming the property cannot be found within the State, the court has jurisdiction to direct a receiver in regard to his duties, where no notice has been given of his appointment, in the absence of evidence that the party claiming the property cannot be found in the State. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634. Receivers 55

**SECTION 15‑65‑50.** No receiver shall be appointed before judgment when bond is offered.

 No receiver of the property of any person or corporation shall be appointed before final judgment in the cause if the party claiming the property so sought to be placed in the hands of a receiver or the party in possession thereof shall offer a bond, in the penalty of double the value of the property, with sufficient security, approved by the clerk of the court of common pleas of the court in which the action is brought, fully to account for and deliver over, whenever thereafter required by any final adjudication in the cause, the property sought to be placed in the hands of a receiver and to meet and satisfy any decree or judgment or order that may be made in the cause.

HISTORY: 1962 Code Section 10‑2305; 1952 Code Section 10‑2305; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

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

Recovery of damages on breach of bond under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 323k51.

Receivers 51.

C.J.S. Receivers Section 75.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bonds Section 81, Chapter 65 Receivership.

S.C. Jur. Receivers Section 12, Bonds.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Cohen v Standard Acci. Ins. Co. 203 SC 263, 17 SE2d 230 (1941). Vasiliades v Vasiliades, 231 SC 366, 98 SE2d 810 (1957).

This section [former Code 1962 Section 10‑2305] and former Code 1962 Section 10‑2306 [see Section 15‑65‑60] were enacted for the purpose of protecting the interests of the person claiming or in possession of the property for which a receiver is sought. Truesdell v. Johnson (S.C. 1928) 144 S.C. 188, 142 S.E. 343.

A method is provided by this section [former Code 1962 Section 10‑2305] whereby a person claiming or in possession of the litigated property may retain possession of the property and prevent the appointment of a receiver. Truesdell v. Johnson (S.C. 1928) 144 S.C. 188, 142 S.E. 343.

**SECTION 15‑65‑60.** Effect of bond given after appointment; return of property.

 Whenever the court or judge before whom such application is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in Section 15‑65‑50. And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver and direct the redelivery of the property to the party from whose possession it was taken; provided, that when, under the orders of the court or judge, the receiver has incurred any lawful charges and expenses in the care and custody of the property put into his hands the court or judge, before directing the redelivery, may require sufficient security to be given in addition for the payment of such lawful charges and expenses should they be thereafter finally adjudged to be chargeable against the property.

HISTORY: 1962 Code Section 10‑2306; 1952 Code Section 10‑2306; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

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

Recovery of damages on breach of bond under South Carolina Rules of Civil Procedure, see Rule 65, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 323k51.

Receivers 51.

C.J.S. Receivers Section 75.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 12, Bonds.

NOTES OF DECISIONS

In general 1

1. In general

The entering into a bond, under this section [former Code 1962 Section 10‑2306] and Code 1962 Section 10‑2305 [see now Section 15‑65‑50], after appointment of a receiver, where the order appointing such receiver provides for such a bond, makes an appeal concerning the appointment unnecessary, as the entering into the bond vacates the receivership. Brookshire v Farmers’ Alliance Exch. 71 SC 451, 51 SE 442 (1905). Roberts v Pipkin, 63 SC 252, 41 SE 300 (1902).

Appointment of receiver is nullified by posting of bond in behalf of defendants. Vasiliades v. Vasiliades (S.C. 1957) 231 S.C. 366, 98 S.E.2d 810.

The requirement of this section [former Code 1962 Section 10‑2306] is for the benefit of those who are in possession of the property and to enable them to replevy it. Ex parte Rowley (S.C. 1942) 200 S.C. 174, 20 S.E.2d 383.

It is a condition precedent to the issuance of an order for a receiver under former Code 1962 Section 10‑2305 [see now Section 15‑65‑50] that the value of the litigated property be fixed therein, in order that this section [former Code 1962 Section 10‑2306], providing for defendant’s bond after appointment of the receiver to recover possession of the property, may be of full force and effect. Truesdell v. Johnson (S.C. 1928) 144 S.C. 188, 142 S.E. 343.

An order of a judge directing a receiver to make an inventory of the assets of a company of which he is given possession is not equivalent to a clause fixing the value of the property. Truesdell v. Johnson (S.C. 1928) 144 S.C. 188, 142 S.E. 343.

Where an error is made in fixing the value of the property in the order appointing a receiver, the circuit judge has power to correct such error. Allen v. Cooley (S.C. 1898) 53 S.C. 414, 31 S.E. 634.

**SECTION 15‑65‑70.** How bonds shall be made payable; filing.

 The several bonds required by this chapter shall be made payable to the clerks of the respective courts in which the action is pending in which the bonds shall be made and shall be conditioned as required by this chapter. They shall, upon execution and approval as to form and sufficiency by the court or judge, or such other officer as the order shall prescribe, be filed in the office of the clerk of court, who shall, upon demand of any party to the cause and payment of the legal fees therefor, give certified copies of such bonds on which any party entitled to the benefit thereof may sue the parties liable thereon in any court of competent jurisdiction.

HISTORY: 1962 Code Section 10‑2307; 1952 Code Section 10‑2307; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

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

Recovery of damages for breach of bond 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.

LIBRARY REFERENCES

Westlaw Key Number Search: 323k51.

Receivers 51.

C.J.S. Receivers Section 75.

NOTES OF DECISIONS

In general 1

1. In general

The court of appointment and service of a receiver is the only “court of competent jurisdiction” to entertain a claim upon the official bond required, and in the action in which the appointment was made. Hoile v Nat. Sur. Hoile v. National Sur. Corp. (S.C. 1944) 204 S.C. 110, 28 S.E.2d 638.

There is no obstacle to the maintainance of actions at law upon bonds given pursuant to this section [former Code 1962 Section 10‑2307], whether or not the procurer of a temporary injunction or restraining order, later dissolved, is a receiver appointed by a court. Hoile v. National Sur. Corp. (S.C. 1944) 204 S.C. 110, 28 S.E.2d 638.

**SECTION 15‑65‑80.** Proceedings when security becomes insufficient.

 Should the security become insufficient upon any of such bonds after they have been given and approved, the court or judge may, upon application, after notice, require the security to be made sufficient and on default therein may proceed as if no bond had been given, but without prejudice to the right of any party entitled to the benefit of such bond to enforce it according to the terms and conditions thereof.

HISTORY: 1962 Code Section 10‑2308; 1952 Code Section 10‑2308; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

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 Search: 323k51.

Receivers 51.

C.J.S. Receivers Section 75.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 12, Bonds.

**SECTION 15‑65‑90.** Charging costs and ascertaining damages if receiver is improperly appointed.

 Whenever a receiver shall have been appointed of any property against the opposition of any party to the cause and shall have taken possession of the property and thereafter by any final adjudication such receiver shall be held to have been improperly appointed, the costs, charges and expenses of such receivership shall not be charges upon the property as a whole but only upon the interests therein of the party procuring the appointment. And any party to the cause having opposed such receivership may apply to the court after final adjudication, as aforesaid, and have it referred to a master, referee or jury, as the practice in the case presented may be proper, to have his actual damages by reason of such receivership ascertained and assessed and for judgment therefor against the party or parties having procured such receiver.

HISTORY: 1962 Code Section 10‑2309; 1952 Code Section 10‑2309; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

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: 323k189; 323k220.

Receivers 189, 220.

C.J.S. Receivers Sections 447, 522 to 523.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 27, Wrongful Receivership.

**SECTION 15‑65‑100.** Compensation of receivers of corporate property.

 Receivers of the property within this State of foreign or other corporations shall be allowed such commissions as may be fixed by the court appointing them.

HISTORY: 1962 Code Section 10‑2310; 1952 Code Section 10‑2310; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510; 1950 (46) 1810.

LIBRARY REFERENCES

Westlaw Key Number Search: 101k568.

Corporations 568.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 25, Compensation of Receiver.

LAW REVIEW AND JOURNAL COMMENTARIES

Criteria for determining receiver fees established. 39 S.C. L. Rev. 151, Autumn 1987.

**SECTION 15‑65‑110.** Deposit of money and the like in court.

 When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery which, being the subject of litigation, is held by him as trustee for another party or which belongs or is due to another party, the court may order such money or other thing to be deposited in court or delivered to such party, with or without security, subject to the further direction of the court.

HISTORY: 1962 Code Section 10‑2311; 1952 Code Section 10‑2311; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

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

LIBRARY REFERENCES

Westlaw Key Number Searches: 123k1 to 123k12.

Deposits in Court 1 to 12.

C.J.S. Deposits in Court Sections 1, 4 to 40.

NOTES OF DECISIONS

In general 1

1. In general

Where a simple money judgment has been rendered against a trustee holding over funds, it is error for a subsequent circuit judge to order the trustee to pay the funds to the plaintiff or deposit them in court, without notice to such trustee or finding that the funds were in his possession at the date of the order. American Seeding Mach. Co. v. Commander (S.C. 1907) 77 S.C. 312, 57 S.E. 1108. Deposits In Court 2

**SECTION 15‑65‑120.** Enforcing order for deposit.

 Whenever, in the exercise of its authority, a court shall have ordered the deposit, delivery or conveyance of money or other property and the order is disobeyed, the court, besides punishing the disobedience as for contempt, may make an order requiring the sheriff or constable to take the money or property and deposit, deliver or convey it in conformity with the direction of the court.

HISTORY: 1962 Code Section 10‑2312; 1952 Code Section 10‑2312; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

LIBRARY REFERENCES

Westlaw Key Number Search: 123k2.

Deposits in Court 2.

C.J.S. Deposits in Court Sections 8 to 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Receivers Section 22, Miscellaneous Duties and Powers.

NOTES OF DECISIONS

In general 1

1. In general

A judge can grant an order of attachment against an executor who has refused to turn over the assets to a receiver as ordered by the court. Harman v. Wagner (S.C. 1890) 33 S.C. 487, 12 S.E. 98.

**SECTION 15‑65‑130.** Order for sum admitted due.

 When the answer of the defendant expressly, or by not denying, admits part of the plaintiff’s claim to be just, the court on motion may order such defendant to satisfy that part of the claim and may enforce the order as it enforces a judgment or provisional remedy.

HISTORY: 1962 Code Section 10‑2313; 1952 Code Section 10‑2313; 1942 Code Section 584; 1932 Code Section 584; Civ. P. ‘22 Section 524; Civ. P. ‘12 Section 303; Civ. P. ‘02 Section 265; 1870 (14) 479 Section 267; 1897 (22) 510.

CROSS REFERENCES

Offer of judgment under South Carolina Rules of Civil Procedure, see Rule 68, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Search: 123k2.

Deposits in Court 2.

C.J.S. Deposits in Court Sections 8 to 17.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 68.1, Reporter’s Notes.

Forms

South Carolina Litigation Forms and Analysis Section 11:20 , Motion for Order for Sum Admitted Due.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Bomar v Gantt, 167 SC 139, 166 SE 90 (1932). Pilot Life Ins. Co. v Habis, 90 F2d 842 (1937).

Cited in Smith v Sovereign Camp Woodmen of the World, 204 SC 193, 28 SE2d 808 (1944). Marion v Weston, 126 SC 65, 119 SE 582 (1923). Bush v Aldrich, 110 SC 491, 96 SC 922 (1918).

If an offer to pay be made, pending suit, by a debtor to his creditor, it cannot avail him unless he follow it up with an offer to pay the money into court, or at least submit to judgment for sum admitted. Coghlan v. South Carolina R. Co., 1887, 32 F. 316, affirmed 12 S.Ct. 150, 142 U.S. 101, 35 L.Ed. 951.

Where the proper motion under this section [former Code 1962 Section 10‑2313] is for an order directing the defendant to pay admitted sum due, it is not error for the court to make such an order on plaintiff’s motion for judgment, where defendant is neither misled nor surprised. Phenix Furniture Co. v. Daggett (S.C. 1928) 145 S.C. 357, 143 S.E. 220.

Where the defendant offers to pay sum, deemed by plaintiff to be in full satisfaction, he may be forced to pay that amount to plaintiff without condition. Phenix Furniture Co. v. Daggett (S.C. 1928) 145 S.C. 357, 143 S.E. 220. Judgment 85

This section [former Code 1962 Section 10‑2313] provides for a personal order to the defendant to satisfy a debt which he admits and, in addition, allows execution against his property, or any other way of satisfying a debt provided by the law. Malloy v. Douglass (S.C. 1920) 113 S.C. 384, 101 S.E. 825.

An order to pay an admitted sum due is not a final judgment as to all matters set forth in the case, so as to preclude further inquiry as to issues set up in the pleadings. Malloy v. Douglass (S.C. 1920) 113 S.C. 384, 101 S.E. 825.