CHAPTER 5

Public Documents, Records, and Books

ARTICLE 1

Public Documents

**SECTION 19‑5‑10.** Admissibility of certified copies or certified photostatic copies of documents.

 When the original of any instrument, document or other paper is required or authorized by law to be recorded or is kept on file in any public office of the United States or any agency thereof, the State of South Carolina or any agency thereof or any political subdivision of this State and the original of any such paper is required to be kept on file in any such office, is in the possession of any adverse party or has been lost or destroyed, a certified copy of the record of such paper, if it has been recorded, or copy of such paper, certified by the lawful custodian thereof, if it is kept on file in any such office, must be received in evidence in any court of competent jurisdiction in lieu of the original of such paper. A certified photostatic copy of any such paper may be used in lieu of a certified copy thereof, and such certified photostatic copy shall in all respects be treated as a certified copy under the provisions of this section.

HISTORY: 1962 Code Section 26‑101; 1952 Code Section 26‑101; 1942 Code Section 713; 1942 (42) 1451.

CROSS REFERENCES

Admissibility of certificate to prove establishment of Soil Conservation District, see Section 48‑9‑650.

Admissibility of certified photographic copy of instrument or record pertaining to business or government when original lost or destroyed, see Section 19‑5‑40.

Admissibility of motor vehicle accident reports prepared for highway department, see Section 56‑5‑1340.

Admissibility of motor vehicle accident reports prepared for municipality, see Section 56‑5‑1360.

Admissibility of operating records of persons furnished by highway department, see Section 56‑9‑330.

Affidavit as to registration of motor vehicle records of highway department as evidence of ownership, see Section 56‑3‑2460.

Brand or earmark certificate as prima facie evidence of ownership, see Section 47‑9‑290.

Certificate of analyst as prima facie evidence in prosecution dealing with commercial feeding stuffs, see Section 46‑27‑460.

Certificate of chemist of Department of Agriculture concerning suspected sample of butter and cheese imitations as prima facie evidence, see Section 39‑35‑80.

Certificate of incorporation of purchased railroad as evidence of incorporation, see Section 58‑17‑430.

Certificate of recordation of agricultural or horticultural brand or mark as evidence of the adoption and recordation of such mark or brand, see Section 39‑15‑430.

Certificate of title issued by the Division of Boating of the South Carolina Wildlife and Marine Resources Department as prima facie evidence, see Section 50‑23‑90.

Certificate of title of motor vehicle issued by Highway Department as prima facie evidence, see Section 56‑19‑320.

Certified copies of bonds of public officers as evidence, see Section 8‑3‑230.

Certified copies of registration and licensing records of State Highway Department, see Section 56‑3‑2450.

Certified copies of reports of convictions of reckless or drunken driving filed with the State Highway Department being evidence of prior convictions, see Section 56‑5‑2980.

Certified copy of any license, regulation or order of the State Board of Bank Control being prima facie evidence of the issuance of the license, regulation or order, see Section 34‑29‑110.

Certified copy of charter as evidence of incorporation of farmers’ association, see Section 46‑39‑160.

Copies of official documents filed with or made by the Public Service Commission as evidence, see Section 58‑27‑2070.

Copies of reports of convictions filed with State Highway Department as evidence in point system proceedings, see Section 56‑1‑800.

Drainage Tax Book being prima facie evidence of all matters therein contained, see Section 49‑19‑1780.

Employment and Workforce Department’s certificate as prima facie evidence, see Section 41‑27‑620.

Proof of official record under South Carolina Rules of Civil Procedure, see Rule 44, SCRCP.

Receiving articles of incorporation of cooperative marketing associations in evidence, see Section 33‑47‑220.

Reference to reports of highway accidents, findings of State Highway Department, etc., see Section 56‑5‑1290.

Substitution of new records for lost or destroyed records of decrees and judgments, see Section 19‑21‑10.

Library References

Evidence 186(6).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1308, 1363 to 1368, 1385.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 71, Certified Copies of Public Records.

S.C. Jur. South Carolina Rules of Civil Procedure Section 44.1, Reporter’s Notes.

LAW REVIEW AND JOURNAL COMMENTARIES

Documents. 25 S.C. L. Rev. 384.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 544.

Attorney General’s Opinions

Section 12 of the South Carolina Rules and Regulations governing vital statistics authorizes the State Registrar of Vital Statistics to preserve original copies by typewritten, photographic or other means of reproduction; this includes the tracing over of original documents. When certified by the State Registrar, such reproduction shall be accepted as the original record. 1975‑76 Op Atty Gen, No 4357, p. 187 (May 28, 1976) 1976 WL 22976.

NOTES OF DECISIONS

In general 1

1. In general

Records of investigations and inquiries conducted, either voluntarily or pursuant to requirement of law, by public officers concerning causes and effects, and involving the exercise of judgment and discretion, expressions of opinion, and making conclusions, are not admissible as public records. Griggs v Driggers (1956) 230 SC 97, 94 SE2d 225. Peagler v Atlantic C. L. R. Co. (1959) 234 SC 140, 107 SE2d 15, 84 ALR2d 794.

Cited in Goudelock v Prudential Ins. Co. (1951) 219 SC 284, 65 SE2d 114; State v Pearson (1953) 223 SC 377, 76 SE2d 151.

The preliminary inquiry as to whether there had been sufficient evidence tending to prove the loss, destruction or unavailability of an original document to justify the admission of secondary evidence is an inquiry, the answer to which, in large measure, is within the discretion of the trial judge, although such discretion is not a completely uncontrolled one. Windham v. Lloyd (S.C. 1970) 253 S.C. 568, 172 S.E.2d 117. Evidence 181

Photostated copies of records of the Veterans Administration reporting prior medical examinations of plaintiff are not admissible as evidence of plaintiff’s physical condition in a subsequent action by him against a third party for injuries alleged to have been received in his employment, since the legislature has not made such records competent evidence. Griggs v. Driggers (S.C. 1956) 230 S.C. 97, 94 S.E.2d 225.

Although other sections of the Code provide that a document or certified copy thereof shall be received either as “sufficient evidence” or “prima facie evidence,” this section [Code 1962 Section 26‑101] provides only that a certified copy shall be received as evidence in any court of competent jurisdiction in lieu of the original of such paper. Griggs v. Driggers (S.C. 1956) 230 S.C. 97, 94 S.E.2d 225.

The board of trustees of Clemson College having by an act of the legislature been made the custodian of records of the former Department of Agriculture, the president of that board is competent to identify the records of the analysis of certain fertilizers made by the Department of Agriculture. G. Ober & Sons Co. v. Blalock (S.C. 1893) 40 S.C. 31, 18 S.E. 264. Evidence 373(2)

**SECTION 19‑5‑20.** Notice required under Section 19‑5‑10.

 In case of possession of such paper by any adverse party or his agent or attorney no such paper shall be received in evidence unless two days’ notice shall have been given to such adverse party or his attorney that a certified copy thereof will be offered in evidence unless the original be produced as required in such notice. But the time of giving notice herein to any such adverse party, his agent or attorney, may be lessened by the officer presiding at trial in which such certified copy may be offered.

HISTORY: 1962 Code Section 26‑102; 1952 Code Section 26‑102; 1942 Code Section 713; 1942 (42) 1451.

CROSS REFERENCES

Proof of official record under South Carolina Rules of Civil Procedure, see Rule 44, SCRCP.

Library References

Evidence 341.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1144 to 1145, 1152, 1154.

C.J.S. Patents Section 252.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 44.1, Reporter’s Notes.

LAW REVIEW AND JOURNAL COMMENTARIES

Documents. 25 S.C. L. Rev. 384.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 544.

NOTES OF DECISIONS

In general 1

1. In general

Where there has been no notice to produce the original charter of a railway company, a certified copy of the record of the Secretary of State’s office of a charter of a company formed by the consolidation of original railroad companies is inadmissible, there being no provision of law requiring such charter to be recorded. Montgomery v. Seaboard Air Line Ry. (S.C. 1906) 73 S.C. 503, 53 S.E. 987. Evidence 185(1)

**SECTION 19‑5‑30.** Admissibility of photostatic or certified copies of certain motor vehicle records.

 Photostatic, optical disk, or certified copies of motor vehicle registration applications, registrations, notices of cancellation, suspensions or revocations, reports of violations, and documents pertaining to the motor vehicle safety responsibility laws of this State, when certified by the director of the Department of Motor Vehicles, or his designee, as true copies of originals, on file with the Department of Motor Vehicles, shall be admissible in any proceedings in any court in like manner as the original thereof.

HISTORY: 1962 Code Section 26‑102.1; 1955 (49) 184; 1993 Act No. 181, Section 278, eff July 1, 1993; 1996 Act No. 459, Section 31, eff June 5, 1996.

CROSS REFERENCES

Admissibility of certain motor vehicle accident reports as evidence of negligence in civil actions, see Section 56‑5‑1290.

Admissibility of motor vehicle accident reports prepared for highway department, see Section 56‑5‑1340.

Admissibility of motor vehicle accident reports prepared for municipality, see Section 56‑5‑1360.

Admissibility of operating records of persons furnished by highway department, see Section 56‑9‑330.

Affidavit as to registration of motor vehicle records of highway department as evidence of ownership, see Section 56‑3‑2460.

Certificate of title of motor vehicle issued by highway department as prima facie evidence, see Section 56‑19‑320.

Certified copies of records of highway department as evidence, see Section 56‑3‑2450.

Certified copies of reports as evidence of convictions in proceedings under the point system for evaluating operating records of drivers, see Section 56‑1‑800.

Copies of reports of highway department as evidence of prior convictions in criminal prosecutions for reckless driving or driving by narcotic users or persons under the influence of liquor or drugs, see Section 56‑5‑2980.

Library References

Evidence 158(15), 186(9), 341.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1144 to 1145, 1152, 1154, 1308, 1314 to 1315, 1326, 1330 to 1335, 1338, 1341 to 1344, 1355, 1363 to 1368.

C.J.S. Patents Section 252.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 71, Certified Copies of Public Records.

LAW REVIEW AND JOURNAL COMMENTARIES

Documents. 25 S.C. L. Rev. 384.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 544.

Expert Testimony in Automobile Accident Cases. 20 S.C. L. Rev. 271.

**SECTION 19‑5‑40.** Admissibility of certified photographic copy of instrument or record pertaining to business or government when original is lost or destroyed.

 Any certified or authenticated photographic copy of any instrument or record in writing used in or acquired in the conduct of business, or of government, in this State shall, upon certification that the original of such instrument or record has been lost or destroyed, be admitted in evidence in any court in this State as the original of such instrument or record would have been admitted when offered.

HISTORY: 1962 Code Section 26‑103; 1952 Code Section 26‑103; 1948 (45) 2075; 1957 (50) 179.

CROSS REFERENCES

Application for leave to substitute new judgment records in place of those lost or destroyed, see Section 19‑21‑10.

Copies of grants and plats issued by North Carolina when original is lost or destroyed, see Section 19‑5‑210.

Copying of bank records, see Section 34‑3‑540.

Proof of official record under South Carolina Rules of Civil Procedure, see Rule 44, SCRCP.

Library References

Evidence 341.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1144 to 1145, 1152, 1154.

C.J.S. Patents Section 252.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 44.1, Reporter’s Notes.

LAW REVIEW AND JOURNAL COMMENTARIES

Documents. 25 S.C. L. Rev. 384.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 544.

Attorney General’s Opinions

Section 12 of the South Carolina Rules and Regulations governing vital statistics authorizes the State Registrar of Vital Statistics to preserve original copies by typewritten, photographic or other means of reproduction; this includes the tracing over of original documents. When certified by the State Registrar, such reproduction shall be accepted as the original record. 1975‑76 Op Atty Gen, No 4357, p. 187 (May 28, 1976) 1976 WL 22976.

NOTES OF DECISIONS

In general 1

1. In general

In boundary dispute, testimony of surveyor that he had prepared original plat and had searched for it in his files but being unable to locate it, he presumed it to be lost, was sufficient to establish unavailability of original document; plat need not have been referred to in any deed in chain of title of owners nor need owners be aware of its existence prior to time of trial; where nearly 30 years had passed since date of original survey so that surveyor could not be expected to remember why he placed boundary line as he did in original plat, court did not abuse discretion in admitting into evidence copy of plat prepared for one of owners’ predecessors in title. Culbertson v. Culbertson (S.C. 1979) 273 S.C. 103, 254 S.E.2d 558.

Contractor’s ledger of man‑hours worked on project, made up in usual course of business from slips, reports, or memoranda furnished by employees who were present on job site, and identified by secretary who recorded information, was book of original entry and admissible as best evidence of job hours chargeable to defendants in action to foreclose mechanic’s lien. Grand Strand Const. Co., Inc. v. Graves (S.C. 1977) 269 S.C. 594, 239 S.E.2d 81.

**SECTION 19‑5‑50.** Evidence of appointment of executors or administrators.

 The judge of probate, on application by the executor or administrator of any deceased person to whom letters testamentary or of administration have been granted, shall furnish a true copy of such order as he may make concerning the probate of the will or granting of administration, certified under his hand, which shall be sufficient evidence of the appointment of such executor or administrator in any such court in this State.

HISTORY: 1962 Code Section 26‑104; 1952 Code Section 26‑104; 1942 Code Section 410; 1932 Code Section 410; Civ. P. ‘22 Section 366; Civ. C. ‘12 Section 3954; Civ. C. ‘02 Section 2850; G. S. 2182; R. S. 2314; 1789 (5) 109; 1839 (11) 62.

CROSS REFERENCES

Probate and granting of letters testamentary or of administration, see Sections 62‑3‑101 et seq.

Library References

Executors and Administrators 28.

Westlaw Topic No. 162.

C.J.S. Executors and Administrators Sections 101 to 102.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 26‑104] obviates the necessity of introducing the whole record of the proceedings in the court of probate, which would otherwise be necessary. Hankinson v Charlotte, C. & A. R. Co. (1894) 41 SC 1, 19 SE 206. Nickles v Seaboard A. L. Ry. (1906) 74 SC 102, 54 SE 255.

Quoted in Griggs v. Driggers (S.C. 1956) 230 S.C. 97, 94 S.E.2d 225.

Cited in Driggers v. Southern Ry. Co. (S.C. 1933) 169 S.C. 157, 168 S.E. 185.

When it becomes necessary for the plaintiff, by reason of the cause of action arising in his intestate’s lifetime, to make profert of his letters of administration, issued under this section [Code 1962 Section 26‑104], he must sue in his representative character. Cauthen v. Green (S.C. 1908) 80 S.C. 432, 61 S.E. 957.

Where the whole record has been introduced in evidence, it is improper to assail any portion of it in a collateral manner. Nickles v. Seaboard Air Line Ry. (S.C. 1906) 74 S.C. 102, 54 S.E. 255.

Where the records have been admitted, it is not proper to ask the administrator on cross‑examination, if he has been sworn in. Nickles v. Seaboard Air Line Ry. (S.C. 1906) 74 S.C. 102, 54 S.E. 255. Executors And Administrators 28

The letters provided for in this section [Code 1962 Section 26‑104] amount, practically, to a judgment of the court of probate rendered on proceedings of record in that court, instituted for that purpose, and in the absence of any statute upon the subject. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206.

Under this section [Code 1962 Section 26‑104] letters of administration are receivable as evidence of appointment, notwithstanding the fact that it is insisted by counsel for defendant that the whole record, if introduced, would show a lack of jurisdiction on its face. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206.

Where the lack of jurisdiction appears upon the face of the record, letters of administration issued therein are void, and may be attacked in any collateral proceeding. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206.

Under this section [Code 1962 Section 26‑104], where the defendant proposes to introduce the entire record of the probate court to prove its lack of jurisdiction to issue letters of administration, it is error for the court to refuse to receive such record as evidence. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206.

Parol evidence dehors the record is inadmissible to impeach the grant of letters under this section [Code 1962 Section 26‑104] in a collateral proceeding. Hankinson v. Charlotte, C. & A.R. Co. (S.C. 1894) 41 S.C. 1, 19 S.E. 206. Evidence 386(2)

**SECTION 19‑5‑60.** Production of instruments required to be recorded as evidence of execution and recording.

 The production, without further or other proof, of the original of any instrument in writing, other than a will, required by law to be recorded shall be prima facie evidence of the execution and recording of such instrument if such instrument shall have been recorded in the manner and place and within the time prescribed by law for recording the same and the recording thereof shall have been certified by the clerk of court or register of deeds.

HISTORY: 1962 Code Section 26‑105; 1952 Code Section 26‑105; 1942 Code Section 723; 1932 Code Section 723; Civ. P. ‘22 Section 738; Civ. C. ‘12 Section 4001; Civ. C. ‘02 Section 2897; 1898 (22) 745; 1900 (23) 347; 1972 (57) 2542.

CROSS REFERENCES

Recording, generally, see Sections 30‑5‑10 et seq.

Library References

Evidence 370(6).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1086 to 1087, 1092, 1198.

LAW REVIEW AND JOURNAL COMMENTARIES

Documents. 25 S.C. L. Rev. 384.

Evidence: The Best Evidence Rule. 22 S.C. L. Rev. 544.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Richland County v Owens (1912) 92 SC 329, 75 SE 549 (1912). Macedonia Baptist Church v Columbia (1940) 195 SC 59, 10 SE2d 350.

Quoted in Thompson v. McGill (S.C. 1955) 226 S.C. 509, 85 S.E.2d 867.

In an action for personalty claimed under a chattel mortgage, where the plaintiff gave notice he would offer the original mortgage without formal proof of execution, due to the inaccessibility of the subscribing witness, and the defendant gave no notice of his intention to attack the mortgage on the grounds of fraud in the execution, as provided for by Code 1962 Section 26‑106, the defendant having testified at prior trials that he executed it, the plaintiff was properly allowed to put the instrument in evidence without formal proof by the subscribing witness. Fairey v. Haynes (S.C. 1918) 111 S.C. 132, 96 S.E. 694. Evidence 374(10)

**SECTION 19‑5‑70.** Applicability of foregoing section when fraud is alleged.

 The provisions of Section 19‑5‑60 shall not apply when any such recorded instrument is assailed or attacked on the ground of fraud in its execution if at least ten days’ previous notice in writing of such ground by a pleading or otherwise duly sworn to shall have been given by the party or his attorney so assailing or attacking such instrument to the opposite party or his attorneys.

HISTORY: 1962 Code Section 26‑106; 1952 Code Section 26‑106; 1942 Code Section 724; 1932 Code Section 724; Civ. P. ‘22 Section 739; Civ. C. ‘12 Section 4002; Civ. C. ‘02 Section 2898; 1898 (22) 745.

Library References

Evidence 370(6).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1086 to 1087, 1092, 1198.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Thompson v. McGill (S.C. 1955) 226 S.C. 509, 85 S.E.2d 867.

Cited in Fairey v. Haynes (S.C. 1918) 111 S.C. 132, 96 S.E. 694.

ARTICLE 3

Foreign Documents

**SECTION 19‑5‑210.** Admissibility of certified copies of grants issued by North Carolina.

 It shall be lawful, in every court of this State, for any party, plaintiff or defendant, to produce in evidence certified copies of grants under the authority of the state of North Carolina; provided, however, that the person or persons so applying to produce an office copy of a grant in evidence swear that the original grant is lost, destroyed or out of his power to produce and that he has not destroyed, mislaid or in any way willingly, previous to that time, put it out of his power to produce the same with an intention to produce an office copy of the same in evidence.

 Nothing herein contained shall be construed to deprive any person in possession of the original grant of any advantage he would have had or derived from possessing the same in case this section had never been passed.

HISTORY: 1962 Code Section 26‑121; 1952 Code Section 26‑121; 1942 Code Section 721; 1932 Code Section 721; Civ. P. ‘22 Section 736; Civ. C. ‘12 Section 3999; Civ. C. ‘02 Section 2895; G. S. 2224; R. S. 2360; 1731 (3) 303; 1906 (5) 459; 1942 (42) 1451.

Library References

Evidence 335.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1133, 1135, 1219.

NOTES OF DECISIONS

In general 1

1. In general

To entitle the plaintiffs, where there are more than one, to give in evidence a certified copy of the original grant, all must make the affidavit as required by this section [Code 1962 Section 26‑121]. Linning v Crawford (1831) 18 SCL 296. Chisolm v Caines (1894, CC SC) 67 F 285.

Cited in Stone v Fitts (1893) 38 SC 393, 17 SE 136. Duren v Sinclair (1885) 22 SC 361.

A copy of a grant is not admissible in evidence without first accounting for the nonproduction of the original. Malcolmson v McKee (1802) 3 SCL 168. Dingle v Bowman (1821) 12 SCL 177.

The affidavit provided for this section [Code 1962 Section 26‑121] need not be made at the time of the trial, provided it is made after the commencement of the suit. Linning v. Crawford (S.C. 1832).

The object of requiring the oath under this section [Code 1962 Section 26‑121] was to protect the opposite party from fraud in suppressing the original, and giving in evidence imperfect copies of the grant. Linning v. Crawford (S.C. 1831).

This section [Code 1962 Section 26‑121] nowhere prescribes the manner or time of swearing. But the practice has been uniform to receive as evidence an affidavit of the loss of the grant. And if an affidavit be received at all, there appears to be no reason for requiring its execution at one period rather than at another, provided it be satisfactory as to the loss of the grant. Turnipseed v. Freeman (S.C. 1822).

Where the affidavit is sworn to subsequent to the docketing of the case, for the purpose of being used in that case, and no circumstance independent of the lapse of time appears to invalidate it, it ought to be received. Turnipseed v. Freeman (S.C. 1822).

A copy of the grant, without a copy of the plat, is sufficient. Rosamond v. McIlwain (S.C. 1807).

Very slight evidence of the loss of the original grant is sufficient to authorize the admission in evidence of an office copy where the land has been conveyed by the original grantee, and has passed to different purchasers, and there is no proof that the party claiming under it ever had possession of the original. Turner v. Moore (S.C. 1803). Evidence 183(10)

The affidavit provided for by this section [Code 1962 Section 26‑121] must be made by the person or persons applying to produce an office copy of the grant; and an affidavit made by a third party is insufficient. Marane v. Carroll (S.C. 1804).

**SECTION 19‑5‑220.** Proof of various instruments.

 All exemplifications of records, all deeds and bonds or other specialities, all letters of attorney, procuration, or other powers in writing and all testimonials which shall at any time be produced in any of the courts of this State and shall be attested to have been proved, upon oath, under the corporation seal of any mayor or chief officer of any city, borough or town corporate in any foreign state, under the hand of the governor and public seal of any state in the United States or under the notarial seal of any notary public shall be deemed and adjudged good and sufficient in law in any of the courts of judicature in this State, as if the witnesses to such deeds were produced and proved the same viva voce, except as herein otherwise provided.

HISTORY: 1962 Code Section 26‑122; 1952 Code Section 26‑122; 1942 Code Section 725; 1932 Code Section 725; Civ. P. ‘22 Section 740; Civ. C. ‘12 Section 4003; Civ. C. ‘02 Section 2899; G. S. 2226; R. S. 2362; 1721 (7) 176; 1731 (8) 285.

CROSS REFERENCES

Full faith and credit to be given in each state to the records and judicial proceedings of every other state, see US Const Art IV Section 1.

Restrictions upon the use of copies of foreign instruments, see Section 19‑5‑230.

Proof of official record under South Carolina Rules of Civil Procedure, see Rule 44, SCRCP.

Library References

Evidence 338.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1144 to 1145, 1152, 1154.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 75, Acknowledged Documents.

S.C. Jur. South Carolina Rules of Civil Procedure Section 44.1, Reporter’s Notes.

NOTES OF DECISIONS

In general 1

1. In general

In the early case of McKenny v Gordon (1860) 47 SCL 40, it was held that judicial proceedings including the judgment in “the court of pleas and quarter sessions” of North Carolina, certified by the clerk and authenticated by the chairman pro tem of the court, are sufficiently authenticated to be received in evidence. See also, Campbell v Home Ins. Co. (1869) 1 SC 158. Napier v Gidiere (1843) 17 SC Eq 215.

It was said in the case of Napier v Gidiere (1843) 17 SC Eq 215, in speaking of the act of Congress dealing with the “full faith and credit laws,” that a judgment in a sister state is a record in another state; and that it is conclusive evidence ‑ record evidence. Napier v. Gidiere (S.C. 1843) 40 Am.Dec. 613.

Proof of fact by certified rather than exemplified copy, if error, is not prejudicial. James v. Williams (S.C. 1965) 247 S.C. 100, 145 S.E.2d 683.

In a case where plaintiff offered in evidence properly attested transcripts of proceedings in the county and superior courts of North Carolina, containing a writ, several interlocutory orders, continuances, memorandum of a verdict and “judgment affirmed,” and executions at length, but no contract or cause of action was set forth, it was held that these transcripts should have been received as evidence of a judgment. Gregory v. Williams (S.C. 1824). Evidence 348(2)

Where plaintiff offered a copy of a bond attested by the clerk of the county court, as the cause of action on which the proceedings were founded, but no connection appeared between them on the transcript, such copy was held inadmissible. Gregory v. Williams (S.C. 1824). Judgment 943

**SECTION 19‑5‑230.** Foreign evidences of debt shall be admissible only on basis of reciprocity.

 No testimonial, probate, certificate or other instrument under the seal of any foreign court of law, notary public or other magistrate or person qualified and empowered to give the same shall be received in the courts of the State as evidence of any debt or demand owing by any person resident within the limits of this State unless it shall appear to the court that testimonials, probates, certificates or other instruments of writing for the purposes aforesaid which shall be issued from any of the courts of this State or by any of the officers thereof authorized and empowered to give the same are received and allowed as evidence in the courts of such foreign country.

HISTORY: 1962 Code Section 26‑123; 1952 Code Section 26‑123; 1942 Code Section 726; 1932 Code Section 726; Civ. P. ‘22 Section 741; Civ. C. ‘12 Section 4004; Civ. C. ‘02 Section 2899; G. S. 2227; R. S. 2363; 1787 (5) 45.

Library References

Evidence 349.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1167 to 1170.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 75, Acknowledged Documents.

ARTICLE 5

Reports as to Missing Persons

**SECTION 19‑5‑310.** Effect of finding of presumed death under Federal Missing Persons Act.

 A written finding of presumed death made by the Secretary of War, the Secretary of the Navy or other officer or employee of the United States authorized to make such finding, pursuant to the Federal Missing Persons Act (56 Stat. 143, 1092, and P. L. 408, Ch. 371, 2d Sess. 78th Cong.) 50 U.S.C. App. 1001‑1017, as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office or other place in this State as prima facie evidence of the death of the person therein found to be dead and the date, circumstances and place of his disappearance.

HISTORY: 1962 Code Section 26‑131; 1952 Code Section 26‑131; 1945 (44) 150.

CROSS REFERENCES

Adjudication of presumed death of a spouse, see Section 20‑1‑540.

Library References

Death 3.

Evidence 383(4).

Westlaw Topic Nos. 117, 157.

C.J.S. Death Sections 4 to 5, 8 to 9.

C.J.S. Evidence Section 1292.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Griggs v. Driggers (S.C. 1956) 230 S.C. 97, 94 S.E.2d 225.

**SECTION 19‑5‑320.** Effect of report that person is missing, besieged, captured by the enemy or the like.

 An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, beleaguered, besieged or captured by an enemy or is dead or alive, made by any officer or employee of the United States authorized by the act referred to in Section 19‑5‑310 or by any other law of the United States to make the same shall be received in any court, office or other place in this State as prima facie evidence that such person is missing, missing in action, interned in a neutral country, beleaguered, besieged or captured by an enemy or is dead or alive, as the case may be.

HISTORY: 1962 Code Section 26‑132; 1952 Code Section 26‑132; 1945 (44) 150.

Library References

Evidence 383(4).

Westlaw Topic No. 157.

C.J.S. Evidence Section 1292.

NOTES OF DECISIONS

In general 1

1. In general

Quoted in Griggs v. Driggers (S.C. 1956) 230 S.C. 97, 94 S.E.2d 225.

**SECTION 19‑5‑330.** Signature of reports or copies shall prima facie be deemed authorized.

 For the purposes of Sections 19‑5‑310 and 19‑5‑320 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing the same shall prima facie be deemed to have acted within the scope of his authority. If a copy purports to have been certified by a person authorized by law to certify the same such certified copy shall be prima facie evidence of his authority so to certify.

HISTORY: 1962 Code Section 26‑133; 1952 Code Section 26‑133; 1945 (44) 150.

Library References

Evidence 370(5).

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1086 to 1088, 1092, 1198.

ARTICLE 9

Business Records

**SECTION 19‑5‑510.** Uniform Business Records as Evidence Act.

 The term “business” shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not.

 A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

 This section may be cited as the Uniform Business Records as Evidence Act.

HISTORY: 1978 Act No. 552 Section 1.

Library References

Evidence 351.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1177 to 1191, 1194 to 1197, 1199, 1201 to 1204, 1215, 1276, 1278.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 104, Records of Regularly Conducted Activity.

S.C. Jur. Hospitals Section 27, Hospital Records.

S.C. Jur. Medical and Health Professionals Section 30, Admissibility of Particular Evidence.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Evidence: Refreshing Memory. 30 S.C. L. Rev. 92.

Annual Survey of South Carolina Law: Business Records. 31 S.C. L. Rev. 84.

NOTES OF DECISIONS

In general 1

Harmless error 3

Hearsay 2

1. In general

Uniform Business Record as Evidence Act gives the trial court control to exclude or require additional proof if the authenticity or trustworthiness of the business record is suspect. State v. Rice (S.C.App. 2007) 375 S.C. 302, 652 S.E.2d 409, rehearing denied, certiorari denied. Criminal Law 436(2)

The trial court did not err in refusing to admit hospital records under the Uniform Business Records Act where the custodian of the records for the hospital testified that she had no knowledge of the way in which the records were prepared or of the program that allegedly created the records. State v. Sarvis (S.C.App. 1994) 317 S.C. 102, 450 S.E.2d 606, rehearing denied, certiorari denied.

In an action alleging wrongful termination of an employee for obedience to a summons for jury service, in violation of Section 41‑1‑70, the employee’s employment file, although relevant and otherwise admissible, was properly excluded from evidence where the employer failed to offer the file through its custodian or another qualified witness, as required by the Business Records Act (Section 19‑5‑510). Connelly v. Wometco Enterprises, Inc. (S.C.App. 1994) 314 S.C. 188, 442 S.E.2d 204, rehearing denied, certiorari denied.

A hospital was entitled to recover payment on an account for medical services, despite the inability of its witness (the manager of the patient accounts department) to answer questions regarding authorization for treatment and the decision to place the patient in a private versus a semi‑private room, where the hospital presented testimony that the patient’s billing records were kept in the ordinary course of business and were generated at or near the time the services were provided, and the defendant failed to offer any expert evidence to challenge the reasonableness of the costs or to demonstrate that the services were medically unnecessary or improperly rendered. Spartanburg Regional Medical Center v. Bulsa (S.C.App. 1992) 308 S.C. 322, 417 S.E.2d 648, rehearing denied.

A requisite for the admissibility of business records is that entries therein must have been made at or near the time of the transaction to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept. Thus, summary statements of credit card accounts were inadmissible under the Uniform Business Records as Evidence Act where it was not established that entries on the summary statements were made at or near the time of the recorded transactions. South Carolina Nat. Bank v. Jones (S.C. 1990) 302 S.C. 154, 394 S.E.2d 323.

Bank records pertaining to loan and numerous office memoranda showing contract price of equipment and consulting costs were within purview of Section 19‑5‑510. Island Car Wash, Inc. v. Norris (S.C.App. 1987) 292 S.C. 595, 358 S.E.2d 150.

In an action to recover damages for mud and water damage to plaintiff’s building caused by negligent grading and road construction by defendant, the trial court properly admitted into evidence, pursuant to Section 19‑5‑510, a written estimate of the cost of repairs where the repairs estimate was a document made and kept in the regular course of the contractor’s business and was, therefore, a business record. Jenkins v. Dixie Specialty Co., Inc. (S.C. 1985) 284 S.C. 425, 326 S.E.2d 658. Evidence 351; Evidence 373(1)

In a prosecution for commission of a lewd act upon a child under 14 years of age, the trial court properly refused to allow the admission into evidence of a doctor’s medical record of the victim, pursuant to Section 19‑5‑510, since the detective of the county sheriff’s department, who requested the report from the doctor and received the original in the mail, was not qualified to testify to the identity and mode of preparation of the report or whether it was made in the regular course of business. State v. McFarlane (S.C. 1983) 279 S.C. 327, 306 S.E.2d 611.

In a prosecution for aggravated assault and battery arising from a shooting incident in which the defendant claimed that his gun had fired accidentally and the bullet had ricocheted upward off the floor into the leg of the victim, the trial court did not err in admitting into evidence the report of the physician who had treated the victim where the report represented a purely factual observation that the bullet had entered the victim’s leg and traveled downward; the medical report did not contain any subjective expressions of opinion or conclusion involving the exercise of judgment or discretion. State v. Key (S.C. 1981) 277 S.C. 214, 284 S.E.2d 781.

Employee’s testimony that his agency of U. S. Treasury was custodian of record of weapon purchased, and that records were made in normal course of business and prepared as required by law, was admissible under this section. State v. Duncan (S.C. 1980) 274 S.C. 379, 264 S.E.2d 421.

2. Hearsay

Business records exception to exclusion of hearsay testimony did not apply to mortgage assignee’s sole member’s testimony regarding the amount remaining due on mortgagor’s loan after member’s review of various documents, in assignee’s action for foreclosure and deficiency judgments, where member’s live testimony was describing records that were not offered into evidence, and member, despite possibly being qualified witness to testify about calculations made from information contained in the records, did not lay the required foundation for admission of a business record. Deep Keel, LLC v. Atlantic Private Equity Group, LLC (S.C.App. 2015) 413 S.C. 58, 773 S.E.2d 607. Evidence 351

List of disciplinary infractions allegedly committed by capital defendant while in Department of Corrections was admissible at sentencing hearing pursuant to business records exception to rule against hearsay; trial judge permitted state to introduce redacted version of prison offenses and required state to omit from list all details of incidents, and all incidents not witnessed by prison guard or staff member. State v. Owens (S.C. 2008) 378 S.C. 636, 664 S.E.2d 80, rehearing denied, certiorari denied, certiorari denied 129 S.Ct. 1004, 555 U.S. 1141, 173 L.Ed.2d 300, habeas corpus dismissed 2010 WL 146164. Sentencing And Punishment 1767

Under the business records exception or the public records exception, admission of police fingerprint records is generally considered not to violate the prohibition against hearsay. State v. Anderson (S.C.App. 2008) 378 S.C. 243, 662 S.E.2d 461, rehearing denied, certiorari granted, affirmed 386 S.C. 120, 687 S.E.2d 35. Criminal Law 429(1); Criminal Law 436(2)

Records of defendant’s former employer, which tracked weapons and other equipment issued to employees and indicated that defendant’s assigned equipment had not been returned approximately one month after victim’s murder and defendant’s termination from employment, were admissible under business records exception to hearsay rule in murder prosecution; no probative evidence suggested sources of information recorded in documents were not credible or methods and circumstances of preparation were unreliable, and evidence defendant relied on identified problems in accessing business records after company stored them and did not cast suspicion on records’ trustworthiness. State v. Rice (S.C.App. 2007) 375 S.C. 302, 652 S.E.2d 409, rehearing denied, certiorari denied. Criminal Law 436(2)

A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either Uniform Business Record as Evidence Act or business records exception to hearsay rule. State v. Rice (S.C.App. 2007) 375 S.C. 302, 652 S.E.2d 409, rehearing denied, certiorari denied. Criminal Law 436(2)

That witness for holder of promissory note and guarantee was not the custodian of holder’s records at or near the time the records were made did not preclude admission of her testimony under the business records exception to hearsay rule, in holder’s action against guarantors to recover balance due on note, where witness’ testimony conveyed information from a person with knowledge at the time the records were created. Twelfth RMA Partners, L.P. v. National Safe Corp. (S.C.App. 1999) 335 S.C. 635, 518 S.E.2d 44. Evidence 373(1)

The Uniform Business Records As Evidence Act, Section 19‑5‑510, precluded hearsay as a ground to exclude 2 letters from evidence where the letters where written by the residence hall director for a university, in his official capacity, to the president of a university fraternity. Butler v. Gamma Nu Chapter of Sigma Chi (S.C.App. 1994) 314 S.C. 477, 445 S.E.2d 468, rehearing denied.

Generally, medical records are properly admitted under the Business Records as Evidence Act as an exception to the rule against hearsay. Thus, a plaintiff’s medical records were properly admitted into evidence where the records were introduced through the hospital’s custodian of medical records who testified that they were prepared in the normal course of business, and the plaintiff did not argue that the record contained any subjective opinions or judgments. Benchoff v. Morgan (S.C.App. 1990) 302 S.C. 116, 394 S.E.2d 19.

Properly authenticated fingerprints are admissible against criminal defendant, and admission of police fingerprint records is generally considered not to violate prohibition against hearsay, either under public records exception (SC Code Ann Section 30‑1‑10), or business records exception (SC Code Ann Section 19‑5‑510), however, this exception to hearsay rule does not absolve offering party from usual requirement of authentication; where fingerprint evidence was crucial to state’s case, which resulted in conviction of defendant, failure of State to lay proper foundation for admission into evidence of set of fingerprints which were used to compare to fingerprints found at scene of crime warranted reversal of conviction. State v. Rich (S.C. 1987) 293 S.C. 172, 359 S.E.2d 281.

3. Harmless error

Trial court’s error, if any, in admitting business records of defendant’s former employer, which tracked weapons and other equipment issued to employees and indicated that defendant’s assigned equipment had not been returned approximately one month after victim’s murder and defendant’s termination from employment, was harmless in murder prosecution; records were merely cumulative to testimony of defendant’s supervisors, who confirmed that defendant had not returned her weapon. State v. Rice (S.C.App. 2007) 375 S.C. 302, 652 S.E.2d 409, rehearing denied, certiorari denied. Criminal Law 1169.2(7)

Admission of police fingerprint records is generally considered not to violate prohibition against hearsay, either under public records exception, Section 30‑1‑10, or business records exception, Section 19‑5‑510, but, offering party must properly authenticate fingerprints, as in other cases, and failure to properly authenticate fingerprints cannot be considered harmless where fingerprint evidence was crucial to state’s case. State v. Rich (S.C. 1987) 293 S.C. 172, 359 S.E.2d 281. Criminal Law 429(1)

Whether it was error to exclude from evidence in a capital murder trial of murder victim’s medical records compiled by the hospital, on the grounds that such records contained the physician’s subjective opinions, not merely factual observations, could not be determined on appeal where the defendant failed to include such records in the transcript but, in any event, any error and their exclusion was harmless, since the testimony of the victim’s wife as to the victim being beaten prior to being shot was refuted by testimony of a pathologist who performed the autopsy on the victim, and, thus, the evidence in the records was merely cumulative. State v. Patterson (S.C. 1986) 290 S.C. 523, 351 S.E.2d 853, certiorari dismissed 107 S.Ct. 2490, 482 U.S. 902, 96 L.Ed.2d 382.

Any error resulting from the exclusion from evidence of a report, on the ground that the report did not fall within the “business exception” to the hearsay rule, was harmless, where the author of the report testified as to its contents. Varnadore v. Nationwide Mut. Ins. Co. (S.C. 1986) 289 S.C. 155, 345 S.E.2d 711. Appeal And Error 1058(1)

In a wrongful death action against the maternal grandparents of two children, asserting that the grandparents failed to supervise their daughter (the children’s mother) and prevent her from killing the children, most portions of medical records relating to the daughter’s treatment for mental disease were admissible, over a hearsay objection, under Section 19‑5‑510. Although some portions of the records contained subjective opinions or judgments which are generally not admissible under Section 19‑5‑510, their admission was not reversible error where the conclusions revealed by the records were abundantly established by other competent evidence and were not truly a matter in dispute at trial. Crowley v. Spivey (S.C.App. 1985) 285 S.C. 397, 329 S.E.2d 774.

**SECTION 19‑5‑520.** Certified business records.

 In addition to those matters provided by Rule 902, South Carolina Rules of Evidence, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

 (A) The original or a copy of a domestic record that meets the requirements of Rule 803(6), South Carolina Rules of Evidence, as shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule. Before the trial or hearing, the proponent shall give an adverse party reasonable written notice of the intent to offer the record and shall make the record and certification available for inspection so that the party has a fair opportunity to challenge the record.

 (B) In a civil case, the original or a copy of a foreign record that is certified by the custodian or another qualified person and otherwise meets the requirements of subsection (A), modified as follows: the certification, rather than complying with a state statute or court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the jurisdiction where the certification is signed. The proponent also shall meet the notice requirements of subsection (A).

HISTORY: 2015 Act No. 4 (S.177), Section 1, eff March 27, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Evidence Section 67, Authenticity of Letters and Documents.

ARTICLE 11

Photographic Copies

**SECTION 19‑5‑610.** Uniform Photographic Copies of Business and Public Records as Evidence Act.

 If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile does not preclude admission of the original.

 This section shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact or adopt it.

 This section may be cited as the Uniform Photographic Copies of Business and Public Records as Evidence Act.

HISTORY: 1978 Act No. 552 Section 2.

CROSS REFERENCES

Admissibility of public documents, generally, see Section 19‑5‑10.

Library References

Evidence 359.

Westlaw Topic No. 157.

C.J.S. Evidence Sections 1246 to 1259.

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Annual Survey of South Carolina Law: Evidence: Refreshing Memory. 30 S.C. L. Rev. 92.