CHAPTER 3

Jurisdiction and Procedure in Magistrates’ Courts

ARTICLE 1

Civil Jurisdiction

**SECTION 22‑3‑10.** Concurrent civil jurisdiction.

 Magistrates have concurrent civil jurisdiction in the following cases:

 (1) in actions arising on contracts for the recovery of money only, if the sum claimed does not exceed seven thousand five hundred dollars;

 (2) in actions for damages for injury to rights pertaining to the person or personal or real property, if the damages claimed do not exceed seven thousand five hundred dollars;

 (3) in actions for a penalty, fine, or forfeiture, when the amount claimed or forfeited does not exceed seven thousand five hundred dollars;

 (4) in actions commenced by attachment of property, as provided by statute, if the debt or damages claimed do not exceed seven thousand five hundred dollars;

 (5) in actions upon a bond conditioned for the payment of money, not exceeding seven thousand five hundred dollars, though the penalty exceeds that sum, the judgment to be given for the sum actually due, and when the payments are to be made by installments an action may be brought for each installment as it becomes due;

 (6) in any action upon a surety bond taken by them, when the penalty or amount claimed does not exceed seven thousand five hundred dollars;

 (7) in any action upon a judgment rendered in a court of a magistrate or an inferior court when it is not prohibited by the South Carolina Rules of Civil Procedure;

 (8) to take and enter judgment on the confession of a defendant in the manner prescribed by law when the amount confessed does not exceed seven thousand five hundred dollars;

 (9) in any action for damages or for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed seven thousand five hundred dollars;

 (10) in all matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27;

 (11) in any action to recover the possession of personal property claimed, the value of which, as stated in the affidavit of the plaintiff, his agent, or attorney, does not exceed the sum of seven thousand five hundred dollars;

 (12) in all actions provided for in this section when a filed counterclaim involves a sum not to exceed seven thousand five hundred dollars, except that this limitation does not apply to counterclaims filed in matters between landlord and tenant and the possession of land;

 (13) in interpleader actions arising from real estate contracts for the recovery of earnest money, only if the sum claimed does not exceed seven thousand five hundred dollars; and

 (14) in actions for damages arising from a person’s failure to return leased or rented personal property within seventy‑two hours after the expiration of the lease or rental agreement, such damages to be based on the loss of revenue or replacement value of the property, whichever is less, if the damages claimed do not exceed seven thousand five hundred dollars; however, the lease or rental agreement must set forth the manner in which the amount of the loss of revenue or replacement value of the item leased or rented is calculated.

HISTORY: 1962 Code Section 43‑51; 1952 Code Section 43‑51; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; 1964 (53) 2165; Const. Art. 5 Sections 20, 21; 1976 Act No. 690, Art. IV, Sections 1, 2; 1979 Act No. 164, Part I, Section 5; 1988 Act No. 681, Section 1; 1994 Act No. 488, Section 1; 1997 Act No. 48, Section 1; 2000 Act No. 226, Section 13; 2002 Act No. 184, Section 1; 2004 Act No. 180, Section 1.

CROSS REFERENCES

Exclusive original jurisdiction of family court, see Section 63‑5‑510.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

Territorial jurisdiction, generally, see Section 22‑1‑10.

Uniform Arbitration Act, see Chapter 48 of Title 15.

Library References

Justices of the Peace 31 to 62.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 41 to 59, 61 to 68, 70 to 80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Breach of Promise to Marry Section 9, Pleadings and Motions.

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 18, Subject Matter Jurisdiction.

S.C. Jur. Magistrates and Municipal Judges Section 33, Extent of Civil Jurisdiction.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Magistrates’ Courts; Unified Judicial System, 31 S.C. L. Rev. 33.

Attorney General’s Opinions

The magistrate courts have concurrent jurisdiction with the circuit courts over a landlord as to any conduct governed by the State Residential Landlord and Tenant Act, including those cases brought pursuant to the Act where damages or attorney’s fees exceed the typical one thousand dollar jurisdictional limit established by Section 22‑3‑10. 1987 Op. Atty Gen, No. 87‑10, p 45.

A city recorder does not have jurisdiction to hear ejection and other proceedings under Section 22‑3‑10(10) Code of Laws of S.C. (1976). Magistrates have the jurisdiction to hear matters of landlord and tenants. 1978 Op. Atty Gen, No. 78‑32, p 49.

Under the provisions of Section 22‑3‑10, 15‑7‑30, Code of Laws of S.C., 1976, and the case law generally, it is not proper in civil cases for a magistrate to endorse for service Summons and Complaints from foreign counties which claim jurisdiction. 1976‑77 Op. Atty Gen, No. 77‑379, p 303.

Since jurisdiction in the magistrates’ courts in civil proceedings was recently expanded to $500.00, the magistrate’s court can lawfully handle a claim and delivery case involving a $450.00 debt by levy against a $1,500.00 motor vehicle. 1976‑77 Op. Atty Gen, No. 77‑362, p 287.

Provisions affecting magistrates’ jurisdiction are governed by Article V, Section 23 [now Section 26], and authority over magistrates’ territorial jurisdiction remains in the General Assembly. 1975‑76 Op. Atty Gen, No. 4462, p 322.

Magistrates, under Section 22‑3‑10], as amended, have jurisdiction in matters between landlord and tenant where the amount in controversy exceeds $200.00. 1974‑75 Op. Atty Gen, No. 4075, p 151.

The jurisdiction of magistrates in civil cases must be the same throughout the State, and if there is a departure from the civil limits fixed by general law, such departure must be based on some logical basis and sound reason for special legislation. 1971‑72 Op. Atty Gen, No. 3297, p 110.

A magistrate’s jurisdiction is limited to the county in which he or she may exercise authority, but is county‑wide, and this jurisdiction may not be waived or conferred on the magistrate by consent of the parties or by order of a higher court. Magistrate courts are vested with concurrent, not exclusive, original jurisdiction in the categories listed in Section 22‑3‑10. S.C. Op.Atty.Gen. (August 16, 2011) 2011 WL 3918180.

NOTES OF DECISIONS

In general 1

Actions commenced by attachment of property 6

Actions for injury to person or personal or real property 4

Actions for penalty, fine or forfeiture 5

Actions on bond conditioned for payment of money; installments 7

Actions to recover possession of personal property claimed 9

Amount in controversy 3

Defendant resident of county 2

Matters between landlord and tenant 8

1. In general

Where magistrate entered judgment for plaintiff while an infant for one hundred dollars and upon reaching majority plaintiff tried to set aside in the absence of fraud, and where it is determined by the circuit judge that the guardian ad litem, his attorney, and, the magistrate in whose court the judgment was obtained, all ably performed their respective duties, there is no sound legal ground on which the judgment can at this late date be set aside and vacated. Bridges v. Joanna Cotton Mill (S.C. 1949) 214 S.C. 319, 52 S.E.2d 406.

Cited in Stewart‑Jones Co. v. Shehan (S.C. 1924) 127 S.C. 451, 121 S.E. 374.

2. Defendant resident of county

In order to give a magistrate jurisdiction it must appear on the record that the defendant is a resident of the county. Hall v Sullivan (1905) 70 SC 397, 50 SE 27. Ragin v Northwestern R. Co. (1917) 108 SC 171, 93 SE 860.

A magistrate has no right to try a claim and delivery action where the defendant resides in another township. Jones v Brown (1900) 57 SC 14, 35 SE 397. Wise v. Werts (S.C. 1905) 72 S.C. 132, 51 S.E. 547.

A requirement that an action should be brought before a magistrate in the county where the cause of action arose is unauthorized. Baker v. Irvine (S.C. 1902) 62 S.C. 293, 40 S.E. 672.

The right to demur to the summons and complaint because it does not allege that the defendant is a resident of the county in which the magistrate has jurisdiction may be waived where the defendant appears in the magistrate’s court and answers on the merits. Baker v. Irvine (S.C. 1902) 62 S.C. 293, 40 S.E. 672. Justices Of The Peace 84(6)

3. Amount in controversy

The jurisdiction, under this section [former Code 1962 Section 43‑51], is determined by the amount claimed by the plaintiff and not the amount actually due. Brunson v Furtick, 72 SC 579 (1905) 52 SE 424. Haygood v Boney (1895) 43 SC 63, 20 SE 803. Bridges v Joanna Cotton Mill (1949) 214 SC 319, 52 SE2d 406.

A counterclaim over limit does not oust jurisdiction of plaintiff’s claim. Corley v Evans (1904) 69 SC 520, 48 SE 459. See also, Dupre v Gilland (1930) 156 SC 109, 152 SE 873. Corley v Evans (1904) 69 SC 520, 48 SE 459. Haygood v Boney (1895) 43 SC 63, 20 SE 803. Dupre v Gilland (1930) 156 SC 109, 152 SE 873.

A magistrate has jurisdiction to determine a dispute as to the amount of a lien under this section only if the amount involved does not exceed the jurisdictional amount stated therein. If more is involved then the disputed amount must be determined by the circuit court in its original jurisdiction. Rock Hill Body Co. v. Rainey (S.C.App. 1987) 294 S.C. 426, 365 S.E.2d 228. Justices Of The Peace 47(2)

It does not adversely affect the jurisdiction of a magistrate that a plaintiff has reduced his claim or demand in order to bring it within the jurisdiction of the magistrate. Bridges v. Joanna Cotton Mill (S.C. 1949) 214 S.C. 319, 52 S.E.2d 406. Justices Of The Peace 44(10)

A party cannot put a fictitious value on property in order to confer jurisdiction, though he can forego a part of his claim for money. Stroy v. Nicpee (S.C. 1916) 105 S.C. 265, 89 S.E. 666. Justices Of The Peace 44(1)

A party in a magistrate’s court may claim and sue for less than due on note, so as to give a magistrate jurisdiction. Brunson v. Furtick (S.C. 1905) 72 S.C. 579, 52 S.E. 424.

It is no objection to the jurisdiction of a magistrate that the plaintiff reduced his demand to bring it within the jurisdiction of the magistrate; but where, in so reducing his claim, the plaintiff leaves out an item which he could have included in the cause of action, he cannot afterwards sue thereon. Catawba Mills v. Hood (S.C. 1894) 42 S.C. 203, 20 S.E. 91.

4. Actions for injury to person or personal or real property

Jurisdiction is concurrent with that of court of common pleas. State ex rel. Adams v Fillebrown (1871) 2 SC 404. Rhodes v Railroad Co. (1875) 6 SC 385.

Quoted in Haygood v. Boney (S.C. 1895) 43 S.C. 63, 20 S.E. 803.

Magistrates may have jurisdiction even in a suit against a foreign corporation. Dennis v. Atlantic Coast Line R. Co. (S.C. 1910) 86 S.C. 258, 68 S.E. 465.

If the defendant is a domestic corporation the suit may be brought in any county where it maintains an agent and transacts its corporate business. Dennis v. Atlantic Coast Line R. Co. (S.C. 1910) 86 S.C. 258, 68 S.E. 465.

An action by a landlord against a constable for proceeds of a crop in his hands applicable to rent is an action for damages for injury to rights pertaining to personal property within the meaning of this section [former Code 1962 Section 43‑51]. Sullivan v. Ellison (S.C. 1884) 20 S.C. 481.

5. Actions for penalty, fine or forfeiture

Where in an action for a penalty a defendant residing in another county appeared and contested the case upon its merits, the right to object to the jurisdiction of the magistrate to try such case was waived. Jenkins v Atlantic C. L. R. Co. (1909), 84 SC 343, 66 SE 409. Best v Seaboard A. L. R. Co. (1905) 72 SC 479, 52 SE 223.

A magistrate has jurisdiction of an action against a foreign corporation having property in the State to recover a penalty by due service of process. Best v. Seaboard Air Line Ry. (S.C. 1905) 72 S.C. 479, 52 S.E. 223. Justices Of The Peace 39(1)

Forfeiture of twenty dollars under a statute providing recovery in court of record cannot be recovered hereunder. State v. Weeks (S.C. 1881) 14 S.C. 400.

6. Actions commenced by attachment of property

A magistrate has jurisdiction, in an action by attachment against a nonresident, to at least render a judgment in rem. Bird v Sullivan (1900) 58 SC 50, 36 SE 494. Burckhalter v Jones (1900) 58 SC 89, 36 SE 495.

A nonresident defendant, by appearing on the day of trial, and contesting the case on the merits by denying the allegations of the complaint, gives the magistrate jurisdiction to render a judgment in personam. Bird v. Sullivan (S.C. 1900) 58 S.C. 50, 36 S.E. 494. Justices Of The Peace 86(7)

The jurisdiction of magistrates to issue writs of attachment against the property of a nonresident was not affected by the Constitution. Bird v. Sullivan (S.C. 1900) 58 S.C. 50, 36 S.E. 494.

7. Actions on bond conditioned for payment of money; installments

Cited in Hagood v. Blythe, 1889, 37 F. 249.

Applied in Cavender v. Ward (S.C. 1888) 28 S.C. 470, 6 S.E. 302.

8. Matters between landlord and tenant

Commercial tenant’s counterclaim for damages, alleging constructive eviction, conversion, unjust enrichment, loss of business revenue, and failure to return deposit, was not within the scope of exception to jurisdiction limits of magistrate’s court for disputes involving “landlord and tenant and the possession of land,” and thus transfer of case to court of common pleas was required; two of tenant’s counterclaims exceed magistrate’s jurisdictional limit of $7,500, and the action did not involve possession of the property. Mosseri, Mosseri, Castro v. Austin’s at the Beach, Inc. (S.C.App. 2007) 372 S.C. 593, 642 S.E.2d 760. Courts 486

The existence of the conventional relation of landlord and tenant is a prerequisite to the assumption and exercise of jurisdiction by a magistrate in proceedings for dispossession of a tenant holding over after the alleged expiration of his lease. Metropolitan Life Ins. Co. v. Stuckey (S.C. 1940) 194 S.C. 469, 10 S.E.2d 3. Landlord And Tenant 1749; Landlord And Tenant 1760

In an action to dispossess a tenant holding over, it is the duty of the magistrate to determine whether the relation of landlord and tenant exists. Metropolitan Life Ins. Co. v. Stuckey (S.C. 1940) 194 S.C. 469, 10 S.E.2d 3.

The tenant cannot oust the magistrate of jurisdiction in a case for dispossession of a tenant holding over after the alleged expiration of his lease, even by the assertion of a superior title in himself. Metropolitan Life Ins. Co. v. Stuckey (S.C. 1940) 194 S.C. 469, 10 S.E.2d 3.

An allegation of fraud in the procurement of the lease will not oust the jurisdiction of the magistrate. Metropolitan Life Ins. Co. v. Stuckey (S.C. 1940) 194 S.C. 469, 10 S.E.2d 3.

9. Actions to recover possession of personal property claimed

It is not necessary to allege in the summons that the plaintiff is entitled to the possession of the property; it is sufficient to allege that the defendant is in unlawful possession of the property belonging to the plaintiff. Dillard v. Samuels (S.C. 1886) 25 S.C. 318.

**SECTION 22‑3‑20.** Civil actions in which magistrate has no jurisdiction.

 No magistrate shall have cognizance of a civil action:

 (1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or

 (2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.

HISTORY: 1962 Code Section 43‑52; 1952 Code Section 43‑52; 1942 Code Section 264; 1932 Code Section 264; Civ. P. ‘22 Section 220; Civ. P. ‘12 Section 87; Civ. P. ‘02 Section 78; 1870 (14) 81; 1873 (15) 496.

CROSS REFERENCES

Answer of title to real property, see Section 22‑3‑1110.

Jurisdiction of magistrate courts relative to claims arising from transactions subject to South Carolina Residential Landlord and Tenant Act, see Section 27‑40‑130.

Library References

Justices of the Peace 31 to 62.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 41 to 59, 61 to 68, 70 to 80.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 34, Civil Actions in Which Magistrate Has No Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

Magisterial courts are vested with judicial power and are thus a part of the state’s uniform judicial system; as a part of such unified system, the jurisdiction of magistrates must be uniform throughout the state; fees charged in magistrate courts must also be uniform throughout the state, although magistrates may not accept fees derived from their performance as judicial officers in either civil or criminal matters. State ex rel. McLeod v. Crowe (S.C. 1978) 272 S.C. 41, 249 S.E.2d 772.

A magistrate, in whose court plaintiff sued for trespass for cutting timber, after dismissing complaint on motion of defendant on an answer of title to real property pursuant to this section [former Code 1962 Section 43‑52], has discretion to allow plaintiff to discontinue. Thomas v. Shea (S.C. 1919) 111 S.C. 416, 98 S.E. 145. Justices Of The Peace 75(1)

Subdivision (2) does not apply to criminal cases. State v. Holcomb (S.C. 1902) 63 S.C. 22, 40 S.E. 1017.

**SECTION 22‑3‑25.** Interpleader actions.

 (A) In compliance with Section 22‑3‑20(2) and Article 11 of this chapter, actions in the nature of interpleader arising from real estate contracts for the recovery of earnest money, in which the value of the money that is the subject of the action does not exceed the jurisdictional limit of the magistrates court, may be filed in magistrates court under the provisions of this section. The fee for an action in the nature of interpleader filed in magistrates court is as provided in Section 8‑21‑1010(6) with service fees as provided by law.

 (B) The failure of a competing claimant to recover in an interpleader action must not be considered as a judgment against the claimant and must not be used to impair the credit of the claimant.

 (C) The Office of Court Administration must design appropriate legal forms for proceeding under this section and make those forms available for distribution.

HISTORY: 2002 Act No. 184, Section 2.

Library References

Interpleader 17.

Westlaw Topic No. 222.

C.J.S. Interpleader Section 21.

**SECTION 22‑3‑30.** Counterclaim requiring transfer to court of common pleas.

 When a counterclaim is filed which if successful would exceed the magistrates’ civil jurisdictional amount as provided in Section 22‑3‑10, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit.

HISTORY: 1988 Act No. 678, Part I, Section 8; 1997 Act No. 48, Section 2.

Library References

Justices of the Peace 54.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 47 to 48.

ARTICLE 3

Civil Procedure Filing and Execution of Judgments

**SECTIONS 22‑3‑110 to 22‑3‑290.** Omitted by 2008 Act No. 267, Section 1, eff June 4, 2008.

Editor’s Note

Former Section 22‑3‑110 was entitled “Forms of action, parties, commencement of actions, service of process upon corporations, and evidence” and was derived from 1962 Code Section 43‑81; 1952 Code Section 43‑81; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (21) 13.

Former Section 22‑3‑120 was entitled “Time for serving complaint” and was derived from 1962 Code Section 43‑82; 1952 Code Section 43‑82; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1891 (20) 1113; 1896 (22) 13.

Former Section 22‑3‑130 was entitled “Effect of service of summons on absent defendant” and was derived from 1962 Code Section 43‑83; 1952 Code Section 43‑83; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 157; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275.

Former Section 22‑3‑140 was entitled “Orders of publication against absent defendant” and was derived from 1962 Code Section 43‑84; 1952 Code Section 43‑84; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (12) 157; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275.

Former Section 22‑3‑150 was entitled “Pleadings in courts of magistrates” and was derived from 1962 Code Section 43‑85; 1952 Code Section 43‑85; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑160 was entitled “Complaint” and was derived from 1962 Code Section 43‑86; 1952 Code Section 43‑86; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑170 was entitled “Answer” and was derived from 1962 Code Section 43‑87; 1952 Code Section 43‑87; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑180 was entitled “Demurrer and orders thereon” and was derived from 1962 Code Section 43‑88; 1952 Code Section 43‑88; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑190 was entitled “Form and filing of pleadings” and was derived from 1962 Code Section 43‑89; 1952 Code Section 43‑89; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑200 was entitled “Amendment of pleadings” and was derived from 1962 Code Section 43‑90; 1952 Code Section 43‑90; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑210 was entitled “Defendant’s failure to appear not deemed waiver of objection to jurisdiction when action brought in wrong county” and was derived from 1962 Code Section 43‑91; 1952 Code Section 43‑91; 1942 Code Section 275; 1932 Code Section 275; Civ. P. ‘22 Section 231; 1919 (31) 51.

Former Section 22‑3‑220 was entitled “Offer of judgment” and was derived from 1962 Code Section 43‑92; 1952 Code Section 43‑92; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑230 was entitled “Right to jury trial” and was derived from 1962 Code Section 43‑93; 1952 Code Section 43‑93; 1942 Code Section 3710; 1932 Code Section 3710; Civ. C. ‘22 Section 2244; Civ. C. ‘12 Section 1394; Civ. C. ‘02 Section 986; G.S. 841; R.S. 884; 1868 (14) 100.

Former Section 22‑3‑260 was entitled “Variance between pleadings and proof” and was derived from 1962 Code Section 43‑96; 1952 Code Section 43‑96; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑270 was entitled “Default judgments; liquidated and unliquidated demands” and was derived from 1962 Code Section 43‑97; 1952 Code Section 43‑97; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787, 833; 1896 (22) 13.

Former Section 22‑3‑280 was entitled “Proof required in action or defense founded upon an account or instrument for payment of money” and was derived from 1962 Code Section 43‑98; 1952 Code Section 43‑98; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1870 (14) 423; 1887 (19) 787; 1896 (22) 13.

Former Section 22‑3‑290 was entitled “Requiring exhibit of account or statement of nature thereof” and was derived from 1962 Code Section 43‑99; 1952 Code Section 43‑99; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13.

**SECTION 22‑3‑300.** Filing and docketing judgments of magistrates.

 A magistrate, on the demand of a party in whose favor he shall have rendered a judgment, shall give a transcript thereof which may be filed and docketed in the office of the circuit court of the county in which the judgment was rendered. The time of the receipt of the transcript by the clerk shall be noted thereon and entered in the abstract of judgments and from that time the judgment shall be a judgment of the circuit court, but no sale shall be made under any execution issued upon such judgment in the circuit court until the time for appeal from the judgment in the magistrates court has expired, nor pending such appeal. If the judgment is set aside in the magistrates court, it shall have the effect of setting aside the judgment filed and docketed in the circuit court. The filing and docketing of such transcript in the circuit court shall not affect the right of the magistrate to grant a new trial. A certified transcript of such judgment may be filed and docketed in the clerk’s office of any other county and with like effect in every respect as in the county in which the judgment was rendered.

HISTORY: 1962 Code Section 43‑100; 1952 Code Section 43‑100; 1942 Code Section 273; 1932 Code Section 273; Civ. P. ‘22 Section 229; Civ. P. ‘12 Section 96; Civ. P. ‘02 Section 87; 1870 (14) 90; 1887 (19) 831; 2008 Act No. 267, Section 1, eff June 4, 2008.

Effect of Amendment

The 2008 amendment made no apparent changes.

CROSS REFERENCES

Continuing jurisdiction over court‑ordered payments, default, hearing to show cause, enforcement, entry in records, satisfaction of judgment, see Section 17‑25‑323.

Judgment constituting a lien after it is filed, see Sections 15‑35‑540, 15‑35‑810.

Library References

Justices of the Peace 125.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 81, 206, 224, 227 to 229, 231 to 239.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 57, Magistrates’ Judgments Recorded in Circuit Court.

S.C. Jur. Magistrates and Municipal Judges Section 64, When Sales May Not be Conducted.

Attorney General’s Opinions

Additional fees should not be charged for recording amended transcriptions of judgments from magistrate’s courts and federal district courts. 1992 Op. Atty Gen 92‑05.

NOTES OF DECISIONS

In general 1

Attack of judgment 4

Enforcement of judgment 5

Form of judgment; signature 3

Time for filing of transcript 2

1. In general

When the transcript is filed, the judgment becomes the judgment of the court of common pleas. Rhoad v Patrick (1892) 37 SC 517, 16 SE 536. Lawrence v Isear (1887) 27 SC 244, 3 SE 222.

Manager of homeowners’ and condominium associations engaged in unauthorized practice of law when, after obtaining judgments in actions it filed in magistrate’s court on behalf of associations to collect unpaid assessments owed to associations, it filed judgments in circuit court, without involvement of an attorney. Rogers Townsend & Thomas, PC v. Peck (S.C. 2017) 419 S.C. 240, 797 S.E.2d 396. Attorney and Client 12(6)

Magistrate’s judgments are entitled to all the presumptions attaching to judgments of the circuit court. Long v. Cummings (S.C. 1912) 91 S.C. 521, 75 S.E. 134.

This section [former Code 1962 Section 43‑100] requires a filing of the transcript of the judgment and not of the summons, pleadings, and proceedings, which, while the basis of, are not the judgment per se and such matter need not be shown. Love v. Dorman (S.C. 1912) 91 S.C. 384, 74 S.E. 829.

This section [former Code 1962 Section 43‑100] must be read in connection with Code 1962 Sections 43‑142 and 43‑143 (see now Sections 22‑3‑990 and 22‑3‑1000 relating to new trials) in such manner as to give full effect to all. Lawrence v. Isear (S.C. 1887) 27 S.C. 244, 3 S.E. 222.

Before a transcript can be filed in the clerk’s office there must be a valid judgment of the trial justice, and if such judgment is a nullity, then no transcript of it can impart vitality to it. Barron v. Dent (S.C. 1882) 17 S.C. 75. Justices Of The Peace 164(2)

2. Time for filing of transcript

There is no limit of time within which the transcript must be filed. Rhoad v. Patrick (S.C. 1892) 37 S.C. 517, 16 S.E. 536.

3. Form of judgment; signature

The judgment must show everything necessary to give jurisdiction to the trial justice to make the judgment valid. Benson v Carrier (1888) 28 SC 119, 5 SE 272, citing Barron v Dent (1882) 17 SC 75.

Where a trial justice was authorized to appoint a clerk, a transcript of a judgment which was rendered by the said justice is properly signed when signed by his clerk. Brown v. Buttz (S.C. 1881) 15 S.C. 488. Judgment 291

4. Attack of judgment

Judgment of a magistrate’s court when filed is of the nature of a judgment of a court of record and general jurisdiction, and cannot be attacked collaterally but only by direct proceeding. Love v Dorman (1912) 91 SC 384, 74 SE 829. O’Rourke v Atlantic Paint Co. (1912) 91 SC 399, 74 SE 930.

A trial justice has no power to vacate, for fraud, a judgment obtained in his court, especially after a transcript has been filed in the circuit court. Brown v. Buttz (S.C. 1881) 15 S.C. 488. Judgment 375

5. Enforcement of judgment

Where the transcript of the justice’s judgment has been filed, an execution is to be issued thereon and may be enforced without circuit court’s leave at any time within ten years. Amick v. Amick (S.C. 1900) 59 S.C. 70, 37 S.E. 39.

**SECTION 22‑3‑310.** Executions on magistrates’ judgments; effect of appeal thereon.

 Execution may be issued on a judgment heretofore or hereafter rendered in a magistrates court at any time within three years after the rendition thereof and shall be returnable sixty days from its date. But no sale shall be made under any such execution until after the time for appeal has expired, nor pending such appeal, and in cases for the claim and delivery of personal property when bond for the property claimed has been properly given by either party, the status of such property shall not be changed until after the expiration of the time for appealing has expired or until such appeal has terminated.

HISTORY: 1962 Code Section 43‑101; 1952 Code Section 43‑101; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787, 832; 1896 (22) 13; 2008 Act No. 267, Section 1, eff June 4, 2008.

Effect of Amendment

The 2008 amendment made no apparent changes.

CROSS REFERENCES

Claim and delivery of personal property, see Sections 15‑69‑10 et seq.

Continuing jurisdiction over court‑ordered payments, default, hearing to show cause, enforcement, entry in records, satisfaction of judgment, see Section 17‑25‑323.

General provisions concerning executions, see Sections 15‑39‑10 et seq.

Library References

Justices of the Peace 135.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 81, 273 to 275, 277 to 289.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 61, Restriction of Action During Appeal.

S.C. Jur. Magistrates and Municipal Judges Section 64, When Sales May Not be Conducted.

Attorney General’s Opinions

Magistrates have the authority to issue executions on judgments rendered in their courts. 1979 Op. Atty Gen, No. 79‑80, p 104.

NOTES OF DECISIONS

In general 1

1. In general

In issuing an execution, the trial justice acts judicially and is not liable in damages therefor unless it was done wilfully or corruptly. McCall v Cohen (1882) 16 SC 445. Abrams v Carlisle (1882) 18 SC 242.

The mere entry of a judgment does not create a lien on personal property unless there is execution and levy thereunder as required by this section [former Code 1962 Section 43‑101] and former Code 1962 Section 10‑1711 (see now Section 15‑39‑100). State v. McCary (S.C. 1922) 120 S.C. 361, 113 S.E. 275.

The question whether a trial justice has the right to have his judgment executed within the time allowed for appeal or motion for new trial, was raised but not decided in Abrams v Carlisle (1881) 18 SC 242, but the Supreme Court did say that it would be better practice for him to consider the case still pending until such time had expired. Abrams v. Carlisle (S.C. 1882) 18 S.C. 242.

**SECTION 22‑3‑320.** Execution when judgment docketed.

 If the judgment be docketed with the clerk of the circuit court, the execution shall be issued by him to the sheriff of the county and have the same effect and be executed in the same manner as other executions and judgments of the circuit court.

HISTORY: 1962 Code Section 43‑102; 1952 Code Section 43‑102; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13; 2008 Act No. 267, Section 1, eff June 4, 2008.

Effect of Amendment

The 2008 amendment made no apparent changes.

CROSS REFERENCES

Continuing jurisdiction over court‑ordered payments, default, hearing to show cause, enforcement, entry in records, satisfaction of judgment, see Section 17‑25‑323.

Docketing judgments, see Section 22‑3‑300.

Executions on judgments of inferior courts, see Section 15‑39‑90.

Library References

Justices of the Peace 135.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 81, 273 to 275, 277 to 289.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 57, Magistrates’ Judgments Recorded in Circuit Court.

Attorney General’s Opinions

Section 22‑3‑320 of the 1976 Code of Laws does not require that all judgments of the magistrate court be docketed with the clerk of the circuit court if execution is requested. 1979 Op. Atty Gen, No. 79‑80, p 104.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Amick v Amick (1900) 59 SC 70, 37 SE 39. Bragg v Thompson (1883) 19 SC 572. Rhoad v Patrick (1892) 37 SC 517, 16 SE 536.

Quoted in Lawrence v. Isear (S.C. 1887) 27 S.C. 244, 3 S.E. 222.

**SECTION 22‑3‑330.** Courtesy summons.

 Notwithstanding another provision of law, a person charged with any misdemeanor offense requiring a warrant signed by nonlaw enforcement personnel to ensure the arrest of a person must be given a courtesy summons.

HISTORY: 2008 Act No. 267, Section 1, eff June 4, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, Section 22‑3‑330 as added by 2008 Act No. 353, Section 2, Part 23A was renumbered as Section 22‑3‑340.

CROSS REFERENCES

Expungement, retention of certain information by law enforcement or prosecution agencies, see Section 17‑1‑40.

**SECTION 22‑3‑340.** Assessments on filings.

 An assessment equal to twenty‑five dollars is imposed on all summons and complaint filings in magistrates court and an assessment equal to ten dollars is imposed on all other civil filings in magistrates court, except for restraining orders. The fees must be collected by the magistrates court and forwarded monthly to the county treasurer and remitted in turn by the county treasurer to the State Treasurer for allocation to the judicial department.

HISTORY: 2008 Act No. 353, Section 2, Pt 23A, eff July 1, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, this section was renumbered from Section 22‑3‑330 because a new section with that number was added by 2008 Act No. 267.

ARTICLE 5

Criminal Jurisdiction

**SECTION 22‑3‑510.** Criminal jurisdiction abolished in counties where county courts established.

 The jurisdiction of magistrates in criminal cases in all counties wherein a county court is established under the provisions of Chapter 9 of Title 14 is hereby abolished.

HISTORY: 1962 Code Section 43‑69; 1952 Code Section 43‑69; 1942 Code Section 94; 1932 Code Section 94; Civ. P. ‘22 Section 91; Civ. C. ‘12 Section 3866; Civ. C. ‘02 Section 2769; 1900 (23) 322; 1963 (53) 252.

Library References

Criminal Law 90.

Westlaw Topic No. 110.

**SECTION 22‑3‑520.** Jurisdiction limited to county.

 Magistrates shall have and exercise within their respective counties all the powers, authority and jurisdiction in criminal cases herein set forth.

HISTORY: 1962 Code Section 43‑61; 1952 Code Section 43‑61; 1942 Code Section 922; 1932 Code Section 922; Cr. P. ‘22 Section 18; Cr. C. ‘12 Section 19; Cr. C. ‘02 Section 11; G. S. 822; R. S. 10; 1870 (14) 402.

CROSS REFERENCES

Additional provision regarding county‑wide jurisdiction of magistrates, see Section 22‑2‑170.

Constitutional provision for criminal jurisdiction of magistrates, see SC Const, Art 5, Section 26.

Territorial jurisdiction, generally, see Section 22‑1‑10.

Library References

Criminal Law 90.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

Attorney General’s Opinions

A bench warrant issued by a magistrate may be executed only within the county of the issuing magistrate. 1979 Op. Atty Gen, No. 79‑45, p 63.

Mayors and magistrates have concurrent jurisdiction where a crime is committed within the limits of an incorporated town when said crime is a violation of the town’s ordinance as well as a statutory offense. 1967‑68 Op. Atty Gen, No. 2497, p 174.

Magistrates in Aiken County have county‑wide jurisdiction, and accordingly an arrest warrant is valid when issued by a magistrate living anywhere in Aiken County for a crime committed anywhere in the county. 1965‑66 Op. Atty Gen, No. 2097, p 200.

NOTES OF DECISIONS

In general 1

1. In general

Magisterial courts are vested with judicial power and are thus a part of the state’s uniform judicial system; as a part of such unified system, the jurisdiction of magistrates must be uniform throughout the state; fees charged in magistrate courts must also be uniform throughout the state, although magistrates may not accept fees derived from their performance as judicial officers in either civil or criminal matters. State ex rel. McLeod v. Crowe (S.C. 1978) 272 S.C. 41, 249 S.E.2d 772.

**SECTION 22‑3‑530.** Trial in district where offense committed.

 In counties where magistrates are given separate and exclusive territorial jurisdiction, criminal cases shall be tried in the district in which the offense was committed, unless the place of trial be changed to another district in the same county in the manner prescribed by law.

HISTORY: 1962 Code Section 43‑62; 1952 Code Section 43‑62; 1942 Code Section 3709; 1932 Code Section 3709; Civ. C. ‘22 Section 2243; Civ. C. ‘12 Section 1393; Civ. C. ‘02 Section 985; 1897 (22) 472.

CROSS REFERENCES

Penalties for fishing or trespassing upon fish sanctuaries, jurisdiction of magistrates, see Section 50‑13‑1990.

Provision requiring criminal cases to be tried in jury area in which the offense was committed, see Section 22‑2‑170.

Library References

Criminal Law 108.

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 179.

Attorney General’s Opinions

Magistrate of Spartanburg County may issue an arrest warrant for an offense which occurs anywhere within the county, but he does not have the authority to try an offense occurring outside of his magisterial district. 1965‑66 Op. Atty Gen, No. 2195, p 338.

NOTES OF DECISIONS

In general 1

1. In general

The jurisdiction of magistrates is fixed by the Constitution and statutes enacted pursuant thereto. Clemmons v. Nicholson (S.C. 1938) 188 S.C. 124, 198 S.E. 180. Criminal Law 90(1)

For related case, see State v. Williams (S.C. 1894) 40 S.C. 373, 19 S.E. 5.

**SECTION 22‑3‑540.** Exclusive and concurrent jurisdiction.

 Magistrates shall have exclusive jurisdiction of all criminal cases in which the punishment does not exceed a fine of one hundred dollars or imprisonment for thirty days, except cases in which an offense within the jurisdiction of a magistrate is included in the charge of an offense beyond his jurisdiction or when it is permissible to join a charge of an offense within his jurisdiction with one or more of which the magistrate has no jurisdiction. Magistrates shall have concurrent but not exclusive jurisdiction in the excepted cases. The provisions of this section shall not be construed so as to limit the jurisdiction of any magistrate whose jurisdiction has been extended beyond that stated above.

HISTORY: 1962 Code Section 43‑68; 1952 Code Section 43‑68; 1942 Code Section 3709; 1932 Code Section 3709; Civ. C. ‘22 Section 2243; Civ. C. ‘12 Section 1393; Civ. C. ‘02 Section 985; 1897 (22) 472; 1951 (47) 442.

CROSS REFERENCES

Breach of trust with fraudulent intent, see Section 16‑13‑230.

Criminally receiving goods and services fraudulently obtained, see Section 16‑14‑80.

Defrauding keeper of hotel, motel, inn, boarding house, rooming house, campground, cafe or restaurant, see Section 45‑1‑50.

Destruction or desecration of human remains or repositories thereof, liability of crematory operators, see Section 16‑17‑600.

Domestic violence, acts prohibited, penalties, see Section 16‑25‑20.

Exclusive original jurisdiction of family court, see Section 63‑5‑510.

Factors or commission merchants failing to account for produce, see Section 46‑1‑70.

Failure to return rented objects, fraudulent appropriation of such, see Section 16‑13‑420.

Forgery, see Section 16‑13‑10.

Fraudulent acquisition or use of food stamps, see Section 16‑13‑430.

Larceny of bicycles, see Section 16‑13‑80.

Making away with produce before paying, see Section 46‑1‑60.

Malicious injury to animals and other personal property, see Section 16‑11‑510.

Malicious injury to tree, house, outside fence, or fixture, trespass upon real property, see Section 16‑11‑520.

Obtaining nonferrous metals unlawfully, see Section 16‑11‑523.

Obtaining property under false tokens or letters, see Section 16‑13‑260.

Obtaining signature or property by false pretenses, see Section 16‑13‑240.

Offenses which may be tried in magistrate’s court, see Sections 24‑3‑965, 56‑1‑460.

Penalties for driving while license cancelled, suspended or revoked, see Section 56‑1‑460.

Penalties for violating Section 16‑13‑65, see Section 16‑13‑66.

Penalties for violation of Financial Transaction Card Crime Act, see Section 16‑14‑100.

Petit larceny, grand larceny, see Section 16‑13‑30.

Presenting false claims for payment, see Section 38‑55‑170.

Provisions of this section not applicable when enticing a child from attendance at school, see Section 16‑17‑510.

Receiving, possessing, concealing, selling, or disposing of stolen vehicle, see Section 16‑21‑80.

Receiving stolen goods, see Section 16‑13‑180.

Sale or purchase of drifted lumber or timber, see Section 49‑1‑50.

Securing property by fraudulent impersonation of officer, see Section 16‑13‑290.

Shoplifting, see Section 16‑13‑110.

Stealing crops from the field, see Section 46‑1‑20.

Stealing livestock, confiscation of motor vehicle or other chattel, see Section 16‑13‑50.

Stealing of bonds and the like, see Section 16‑13‑40.

Stealing of vessels and equipment pertaining thereto, payment of damages, see Section 16‑13‑70.

Stealing tobacco plants from beds, see Section 46‑1‑40.

Transfer of certain criminal cases from general sessions court, see Section 22‑3‑545.

Unauthorized removal or concealment of library property prohibited, see Section 16‑13‑331.

Unlawful sale or disposal of personal property subject to security interest, see Section 36‑9‑410.

Violations committed by person on premises or property of lodging establishment, see Section 45‑2‑40.

Library References

Criminal Law 85.

Judges 23, 24.

Westlaw Topic Nos. 110, 227.

C.J.S. Criminal Law Section 152.

C.J.S. Judges Sections 78 to 80, 136 to 152, 178, 180.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

S.C. Jur. Game and Fish Section 36, Criminal Prosecution.

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 19, Exclusive Versus Concurrent Jurisdiction.

Attorney General’s Opinions

Although possessing concurrent jurisdiction with city recorders, there is no authority which mandates that magistrates should issue warrants, conduct trial proceedings, and hold preliminary examinations for municipal cases triable in general sessions court inasmuch as city recorders have jurisdiction to perform such duties. 1979 Op. Atty Gen, No. 79‑8, p 20.

NOTES OF DECISIONS

In general 1

Concurrent jurisdiction 3

Exclusive jurisdiction 2

Expansion of jurisdiction 4

1. In general

Lack of warrant did not negate jurisdiction of magistrate court to enter default conviction on charge of possession of marijuana, where officer was statutorily authorized to issue uniform traffic ticket for simple possession of marijuana, as offense was committed in his presence and punishment therefor fell within purview of the magistrate court. Bayly v. State (S.C. 2012) 397 S.C. 290, 724 S.E.2d 182. Criminal Law 99

Murder is not an offense within the magistrate court’s jurisdiction. State v. Ballington (S.C.App. 2001) 346 S.C. 262, 551 S.E.2d 280, rehearing denied, certiorari denied. Criminal Law 93

Magistrate’s court lacked jurisdiction over prosecution for second offense ill‑treatment of animals; assistant solicitor’s transfer of charges to magistrate’s court by merely signing a general sessions docket report and sending the arrest warrants to magistrate did not comply with statutory procedure in effect, which prescribed the procedure whereby certain cases could be transferred from the court of general sessions to the magistrate’s court. State v. Whetstone (S.C.App. 1998) 333 S.C. 376, 510 S.E.2d 225. Criminal Law 90(3)

The jurisdiction of the magistrates is fixed by the provisions of SC Const, Art 5, Section 21 (now Art 5, Section 26), and statutes of the General Assembly enacted pursuant to, and within the limitations of, that section of the Constitution. Bourne v. Graham (S.C. 1973) 260 S.C. 554, 197 S.E.2d 674, decided before the 1973 revision of SC Const, Art 5. See now SC Const, Art 5, Section 23.

2. Exclusive jurisdiction

Because crime of trafficking in cocaine was punishable by a minimum sentence of three years and a $25,000 fine, it exceeded the inferior courts’ exclusive jurisdictional limits, and therefore, Circuit Court had subject matter jurisdiction over the general class of trafficking charges. State v. Dudley (S.C. 2005) 364 S.C. 578, 614 S.E.2d 623. Criminal Law 94

The court of magistrate has exclusive jurisdiction of a trial for a first offense of unlawful possession of intoxicating liquor, for which the punishment is imprisonment for not more than thirty days or a fine of not more than $100.00. State v. Castleman (S.C. 1951) 219 S.C. 136, 64 S.E.2d 250.

Where a defendant was tried before a court of general sessions upon an indictment for receiving stolen goods, inter alia, and the jury found a verdict of guilty, and also found that the property stolen and received was of the value of eighteen dollars, the court of general sessions had no jurisdiction to enter a judgment, for the court of magistrate has exclusive jurisdiction where a punishment does not exceed a fine of one hundred dollars, or imprisonment for thirty days. State v. Brown (S.C. 1942) 201 S.C. 417, 23 S.E.2d 381.

3. Concurrent jurisdiction

There is no grant of exclusive jurisdiction to the magistrate’s court over the offense of driving under the influence, since the maximum penalty for DUI, first offense, is a fine of $200 or thirty days in jail. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

Where two defendants were jointly indicted and tried for reckless homicide, and in addition one of the defendants was charged with driving under the influence and driving under suspension, and the other defendant was charged with driving under the influence, the case plainly fell within the exception expressed in Section 22‑3‑540, since judicial economy was served by trying together charges arising out of the same event. State v. Leonard (S.C.App. 1986) 287 S.C. 462, 339 S.E.2d 159, certiorari granted 290 S.C. 46, 348 S.E.2d 176, reversed 292 S.C. 133, 355 S.E.2d 270.

4. Expansion of jurisdiction

Magistrate court’s criminal jurisdiction is not limited to the provisions of the statute settling forth its general jurisdiction, as the last sentence of the statute indicates that the General Assembly may extend the criminal jurisdiction of the magistrate court beyond what is set forth therein. Bayly v. State (S.C. 2012) 397 S.C. 290, 724 S.E.2d 182. Criminal Law 90(1)

Statute authorizing the use of uniform traffic tickets to effect arrests expands general jurisdiction of the magistrate court by identifying certain offenses beyond the limits of the statute settling forth its general jurisdiction, and eliminates the need for an arrest warrant and authorizes the use of a uniform traffic ticket to notify an accused and commence judicial proceedings in the magistrate court. Bayly v. State (S.C. 2012) 397 S.C. 290, 724 S.E.2d 182. Criminal Law 99

**SECTION 22‑3‑545.** Transfer of certain criminal cases from general sessions court.

 (A) Notwithstanding the provisions of Sections 22‑3‑540 and 22‑3‑550, a criminal case, the penalty for which the crime in the case does not exceed five thousand five hundred dollars or one year imprisonment, or both, either as originally charged or as charged pursuant to the terms of a plea agreement, may be transferred from general sessions court if the provisions of this section are followed.

 (B)(1) The solicitor, upon ten days’ written notice to the defendant, may petition a circuit court judge in the circuit to transfer one or more cases from the general sessions court docket to a docket of a magistrates or municipal court in the circuit for disposition. The solicitor’s notice must fully apprise the defendant of his right to have his case heard in general sessions court. The notice must include the difference in jury size in magistrates or municipal court and in general sessions court. The case may be transferred from the general sessions court unless the defendant objects after notification by the solicitor pursuant to the provisions of this item. The objection may be made orally or in writing at any time prior to the trial of the case or prior to the entry of a guilty plea. The objection may be made to the chief judge for administrative purposes in the judicial circuit where the charges are pending, the trial judge, or the solicitor. Before impaneling the jury or accepting the guilty plea of the defendant, the trial judge must receive an affirmative waiver by the defendant, if present, of his right to have the case tried in general sessions court. The defendant must be informed that, if tried in general sessions court, the case would be tried in front of twelve jurors who must reach a unanimous verdict before a finding of guilty of the offense can be rendered in his case, and that if tried in magistrates or municipal court, the case would be tried in front of six jurors who must reach a unanimous verdict before a finding of guilty of the offense can be reached in his case. The defendant may waive any and all of the rights provided in this subsection, in writing, prior to the impaneling of the jury or the acceptance of the defendant’s guilty plea.

 (2) A case transferred to a magistrates or municipal court not disposed of in one hundred eighty days from the date of transfer automatically reverts to the docket of the general sessions court.

 (C) All cases transferred to the magistrates or municipal court must be prosecuted by the solicitor’s office. The chief magistrate of the county or the chief municipal judge of the municipality, upon petition of the solicitor, shall set the terms of court and order the magistrates and municipal judges to hold terms of court on specific times and dates for the disposition of these cases.

 (D) Provision for an adequate record must be made by the solicitor’s office.

 (E) Notwithstanding another provision of law, all fines and assessments imposed by a magistrate or municipal judge presiding pursuant to this section must be distributed as if the fine and assessment were imposed by a circuit court pursuant to Sections 14‑1‑205 and 14‑1‑206. This section must not result in increased compensation to a magistrate presiding over a trial or hearing pursuant to this section or in other additional or increased costs to the county.

HISTORY: 1992 Act No. 310, Section 1; 1993 Act No. 174, Section 1; 1994 Act No. 497, Part II, Section 36K; 1994 Act No. 499, Sections 1, 2; 1995 Act No. 7, Part I, Sections 16, 21; 2000 Act No. 376, Section 2; 2004 Act No. 214, Section 1; 2012 Act No. 169, Section 1, eff May 14, 2012.

Effect of Amendment

The 2012 amendment rewrote subsections (A), (B), and (C).

CROSS REFERENCES

Breach of trust with fraudulent intent, see Section 16‑13‑230.

Candidates for Department of Employment and Workforce Appellate Panel, support pledges limited, violations, see Section 41‑27‑760.

Criminally receiving goods and services fraudulently obtained, see Section 16‑14‑80.

Defrauding keeper of hotel, motel, inn, boarding house, rooming house, campground, cafe or restaurant, see Section 45‑1‑50.

Destruction or desecration of human remains or repositories thereof, liability of crematory operators, see Section 16‑17‑600.

Domestic violence, acts prohibited, penalties, see Section 16‑25‑20.

Factors or commission merchants failing to account for produce, see Section 46‑1‑70.

Failure to return rented objects, fraudulent appropriation of such, see Section 16‑13‑420.

Forgery, see Section 16‑13‑10.

Fraudulent acquisition or use of food stamps, see Section 16‑13‑430.

Larceny of bicycles, see Section 16‑13‑80.

Making away with produce before paying, see Section 46‑1‑60.

Malicious injury to animals and other personal property, see Section 16‑11‑510.

Malicious injury to tree, house, outside fence, or fixture, trespass upon real property, see Section 16‑11‑520.

Nonjudicial screening and elections, prohibition against seeking votes, penalty for violations, see Section 2‑20‑420.

Obtaining nonferrous metals unlawfully, see Section 16‑11‑523.

Obtaining property under false tokens or letters, see Section 16‑13‑260.

Obtaining signature or property by false pretenses, see Section 16‑13‑240.

Offenses which may be tried in magistrate’s court, see Sections 24‑3‑965, 56‑1‑460.

Penalties for driving while license cancelled, suspended or revoked, see Section 56‑1‑460.

Penalties for violating Section 16‑13‑65, see Section 16‑13‑66.

Penalties for violation of Financial Transaction Card Crime Act, see Section 16‑14‑100.

Petit larceny, grand larceny, see Section 16‑13‑30.

Presenting false claims for payment, see Section 38‑55‑170.

Provisions of this section not applicable when enticing a child from attendance at school, see Section 16‑17‑510.

Receiving, possessing, concealing, selling, or disposing of stolen vehicle, see Section 16‑21‑80.

Receiving stolen goods, see Section 16‑13‑180.

Sale or purchase of drifted lumber or timber, see Section 49‑1‑50.

Securing property by fraudulent impersonation of officer, see Section 16‑13‑290.

Shoplifting, see Section 16‑13‑110.

Stealing crops from the field, see Section 46‑1‑20.

Stealing livestock, confiscation of motor vehicle or other chattel, see Section 16‑13‑50.

Stealing of bonds and the like, see Section 16‑13‑40.

Stealing of vessels and equipment pertaining thereto, payment of damages, see Section 16‑13‑70.

Stealing tobacco plants from beds, see Section 46‑1‑40.

Unauthorized removal or concealment of library property prohibited, see Section 16‑13‑331.

Unlawful sale or disposal of personal property subject to security interest, see Section 36‑9‑410.

Violations committed by person on premises or property of lodging establishment, see Section 45‑2‑40.

Library References

Criminal Law 101.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 172 to 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 13, Appellate Jurisdiction of Circuit Courts.

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

S.C. Jur. Game and Fish Section 36, Criminal Prosecution.

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 32.1, Prosecution of Misdemeanor Cases.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 15.1(D), Indictment Jurisdictions.

NOTES OF DECISIONS

In general 1

1. In general

Section 22‑3‑545 makes no provision for direct appeals to the Supreme Court of South Carolina; accordingly, Section 18‑3‑10, which states that anyone convicted before a magistrate “of any offense whatever” may appeal to the court of general sessions, would apply, and cases transferred pursuant to Section 22‑3‑545 must be appealed to the court of general sessions. State v. Rushton (S.C. 1993) 322 S.C. 188, 470 S.E.2d 847.

**SECTION 22‑3‑546.** Establishment of program for prosecution of first offense misdemeanor criminal domestic violence offenses.

 A circuit solicitor, in a circuit with five or more counties, may establish a program under his discretion and control, to prosecute first offense misdemeanor criminal domestic violence offenses, as defined in Section 16‑25‑20, in general sessions court. Whether to establish a program, and which cases may be prosecuted in general sessions court, are within the sole discretion of the solicitor. A solicitor shall report the results of the program to the Prosecution Coordination Commission.

HISTORY: 2006 Act No. 366, Section 2, eff June 9, 2006.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 32.1, Prosecution of Misdemeanor Cases.

**SECTION 22‑3‑550.** Jurisdiction over minor offenses; restitution; contempt; maximum consecutive sentences.

 (A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22‑3‑10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

 A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17‑25‑323(C).

 (B) However, a magistrate does not have the power to sentence a person to consecutive terms of imprisonment totaling more than ninety days except for convictions resulting from violations of Chapter 11, Title 34, pertaining to fraudulent checks, or violations of Section 16‑13‑110(B)(1), relating to shoplifting. Further, a magistrate must specify an amount of restitution in damages at the time of sentencing as an alternative to any imprisonment of more than ninety days which is lawfully imposed. The provisions of this subsection do not affect the transfer of criminal matters from the general sessions court made pursuant to Section 22‑3‑545.

HISTORY: 1962 Code Section 43‑63; 1952 Code Section 43‑63; 1942 Code Section 923; 1932 Code Section 923; Cr. P. ‘22 Section 19; Cr. C. ‘12 Section 20; Cr. C. ‘02 Section 12; G. S. 823; R. S. 11; 1870 (14) 402; 1977 Act No. 113, Section 1; 1993 Act No. 171, Section 14; 1993 Act No. 184, Section 261; 1994 Act No. 497, Part II, Section 28; 1995 Act No. 83, Section 21; 1995 Act No. 138, Section 1; 1999 Act No. 78, Section 2; 2010 Act No. 273, Section 24, eff June 2, 2010; 2013 Act No. 82, Section 6, eff June 13, 2013.

Effect of Amendment

The 2010 amendment in the second sentence of subsection (A) substituted “the civil jurisdictional amount provided in Section 22‑3‑10(2)” for “five thousand dollars”.

The 2013 amendment added the second sentence in the second paragraph, relating to Section 17‑25‑323.

CROSS REFERENCES

Breach of trust with fraudulent intent, see Section 16‑13‑230.

Criminally receiving goods and services fraudulently obtained, see Section 16‑14‑80.

Defrauding keeper of hotel, motel, inn, boarding house, rooming house, campground, cafe or restaurant, see Section 45‑1‑50.

Destruction or desecration of human remains or repositories thereof, liability of crematory operators, see Section 16‑17‑600.

Domestic violence, acts prohibited, penalties, see Section 16‑25‑20.

Factors or commission merchants failing to account for produce, see Section 46‑1‑70.

Failure to return rented objects, fraudulent appropriation of such, see Section 16‑13‑420.

Forgery, see Section 16‑13‑10.

Fraudulent acquisition or use of food stamps, see Section 16‑13‑430.

Jurisdiction of cases involving carrying concealed weapons in connection with murder, etc., see Section 17‑19‑40.

Jurisdiction to try persons entering premises after warning, or refusing to leave on request, see Section 16‑11‑620.

Larceny of bicycles, see Section 16‑13‑80.

Making away with produce before paying, see Section 46‑1‑60.

Malicious injury to animals and other personal property, see Section 16‑11‑510.

Malicious injury to tree, house, outside fence, or fixture, trespass upon real property, see Section 16‑11‑520.

Obtaining nonferrous metals unlawfully, see Section 16‑11‑523.

Obtaining property under false tokens or letters, see Section 16‑13‑260.

Obtaining signature or property by false pretenses, see Section 16‑13‑240.

Offenses which may be tried in magistrate’s court, see Sections 24‑3‑965, 56‑1‑460.

Penalties for driving while license cancelled, suspended or revoked, see Section 56‑1‑460.

Penalties for violating Section 16‑13‑65, see Section 16‑13‑66.

Penalties for violation of Financial Transaction Card Crime Act, see Section 16‑14‑100.

Petit larceny, grand larceny, see Section 16‑13‑30.

Presenting false claims for payment, see Section 38‑55‑170.

Provisions of this section not applicable when enticing a child from attendance at school, see Section 16‑17‑510.

Receiving, possessing, concealing, selling, or disposing of stolen vehicle, see Section 16‑21‑80.

Receiving stolen goods, see Section 16‑13‑180.

Sale or purchase of drifted lumber or timber, see Section 49‑1‑50.

Securing property by fraudulent impersonation of officer, see Section 16‑13‑290.

Shoplifting, see Section 16‑13‑110.

Stealing crops from the field, see Section 46‑1‑20.

Stealing livestock, confiscation of motor vehicle or other chattel, see Section 16‑13‑50.

Stealing of bonds and the like, see Section 16‑13‑40.

Stealing of vessels and equipment pertaining thereto, payment of damages, see Section 16‑13‑70.

Stealing tobacco plants from beds, see Section 46‑1‑40.

Transfer of certain criminal cases from general sessions court, see Section 22‑3‑545.

Unauthorized removal or concealment of library property prohibited, see Section 16‑13‑331.

Unlawful sale or disposal of personal property subject to security interest, see Section 36‑9‑410.

Violations committed by person on premises or property of lodging establishment, see Section 45‑2‑40.

Library References

Criminal Law 91.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 157 to 166.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

S.C. Jur. False Pretenses Section 3, Misdemeanor Status and Punishment.

S.C. Jur. False Pretenses Section 4, Lesser Included Offense.

S.C. Jur. Game and Fish Section 36, Criminal Prosecution.

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 18, Subject Matter Jurisdiction.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 15.1(D), Indictment Jurisdictions.

Attorney General’s Opinions

A magistrate would have jurisdiction to render a judgment in an amount greater than $2,500.00 for expenses in association with a criminal proceeding brought pursuant to Sections 47‑3‑710 et seq. of the Code. 1989 Op. Atty Gen, No. 89‑138, p 375.

A magistrate lacks authority to order the release of an individual previously sentenced by the magistrate to a term of imprisonment where an alternative sentence of a fine was not offered, after the sentence has gone into execution; a magistrate must exercise his authority to suspend a sentence at the time he imposes that sentence. 1983 Op. Atty Gen, No. 83‑14, p. 27.

A defendant under seventeen years of age charged with a traffic violation who fails to comply with the sentence issued by a magistrate’s or municipal court, would be treated the same as any other defendant who fails to comply with the sentence of such a court. 1978 Op. Atty Gen, No. 78‑173, p 200.

A magistrate may impose sentences singly or in the alternative. 1969‑70 Op. Atty Gen, No. 3034, p 323.

Magistrate may impose sentence of prison with no fine if he wishes to do so. 1966‑67 Op. Atty Gen, No. 2289, p 109.

A magistrate may sentence one to a term of imprisonment without providing that he be given the alternative of paying a find. 1965‑66 Op. Atty Gen, No. 2017, p 81.

A magistrate has no jurisdiction of the offense of carrying a concealed pistol because the penalty established therefor exceeds the limits prescribed by this section. 1965‑66 Op. Atty Gen, No. 2109, p 215.

Magistrates do not have jurisdiction over juveniles charged with the criminal offense of minor in possession of beer, or violation of the open container law. Only the Family Court would possess jurisdiction over those two charges. 1994 Op. Atty Gen, No. 94‑60, p. 135.

NOTES OF DECISIONS

In general 1

Definite punishment requirement 2

1. In general

Cited in State v Hondros (1915) 100 SC 242, 84 SE 781. Xepapas v Richardson (1929) 149 SC 52, 146 SE 686. State v Funderburk (1925) 130 SC 352, 126 SE 140.

For additional related cases, see State v Pope (1908) 79 SC 87, 60 SE 234. Union v Hampton (1909) 83 SC 46, 64 SE 1017.

Magistrates are not authorized to conduct preliminary hearings on matters within their own trial jurisdiction. State v. Williams (S.C.App. 2016) 417 S.C. 209, 789 S.E.2d 582. Criminal Law 1028

Magistrate erred in holding a pretrial probable cause hearing, instead of proceeding to trial, because driving under the influence (DUI) charge was within its jurisdiction. State v. Williams (S.C.App. 2016) 417 S.C. 209, 789 S.E.2d 582. Criminal Law 260.4

The jurisdiction of the magistrates is fixed by the provisions of SC Const, Art 5, Section 21 (now Art 5, Section 26), and statutes of the General Assembly enacted pursuant to, and within the limitations of, that section of the Constitution. Bourne v. Graham (S.C. 1973) 260 S.C. 554, 197 S.E.2d 674, decided before the 1973 revision of SC Const, Art 5.

Stated in Town of Central v. Madden (S.C. 1908) 81 S.C. 7, 61 S.E. 1028.

2. Definite punishment requirement

When the punishment of petit larceny was not limited, magistrates had no jurisdiction of it. State v Williams (1880) 13 SC 546. State v Jenkins (1887) 26 SC 121, 1 SE 437.

Magistrates have jurisdiction of the offense of carrying concealed weapons, because the penalty is definite. State v. McClenton (S.C. 1901) 59 S.C. 226, 37 S.E. 819.

Trial justices had no jurisdiction of the offense of violating a written contract for farm labor prior to the 1889 amendment so limiting the punishment. State v. Cooler (S.C. 1889) 30 S.C. 105, 8 S.E. 692.

The trial justices have no jurisdiction of the offense of taking a boat under the act of 1695, because the penalty is indefinite. State v. Weeks (S.C. 1881) 14 S.C. 400, decided prior to the 1897 amendment of Code 1962 Section 16‑356 (see now Section 16‑13‑70).

**SECTION 22‑3‑560.** Breaches of the peace.

 Magistrates may punish breaches of the peace by a fine not exceeding five hundred dollars or imprisonment for a term not exceeding thirty days, or both.

HISTORY: 1962 Code Section 43‑64; 1952 Code Section 43‑64; 1942 Code Section 924; 1932 Code Section 924; Cr. P. ‘22 Section 20; Cr. C. ‘12 Section 21; Cr. C. ‘02 Section 13; G. S. 824; R. S. 12; 1870 (14) 402; Const. Art. 5, Section 21; 1981 Act No. 76, Section 8; 1997 Act No. 80, Section 4; 2008 Act No. 346, Section 1, eff June 25, 2008; 2010 Act No. 273, Section 8, eff June 2, 2010; 2016 Act No. 154 (H.3545), Section 3, eff April 21, 2016.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

The 2008 amendment designated subsection (A) and added subsection (B) relating to assaults and batteries against sports officials and coaches.

The 2010 amendment rewrote the section.

2016 Act No. 154, Section 3, substituted “punish breaches of the peace by a fine” for “punish by fine” and “or both” for “or both, all breaches of the peace”.

Library References

Criminal Law 91.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 157 to 166.

NOTES OF DECISIONS

In general 1

1. In general

This section [former Code 1962 Section 43‑64] leaves it to the discretion of the trial justice in the first instance, when a party is brought before him, to determine whether he will take jurisdiction or bind the accused over; but it certainly never intended that his judgment in this matter should be final, and that he should have the power to fix indisputably the character of the offense when it came before the higher court. State v Burch (1895) 43 SC 3, 20 SE 758. State v Glover (1911) 90 SC 166, 72 SE 1087.

For additional related cases, see State v McKettrick (1880) 14 SC 346. State v Grant (1891) 34 SC 109, 12 SE 1070. State v Garlington (1900) 56 SC 413, 34 SE 689. State v Dawson (1910) 85 SC 234, 67 SE 313. State v McKellar (1910) 85 SC 236, 67 SE 314. Davis v Collins (1904) 69 SC 460, 48 SE 469. Edwards v Wessinger (1903) 65 SC 161, 43 SE 518 (ovrld on other grounds by Bryant v Smith, 187 SC 453, 198 SE 20). State v Williamson (1903) 65 SC 242, 43 SE 671. State v Jones (1906) 74 SC 456, 54 SE 1017. State v Dalby (1910) 86 SC 367, 68 SE 633.

Defendant convicted of high and aggravated breach of the peace could be sentenced to 10 years’ imprisonment, suspended upon the service of three years’ imprisonment, plus three years’ probation, where defendant had been prosecuted in circuit court due to aggravated nature of offense; general sentencing statute applied, since statute permitting magistrates to punish “all breaches of the peace” with a maximum of 30 days and $500 fine did not apply once defendant was “waived up” to circuit court. State v. Simms (S.C. 2015) 412 S.C. 590, 774 S.E.2d 445, rehearing denied. Disorderly Conduct 151

**SECTION 22‑3‑570.** Larceny by stealing property not exceeding certain value.

 Magistrates have jurisdiction of petit larceny and all other larcenies involving personal property including, but not limited to:

 (1) money;

 (2) goods or chattels;

 (3) bank note, bond, promissory note, bill of exchange, or other bill;

 (4) order or certificate;

 (5) book of accounts;

 (6) deed or writing containing a conveyance of land;

 (7) other valuable contract in force;

 (8) receipt;

 (9) release or defeasance; or

 (10) any writ, process, or public record.

 The value of the property stolen must be one thousand dollars or less.

HISTORY: 1962 Code Section 43‑65; 1952 Code Section 43‑65; 1942 Code Section 926; 1932 Code Section 926; Cr. P. ‘22 Section 22; Cr. C. ‘12 Section 24; Cr. C. ‘02 Section 16; G. S. 826; R. S. 15; 1870 (14) 403; 1993 Act No. 171, Section 15; 1993 Act No. 184, Section 262.

Library References

Criminal Law 91.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 157 to 166.

**SECTION 22‑3‑580.** Receiving stolen goods.

 Magistrates shall have jurisdiction of the offenses of buying, receiving or aiding in the concealment of stolen goods and other property, when they would have jurisdiction of the larceny of the same goods or property.

HISTORY: 1962 Code Section 43‑66; 1952 Code Section 43‑66; 1942 Code Section 927; 1932 Code Section 927; Cr. P. ‘22 Section 23; Cr. C. ‘12 Section 25; Cr. C. ‘02 Section 17; G. S. 827; R. S. 16; 1870 (14) 403.

Library References

Criminal Law 91.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 157 to 166.

NOTES OF DECISIONS

In general 1

1. In general

Where a defendant was tried before a court of general sessions upon an indictment for receiving stolen goods, inter alia, and the jury found a verdict of guilty, and also found that the property stolen and received was of the value of eighteen dollars, the court of general sessions had no jurisdiction to enter a judgment, for the court of magistrate has exclusive jurisdiction where a punishment does not exceed a find of one hundred dollars, or imprisonment for thirty days. See SC Const, Art 5, Section 20 (now Art 5, Section 26). State v. Brown (S.C. 1942) 201 S.C. 417, 23 S.E.2d 381.

**SECTION 22‑3‑590.** Obtaining property under false pretenses.

 Magistrates shall have jurisdiction of the offenses of obtaining property by any false pretense, by any privy or false token or by any game, device, sleight of hand, pretensions to fortunetelling, trick or other means by the use of cards or other implements or instruments, when they would have jurisdiction of a larceny of the same property and may punish such offenses the same as larceny.

HISTORY: 1962 Code Section 43‑67; 1952 Code Section 43‑67; 1942 Code Section 928; 1932 Code Section 928; Cr. P. ‘22 Section 24; Cr. C. ‘12 Section 26; Cr. C. ‘02 Section 18; G. S. 828; R. S. 17; 1870 (14) 403.

CROSS REFERENCES

Jurisdiction of securing property by fraudulent impersonation of an officer, see Section 16‑13‑290.

Library References

Criminal Law 91.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 157 to 166.

Attorney General’s Opinions

The magistrates’ courts do not have jurisdiction to dispose of charges of carrying concealed weapons. 1976‑77 Op. Atty Gen, No. 77‑336, p 266.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Edens (1911) 88 SC 302, 70 SE 609. State v Hondros (1915) 100 SC 242, 84 SE 781.

ARTICLE 7

Criminal Procedure Generally

**SECTION 22‑3‑710.** Proceedings commenced on information.

 All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

HISTORY: 1962 Code Section 43‑111; 1952 Code Section 43‑111; 1942 Code Section 930; 1932 Code Section 930; Cr. P. ‘22 Section 26; Cr. C. ‘12 Section 28; Cr. C. ‘02 Section 20; G. S. 830; R. S. 19; 1870 (14) 403.

Library References

Indictment and Information 35.

Westlaw Topic No. 210.

Attorney General’s Opinions

A search or arrest warrant is not rendered invalid solely by virtue of the fact that it was signed or issued by a municipal judge from his or her residence located outside the territorial limits of the municipality he or she is employed by. S.C. Op.Atty.Gen. (August 20, 2013) 2013 WL 4778503.

Any individual who can meet requirements as to providing probable cause may serve as affiant on an arrest warrant. 1993 Op. Atty Gen No. 93‑74.

Where an arrest has been made without a warrant, the obtaining of an arrest warrant is necessary to vest a magistrate’s court with jurisdiction over the offense as charged—exception in case of official summons. 1969‑70 Op. Atty Gen, No. 3845 p 77.

In South Carolina, a notary public may not take an affidavit on which an arrest warrant may be based. 1968‑69 Op. Atty Gen, No. 2631, p 35.

A defendant in magistrate’s court or municipal court may not be convicted of an offense not charged in an arrest, warrant or summons. 1964‑65 Op. Atty Gen, No. 1852, p 110.

NOTES OF DECISIONS

In general 1

Necessity of information and warrant 2

Sufficiency of information and warrant 3

1. In general

Cited in State v Mays (1886) 24 SC 190. State v Nash (1898) 51 SC 319, 28 SE 946. State v Edens (1911) 88 SC 302, 70 SE 609.

The uniform traffic ticket statute (Section 56‑7‑10) does not repeal Section 22‑3‑710 relating to the commencement of actions before magistrates in criminal cases; it merely provides a method of acquiring jurisdiction in traffic cases tried in all traffic courts. State v. Biehl (S.C. 1978) 271 S.C. 201, 246 S.E.2d 859.

This section is applicable to prosecutions in municipal courts. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854.

For related case, see State v. Spray (S.C. 1906) 74 S.C. 443, 54 S.E. 600.

2. Necessity of information and warrant

While an accused may be arrested on a warrant that does not fully inform him of the nature and cause of the accusation, he may, when he is brought to trial, demand the information he is entitled to have under the provisions of SC Const, Art 1, Section 14. State v Randolph (1961) 239 SC 79, 121 SE2d 349. Charleston v Mitchell (1961) 239 SC 376, 123 SE2d 512, revd on other grounds 378 US 551, 12 L Ed 2d 1033, 84 S Ct 1901.

Subject to certain exceptions, the state may not commence judicial proceedings in the magistrate court without first obtaining an arrest warrant. State v. Ramsey (S.C.App. 2012) 398 S.C. 275, 727 S.E.2d 429, affirmed 409 S.C. 206, 762 S.E.2d 15, rehearing denied. Criminal Law 216

Where driver was charged with driving a motor vehicle while under the influence of intoxicating liquor, but magistrate accepted a plea of guilty of reckless driving for which no warrant, uniform traffic ticket or other process had been issued, since reckless driving is not a lesser offense of driving under the influence, magistrate was without jurisdiction to accept a plea of guilty to the second offense. State v. Fennell (S.C. 1974) 263 S.C. 216, 209 S.E.2d 433. Indictment And Information 191(.5)

After the arrest of accused, a proper warrant was issued, which conferred jurisdiction upon the magistrate’s court. The illegality of the initial arrest did not bar subsequent prosecution and conviction of the offense charged. State v. Holliday (S.C. 1970) 255 S.C. 142, 177 S.E.2d 541.

A grand jury may indict for any crime, certainly any which is not within the exclusive jurisdiction of a magistrate or other inferior court, whether or not there has been a prior proceeding before a magistrate and an arrest warrant issued pursuant to this section. State v. Walker (S.C. 1958) 232 S.C. 290, 101 S.E.2d 826. Indictment And Information 9

This section does not forbid any steps in the judicial process until an information under oath is filed. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854.

There can be a valid forfeiture of bail where no warrant for the arrest of accused has been issued. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854.

This statutory requirement that all proceedings before a magistrate in criminal cases shall be commenced upon the issuance of a warrant of arrest, cannot be waived. Town of Honea Path v. Wright (S.C. 1940) 194 S.C. 461, 9 S.E.2d 924. Criminal Law 216

Where accused at trial before recorder of municipal court under warrant charging him with breach of peace, but not with vagrancy, was orally charged with vagrancy and tried without warrant, trial on vagrancy charge held illegal and sentence void. State v. Praser (S.C. 1934) 173 S.C. 284, 175 S.E. 551. Criminal Law 252

Warrant issued upon a statement of facts not sworn to is unconstitutional. State v. Wimbush (S.C. 1878) 9 S.C. 309. Criminal Law 218(1)

3. Sufficiency of information and warrant

Magistrates in the preparation of warrants are not required to conform to the technical precision required in indictments. State v Randolph (1961) 239 SC 79, 121 SE2d 349. Charleston v Mitchell (1961) 239 SC 376, 123 SE2d 512, revd on other grounds 378 US 551, 12 L Ed 2d 1033, 84 S Ct 1901.

This section requires that the offense with which a party is charged should be set forth “plainly and substantially,” so as to enable the party accused to understand the nature of the offense with which he is charged, in order that he may be prepared to meet the charge at the proper time. It certainly never was designed to require any more formality or technical accuracy in stating the offense. McConnell v Kennedy (1888) 29 SC 180, 7 SE 76. McCall v Alexander (1908) 81 SC 131, 61 SE 1106. State v Hallback (1894) 40 SC 298, 18 SE 919. Duffie v Edwards (1937) 185 SC 91, 193 SE 211. State v Randolph (1961) 239 SC 79, 121 SE2d 349. Charleston v Mitchell (1961) 239 SC 376, 123 SE2d 512, revd on other grounds 378 US 551, 12 L Ed 2d 1033, 84 S Ct 1901.

An arrest warrant affidavit that is insufficient in itself to establish probable cause may be supplemented before a magistrate by sworn oral testimony. Law v. South Carolina Dept. of Corrections (S.C. 2006) 368 S.C. 424, 629 S.E.2d 642, rehearing denied. Criminal Law 212

Designation of the offense by name in the affidavit and warrant is a mere legal conclusion. State v. Randolph (S.C. 1961) 239 S.C. 79, 121 S.E.2d 349.

In a prosecution for driving an automobile in excess of the speed limit, arrest warrant issued on information and belief need not set forth source of information and grounds of belief. Town of Mayesville v. Clamp (S.C. 1929) 149 S.C. 346, 147 S.E. 455. Criminal Law 218(1)

The warrant is not invalidated by the fact that the affidavit on which it was issued charged that defendant “did neglect to pay poll tax,” instead of charging, in the language of the act, that defendant “did fail and refuse to pay,” or that neither the warrant nor affidavit states that defendant was a resident of the county, and as such liable for the tax. Rogers v. Marlborough County (S.C. 1890) 32 S.C. 555, 11 S.E. 383.

An information charging that the accused did “feloniously, and with the intention of fraud, make false entries on his cashbook, he being employed (by deponent) as clerk, to the great injury and injustice of deponent,” sufficiently charges accused with forgery, to authorize his arrest. McConnell v. Kennedy (S.C. 1888) 29 S.C. 180, 7 S.E. 76.

**SECTION 22‑3‑720.** Amendment of information.

 The information may be amended at any time before trial.

HISTORY: 1962 Code Section 43‑112; 1952 Code Section 43‑112; 1942 Code Section 930; 1932 Code Section 930; Cr. P. ‘22 Section 26; Cr. C. ‘12 Section 28; Cr. C. ‘02 Section 20; G. S. 830; R. S. 19; 1870 (14) 403.

Library References

Indictment and Information 161.

Westlaw Topic No. 210.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

Stated in City of Charleston v. Mitchell (S.C. 1961) 239 S.C. 376, 123 S.E.2d 512, reversed on other grounds 84 S.Ct. 1901, 378 U.S. 551, 12 L.Ed.2d 1033.

Quoted in State v. Randolph (S.C. 1961) 239 S.C. 79, 121 S.E.2d 349.

There was no error, in a prosecution for selling whiskey, in amending the information and warrant so as to allege the name of the person to whom the whiskey was sold, and the price paid therefor, and ordering the case to trial, especially as defendant did not show that he was surprised by the amendment, or would be prejudiced by an immediate trial. Town of Ridgeland v. Gens (S.C. 1909) 83 S.C. 562, 65 S.E. 828.

**SECTION 22‑3‑730.** Proceedings are summary.

 All proceedings before magistrates shall be summary or with only such delay as a fair and just examination of the case requires.

HISTORY: 1962 Code Section 43‑113; 1952 Code Section 43‑113; 1942 Code Section 930; 1932 Code Section 930; Cr. P. ‘22 Section 26; Cr. C. ‘12 Section 28; Cr. C. ‘02 Section 20; G. S. 830; R. S. 19; 1870 (14) 403.

Library References

Criminal Law 254.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 2, Jurisdictional Background.

S.C. Jur. Magistrates and Municipal Judges Section 22, Jurisdiction.

Attorney General’s Opinions

In the absence of a statute or court decision requiring same, the State is not obligated to pay for the appearance fee of a court reporter and/or the transcript costs for an indigent defendant appearing at a preliminary hearing. 1978 Op. Atty Gen, No. 78‑203, p 230.

It is not necessary for a magistrate to dismiss a case because he was late in arriving at the hearing. 1975‑76 Op. Atty Gen, No. 4511, p 372.

NOTES OF DECISIONS

In general 1

1. In general

Stated in State v Randolph (1961) 239 SC 79, 121 SE2d 349. Charleston v Mitchell (1961) 239 SC 376, 123 SE2d 512, revd on other grounds 378 US 551, 12 L Ed 2d 1033, 84 S Ct 1901.

Magistrates are not authorized to conduct preliminary hearings on matters within their own trial jurisdiction. State v. Williams (S.C.App. 2016) 417 S.C. 209, 789 S.E.2d 582. Criminal Law 1028

Even though the proceedings in magistrates’ courts lack many of the formalities required in a court of general sessions, jurisdiction of the offense charged and of the person of the accused is indispensable to a valid conviction. State v. Langford (S.C. 1953) 223 S.C. 20, 73 S.E.2d 854. Criminal Law 250

A magistrate has power to grant a continuance in a criminal prosecution both as a necessary incident of the power to hear and determine causes, and under this section. State v. Pope (S.C. 1908) 79 S.C. 87, 60 S.E. 234. Criminal Law 247

**SECTION 22‑3‑740.** Election on which of several offenses to try accused.

 Whenever a person be accused of committing an act which is susceptible of being designated as several different offenses the magistrate upon the trial of the person shall be required to elect which charge to prefer and a conviction or an acquittal upon such elected charge shall be a complete bar to further prosecution for such alleged act.

HISTORY: 1962 Code Section 43‑114; 1952 Code Section 43‑114; 1942 Code Section 994; 1932 Code Section 994; 1928 (35) 1317.

CROSS REFERENCES

Constitutional protection against double jeopardy, see SC Const, Art 1, Section 12.

Library References

Criminal Law 254.

Westlaw Topic No. 110.

Attorney General’s Opinions

Neither section 22‑3‑740 nor potential double jeopardy claims would prohibit prosecutions for driving with defective tail lights or an expired inspection sticker and driving under the influence arising out of the same incident. 1988 Op. Atty Gen, No. 88‑39, p 120.

Under certain circumstances, a defendant can be charged for two traffic offenses arising from the same incident without double jeopardy. 1983 Op. Atty Gen, No. 83‑86, p. 140.

NOTES OF DECISIONS

In general 1

1. In general

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

**SECTION 22‑3‑750.** Procedure against corporations for violating criminal laws.

 Whenever any person shall make an affidavit before any magistrate that any corporation doing business in this State, whether incorporated under the laws of this State or not, has violated any of the criminal laws of the State the enforcement of which is within the jurisdiction of such magistrate, such magistrate shall issue a warrant against such offending corporation in which shall be stated the substance of the offense charged against such corporation, together with a notice to such corporation stating the time and place when and where such corporation shall appear for trial, and upon service of such warrants in the manner provided in Section 17‑13‑80 the magistrate shall obtain and have jurisdiction of such corporation.

HISTORY: 1962 Code Section 43‑123; 1952 Code Section 43‑123; 1942 Code Section 989; 1932 Code Section 989; Civ. C. ‘22 Section 4297; Civ. C. ‘12 Section 2830; 1911 (27) 39.

Library References

Corporations 531.

Westlaw Topic No. 101.

**SECTION 22‑3‑760.** Trial of corporation.

 After the service the magistrate shall proceed with the trial as in criminal cases and if the defendant corporation is found guilty of the offense charged, whether by a verdict of a jury or by the findings of the magistrate in case a trial by jury be waived by the defendant, the magistrate shall pronounce sentence in conformity with the law in the case and the sentence may be enforced by an execution against the property of the defendant corporation in the same manner as now provided by law for enforcing the judgments of magistrates’ courts; provided, that nothing herein may be construed to prevent the right of appeal by either party to the Court of Common Pleas, as is now provided by law in criminal cases within the jurisdiction of magistrates.

HISTORY: 1962 Code Section 43‑124; 1952 Code Section 43‑124; 1942 Code Section 990; 1932 Code Section 990; Civ. C. ‘22 Section 4298; Civ. C. ‘12 Section 2831; 1911 (27) 41; 1994 Act No. 520, Section 7.

Library References

Corporations 534.

Westlaw Topic No. 101.

**SECTION 22‑3‑790.** Recording and acknowledgement of testimony by witnesses.

 In the trial of any case before a magistrate the testimony of all witnesses must be taken down in writing and signed by the witnesses except when the defendant waives the taking and signing of the testimony.

 In any case before any magistrate in which a stenographer takes down the testimony or in which the testimony is electronically recorded it need not be read over and signed by the witnesses.

HISTORY: 1962 Code Section 43‑122; 1952 Code Section 43‑122; 1942 Code Section 932; 1936 (39) 1435; 1987 Act No. 49, Section 2.

CROSS REFERENCES

Effect of this section on magistrate’s filing requirements in context of criminal appeals, see Section 18‑3‑40.

Library References

Criminal Law 254.

Westlaw Topic No. 110.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 23, Trial.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Constitutional Law: Nonattorney Magistrates. 30 S.C. L. Rev. 31.

Attorney General’s Opinions

A municipal or magistrate court must allow a party to an appeal, as a member of the public, the right to inspect or copy tape recordings of any proceedings which are not otherwise subject to some applicable restriction. Copies should be made at a reasonable expense to the requesting party based on the actual costs of producing such copies. S.C. Op.Atty.Gen. (Feb. 28, 2012) 2012 WL 756271.

The effect of the United States Supreme Court decision in Mayers v City of Chicago, 40 USLW 4055 (US Dec. 13, 1971), which makes it mandatory upon the states to furnish an indigent defendant a free trial transcript in nonfelony cases, would be to insure that the testimony taken down is made available at no cost to an indigent defendant desiring to appeal his convictions. 1971‑72 Op. Atty Gen, No. 3316, p 137.

This section requires that the testimony of a witness in the magistrates court must be taken down in writing and signed by the witness, but does not require that the testimony be taken down verbatim. 1970‑71 Op. Atty Gen, No. 3206, p 186.

This section does not require that the magistrate furnish a copy of the testimony to an attorney. 1970‑71 Op. Atty Gen, No. 3206, p 186.

**SECTION 22‑3‑800.** Suspension of imposition or execution of sentence in certain cases.

 Notwithstanding the limitations of Sections 17‑25‑100 and 24‑21‑410, after a conviction or plea for an offense within a magistrate’s jurisdiction the magistrate at the time of sentence may suspend the imposition or execution of a sentence upon terms and conditions the magistrate considers appropriate, including imposing or suspending up to one hundred hours of community service, except where the amount of community service is established otherwise. The magistrate shall not order community service in lieu of a sentence for offenses under Title 50, for offenses under Section 34‑11‑90, or for an offense of driving under suspension pursuant to Section 56‑1‑460 when the person’s driver’s license was suspended pursuant to the provisions of Section 56‑5‑2990. The magistrate must keep records on the community service hours ordered and served for each sentence. However, after a conviction or plea for drawing and uttering a fraudulent check or other instrument in violation of Section 34‑11‑60 within the magistrate’s jurisdiction, at the time of sentence the magistrate may suspend the imposition or execution of a sentence only upon a showing of satisfactory proof of restitution. When a minimum sentence is provided for by statute, except in Section 34‑11‑90, the magistrate may not suspend that sentence below the minimum sentence provided, and penalties under Title 50 may not be suspended to an amount less than twenty‑five dollars unless the minimum penalty is a fine of less than that amount. Nothing in this section may be construed to authorize or empower a magistrate to suspend a specific suspension of a right or privilege imposed under a statutory administrative penalty. Nothing in this section may be construed to give a magistrate the right to place a person on probation.

HISTORY: 1962 Code Section 43‑67.1; 1976 Act No. 699, Section 1; 1981 Act No. 178, Part II, Section 27; 1993 Act No. 183, Section 1.

Library References

Criminal Law 258.

Sentencing and Punishment 1803.

Westlaw Topic Nos. 110, 350H.

C.J.S. Criminal Law Sections 1547 to 1550, 1552, 1555, 1557 to 1558.

Attorney General’s Opinions

Municipal judge is authorized to impose work detail or public service work as part of suspended sentence of fine imposed on juvenile subject to minimum sentence requirements set forth by statute; there appears to be no separate authority for municipal judges or magistrates to impose work details or public service work on juvenile. 1990 Op. Atty Gen No. 90‑24.

A magistrate is authorized to sentence offenders to attend a program for fraudulent check offenders conducted by a nonprofit organization as a condition of a suspended sentence imposed on an individual convicted of issuing a fraudulent check. 1988 Op. Atty Gen, No. 88‑73, p 207.

Magistrates are without authority to suspend the one hundred dollar fine provided as punishment in 1976 Code Section 56‑1‑460 or an amount below such a minimum amount. 1979 Op. Atty Gen, No. 79‑143, p 228.

Magistrate may impose fine, jail time and order restitution in fraudulent check violation. 1993 Op. Atty Gen No. 93‑54.

NOTES OF DECISIONS

Right to counsel 1

1. Right to counsel

Defendant did not have Sixth Amendment right to counsel in prosecution for domestic violence, and thus, conviction could be used to enhance subsequent sentence for federal drug charge, despite sentence of 30 days incarceration, suspended on condition of six months of good behavior, and fine; magistrate lacked authority to effectively place defendant on probation by suspending 30‑day with condition of good behavior, and therefore, because that part of sentence was void, defendant faced no possibility of incarceration. Talley v. State (S.C. 2007) 371 S.C. 535, 640 S.E.2d 878, rehearing denied. Criminal Law 1715

ARTICLE 9

Provisions Applicable to Both Civil and Criminal Cases

**SECTION 22‑3‑910.** Jurisdiction when magistrate becomes incapacitated.

 In the event a magistrate who has separate and exclusive territorial jurisdiction becomes incapacitated, any magistrate of an adjoining magisterial district within the same county may assume the jurisdiction of the incapacitated magistrate during such time as the incapacity continues.

HISTORY: 1962 Code Section 43‑131.1; 1973 (58) 265.

Library References

Justices of the Peace 9.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Section 19.

Attorney General’s Opinions

The term “incapacitated” as used in Section 22‑3‑910 may be construed to refer to circumstances where a magistrate is physically or mentally unable to perform the duties of his office. 1976‑77 Op. Atty Gen, No. 77‑385, p 314.

**SECTION 22‑3‑920.** Change of venue.

 Whenever in a case in the court of a magistrate (a) either party in a civil case, after giving to the adverse party two days’ notice that he intends to apply for a change of venue or (b) the prosecutor or accused in a criminal case shall file with the magistrate issuing the warrant or summons an affidavit to the effect that he does not believe he can obtain a fair trial before the magistrate and setting forth the grounds of such belief, the papers shall be turned over to the nearest magistrate not disqualified from hearing the cause in the county, who shall proceed to try the case as if he had issued the warrant or summons. But in counties in which magistrates have separate and exclusive territorial jurisdiction the change of venue shall be to another magistrate’s district in the same county. One such transfer only shall be allowed each party in any case.

HISTORY: 1962 Code Section 43‑131; 1952 Code Section 43‑131; 1942 Code Sections 274, 946; 1932 Code Sections 274, 946; Civ. P. ‘22 Section 230; Cr. P. ‘22 Section 42; Civ. P. ‘12 Section 97; Cr. C. ‘12 Section 42; Civ. P. ‘02 Section 88; Cr. C. ‘02 Section 33; R. S. 29; 1887 (19) 787; 1896 (22) 12, 13.

CROSS REFERENCES

Power of circuit courts to change venue in civil and criminal cases, see Sections 15‑7‑100, 17‑21‑80.

Procedure to change of place of trial, see Sections 15‑7‑110, 17‑21‑80.

Trial of criminal cases in jury area where offense was committed, pursuant to change of venue under this section, see Section 22‑2‑170.

Library References

Criminal Law 115 to 144.

Venue 33 to 84.

Westlaw Topic Nos. 110, 401.

C.J.S. Corporations Section 252.

C.J.S. Criminal Law Sections 187 to 191.

C.J.S. Trusts Section 719.

C.J.S. Venue Sections 127 to 316.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 20, Venue.

S.C. Jur. Magistrates and Municipal Judges Section 36, Venue.

Attorney General’s Opinions

A magistrate must grant change of venue if the required affidavit is filed with him reasonably promptly after service of the arrest warrant, or within a reasonable time after knowledge of the facts upon which the request is based came to the person so moving and if such affidavit sets out sufficient facts to justify the belief that a fair trial cannot be obtained before the magistrate who issued the warrant. 1963‑64 Op. Atty Gen, No. 1733, p 222.

Motion for change of venue in a magistrate’s court must be made with reasonable promptness after arrest warrant is served; otherwise, granting of motion is not mandatory, even if sufficient grounds are set forth in the affidavit. 1963‑64 Op. Atty Gen, No. 1733, p 222.

Whether or not reasonable time has elapsed since service of the arrest warrant is a question to be decided by the magistrate in each case. 1963‑64 Op. Atty Gen, No. 1733, p 222.

Usually, in a magistrate’s court, notion for change of venue should be made within a few days after the arrest and before the day set for trial. 1963‑64 Op. Atty Gen, No. 1733, p 222.

The real test is whether or not, in view of all the circumstances, the person requesting change of venue has had a reasonable opportunity to make such request previously. If he has had such opportunity and has not done so, without good excuse for the delay, the magistrate is not required to grant the request, and he may proceed with the trial at the time set. 1963‑64 Op. Atty Gen, No. 1733, p 222.

After a request for change of venue has been made and denied, the person requesting such change has no right to consideration of another motion for change of venue if the facts upon which the second motion is made were known to him, or should have been known to him, at the time the first motion was made. 1963‑64 Op. Atty Gen, No. 1733, p 222.

Refusal to grant motion for change of venue is an error of law. 1963‑64 Op. Atty Gen, No. 1733, p 222.

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.

Magistrate who was in company of arresting officer and witnessed the violation of law may disqualify himself, and should this not be done, the defendant may demand a change of venue. 1963‑64 Op. Atty Gen, No. 1651, p 86.

Where there is compliance with requirements of this section, change of venue is mandatory. Op. Atty Gen, May 27, 1963.

Change to be made to nearest magistrate within county not disqualified, except in those counties in which magistrates have separate and exclusive territorial jurisdiction in which case change to be made to any other magistrate’s district within county. Op. Atty Gen, May 27, 1963.

NOTES OF DECISIONS

In general 1

Amendment of affidavit 4

Notice 2

Sufficiency of affidavit 5

Waiver of affidavit 3

1. In general

Where a party files a sufficient affidavit, a grant of change of venue is mandatory. State v Conkle (1902) 64 SC 371, 42 SE 173. Bacot v Deas (1903) 67 SC 245, 45 SE 171. Brown v Kolb (1912) 92 SC 309, 75 SE 529.

There must be a strict compliance with all of the requirements of the section before it becomes the mandatory duty of the magistrate to change the venue. State v Conkle (1902) 64 SC 371, 42 SE 173. Bacot v Deas (1903) 67 SC 245, 45 SE 171. Witte v Cave (1905) 73 SC 15, 52 SE 736. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657.

A motion for change of venue may be made after a mistrial. Sanders v. Hayes (S.C. 1924) 128 S.C. 181, 122 S.E. 572.

The party must make the affidavit himself. Cromer v. Watson (S.C. 1901) 59 S.C. 488, 38 S.E. 126.

2. Notice

A motion to transfer a cause from one magistrate to another should be made before the day appointed for the trial unless based upon facts discovered later. McNair v Tucker (1986) 24 SC 105. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657.

The two days’ notice as provided for under this section, is necessary for a motion for a change of venue before a magistrate unless the facts stated in the affidavit show that the applicant became aware of the facts at a time when he could not have given the two days’ notice. Mayes v. Evans (S.C. 1908) 80 S.C. 362, 61 S.E. 216, rehearing denied 80 S.C. 362, 61 S.E. 657.

3. Waiver of affidavit

When no affidavit was filed by the defendant for the removal of the preliminary hearing to the next magistrate, it was an error of law and an abuse of discretion on the magistrate’s part to order the case transferred; but since neither the state nor the defendant objected thereto and no appeal was taken, the second magistrate had jurisdiction and his decision was not void, but at most was only voidable. Clemmons v. Nicholson (S.C. 1938) 188 S.C. 124, 198 S.E. 180.

4. Amendment of affidavit

An affidavit for a change of venue of an action tried before a magistrate cannot be amended at the hearing. Bacot v. Deas (S.C. 1903) 67 S.C. 245, 45 S.E. 171. Justices Of The Peace 73(4)

5. Sufficiency of affidavit

To satisfy this statute, the grounds upon which a change of venue is asked for must be stated with such definiteness and certainty that the court can determine their sufficiency; and, if facts are stated on information and belief, the sources of information and the grounds of belief must be stated with particularity and certainty, otherwise, the court cannot determine the sufficiency of the grounds, nor would the affidavit, if false, afford the basis of an indictment for perjury. Startex Mills v Comer (1937) 184 SC 126, 191 SE 903. State v Barnett (1914) 98 SC 422, 82 SE 795.

Such facts should be stated in the affidavit provided for by this section as would constitute a basis for an indictment for perjury. Witte v Cave (1905) 73 SC 15, 52 SE 736. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657. Brown v Kolb (1912) 92 SC 309, 75 SE 529.

The affidavit should state facts tending to show that a fair trial cannot be obtained before the magistrate. It is not sufficient to state the mere opinion of the affiant. Witte v Cave (1905) 73 SC 15, 52 SC 736. State v Conkle (1902) 64 SC 371, 42 SE 173. Bacot v Deas (1903) 67 SC 245, 45 SE 171. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657.

Affidavit must state reasons why a fair trial cannot be had. Bacot v Deas (1903) 67 SC 245, 45 SE 171. Mayes v Evans (1908) 80 SC 362, 61 SE 216, reh dismd 80 SC 366, 61 SE 657.

This section requires strict compliance in order to make a change of venue mandatory. The affidavit must set forth more than a mere opinion, it must set forth substantial grounds for a belief that the party cannot obtain a fair trial. The facts must be stated in such a manner in the affidavit that the statement, if false, would constitute a basis for an indictment for perjury. And if the affidavit be sufficient, and if all of the terms of this section be strictly complied with, it is then mandatory upon the magistrate to grant the change of venue. Browning Mfg. Co. v. Brunson (S.C. 1938) 187 S.C. 278, 197 S.E. 311. Justices Of The Peace 73(4)

See Sumter v Owens (1936) 181 SC 540, 188 SE 192, for an opinion holding that since nothing appearing in the affidavit submitted showed that a fair trial could not be obtained, change of venue would refused. City of Sumter v. Owens (S.C. 1936) 181 S.C. 540, 188 S.E. 192.

An affidavit which stated that the magistrate had said in the presence of the parties that the party so moving for a change of venue did not have a case is not sufficient to warrant a change of venue. Mayes v. Evans (S.C. 1908) 80 S.C. 362, 61 S.E. 216, rehearing denied 80 S.C. 362, 61 S.E. 657.

**SECTION 22‑3‑930.** Compelling attendance of witnesses and the giving of testimony.

 Any magistrate, on the application of a party to a cause pending before the magistrate, must issue a summons citing any person whose testimony may be required in the cause and who resides in the county to appear before the magistrate at a certain time and place to give evidence. This summons must be served in a manner such that it is received by the witness at least one day before his attendance is required. If the witness fails or refuses to attend, the magistrate may issue a rule to show cause commanding the witness to be brought before the magistrate or, if any witness attending refuses to give evidence without good cause shown, the magistrate may punish the witness for contempt by imposition of a sentence up to the limits imposed on magistrates’ courts in Section 22‑3‑550.

HISTORY: 1962 Code Section 43‑132; 1952 Code Section 43‑132; 1942 Code Section 3715; 1932 Code Section 3715; Civ. C. ‘22 Section 2249; Civ. C. ‘12 Section 1399; Civ. C. ‘02 Section 991; G. S. 844; R. S. 887; 1839 (11) 16; 1998 Act No. 301, Section 1.

Library References

Witnesses 1, 2.

Westlaw Topic No. 410.

C.J.S. Criminal Law Sections 469 to 485.

C.J.S. Witnesses Sections 1 to 6.

**SECTION 22‑3‑940.** Magistrates empowered to take testimony de bene esse.

 In case it shall appear to the satisfaction of any magistrate that the attendance of any witness whose testimony may be required in any case before him cannot be had (a) by reason of (i) extreme age, (ii) sickness or infirmity or (iii) indispensable absence on public official duty, (b) in consequence of intended removal from the State before the cause can be otherwise ready for trial or (c) when such witness may be resident in another county or without the limits of the State, such magistrate may take the examination of such witness in writing or cause it to be done by another magistrate or other officer authorized by law to administer oaths, to be used in evidence on the trial of the case. But the parties to such cause shall have notice thereof in time to be present if they or either should choose to be present or notice may be given by either party to the other of interrogatories to be propounded to such witness, with four days’ time given the party notified to prepare cross‑interrogatories, upon which interrogatories and cross‑interrogatories, when preferred by the parties or either of them, the deposition shall be had. When such examination is so made by another, it shall be sealed up, with the title of the case endorsed, and conveyed by a disinterested person to the magistrate authorizing it or mailed and the postage prepaid.

HISTORY: 1962 Code Section 43‑133; 1952 Code Section 43‑133; 1942 Code Section 3716; 1932 Code Section 3716; Civ. C. ‘22 Section 2250; Civ. C. ‘12 Section 1400; Civ. C. ‘02 Section 992; G. S. 849; R. S. 891; 1883 (18) 313.

Library References

Criminal Law 627.2.

Pretrial Procedure 63.

Westlaw Topic Nos. 110, 307A.

C.J.S. Criminal Law Section 468.

C.J.S. Depositions Sections 3 to 10, 18 to 20, 35 to 54.

NOTES OF DECISIONS

In general 1

1. In general

Under a provision that where a deposition is taken by another magistrate, it shall be “sealed up,” etc., a seal in its usual meaning, denoting an outward imprint, is not required on the envelope; the words “sealed up” having reference to the manner in which the envelope containing the deposition is to be closed or fastened with mucilage or other like substance. And that the title of the case is not endorsed on package containing the deposition, is a mere irregularity, which does not affect its validity. Jenkins v. Atlantic Coast Line R. Co. (S.C. 1909) 83 S.C. 473, 65 S.E. 636. Pretrial Procedure 74

The magistrate may authorize that testimony be taken before a foreign notary public and certified under this official seal. Greene v. Tally (S.C. 1893) 39 S.C. 338, 17 S.E. 779.

**SECTION 22‑3‑950.** Power to punish for contempt.

 Every magistrate shall have power to enforce the observance of decorum in his court while holding the same and for that purpose he may punish for contempt any person who, in the presence of the court, shall offer an insult to the magistrate or a juror or who is wilfully guilty of an undue disturbance of the proceedings before the magistrate while sitting officially. A magistrate shall have the power to punish for contempt of court by imposition of sentences up to the limits imposed on magistrates’ courts in Section 22‑3‑550.

HISTORY: 1962 Code Section 43‑134; 1952 Code Section 43‑134; 1942 Code Section 3713; 1932 Code Section 3713; Civ. C. ‘22 Section 2247; Civ. C. ‘12 Section 1397; Civ. C. ‘02 Section 989; G. S. 844; R. S. 887; 1839 (11) 27; 1997 Act No. 64, Section 3.

Library References

Contempt 41.

Westlaw Topic No. 93.

C.J.S. Contempt Sections 66 to 67.

Attorney General’s Opinions

Discussion of the contempt powers of magistrates’ and municipal courts. S.C. Op.Atty.Gen. (March 1, 2013) 2013 WL 1695519.

Magistrates may punish all behavior within the definition of contemptuous exhibited in their presence while performing the duties of their office as contempt of court. 1978 Op. Atty Gen, No. 78‑191, p 214.

NOTES OF DECISIONS

In general 1

1. In general

Power of magistrate to punish for contempt is limited to instances where contempt in committed in presence of court, or where party is wilfully guilty of undue disturbance of proceedings before magistrate while sitting officially. Dean v. Shirer (C.A.4 (S.C.) 1976) 547 F.2d 227, 42 A.L.R. Fed. 155.

The arguments of a lawyer in presenting his or her client’s case strenuously and persistently cannot amount to contempt of court so long as the lawyer does not in some way create an obstruction which blocks the judge in the performance of his or her judicial duty. State v. Harper (S.C. 1989) 297 S.C. 257, 376 S.E.2d 272. Contempt 10

Applied in State v. Barnett (S.C. 1914) 98 S.C. 422, 82 S.E. 795.

**SECTION 22‑3‑990.** New trials.

 Any magistrate may grant a new trial in any case tried in his court for reasons for which new trials have usually been granted in the courts of law of this State. The granting of a new trial shall in no wise affect the right and duty of such magistrate to change the venue of a case as provided in Section 22‑3‑920.

HISTORY: 1962 Code Section 43‑142; 1952 Code Section 43‑142; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1876 (16) 60; 1887 (19) 787; 1896 (22) 13; 1908 (25) 1032.

CROSS REFERENCES

Granting of new trials by circuit courts, see Section 17‑23‑110.

Statutory provisions for an appeal from a magistrate’s court in criminal cases, see Sections 18‑3‑10, 18‑3‑20.

Library References

Criminal Law 913.

New Trial 13 to 108.

Westlaw Topic Nos. 110, 275.

C.J.S. Criminal Law Sections 1423, 1428, 1430, 1446.

C.J.S. New Trial Sections 17 to 139, 255 to 259.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 59, New Trial.

**SECTION 22‑3‑1000.** Time for motion for new trial; appeal; exception.

 (A) Except as provided in subsection (B), a motion for a new trial may not be heard unless made within ten days from the rendering of the judgment. The right of appeal from the judgment exists for thirty days after the rendering of the judgment. A magistrate’s order of restitution may be appealed within thirty days. The order of restitution may be appealed separately from an appeal relating to the conviction.

 (B) The provisions of subsection (A) do not apply to a motion for a new trial made under Chapters 37 and 40, Title 27. A motion for a new trial made under Chapters 37 and 40, Title 27 must be requested within five days from the rendering of the judgment.

HISTORY: 1962 Code Section 43‑143; 1952 Code Section 43‑143; 1942 Code Section 274; 1932 Code Section 274; Civ. P. ‘22 Section 230; Civ. P. ‘12 Section 97; Civ. P. ‘02 Section 88; 1887 (19) 787; 1896 (22) 13; 1989 Act No. 20, Section 2; 1999 Act No. 78, Section 3; 2014 Act No. 241 (S.176), Section 1, eff June 6, 2014.

Effect of Amendment

2014 Act No. 241, Section 1, inserted the subsection designator (A); in subsection (A), inserted the reference to subsection (B), in the first sentence, and deleted “, if any,” following “from an appeal”, at the end of the last sentence; and added subsection (B).

CROSS REFERENCES

Appeals generally, see Title 18.

Library References

Appeal and Error 337 to 357.

Criminal Law 951, 1069.

New Trial 115.

Westlaw Topic Nos. 110, 275, 30.

C.J.S. Appeal and Error Sections 264 to 297, 314.

C.J.S. Criminal Law Section 1686.

C.J.S. New Trial Sections 153 to 164.

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.

S.C. Jur. Automobiles and Other Motor Vehicles Section 28, Judicial Review.

S.C. Jur. Magistrates and Municipal Judges Section 49, Default Judgments and Dismissals.

S.C. Jur. Magistrates and Municipal Judges Section 59, New Trial.

Attorney General’s Opinions

Magistrates may vacate judgments and declare sentences null and void only upon sufficient legal cause after a full hearing held within five days from the rendering of the judgment. 1978 Op. Atty Gen, No. 78‑47, p 75.

Motions for new trials in magistrates’ courts must be made within five days of original judgments. 1968‑69 Op. Atty Gen, No. 2762, p 247.

NOTES OF DECISIONS

In general 1

Time for hearing on motion 3

Time for notice 2

1. In general

The circuit court properly exercised jurisdiction over a motorist’s appeal from his conviction in the magistrate court and the denial of his motion for a new trial, even though the appeal was not filed within 10 days of the jury verdict as required by Section 18‑3‑30, since Section 22‑3‑1000 specifically provides that the right of appeal from judgment exists for 25 days after the refusal of a motion for a new trial, and specific law prevails over general law. State v. Sullivan (S.C. 1993) 310 S.C. 311, 426 S.E.2d 766.

Applied in State v. Dickert (S.C. 1973) 260 S.C. 490, 197 S.E.2d 89.

The motion for a new trial as provided for under this section may be made on a legal holiday. Mitchell v. Bates (S.C. 1900) 57 S.C. 44, 35 S.E. 420. Holidays 5

This section does not require a notice of a motion for a new trial to be in writing. Mitchell v. Bates (S.C. 1900) 57 S.C. 44, 35 S.E. 420.

This section must be read in connection with Sections 22‑3‑300 and 22‑3‑990 in such a manner as to give full effect to all. Lawrence v. Isear (S.C. 1887) 27 S.C. 244, 3 S.E. 222.

2. Time for notice

Where respondent was notified by summons to appear before a magistrate on a DWI charge, but defaulted, the time for moving for a new trial commenced to run on the day of conviction. State v. Adkison (S.C. 1975) 264 S.C. 180, 213 S.E.2d 591. Criminal Law 951(1)

Denial of motion to reopen DWI case was correct whether magistrate referred to statute relating to appeals or to statute relating to motions for new trial, since in neither event was motion timely filed following driver’s failure to appear. State v. Adkison (S.C. 1975) 264 S.C. 180, 213 S.E.2d 591.

A party’s time to appeal from a judgment in a magistrate’s court or move for a new trial therein does not begin until he has notice of the judgment against him. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

Where the first notice that respondent had of his conviction was when the appellant notified him that his driver’s license was suspended and on the next day he made his motion for a new trial, the respondent made timely motion for a new trial within five days after receiving personal notice that a judgment of conviction had been rendered against him in absentia. This was in conformity with the construction of this section [Code 1962 Section 43‑143]. Brewer v. South Carolina State Highway Dept. (S.C. 1973) 261 S.C. 52, 198 S.E.2d 256.

Where a magistrate does not render judgment on the day the case is tried but reserves the decision, a party’s time to appeal or move for a new trial does not begin until he has notice of the judgment. O’Rourke v. Atlantic Paint Co. (S.C. 1912) 91 S.C. 399, 74 S.E. 930. Justices Of The Peace 116

Where the last day of the five days allowed by this section falls on Sunday, the motion may be made on Monday. Ashe v. State (S.C. 1894) 41 S.C. 92, 19 S.E. 297.

The notice of a motion for a new trial must be given within five days. Doty & Co. v. Duvall (S.C. 1883) 19 S.C. 143.

3. Time for hearing on motion

A hearing on a motion for new trial need not be within five days after judgment. Whetstone v Livingston (1899) 54 SC 539, 32 SE 561. Mitchell v Bates (1900) 57 SC 44, 35 SE 420.

Any error by municipal court in granting driver’s motion for new trial filed more than five days after conviction for traffic offense was an error of the court’s exercise of jurisdiction and did not implicate its general grant of subject matter jurisdiction, and, thus, Department of Motor Vehicles appeal from the Department of Motor Vehicle Hearings decision was an improper collateral attack on the municipal court decision; decision was merely voidable, rather than void. South Carolina Dept. of Motor Vehicles v. Holtzclaw (S.C.App. 2009) 382 S.C. 344, 675 S.E.2d 756, rehearing denied, certiorari denied. Automobiles 144.2(2.1)

The limitation is that the motion for a new trial must be made, and is not that the motion must be decided within five days from judgment. Speer v. Meschine (S.C. 1896) 46 S.C. 505, 24 S.E. 329.

**SECTION 22‑3‑1010.** Itemized account of costs.

 Any person, before paying any costs in any magistrate’s court, may demand of the magistrate an itemized account of such costs. Such account shall be receipted by the magistrate at the time the costs are paid and no person shall be compelled to pay any costs in any magistrate’s court unless the magistrate shall furnish to such person an itemized account.

HISTORY: 1962 Code Section 43‑144; 1952 Code Section 43‑144; 1942 Code Section 3720; 1932 Code Section 3720; Civ. C. ‘22 Section 2254; Civ. C. ‘12 Section 1404; Civ. C. ‘02 Section 996; G. S. 854; R. S. 894; 1875 (15) 864.

CROSS REFERENCES

Jurisdiction of magistrate, see Section 22‑3‑10.

Summary ejectment of trespassers, see Sections 15‑67‑610 et seq.

Library References

Costs 207.

Westlaw Topic No. 102.

C.J.S. Costs Section 151.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 58, Costs.

Attorney General’s Opinions

Section 27‑A of Act No. 1648 of 1968 is constitutional, and the Supreme Court of South Carolina has the power to confer and impose county‑wide duties and jurisdiction on each county magistrate, notwithstanding local acts limiting territorial jurisdiction. 1976‑77 Op. Atty Gen, No. 77‑301, p 228.

No violation of the criminal law may be lawfully disposed of by a magistrate except on issuance of an arrest warrant. 1974‑75 Op. Atty Gen, No. 3948, p 23.

ARTICLE 11

Proceedings When Title to Real Estate is Involved

**SECTION 22‑3‑1110.** Defense of questionable title in defendant’s answer.

 When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

HISTORY: 1962 Code Section 43‑151; 1952 Code Section 43‑151; 1942 Code Section 265; 1932 Code Section 265; Civ. P. ‘22 Section 221; Civ. P. ‘12 Section 88; Civ. P. ‘02 Section 79; 1870 (14) 82; 1972 (57) 2452.

Library References

Justices of the Peace 92.

Westlaw Topic No. 231.

C.J.S. Justices of the Peace Sections 81, 154, 169 to 172.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 34, Civil Actions in Which Magistrate Has No Jurisdiction.

NOTES OF DECISIONS

In general 1

1. In general

Where tenant did not deny execution of lease, and offered no evidence of duress and fraud in ejectment proceedings before magistrate, relation of landlord and tenant, which was preliminary question of fact for magistrate to determine, when question of title was raised by defendant, was established, and, as tenant cannot dispute landlord’s title, issue of title could not arise, so as to defeat magistrate’s jurisdiction. Bamberg Banking Co. v Matthews (1925) 132 SC 130, 128 SE 718. (1925). Burch v Muldrow (1927) 141 SC 29, 139 SE 208.

This section does not apply to a criminal case where the title to real estate is an issue. State v Richardson (1914) 98 SC 147, 82 SE 353. State v Holcomb (1902) 63 SC 22, 40 SE 1017.

A tenant not raising the issue of title in ejectment proceedings before a magistrate by methods prescribed under this and the following section cannot raise such question on appeal. Bamberg Banking Co. v. Matthews (S.C. 1925) 132 S.C. 130, 128 S.E. 718. Justices Of The Peace 141(5)

A magistrate before whom an action is brought for trespass for cutting timber, where a defense is interposed of “title to real property,” had the right in his discretion to grant an order allowing plaintiff to discontinue the suit. Thomas v. Shea (S.C. 1919) 111 S.C. 416, 98 S.E. 145. Justices Of The Peace 75(1)

**SECTION 22‑3‑1120.** Written undertaking by defendant in cases where title to real property will come in question.

 At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

 When the defendant was arrested in the action before the magistrate the undertaking shall further provide that he will at all times render himself amenable to the process of the court during the pending of the action and to such as may be issued to enforce the judgment therein. In case of failure to comply with the undertaking the surety shall be liable for not exceeding one hundred dollars.

HISTORY: 1962 Code Section 43‑152; 1952 Code Section 43‑152; 1942 Code Section 266; 1932 Code Section 266; Civ. P. ‘22 Section 222; Civ. P. ‘12 Section 89; Civ. P. ‘02 Section 80; 1870 (14) 83.

Library References

Undertakings 1.

Westlaw Topic No. 392.

C.J.S. Undertakings Section 1.

NOTES OF DECISIONS

In general 1

1. In general

Issue of title unless raised under this section [Code 1962 Section 43‑152] and Code 1962 Section 43‑151 cannot be raised on appeal. Bamberg Banking Co. v. Matthews (S.C. 1925) 132 S.C. 130, 128 S.E. 718.

Cited in High v. Wingo (S.C. 1909) 84 S.C. 246, 66 S.E. 185.

**SECTION 22‑3‑1130.** Action discontinued upon delivery of undertaking; costs.

 Upon the delivery of the undertaking to the magistrate the action before him shall be discontinued and each party shall pay his own costs. The costs so paid by either party shall be allowed to him if he recover costs in the action to be brought for the same cause in the circuit court. If no such action be brought within thirty days after the delivery of the undertaking the defendant’s costs before the magistrate may be recovered of the plaintiff.

HISTORY: 1962 Code Section 43‑153; 1952 Code Section 43‑153; 1942 Code Section 267; 1932 Code Section 267; Civ. P. ‘22 Section 223; Civ. P. ‘12 Section 90; Civ. P. ‘02 Section 81; 1870 (14) 84.

Library References

Undertakings 1.

Westlaw Topic No. 392.

C.J.S. Undertakings Section 1.

NOTES OF DECISIONS

In general 1

1. In general

Cited in High v. Wingo (S.C. 1909) 84 S.C. 246, 66 S.E. 185.

**SECTION 22‑3‑1140.** Procedure if undertaking not delivered.

 If such an undertaking be not delivered to the magistrate he shall have jurisdiction of the cause and shall proceed therein and the defendant shall be precluded, in his defense, from drawing the title in question.

HISTORY: 1962 Code Section 43‑154; 1952 Code Section 43‑154; 1942 Code Section 268; 1932 Code Section 268; Civ. P. ‘22 Section 224; Civ. P. ‘12 Section 91; Civ. P. ‘02 Section 82; 1870 (14) 85.

Library References

Undertakings 1.

Westlaw Topic No. 392.

C.J.S. Undertakings Section 1.

**SECTION 22‑3‑1150.** Effect of plaintiff’s showing developing an issue of title.

 If, however, it appear on the trial from the plaintiff’s own showing that the title to real property is in question and such title shall be disputed by the defendant the magistrate shall dismiss the action and render judgment against the plaintiff for the costs.

HISTORY: 1962 Code Section 43‑155; 1952 Code Section 43‑155; 1942 Code Section 269; 1932 Code Section 269; Civ. P. ‘22 Section 225; Civ. P. ‘12 Section 92; Civ. P. ‘02 Section 83; 1870 (14) 86.

NOTES OF DECISIONS

In general 1

1. In general

The mere attempt to deny a landlord’s title or the assertion of a superior title will not oust the magistrate of jurisdiction in a summary proceeding. Stewart‑Jones Co. v. Shehan (S.C. 1924) 127 S.C. 451, 121 S.E. 374. Justices Of The Peace 36(7)

The magistrate is not deprived of jurisdiction of an action for damages to the plaintiff’s land by fire where the defendant did not appear at the trial and dispute the plaintiff’s title though the allegations of the complaint, including the plaintiff’s ownership were generally denied, and the plaintiff introduced evidence of his ownership of the land which was not disputed. Barnes v. Charleston & W.C. Ry. Co. (S.C. 1916) 106 S.C. 227, 90 S.E. 1017. Justices Of The Peace 36(3)

**SECTION 22‑3‑1160.** Defense of questionable title as to one of several causes of action.

 If, in an action before a magistrate, the plaintiff have several causes of action, to one of which the defense of title to real property shall be interposed, and as to such cause the defendant shall deliver an answer and undertaking, as provided in Sections 22‑3‑1110 and 22‑3‑1120, the magistrate shall discontinue the proceedings as to that cause and the plaintiff may commence another action therefor in the circuit court. As to the other causes of action the magistrate may continue his proceedings.

HISTORY: 1962 Code Section 43‑156; 1952 Code Section 43‑156; 1942 Code Section 272; 1932 Code Section 272; Civ. P. ‘22 Section 228; Civ. P. ‘12 Section 95; Civ. P. ‘02 Section 86; 1870 (14) 89.

**SECTION 22‑3‑1170.** New action in circuit court after discontinuance by delivery of answer and undertaking.

 When a suit before a magistrate shall be discontinued by the delivery of an answer and undertaking, as provided in Sections 22‑3‑1110 to 22‑3‑1130, the plaintiff may prosecute an action for the same cause in the circuit court.

HISTORY: 1962 Code Section 43‑157; 1952 Code Section 43‑157; 1942 Code Section 270; 1932 Code Section 270; Civ. P. ‘22 Section 226; Civ. P. ‘12 Section 93; Civ. P. ‘02 Section 84; 1870 (14) 87; 1972 (57) 2453.

NOTES OF DECISIONS

In general 1

1. In general

Where in a suit for wilfully cutting and removing timber the defendant sets up title in himself and tenders proper undertaking, and the magistrate endorses on summons “This action is discontinued,” action brought in the circuit court must be on the same cause of action. Notice of the plaintiff, that the case is withdrawn and discontinued, served after an order of the magistrate is not binding on the defendant. High v. Wingo (S.C. 1909) 84 S.C. 246, 66 S.E. 185.

**SECTION 22‑3‑1180.** Costs in circuit court action.

 If the judgment in the circuit court be for the plaintiff, he shall recover costs. If it be for the defendant, he shall recover costs, except that upon a verdict he shall pay costs to the plaintiff unless the judge certify that the title to real property came in question on the trial.

HISTORY: 1962 Code Section 43‑158; 1952 Code Section 43‑158; 1942 Code Section 271; 1932 Code Section 271; Civ. P. ‘22 Section 227; Civ. P. ‘12 Section 94; Civ. P. ‘02 Section 85; 1870 (14) 88.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 34, Civil Actions in Which Magistrate Has No Jurisdiction.

ARTICLE 13

Proceedings in Claim and Delivery

**SECTION 22‑3‑1310.** Claiming immediate delivery of property by plaintiff.

 The plaintiff in an action of claim and delivery before a magistrate may at the time of issuing the summons, but not afterwards, claim the immediate delivery of such property as herein provided.

HISTORY: 1962 Code Section 43‑171; 1952 Code Section 43‑171; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; Const. Art. 5, Sections 20, 21.

CROSS REFERENCES

Recovery of personal property generally, see Sections 15‑69‑10 et seq.

Library References

Replevin 25.

Westlaw Topic No. 335.

C.J.S. Replevin Section 46.

NOTES OF DECISIONS

In general 1

1. In general

If the plaintiff does not claim immediate delivery, as authorized by this section, then he must make the proof by affidavit as required by Section 22‑3‑1320 but is not required to enter into an undertaking under Section 22‑3‑1330. Dillard v. Samuels (S.C. 1886) 25 S.C. 318.

**SECTION 22‑3‑1320.** Affidavit of plaintiff in action of claim and delivery.

 Before any process shall be issued in an action to recover the possession of personal property, the plaintiff, his agent or attorney, shall make proof by affidavit, showing:

 (1) That the plaintiff is the owner or is entitled to immediate possession of the property claimed, particularly describing such property;

 (2) That such property is wrongfully withheld or detained by the defendant;

 (3) The cause of such detention or withholding thereof, according to the best knowledge, information and belief of the person making the affidavit;

 (4) That such personal property has not been taken for any tax, fine or assessment, pursuant to statute, or seized by virtue of an execution or attachment against the property of the plaintiff or, if so seized, that it is exempt from such seizure by statute; and

 (5) The actual value of such personal property.

HISTORY: 1962 Code Section 43‑172; 1952 Code Section 43‑172; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; Const. Art. 5, Sections 20, 21.

Library References

Replevin 26.

Westlaw Topic No. 335.

C.J.S. Replevin Section 47.

Attorney General’s Opinions

Claim‑and‑delivery actions may be instituted and carried into effect lawfully by filing of affidavit as required by this section, by the issuance and service of magistrate’s summons setting the matter for hearing as provided in what is now Section 22‑3‑1330, by hearing, by judgment, and by execution. 1971‑72 Op. Atty Gen, No. 3343, p 180.

NOTES OF DECISIONS

In general 1

1. In general

Affidavit must state that value of property does not exceed one hundred dollars. Williams v Irby (1882) 16 SC 371. See also, Wright v Lee (1918) 108 SC 357, 94 SE 873.

On appeal the circuit court may hear affidavits to show demand before action of claim and delivery. Burton v. Laurens Cotton Mills (S.C. 1902) 64 S.C. 224, 41 S.E. 975.

Variance between affidavit and pleadings may be amended. Ehrhardt v. Breeland (S.C. 1900) 57 S.C. 142, 35 S.E. 537.

Cited in Kelley v. Kennemore (S.C. 1896) 47 S.C. 256, 25 S.E. 134.

**SECTION 22‑3‑1330.** Summons and notice of right to preseizure hearing in plaintiff’s action of claim and delivery; order for seizure of property.

 (a) On receipt of such affidavit and an undertaking in writing, executed by one or more sufficient sureties, to be approved by the magistrate before whom such action is commenced, to the effect that they are bound in double the value of such property as stated in such affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the magistrate shall at the same time issue both a summons and a notice of right to preseizure hearing, with a copy of the undertaking and plaintiff’s affidavit, directed to the defendant and to be served by the constable.

 (b) The notice of right to a preseizure hearing so issued and served shall notify the defendant that within five days from service thereof, he may demand such hearing and present such evidence touching upon the probable validity of the plaintiff’s claim for immediate possession and defendant’s right to continue in possession, but if the defendant fails to make timely demand for preseizure hearing, the constable will be directed to take the property described in the affidavit.

 (c) The summons so issued and served will require the defendant to appear before the magistrate at a time and place to be therein specified, not more than twenty days from the date thereof, to answer the complaint of the plaintiff. The summons shall contain a notice to the defendant that in case he shall fail to appear at the time and place therein mentioned the plaintiff will have judgment for the possession of the property described in the affidavit with the costs and disbursements of the action.

 (d) If the defendant fails to demand a preseizure hearing, or, if after such hearing the magistrate shall find that plaintiff’s claim for immediate possession should be allowed, then the magistrate shall endorse upon the affidavit a direction to any constable of the county in which the magistrate shall reside, requiring such constable to take the property described therein from the defendant and keep it, to be disposed of according to law. For the endorsement in such affidavit the magistrate shall receive an additional fee of twenty‑five cents, which shall be included in the costs of the suit.

HISTORY: 1962 Code Section 43‑173; 1952 Code Section 43‑173; 1942 Code Sections 257, 263; 1932 Code Sections 257, 263; Civ. P. ‘22 Sections 213, 1219; Civ. P. ‘12 Sections 80, 186; Civ. P. ‘02 Sections 71, 177; 1870 (14) 74, 80; 1879 (17) 28; Const. Art. 5, Sections 20, 21; 1972 (57) 3080.

Library References

Replevin 25 to 54.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 46 to 80.

LAW REVIEW AND JOURNAL COMMENTARIES

“Service of Process” in “Handbook of South Carolina Trial and Appellate Practice,” 11 SCLQ, Supp, 17 (1959).

Attorney General’s Opinions

Claim‑and‑delivery actions may be instituted and carried into effect lawfully by filing of affidavit as required by what is now Section 22‑3‑1320, by the issuance and service of magistrate’s summons setting the matter for hearing as provided in this section, by hearing, by judgment, and by execution. 1971‑72 Op. Atty Gen, No. 3343, p 180.

NOTES OF DECISIONS

In general 1

1. In general

This section is manifestly applicable to actions of claim and delivery only. Kelly v Kennemore (1896) 47 SC 256, 25 SE 134. Hasten v Southern R. Co. (1909) 82 SC 238, 64 SE 223.

Summons is fatally defective if it names a day for trial more than twenty days after its date. Simmons v Cochran (1888) 29 SC 31, 6 SE 859. State v Smith (1893) 38 SC 270, 16 SE 997, reaffirmed in Kelly v Kennemore (1896) 47 SC 256, 25 SE 134.

There is no requirement that the undertaking to be given by a plaintiff shall be executed by the plaintiff; the only requirement is that “an undertaking, in writing executed by one or more sufficient sureties” to be approved by the magistrate, shall be delivered to the magistrate before he directs the constable to take possession of the property sought. Marshall Bros. Furniture Co. v. Drawdy (S.C. 1937) 184 S.C. 492, 193 S.E. 49.

It is immaterial whether the summons is addressed to the defendant or officer. Bell v. Pruit (S.C. 1898) 51 S.C. 344, 29 S.E. 5.

Quoted in Adkins v. Moore (S.C. 1895) 43 S.C. 173, 20 S.E. 985.

**SECTION 22‑3‑1340.** Defendant’s exceptions to sureties in bond or undertaking.

 The defendant may, at any time after such service and at least two days before the return day of the summons, serve upon the plaintiff or upon the constable who made such service a notice in writing that he excepts to the sureties in the bond or undertaking and if he fail to do so all objection thereto shall be waived. If such notice be served, the sureties shall justify or the plaintiff shall give new sureties on the return day of such summons, who shall then appear and justify, or the magistrate shall order the property delivered to the defendant and shall also render judgment for defendant’s costs and disbursements.

HISTORY: 1962 Code Section 43‑178; 1952 Code Section 43‑178; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; Const. Art. 5, Sections 20, 21.

Library References

Replevin 33(2).

Westlaw Topic No. 335.

C.J.S. Replevin Section 54.

NOTES OF DECISIONS

In general 1

1. In general

The objection that the magistrate did not endorse his approval on an undertaking is waived by not excepting thereto. Cromer v. Watson (S.C. 1901) 59 S.C. 488, 38 S.E. 126.

**SECTION 22‑3‑1350.** Purpose of preseizure hearing; allowing claim for immediate possession; action to be tried as others.

 The purpose of the preseizure hearing is to protect the defendant’s use and possession of property from arbitrary encroachment, and to prevent unfair or mistaken deprivations of property. If the magistrate shall, after conducting the hearing, find that the plaintiff’s claim for immediate possession is probably valid and the defendant has no overriding right to continue in possession of the property, then the magistrate may allow the claim for immediate possession and endorse the affidavit accordingly.

 Whether the claim for immediate possession is allowed or not, the action commenced by the service of the summons shall be tried in all respects as other actions are tried in the magistrates’ courts.

HISTORY: 1962 Code Section 43‑181; 1952 Code Section 43‑181; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80; 1972 (57) 3080.

Library References

Replevin 47.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 74 to 78.

**SECTION 22‑3‑1360.** Notice and opportunity for preseizure hearing required; waiver.

 No property shall be seized under the provisions of this article unless five days’ notice and an opportunity to be heard have been afforded the party in possession as herein provided; provided, however, any person in possession of the personal property may waive the right to a preseizure hearing, if the waiver is conspicuously displayed in the contract and includes the wording “waiver of hearing prior to immediate possession.” In order for the contractual waiver or any other waiver to be effective, the plaintiff by affidavit must show that the defendant has in writing by contract or separate written instrument voluntarily, intelligently and knowingly waived his right to a hearing prior to the repossession of such personal property. The magistrate may order immediate delivery of the property to the plaintiff upon receipt of such affidavit.

HISTORY: 1962 Code Section 43‑185; 1972 (57) 3080.

Library References

Replevin 34 to 54.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 60 to 80.

**SECTION 22‑3‑1370.** Order restraining defendant from damaging, concealing or removing property.

 The magistrate shall concurrently have served on the defendant, when immediate possession of the subject property is not being taken, an order restraining the defendant from damaging, concealing or removing such property. Upon proper showing that such order has been violated, the defendant shall be subject to a fine not to exceed one hundred dollars or imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 43‑186; 1972 (57) 3080.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

**SECTION 22‑3‑1380.** Determination upon affidavit showing danger of destruction or concealment.

 Upon a showing unto the magistrate supported by an affidavit containing facts sufficient to show that it is probable to believe that the property at issue is in immediate danger of being destroyed or concealed by the possessor of such property and particularly describing such property and its location, the magistrate shall make a determination as to whether or not the property may be immediately seized. Provided, that the holding of a preseizure hearing by the magistrate shall not be a condition precedent to such determination.

HISTORY: 1962 Code Section 43‑187; 1972 (57) 3080.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

**SECTION 22‑3‑1390.** Service of copy of affidavit of waiver or probability of damage or concealment.

 If either an affidavit showing that the defendant has waived his right to a preseizure hearing or an affidavit of probability of damage or concealment is filed, under the provisions of this article, a copy thereof shall be served on the defendant in lieu of serving him with notice of right to preseizure hearing.

HISTORY: 1962 Code Section 43‑188; 1972 (57) 3080.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

**SECTION 22‑3‑1400.** Procedure when defendant cannot be found.

 If it shall appear by the return of a constable that he has taken the property described in the plaintiff’s affidavit and that the defendant cannot be found and has no last place of abode in the county and that no agent of defendant could be found on whom service could be made, the magistrate may proceed with the cause in the same manner as though there had been a personal service.

HISTORY: 1962 Code Section 43‑174; 1952 Code Section 43‑174; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80.

Library References

Replevin 41, 42.

Westlaw Topic No. 335.

C.J.S. Replevin Section 60.

**SECTION 22‑3‑1410.** Service of copy of affidavit, summons and notice; taking of property by constable.

 The constable to whom the affidavit, endorsement, notice of preseizure hearing and summons shall be delivered, shall, without delay, serve upon the defendant a copy of the affidavit, notice and summons, by delivering them to him personally, but, if he cannot be found, to the agent of the defendant in whose possession the property shall be found and, if neither can be found, by leaving such copies at his place of business or the last or usual place of abode of the defendant with some person of suitable age and discretion. He shall forthwith make a return of his proceedings thereon and the manner of serving the documents to the magistrate who issued the summons. Upon the magistrate endorsing upon the affidavit a direction requiring the constable to take the property, the constable to whom the affidavit and endorsement is delivered shall forthwith take the property described in the affidavit, if he can find it in the county, and shall keep it in his custody.

HISTORY: 1962 Code Section 43‑175; 1952 Code Section 43‑175; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; Const. Art. 5, Sections 20, 21; 1972 (57) 3080.

Library References

Replevin 41, 42.

Westlaw Topic No. 335.

C.J.S. Replevin Section 60.

Attorney General’s Opinions

City policemen may serve magistrates arrest warrants and civil papers, but they may not serve papers in claim and delivery actions. 1964‑65 Op. Atty Gen, No. 1800, p 44.

**SECTION 22‑3‑1420.** Taking property concealed in building or enclosure.

 If the property, or any part thereof, be concealed in a building or enclosure the constable shall publicly demand its delivery. If it be not delivered he shall cause the building or enclosure to be broken open and take the property into his possession. If necessary he may call to his aid the power of his county.

HISTORY: 1962 Code Section 43‑176; 1952 Code Section 43‑176; 1942 Code Section 261; 1932 Code Section 261; Civ. P. ‘22 Section 217; Civ. P. ‘12 Section 84; Civ. P. ‘02 Section 75; 1870 (14) 78.

Library References

Replevin 40.

Westlaw Topic No. 335.

C.J.S. Replevin Section 60.

Attorney General’s Opinions

Only a sheriff or one of his duly appointed and qualified (regular) deputies, and a constable of the county, in claim and delivery actions arising out of magistrate’s court, are empowered to break residence buildings under this section. No “special” deputy or constable has the authority, and neither the sheriff nor the magistrate may appoint anyone specially to exercise this authority. 1963‑64 Op. Atty Gen, No. 1720, p 196.

The authority to break and enter a residence building under civil process may be exercised in claim and delivery only, unless the authority is granted in other types of civil actions by special statute. 1963‑64 Op. Atty Gen, No. 1720, p 196.

Collection of rent by distraint on a tenant’s property, authorized by Sections 27‑39‑210, et seq., does not come within the authority conferred by this section and Section 15‑69‑180. 1963‑64 Op. Atty Gen, No. 1720, p 196.

The word “concealed” as used in this section apparently does not mean hidden from view within the house. If the objects sought are within a building or house, even though in their normal places within such house, and demand has been made by the officer and refused by the owner or occupant, they are “concealed” within the meaning of the statute. 1963‑64 Op. Atty Gen, No. 1720, p 196.

The “public demand” required of the officer does not mean that such demand must be posted on the courthouse door or advertised in a newspaper. It means, simply, that the officer must make every reasonable effort to make his presence known to the occupants of the house and to demand surrender of the goods to him. 1963‑64 Op. Atty Gen, No. 1720, p 196.

Before breaking and entering, an officer must make his presence and business known to the occupants and must demand that such property be given over to him. Only after refusal of such demand may he break and enter. 1963‑64 Op. Atty Gen, No. 1720, p 196.

A sheriff, a regular deputy sheriff, or a magistrate’s constable may break open the door or window of a residence building to gain admittance to seize specified personal property in claim and delivery proceedings if entrance can be gained in no other reasonable manner. 1963‑64 Op. Atty Gen, No. 1720, p 196.

If an officer is unable to find anyone at home, or the occupants fail to answer his knocks, on the second or subsequent trip, with every reasonable effort being made each time to make his presence known to the occupants, he is empowered to break open a door or window and take possession of the goods without further demand or notice. 1963‑64 Op. Atty Gen, No. 1720, p 196.

An officer must act reasonably throughout the entire proceeding, and he must use no more force than is necessary to break and enter. 1963‑64 Op. Atty Gen, No. 1720, p 196.

**SECTION 22‑3‑1430.** Care of property taken by constable.

 When a constable shall have taken property as in this article provided, he shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his lawful fee for taking the property and his necessary expenses for keeping it.

HISTORY: 1962 Code Section 43‑177; 1952 Code Section 43‑177; 1942 Code Section 262; 1932 Code Section 262; Civ. P. ‘22 Section 218; Civ. P. ‘12 Section 85; Civ. P. ‘02 Section 76; 1870 (14) 79.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

**SECTION 22‑3‑1440.** Return of property to defendant upon filing written undertaking for delivery if delivery be adjudged.

 At any time before the return day of the summons the defendant may, if he has not excepted to the plaintiff’s sureties, require the return of the property to him upon giving to the plaintiff and filing with the magistrate a written undertaking, with one or more sureties who shall justify before the magistrate on the return day of the summons to the effect that they are bound in double the value of the property, as stated in plaintiff’s affidavit, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for any cause be recovered against the defendant. If such return be not required before the return day of the summons the property shall be delivered to the plaintiff.

HISTORY: 1962 Code Section 43‑179; 1952 Code Section 43‑179; 1942 Code Section 257; 1932 Code Section 257; Civ. P. ‘22 Section 213; Civ. P. ‘12 Section 80; Civ. P. ‘02 Section 71; 1870 (14) 74; 1879 (17) 28; Const. Art. 5, Sections 20, 21.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

**SECTION 22‑3‑1450.** Claim to taken property by third person.

 If the property taken be claimed by any other person than the defendant or his agent and such person shall make affidavit to his title thereto and right to the possession thereof, stating the grounds of such right and title, and serve such affidavit upon the constable, the constable shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff on demand of him or his agent shall indemnify the constable against such claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff and are freeholders and householders of the county. No claim to such property by any other person than the defendant or his agent shall be valid against the constable unless made as aforesaid. And notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

HISTORY: 1962 Code Section 43‑180; 1952 Code Section 43‑180; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80.

Library References

Replevin 44.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 79 to 80.

NOTES OF DECISIONS

In general 1

1. In general

In a claim and delivery proceeding the defendant cannot defeat the action by showing title in a third party. Rogers v. Felder (S.C. 1914) 98 S.C. 178, 82 S.E. 436.

**SECTION 22‑3‑1460.** Judgment in actions for claim and delivery.

 The judgment for the plaintiff may be for the possession, the recovery of the possession or the value thereof in case a delivery cannot be had and for damages for the detention. If the property has been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property or the value thereof in case a return cannot be had and damages for taking and withholding the property.

HISTORY: 1962 Code Section 43‑182; 1952 Code Section 43‑182; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80.

CROSS REFERENCES

Judgment when property not delivered to plaintiff, see Section 22‑3‑1480.

Library References

Replevin 99 to 115.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 90 to 98.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 65, Sales in Different Situations.

NOTES OF DECISIONS

In general 1

Description of property 2

Recovery of value of property 3

1. In general

Where the verdict is not in proper form, the trial justice cannot change it; a new trial is the remedy. Du Bose v. Armstrong (S.C. 1888) 29 S.C. 290, 6 S.E. 934.

Where there are proper allegations the plaintiff may on appeal, in the circuit court, elect to treat the action as one for damages. Williams v. Irby (S.C. 1882) 16 S.C. 371.

2. Description of property

A verdict may be referred to the pleadings for a more particular description of the property. Bossard v. Vaughn (S.C. 1904) 68 S.C. 96, 46 S.E. 523.

3. Recovery of value of property

A verdict in an action of claim and delivery fixing the right of the plaintiff to have the property, or the value thereof, and the right of the defendant to deliver the property rather than pay the value if he so choose, is in full compliance with this section. Bossard v. Vaughn (S.C. 1904) 68 S.C. 96, 46 S.E. 523. Replevin 93

Judgment may be given for the value of the property though the demand is only for its recovery and damages for its detention. Joplin v. Carrier (S.C. 1879) 11 S.C. 327. Replevin 106

A judgment for the value of the property so demanded cannot be given in a case where the party is entitled to general damages. Joplin v. Carrier (S.C. 1879) 11 S.C. 327.

**SECTION 22‑3‑1470.** Execution on judgment.

 An execution shall be issued on any such judgment and if the judgment be for the delivery of the possession of personal property it shall require the officer to deliver the possession of such property, particularly describing it, to the party entitled thereto and may, at the same time, require the officer to satisfy any costs or damages recovered by the judgment out of the personal property of the party against whom it was rendered, to be specified therein, if a delivery thereof cannot be had. The execution shall be returnable within sixty days after its receipt by the officer to the magistrate who issued it.

HISTORY: 1962 Code Section 43‑183; 1952 Code Section 43‑183; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80.

Library References

Replevin 111.

Westlaw Topic No. 335.

C.J.S. Replevin Section 98.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 65, Sales in Different Situations.

**SECTION 22‑3‑1480.** Judgment when property not delivered to plaintiff or when defendant claims return.

 In all actions for the recovery of the possession of personal property, as herein provided, if the property shall not have been delivered to the plaintiff or the defendant by answer shall claim a return thereof, the magistrate or jury shall assess the value thereof and the injury sustained by the prevailing party by reason of the taking or detention thereof and the magistrate shall render judgment accordingly, with costs and disbursements.

HISTORY: 1962 Code Section 43‑184; 1952 Code Section 43‑184; 1942 Code Section 263; 1932 Code Section 263; Civ. P. ‘22 Section 219; Civ. P. ‘12 Section 86; Civ. P. ‘02 Section 77; 1870 (14) 80.

Library References

Replevin 99 to 115.

Westlaw Topic No. 335.

C.J.S. Replevin Sections 90 to 98.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Magistrates and Municipal Judges Section 65, Sales in Different Situations.

NOTES OF DECISIONS

In general 1

1. In general

A judgment in a claim and delivery proceeding before a magistrate which merely awarded the plaintiff the property in dispute without declaring the value of the property as provided for under this section is void. Yarborough v Dickerson (1925) 132 SC 168, 129 SE 136. Wilkins v Willimon (1924) 128 SC 509, 122 SE 503.