CHAPTER 1

General Provisions

**SECTION 18‑1‑10.** Title covers all appeals in civil and criminal actions; exceptions.

 The only mode of reviewing a judgment or order in a civil or criminal action, other than the mode prescribed for particular matters in Titles 14, 15, and 17, shall be as prescribed by this title.

HISTORY: 1962 Code Section 7‑1; 1952 Code Section 7‑1; 1942 Code Section 771; 1932 Code Section 771; Civ. P. ‘22 Section 636; Civ. P. ‘12 Section 374; Civ. P. ‘02 Section 335; 1870 (14) 349; 1960 (51) 1750.

CROSS REFERENCES

Appeals from decisions of board of registration under the South Carolina Election Law, see Sections 7‑5‑180, 7‑5‑230 et seq.

Appeals from judgment entered under Uniform Post‑Conviction Procedure Act, see Section 17‑27‑100.

Civil remedies and procedure, generally, see Section 15‑1‑10 et seq.

Courts, generally, see Section 14‑1‑10 et seq.

Criminal procedure, generally, see Section 17‑1‑10 et seq.

Magistrates, generally, see Section 22‑1‑10 et seq.

Review of declaratory judgments, see Section 15‑53‑110.

Right to appeal of person denied registration to vote, see SC Const, Art II, Section 9.

Right to judicial review of judicial or quasi‑judicial decisions, see SC Const, Art I, Section 22.

Library References

Appeal and Error 4.

Criminal Law 1007.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 25, 35 to 45.

C.J.S. Criminal Law Sections 2328 to 2329.

LAW REVIEW AND JOURNAL COMMENTARIES

“Appellate Practice” in “Handbook of South Carolina Trial and Appellate Practice,” 11 SCLQ, Supp, 170 (1959).

“Procedure on Appeal” in “Handbook of South Carolina Trial and Appellate Practice,” 11 SCLQ, Supp, 212 (1959).

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

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Tallevast v Kaminski (1928) 146 SC 225, 143 SE 796. Montgomery v. Robinson (S.C. 1912) 93 S.C. 247, 76 S.E. 188.

Quoted in Hill v. Watson (S.C. 1878) 10 S.C. 268.

**SECTION 18‑1‑20.** Definitions.

 As used in reference to courts and court procedure in this Title the following terms shall be interpreted as follows:

 (1) The words “real property” and “real estate” are coextensive with lands, tenements and hereditaments.

 (2) The words “personal property” include money, goods, chattels, things in action and evidences of debt.

 (3) The word “property” includes real and personal property.

 (4) The word “clerk” signifies the clerk of the court in which the action is pending and, in the Supreme Court or the court of appeals, the clerk of the county mentioned in the title of the complaint or in another county to which the court may have changed the place of trial, unless otherwise specified.

HISTORY: 1962 Code Section 7‑16; 1952 Code Sections 7‑16 to 7‑19; 1942 Code Sections 897‑900; 1932 Code Sections 897‑900; Civ. P. ‘22 Sections 845‑848; Civ. P. ‘12 Sections 482‑485; Civ. P. ‘02 Sections 444‑447; 1870 (14) 466‑469; 1960 (51) 1926; 1999 Act No. 55, Section 25, eff June 1, 1999.

Library References

Appeal and Error 2.

Criminal Law 1005.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 2 to 3, 86 to 87.

C.J.S. Criminal Law Sections 2325 to 2326.

NOTES OF DECISIONS

In general 1

1. In general

Cited in McDonald v. Welborn (S.C. 1951) 220 S.C. 10, 66 S.E.2d 327.

**SECTION 18‑1‑30.** Who may appeal.

 Any party aggrieved may appeal in the cases prescribed in this title.

HISTORY: 1962 Code Section 7‑2; 1952 Code Section 7‑2; 1942 Code Section 773; 1932 Code Section 773; Civ. P. ‘22 Section 638; Civ. P. ‘12 Section 376; Civ. P. ‘02 Section 337; 1870 (14) 351.

Library References

Appeal and Error 151.

Criminal Law 1023.5.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 250 to 255, 258 to 262, 264 to 266.

C.J.S. Criminal Law Sections 2340 to 2341.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 29, Criminal Prosecutions.

S.C. Jur. Appeal and Error Section 30, Civil Actions.

S.C. Jur. Appeal and Error Section 71, The Four Basic Requirements.

LAW REVIEW AND JOURNAL COMMENTARIES

“Parties to Proceedings for Review” in “Handbook of South Carolina Trial and Appellate Practice,” 11 SCLQ, Supp, 209 (1959).

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

NOTES OF DECISIONS

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Aggrieved party 2

Cases 4

Right to appeal 3

1. In general

A defendant’s right to appeal is authorized by statutes and appellate court rules of procedure. State v. Rearick (S.C. 2016) 417 S.C. 391, 790 S.E.2d 192, certiorari denied 137 S.Ct. 1582, 197 L.Ed.2d 712. Criminal Law 1004

Under this section [Code 1962 Section 7‑2] a party ordinarily cannot appeal from a judgment, order, or decree in his own favor. Wilson v. Southern Ry., Carolina Division (S.C. 1923) 123 S.C. 399, 115 S.E. 764. Appeal And Error 151(5)

2. Aggrieved party

An aggrieved party is one who is injured in a legal sense; one who has suffered an injury to person or property. Bivens v Knight (1970) 254 SC 10, 173 SE2d 150. Cisson v McWhorter, 255 SC 174, (1970) 177 SE2d 603.

An aggrieved party within this section [Code 1962 Section 7‑2] is a person who is aggrieved by the judgment or decree, when it operates on his rights of property or bears directly upon his interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation. Bivens v Knight (1970) 254 SC 10, 173 SE2d 150. Cisson v McWhorter (1970) 255 SC 174, 177 SE2d 603.

An “aggrieved party” permitted to appeal is one who is injured in a legal sense or has suffered an injury to person or property. State v. Rearick (S.C. 2016) 417 S.C. 391, 790 S.E.2d 192, certiorari denied 137 S.Ct. 1582, 197 L.Ed.2d 712. Criminal Law 1023.5

Defendant was not “aggrieved” by circuit court’s order reversing magistrate’s dismissal of driving under the influence (DUI) charge, and therefore order was not appealable; order was analogous to an order denying a motion to suppress evidence, which was an interlocutory order that was not immediately appealable. State v. Looper (S.C.App. 2015) 412 S.C. 363, 772 S.E.2d 516, rehearing denied, certiorari granted. Criminal Law 1023(3)

Option holder for stock purchase was an “aggrieved party” with standing to appeal judgment granting specific performance to option holder, but requiring him to pay $2,936,000, instead of $415,988; verdict required option holder to pay more than he contended he was contractually required to pay for exercise of option. North American Rescue Products, Inc. v. Richardson (S.C.App. 2011) 396 S.C. 124, 720 S.E.2d 53, rehearing denied, opinion affirmed in part, vacated in part 2014 WL 2535542, withdrawn and superseded 411 S.C. 371, 769 S.E.2d 237. Appeal and Error 151(5)

Clients of attorney were not “aggrieved” party that could appeal sanctions imposed by trial court on attorney for filing frivolous claim; assessment of sanctions did not affect any property right of clients and did not impose any burden or obligation on them. Burns v. Gardner (S.C.App. 1997) 328 S.C. 608, 493 S.E.2d 356. Attorney And Client 24

Person is “aggrieved” by judgment or decree, as requirement for right to appeal, when judgment or decree operates on his rights of property or bears directly upon his interest and constitutes substantial grievance, denial of some personal or property right, or imposition on party of burden or obligation. Burns v. Gardner (S.C.App. 1997) 328 S.C. 608, 493 S.E.2d 356. Appeal And Error 151(2)

Wife was not an aggrieved party where the court failed to grant a divorce to her on the ground of desertion, but instead granted divorce on the ground of separation for one year as asserted by the husband. Dunson v. Dunson (S.C. 1982) 278 S.C. 210, 294 S.E.2d 39.

Joint tortfeasor was not aggrieved party within meaning of this section, from an order granting a nonsuit as to another joint tortfeasor, since there is no right of contribution among joint tortfeasors; thus, tortfeasor’s potential liability was not increased by the granting of the nonsuit. Knight v. Autumn Co., Inc. (S.C. 1978) 271 S.C. 112, 245 S.E.2d 602.

The statutory provision limiting appellate review to those who have been aggrieved by the judgment below is a wise and well‑reasoned requirement, as the reviewing court is concerned with correcting errors that have practically wronged the appealing party. Cisson v. McWhorter (S.C. 1970) 255 S.C. 174, 177 S.E.2d 603.

It is the duty of the Supreme Court to reject an appeal that is prosecuted by a party who is not aggrieved in a legal sense by the judgment of the trial court. Cisson v. McWhorter (S.C. 1970) 255 S.C. 174, 177 S.E.2d 603.

Where the appellant has not been prejudicially or injuriously affected by the judgment, it has no standing to appeal, as it is not a party aggrieved as contemplated by this section [Code 1962 Section 7‑2]. Cisson v. McWhorter (S.C. 1970) 255 S.C. 174, 177 S.E.2d 603.

Executor is not entitled to appeal from judgment decreeing division of land in kind, because he is not aggrieved as required by this section [Code 1962 Section 7‑2]. Byrd v. Shell (S.C. 1933) 169 S.C. 226, 168 S.E. 692. Appeal And Error 151(3)

3. Right to appeal

In an action brought by the parents of a severely retarded and handicapped 11‑year‑old girl seeking a court order to have the child sterilized, appointed counsel had no right to appeal the court’s sterilization order where, at the end of the hearing at which substantial evidence was offered to support the need for sterilization, the guardian ad litem, appointed by the court, informed the court that he accepted the factual showing and joined in the prayer of the parents that the sterilization of the child should be authorized, and at such time the duties of appointed counsel should have ended absent evidence of fraud or collusion on the part of the guardian. Brode v. Brode (S.C. 1982) 278 S.C. 457, 298 S.E.2d 443.

Where an individual commenced a will contest and died during the pendency thereof, the executor of the decedent had no individual right to appeal the judgment in the will contest. Asbury v. South Carolina Nat. Bank (S.C. 1977) 268 S.C. 40, 231 S.E.2d 306.

A person not a contestant nor a party to a probate proceeding has no individual right to appeal. Asbury v. South Carolina Nat. Bank (S.C. 1977) 268 S.C. 40, 231 S.E.2d 306.

4. Cases

Special proceedings are included in the word “cases.” ‑Sease v. Dobson (S.C. 1892) 36 S.C. 554, 15 S.E. 703.

**SECTION 18‑1‑40.** Appeals by corporations in criminal cases.

 In all criminal cases against corporations the right of appeal shall be preserved and the procedure therein shall be such as is now provided by law in other appeals in criminal cases.

HISTORY: 1962 Code Section 7‑3; 1952 Code Section 7‑3; 1942 Code Section 992; 1932 Code Section 992; Civ. C. ‘22 Section 4300; Civ. C. ‘12 Section 2833; 1911 (27) 41.

Library References

Criminal Law 1026.

Westlaw Topic No. 110.

**SECTION 18‑1‑70.** Notice of appeal shall stay execution of sentence.

 In criminal cases service of notice of appeal in accordance with law shall operate as a stay of the execution of the sentence until the appeal is finally disposed of.

HISTORY: 1962 Code Section 7‑6; 1952 Code Section 7‑6; 1942 Code Section 1031; 1932 Code Section 1031; Cr. P. ‘22 Section 121; Cr. C. ‘12 Section 100; Cr. C. ‘02 Section 73; R. S. 73; 1884 (18) 737; 1944 (43) 1256.

Library References

Criminal Law 1083 to 1084.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 2356.

Attorney General’s Opinions

Appeal by the defendant from denial by magistrate of motion for change of venue does not prevent case being tried pending final determination of the question on appeal, such denial being reviewable only on appeal from conviction. 1963‑64 Op Atty Gen, No 1733, p. 222 (September 25, 1964) 1964 WL 8353.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Avant (1910) 85 SC 570, 67 SE 908. Maxey v Manning (1953) 224 SC 320, 78 SE2d 633.

Where accused was unable to raise the bond which was set when his notice of appeal was given, he was not entitled to be released from custody pending his appeal. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563. Habeas Corpus 469

Defendant’s sentences for his fraudulent check conviction and driving under suspension (DUS) conviction were sentences of confinement for purposes of rule governing stays of sentences pending appeals, even though committed portions of sentences were suspended to probation by trial court, and thus, defendant was required to post appeal bond to stay probationary sentences during appeal process; appeal bond relieved State of cost of supervising a probationer during appeal process, while at same time, the probationer remained under power of court as if in custody. State v. Gibbs (S.C. 2003) 353 S.C. 226, 577 S.E.2d 454. Bail 63.1; Sentencing And Punishment 475

But section is inapplicable to suspension of driver’s license under Code 1962 Section 45‑348. Parker v. State Highway Dept. (S.C. 1953) 224 S.C. 263, 78 S.E.2d 382.

When bail bond was given on appeal from first conviction for maintaining a nuisance and was conditioned upon good behavior, circuit court was without jurisdiction during pendency of appeal from second conviction to order bail bond estreated because of the second conviction. State v. Cook (S.C. 1944) 204 S.C. 381, 29 S.E.2d 537. Criminal Law 1084

Applied in State v. Barton (S.C. 1942) 201 S.C. 225, 22 S.E.2d 585.

An appeal is finally disposed of when it is declared abandoned by competent authority. State v. Johnson (S.C. 1898) 52 S.C. 505, 30 S.E. 592.

**SECTION 18‑1‑80.** Confinement until bail given.

 Pending such appeal the defendant shall still remain in confinement until he give bail in such sum and with such sureties as to the court shall seem proper.

HISTORY: 1962 Code Section 7‑7; 1952 Code Section 7‑7; 1942 Code Section 1031; 1932 Code Section 1031; Cr. P. ‘22 Section 121; Cr. C. ‘12 Section 100; Cr. C. ‘02 Section 73; R. S. 73; 1884 (18) 737; 1944 (43) 1256.

CROSS REFERENCES

How bail is given in appeals from magistrates, see Section 18‑3‑50.

Sentence of confinement not stayed until defendant posts bail, see Rule 230, SCACR.

Library References

Bail 44.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 7 to 8, 39 to 45, 47 to 54, 56 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

United States Supreme Court Annotations

Release on bail as rendering criminal case moot so as to preclude review by habeas corpus. 1 L Ed 2d 1876.

NOTES OF DECISIONS

In general 1

1. In general

Where accused was unable to raise the bond which was set when his notice of appeal was given, he was not entitled to be released from custody pending his appeal. Sanders v. State of S. C. (D.C.S.C. 1969) 296 F.Supp. 563. Habeas Corpus 469

For non‑confinement sentences, simply serving the notice of intent to appeal stays the execution of the sentence until the appeal has been concluded, while for sentences involving confinement, the defendant must post bail. State v. Gibbs (S.C.App. 2001) 346 S.C. 355, 550 S.E.2d 908, rehearing denied, certiorari granted, reversed 353 S.C. 226, 577 S.E.2d 454. Criminal Law 1083

The service of a notice in writing on the solicitor of an intention to appeal is a prerequisite to the granting of bail. State v. Avant (S.C. 1910) 85 S.C. 570, 67 S.E. 908.

**SECTION 18‑1‑90.** When bail may be allowed.

 Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to death, life imprisonment, or imprisonment for more than ten years.

HISTORY: 1962 Code Section 7‑8; 1952 Code Section 7‑8; 1942 Code Section 1031; 1932 Code Section 1031; Cr. P. ‘22 Section 121; Cr. C. ‘12 Section 100; Cr. C. ‘02 Section 73; R. S. 73; 1884 (18) 737; 1944 (43) 1256; 1996 Act No. 400, Section 1, eff June 4, 1996.

CROSS REFERENCES

How bail is given in appeals from magistrates, see Section 18‑3‑50.

Sentence of confinement not stayed until defendant posts bail, see Rule 246, SCACR.

Library References

Bail 44(2).

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 7 to 8, 48 to 49, 52 to 53, 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 47, Criminal Appeals.

S.C. Jur. Appeal and Error App I, South Carolina Appellate Court Rules Parts I and II Only General Provisions of and Practice and Procedure in Appellate Courts.

United States Supreme Court Annotations

Release on bail as rendering criminal case moot so as to preclude review by habeas corpus. 1 L Ed 2d 1876.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

Factors to be considered in admitting a person to bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the defendant. In re Michael H. (S.C. 2004) 360 S.C. 540, 602 S.E.2d 729, rehearing denied, certiorari denied 125 S.Ct. 1644, 544 U.S. 943, 161 L.Ed.2d 511. Bail 44(2); Bail 44(3.1)

For non‑confinement sentences, simply serving the notice of intent to appeal stays the execution of the sentence until the appeal has been concluded, while for sentences involving confinement, the defendant must post bail. State v. Gibbs (S.C.App. 2001) 346 S.C. 355, 550 S.E.2d 908, rehearing denied, certiorari granted, reversed 353 S.C. 226, 577 S.E.2d 454. Criminal Law 1083

Cited in State v. Swilling (S.C. 1967) 249 S.C. 541, 155 S.E.2d 607, certiorari denied 88 S.Ct. 806, 389 U.S. 1055, 19 L.Ed.2d 853.

Supreme Court may grant bail under provisions of SC Const, Art 5, Section 4 (now Art 5, Section 5), and since legislature may not remove powers granted to the court by the Constitution, the Supreme Court may in its discretion grant bail where the sentence exceeds ten years notwithstanding the provisions of this section [Code 1962 Section 7‑8]. State v. Whitener (S.C. 1954) 225 S.C. 244, 81 S.E.2d 784.

Before the 1944 amendment to this section [Code 1962 Section 7‑8], bail after conviction was a matter of discretion and not of right. Nichols v. Patterson (S.C. 1943) 202 S.C. 352, 25 S.E.2d 155.

A tender of sufficient bond stays execution, on an appeal from a magistrate’s order, holding one in contempt. State v. Barnett (S.C. 1914) 98 S.C. 422, 82 S.E. 795.

Section 1032 of the 1942 Code, containing provisions similar to this section [Code 1962 Section 7‑8], was held not to apply to the Supreme Court. State v. Farris (S.C. 1897) 51 S.C. 176, 28 S.E. 308.

2. Jurisdiction

Court of Appeals retained jurisdiction over juvenile’s case and acted within its authority when it granted juvenile’s petition for bond pending appeal, where state had filed petition for rehearing, three days later juvenile filed petition for appeal bond pending outcome of state’s appeal from Court of Appeals’ decision, Court of Appeals denied state’s petition for rehearing and granted juvenile’s petition for appeal bond on the same day, Court of Appeals had not returned remittitur when it granted juvenile’s petition for appeal bond, and Supreme Court had not yet granted certiorari over the case. In re Michael H. (S.C. 2004) 360 S.C. 540, 602 S.E.2d 729, rehearing denied, certiorari denied 125 S.Ct. 1644, 544 U.S. 943, 161 L.Ed.2d 511. Infants 2526

**SECTION 18‑1‑100.** Amendment to cure failure to perfect appeal.

 When a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings the court may permit an amendment on such terms as may be just.

HISTORY: 1962 Code Section 7‑9; 1952 Code Section 7‑9; 1942 Code Section 775; 1932 Code Section 775; Civ. P. ‘22 Section 640; Civ. P. ‘12 Section 378; Civ. P. ‘02 Section 339; 1870 (14) 353; 1878 (16) 698; 1880 (17) 368; 1912 (27) 625.

CROSS REFERENCES

Amendment of pleadings in appeal from inferior court to circuit court, see Sections 18‑7‑140, 18‑7‑190.

Library References

Appeal and Error 361(5), 459.

Criminal Law 1079, 1084.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 414 to 416, 522.

C.J.S. Criminal Law Section 2356.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Associated Petroleum Carriers v. Mutual Properties, Inc. (S.C. 1959) 235 S.C. 195, 110 S.E.2d 861.

Applied in State v. Patterson (S.C. 1941) 198 S.C. 181, 17 S.E.2d 153.

Appeal would not be dismissed for failure to perfect appeal where plaintiff did not intend to abandon appeal, but merely intended to delay perfection of appeal pending negotiation for settlement of defendant’s proposed amendment to plaintiff’s proposed case for appeal. Salley v. Western Mut. Fire Ins. Co. (S.C. 1935) 177 S.C. 281, 181 S.E. 72. Appeal And Error 787

A party appealing from a judgment of the probate court must file a certified copy in the appellate court within a reasonable time; and where he permits five terms of court to convene without doing so, and fails, after motion to dismiss the appeal, to take any steps under this section [Code 1962 Section 7‑9] and Code 1962 Section 7‑411, to relieve himself from his neglect, the appeal is properly dismissed. In re Dicks’ Will (S.C. 1912) 90 S.C. 439, 73 S.E. 866.

Failure to serve exceptions in time is an omission within this section [Code 1962 Section 7‑9] and Code 1962 Section 7‑411, but the court, within its discretion, may permit the party to perfect the appeal. Crosswell v. Connecticut Indemnity Ass’n (S.C. 1897) 49 S.C. 374, 27 S.E. 388.

**SECTION 18‑1‑120.** How parties shall be designated on appeal.

 The party appealing shall be known as the appellant and the adverse party as the respondent. But the title of the action shall not be changed in consequence of the appeal.

HISTORY: 1962 Code Section 7‑11; 1952 Code Section 7‑11; 1942 Code Section 774; 1932 Code Section 774; Civ. P. ‘22 Section 639; Civ. P. ‘12 Section 377; Civ. P. ‘02 Section 338; 1870 (14) 352.

Library References

Appeal and Error 321.1, 326.1.

Criminal Law 1070.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 325 to 327, 332 to 334.

C.J.S. Criminal Law Section 2354.

**SECTION 18‑1‑130.** Review of intermediate orders affecting judgment.

 Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment.

HISTORY: 1962 Code Section 7‑12; 1952 Code Section 7‑12; 1942 Code Section 777; 1932 Code Section 777; Civ. P. ‘22 Section 642; Civ. P. ‘12 Section 380; Civ. P. ‘02 Section 341; 1870 (14) 355.

CROSS REFERENCES

Appellate jurisdiction of Supreme Court, see Section 14‑3‑330.

Jurisdiction of Supreme Court, see SC Const, Art V, Section 5.

Review of intermediate orders by Supreme Court, see Section 14‑3‑430.

Library References

Appeal and Error 871.

Criminal Law 1134.90.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Section 855.

C.J.S. Criminal Law Section 2381.

NOTES OF DECISIONS

In general 1

1. In general

In condemnation action, trial court’s order ruling that landowner was entitled to interest on additional 50% of funds deposited with clerk of court by condemning authority was not a final, appealable judgment and was thus not the law of the case when no appeal was taken; court noted that it did not have the relevant dates needed to calculate actual amount of interest due, and court left the matter to the parties to determine but gave them the option to bring the matter back before court if they could not agree. South Carolina Dept. of Transp. v. Faulkenberry (S.C.App. 1999) 337 S.C. 140, 522 S.E.2d 822. Courts 99(6); Eminent Domain 253(1)

An order granting an extension of time in which to answer a request for admissions is intermediate or interlocutory in nature and does not involve the merits or a substantial right, but is reviewable after final judgment under Section 18‑1‑130. Pendergrass v. Martin (S.C. 1980) 275 S.C. 413, 272 S.E.2d 172. Appeal And Error 90; Appeal And Error 91(4)

Order denying compulsory reference of the issues involved in a law suit affects the mode of trial and is appealable. Pelfrey v. Bank of Greer (S.C. 1978) 270 S.C. 691, 244 S.E.2d 315.

Denial of motion to strike is not ordinarily appealable until final judgment, unless (1) the motion to strike is in the nature of a demurrer or (2) there is an appealable issue before the court justifying the consideration of the motion to strike also in order to avoid unnecessary litigation. Pelfrey v. Bank of Greer (S.C. 1978) 270 S.C. 691, 244 S.E.2d 315. Appeal And Error 103

Cited in Gunnells v. Raybestos‑Manhattan, Inc. (S.C. 1973) 261 S.C. 106, 198 S.E.2d 535.

Applied in Johnson v. Abney Mills (S.C. 1951) 219 S.C. 231, 64 S.E.2d 641.

Intermediate orders, on appeal from decree in receivership proceeding, which affected the final decree could be reviewed although no intention to appeal was given within ten days after filing of orders. Montgomery & Crawford v. Arcadia Mills (S.C. 1934) 173 S.C. 464, 176 S.E. 589. Appeal And Error 870(3)

Order granting new trial cannot be reviewed on appeal from a final judgment obtained in the second trial of the case, especially if notice of intention to appeal therefrom is not given within the time required by law. De Pass v. Broad River Power Co. (S.C. 1934) 173 S.C. 387, 176 S.E. 325, 95 A.L.R. 545. Appeal And Error 870(6)

An exception to order overruling demurrer is reviewable without notice of intention to appeal being filed within ten days after the order, on appeal from final judgment, since the order is intermediate involving the merits of the case. McCoy v. State Highway Dept. of South Carolina (S.C. 1933) 169 S.C. 436, 169 S.E. 174. Appeal And Error 425

Intermediate decree is reviewable although appeal therefrom has been dismissed. Where a circuit judge enters a decree subject to a master’s finding on a matter committed to him, and another judge renders a decree on the master’s report, on appeal from the latter decree the court may review the intermediate decree, though an appeal from such intermediate decree has been dismissed as such dismissal cannot affect the court’s right to review such intermediate decree on appeal from the final judgment. Morgan v. Smith (S.C. 1900) 59 S.C. 49, 37 S.E. 43. Appeal And Error 870(1)

**SECTION 18‑1‑140.** Judgment on appeal.

 Upon an appeal from a judgment or order the appellate court may reverse, affirm or modify the judgment or order appealed from as to any or all of the parties and may, if necessary or proper, order a new trial. When the judgment is reversed or modified the appellate court may make complete restitution of all property and rights lost by the erroneous judgment.

HISTORY: 1962 Code Section 7‑13; 1952 Code Section 7‑13; 1942 Code Section 778; 1932 Code Section 778; Civ. P. ‘22 Section 643; Civ. P. ‘12 Section 381; Civ. P. ‘02 Section 342; 1870 (14) 356; 1960 (51) 1751.

CROSS REFERENCES

Enforcement of judgments, see Section 15‑35‑180.

Judgments, generally, see SCRCP, Rule 54.

Judgment of circuit court in case an appeal, see Section 18‑7‑170.

Judgment of Supreme Court, see Section 18‑9‑270.

Library References

Appeal and Error 1111, 1115.

Criminal Law 1181(1).

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 1013 to 1016.

C.J.S. Criminal Law Section 2373.

C.J.S. Homicide Section 526.

NOTES OF DECISIONS

In general 1

1. In general

Although an order dismissing some but not all multiple defendants joined in the same action is ordinarily not final or appealable, under Section 18‑1‑130 the appellate court, upon appeal from a final judgment, may review any intermediate order involving the merits and necessarily affecting the judgment; accordingly, the Attorney General’s appeal from a final order in an action under the Unfair Trade Practices Act was sufficient to bring intermediate orders granting summary judgment before the Court of Appeal for review, where proper exceptions had been taken to the granting of summary judgment. State ex rel. McLeod v. C & L Corp., Inc. (S.C.App. 1984) 280 S.C. 519, 313 S.E.2d 334.

Order appointing appraisers is intermediate order reviewable upon appeal from final judgment. Bankers Trust of South Carolina v. Bruce (S.C. 1980) 275 S.C. 35, 267 S.E.2d 424.

**SECTION 18‑1‑150.** Certiorari to magistrates or municipal court.

 Whenever a person shall have been convicted in a municipal court or a magistrates court such person shall have the right, upon petition, to obtain from any circuit judge or justice of the Supreme Court at chambers or in open court a writ of certiorari requiring such municipal court or magistrate to certify the entire record of the case together with a copy of the municipal ordinance or a reference to the statute involved, as the case may be, and including the rulings, findings and sentence, returnable at such time as such circuit judge or justice of the Supreme Court may direct, and upon the hearing of the writ such circuit judge or justice of the Supreme Court shall have the same jurisdiction of the entire matter as circuit judges now have in cases appealed from municipal courts or magistrates courts.

HISTORY: 1962 Code Section 7‑14; 1952 Code Section 7‑14; 1942 Code Section 994; 1932 Code Section 994; 1928 (35) 1317.

CROSS REFERENCES

Jurisdiction of Supreme Court to issue writs of certiorari, see SC Const, Art V, Section 5, Section 14‑3‑310.

Powers of justices and judges at chambers, see SC Const, Art V, Section 20.

Power of Supreme Court justices at chambers, see Section 14‑3‑350.

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

Library References

Criminal Law 260.4, 260.7.

Westlaw Topic No. 110.

NOTES OF DECISIONS

In general 1

1. In general

The circuit court had no jurisdiction to grant a motion for new trial where respondent had failed to move for a new trial before the magistrate who had convicted him and had failed to appeal to the court of general sessions. State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

There was no authority on the part of the circuit judge to stay the magistrate’s order suspending respondent’s driver’s license. State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

Method of review under this section [Code 1962 Section 7‑14] classified as appellate proceeding. City of Columbia v. South Carolina Public Service Commission (S.C. 1963) 242 S.C. 528, 131 S.E.2d 705.

Quoted in State v. Butler (S.C. 1956) 230 S.C. 159, 94 S.E.2d 761.

**SECTION 18‑1‑160.** Where undertakings must be filed.

 The various undertakings required to be given by this title must be filed with the clerk of the court, unless the court expressly provides for a different disposition.

HISTORY: 1962 Code Section 7‑15; 1952 Code Section 7‑15; 1942 Code Section 824; 1932 Code Section 824; Civ. P. ‘22 Section 772; Civ. P. ‘12 Section 458; Civ. P. ‘02 Section 420; 1870 (14) 438.

CROSS REFERENCES

Filing undertakings on appeals to Supreme Court, see Section 18‑9‑230.

Library References

Appeal and Error 351(1), 625.

Criminal Law 260.5, 1069(1), 1106(1).

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 389 to 390, 646.

C.J.S. Criminal Law Section 2355.

United States Supreme Court Annotations

State regulation of appellate procedure in civil case as violating equal protection clause of Federal Constitution’s Fourteenth Amendment ‑ Supreme Court cases. 100 L Ed 2d 947.

**SECTION 18‑1‑170.** Rules of construction.

 The rule of the common law that statutes in derogation of that law are to be strictly construed has no application to this title.

HISTORY: 1962 Code Section 7‑20; 1952 Code Section 7‑20; 1942 Code Section 902; 1932 Code Section 902; Civ. P. ‘22 Section 850; Civ. P. ‘12 Section 487; Civ. P. ‘02 Section 448; 1870 (14) 470.

Library References

Appeal and Error 2.

Criminal Law 1005.

Westlaw Topic Nos. 30, 110.

C.J.S. Appeal and Error Sections 2 to 3, 86 to 87.

C.J.S. Criminal Law Sections 2325 to 2326.