CHAPTER 21

Perpetuation of Evidence

**SECTION 19‑21‑10.** Substituting new records for lost, destroyed, or abstracted records of decrees and judgments.

 The plaintiff in any judgment or decree, the record whereof has been destroyed, abstracted or lost, or his personal representatives, or other person claiming under or through them, or any of them, or any person whatever having an interest in the preservation of the evidence of such judgment or decree, may upon notice of not less than twenty‑one days, served as a summons in actions is now served pursuant to law, upon the defendant therein or upon those upon whom his liability has devolved, or others interested to oppose the application, apply to the court in which such judgment or decree was rendered for leave to substitute a new record. If, upon hearing the evidence on each side, the court is satisfied of the existence and loss of such record, an order for leave to substitute shall be made, conforming as nearly as possible in all respects to the lost, abstracted or destroyed record; and if it be for the payment of money, the balance due thereon and date of lien, if any, shall be made to appear thereon. Such substituted record shall be good and valid in law to all intents and purposes.

HISTORY: 1962 Code Section 26‑801; 1952 Code Section 26‑801; 1942 Code Section 729; 1932 Code Section 729; Civ. P. ‘22 Section 745; Civ. C. ‘12 Section 4008; Civ. C. ‘02 Section 2903; G. S. 2230; R. S. 2367; 1882 (17) 1081.

CROSS REFERENCES

Other proof of lost papers, see Section 19‑21‑50.

Use of copies of public documents in certain cases, see Section 19‑5‑10 et seq.

Library References

Records 17.

Westlaw Topic No. 326.

C.J.S. Records Sections 41 to 52.

NOTES OF DECISIONS

In general 1

1. In general

It was said in the case of Dubois v Thomas (1880) 14 SC 30, that the court of common pleas, outside of any special statutory authority, in virtue of its general authority possesses the power of substituting new records, including judgments, in the place of originals lost or destroyed, and such authority may be derived from common law. Dubois v. Thomas (S.C. 1880) 14 S.C. 30. Records 17(2)

**SECTION 19‑21‑20.** Perpetuation of testimony as to lost, destroyed, or defective instruments.

 Any person interested in the preservation of the contents of any deed, release, private writing usually put on record or document alleged to have been lost, destroyed or defective in the record thereof and desiring to preserve the evidence thereof for any purpose may, by summons and complaint as provided by Title 15, institute an action in the court of common pleas to perpetuate testimony as to the existence and true contents of the same. In such complaint the defects, if any, complained of in the record shall be substantially set forth and to such action all persons interested or known or supposed to claim an interest in the property to which such testimony may relate shall be made parties defendant and served with summons as provided by law in civil actions.

HISTORY: 1962 Code Section 26‑802; 1952 Code Section 26‑802; 1942 Code Section 730; 1932 Code Section 730; Civ. P. ‘22 Section 746; Civ. C. ‘12 Section 4009; Civ. C. ‘02 Section 2904; G. S. 2230, 2232; R. S. 2368; 1882 (17) 1081.

CROSS REFERENCES

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

Library References

Records 17.

Westlaw Topic No. 326.

C.J.S. Records Sections 41 to 52.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Martin v Ragsdale (1905) 71 SC 67, 50 SE 671; Pineland Club v Robert (1914, CA4 SC) 213 F 545.

It was said in the case of Atlantic C. L. R. Co. v Baker (1927) 143 SC 445, 141 SE 688, in construing this section [Code 1962 Section 26‑802] and Code 1962 Sections 26‑803 and 26‑804, that it was necessary to serve a summons only on claimants or persons interested who were known or supposed to have an interest, and a failure to so serve a person not known or supposed to have a claim at the time the testimony is taken is not fatal to the admissibility of such testimony as is taken in the proceedings here provided for. Atlantic Coast Line R. Co. v. Baker (S.C. 1927) 143 S.C. 445, 141 S.E. 688.

**SECTION 19‑21‑30.** Issuance of orders in action to perpetuate testimony.

 The court or judge at chambers having jurisdiction of the subject matter may hear, determine and grant all orders as will best subserve the purposes of the complaint and the preservation of the testimony sought without delay.

HISTORY: 1962 Code Section 26‑803; 1952 Code Section 26‑803; 1942 Code Section 731; 1932 Code Section 731; Civ. P. ‘22 Section 747; Civ. C. ‘12 Section 4010; Civ. C. ‘02 Section 2905; G. S. 2230, 2233; R. S. 2369; 1882 (17) 1082.

Library References

Records 17.

Westlaw Topic No. 326.

C.J.S. Records Sections 41 to 52.

NOTES OF DECISIONS

In general 1

1. In general

Failure to serve summons on subsequent claimant not fatal to admissibility of testimony. Atlantic Coast Line R. Co. v. Baker (S.C. 1927) 143 S.C. 445, 141 S.E. 688.

**SECTION 19‑21‑40.** Recordation and force and effect of perpetuated testimony.

 The evidence so taken shall be preserved, and the parties may have the same recorded in the office to which the same may relate. And such evidence so taken, preserved and recorded shall be received in all courts, subject to the same rules as to competency and credibility as any other evidence.

HISTORY: 1962 Code Section 26‑804; 1952 Code Section 26‑804; 1942 Code Section 732; 1932 Code Section 732; Civ. P. ‘22 Section 748; Civ. C. ‘12 Section 4011; Civ. C. ‘02 Section 2906; G. S. 2230, 2234, 2235; R. S. 2370; 1882 (17) 1082.

Library References

Evidence 186(2).

Records 17.

Westlaw Topic Nos. 157, 326.

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

C.J.S. Records Sections 41 to 52.

NOTES OF DECISIONS

In general 1

1. In general

Failure to serve summons on subsequent claimant not fatal to admissibility of testimony. Atlantic Coast Line R. Co. v. Baker (S.C. 1927) 143 S.C. 445, 141 S.E. 688.

**SECTION 19‑21‑50.** Proof of lost papers other than by perpetuation of testimony.

 Nothing herein contained shall prevent anyone from establishing on the trial of any cause any lost papers, according to the rules of evidence.

HISTORY: 1962 Code Section 26‑805; 1952 Code Section 26‑805; 1942 Code Section 733; 1932 Code Sections 733, 734; Civ. P. ‘22 Sections 749, 750; Civ. C. ‘12 Sections 4012, 4013; Civ. C. ‘02 Sections 2907, 2908; G. S. 2230, 2235; R. S. 2236, 2371; 1882 (17) 1082; 1995 Act No. 104, Section 5, eff September 3, 1995.

Library References

Evidence 186.

Westlaw Topic No. 157.

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

NOTES OF DECISIONS

In general 1

1. In general

The admissibility of a deed record book, under the common‑law rule and the provisions of this section [Code 1962 Section 26‑805], is dependent upon evidence tending to prove that the original deed was lost or not to be had. Windham v. Lloyd (S.C. 1970) 253 S.C. 568, 172 S.E.2d 117. Evidence 183(1)

Cited in Macedonia Baptist Church v. City of Columbia (S.C. 1940) 195 S.C. 59, 10 S.E.2d 350.

A lost deed could be proved at common law by record thereof, hence such record is admissible under this section [Code 1962 Section 26‑805]. State v. Crocker (S.C. 1897) 49 S.C. 242, 27 S.E. 49.

**SECTION 19‑21‑60.** Costs.

 The costs of such proceedings as shall be had under the provisions of this chapter shall be in the discretion of the presiding judge.

HISTORY: 1962 Code Section 26‑806; 1952 Code Section 26‑806; 1942 Code Section 733; 1932 Code Sections 733, 734; Civ. P. ‘22 Sections 749, 750; Civ. C. ‘12 Sections 4012, 4013; Civ. C. ‘02 Sections 2907, 2908; G. S. 2230, 2235; R. S. 2236, 2371; 1882 (17) 1082.

Library References

Costs 57.

Westlaw Topic No. 102.

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