CHAPTER 25

Assignments for the Benefit of Creditors

**SECTION 27‑25‑10.** Assignment by insolvent debtor.

Any assignment by an insolvent debtor of his property for the benefit of his creditors in which any preference or priority is given to any creditor or creditors of the debtor by the terms of the assignment over any other creditor or creditors, other than as to any debts due to the public, or in which any provision or disposition of the property so assigned is made or directed other than that it be distributed among all creditors of the insolvent debtor equally, in proportion to the amount of their several demands and without preference or priority of any kind whatsoever, save only as to debts due to the public and save only as to such creditors as may accept the terms of such assignment and execute a release of their claim against the debtor, and except as hereinafter provided, shall be absolutely null and void and of no effect whatsoever.

HISTORY: 1962 Code Section 57‑351; 1952 Code Section 57‑351; 1942 Code Section 9106; 1932 Code Section 9106; Civ. C. ‘22 Section 5511; Civ. C. ‘12 Section 3732; Civ. C. ‘02 Section 2647; G. S. 2014; R. S. 2146; 1882 (18) 847.

CROSS REFERENCES

Parol, fraudulent and other void gifts or conveyances, see Sections 27‑23‑10 et seq.

Release of debtors from civil arrest on assignment of property, see Sections 15‑17‑410 et seq.

Library References

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Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 29.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Assignments for Benefit of Creditors Section 1 , Introductory Comments.

Treatises and Practice Aids

Fletcher Cyclopedia Law of Private Corporations Section 7462.5, Statutory Provisions Affecting the Validity of Preferences‑South Carolina.

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Purpose of section 2

1. In general

Applied in Ryttenberg v Keels (1893) 39 SC 203, 17 SE 441. Wagener v Boynton (1888) 29 SC 389, 7 SE 481. Magruder v Clayton (1888) 29 SC 407, 7 SE 844. Knobeloch v Smith (1887) 26 SC 331, 2 SE 612. Moore v Moore (1942, DC SC) 46 F Supp 330. Austin v Goddard (1932) 164 SC 20, 161 SE 767. Crown Cent. Petroleum Corp. v Elmwood Properties (1964) 244 SC 588, 138 SE2d 38.

Cited in Rice v Columbia (1928) 143 SC 516, 141 SE 705. Secrest v Hartford Fire Ins. Co. (1904) 68 SC 378, 47 SE 680. Drake v Steadman (1896) 46 SC 474, 24 SE 458. Leake v Anderson (1895) 43 SC 448, 21 SE 439. National Exch. Bank v Stelling (1890) 32 SC 102, 10 SE 766. E. Sternberger Co. v Summerford (1927) 150 SC 60, 147 SE 627. Southern Trust Co. v Cudd (1932) 166 SC 108, 164 SE 428. Gardner v Kirven (1937) 184 SC 37, 191 SE 814. Lynch v Lynch (1942) 201 SC 130, 21 SE2d 569. Matthews v Matthews (1945) 207 SC 170, 35 SE2d 157. Olin Mathieson Chemical Corp. v Planters Corp. (1960) 236 SC 318, 114 SE2d 321.

This section has no application unless there is either an actual assignment or a state of facts fully proved or admitted which, in conscience or in equity, is tantamount to an assignment with unlawful preferences. Verner v McGhee (1986, SC) 2 SE 113. First Carolinas Joint Stock Land Bank v Knotts (1939) 191 SC 384, 1 SE2d 797.

A transfer of all one’s property on valid consideration was held not an assignment for creditors. Lanahan v Bailey Liquor Co. (1900) 58 SC 269, 36 SE 584. Porter v Stricker (1895) 44 SC 183, 21 SE 635.

Assignment is void if made upon the condition that all creditors accept and release on such terms as only the debtor prescribes. Jacot v Corbett (1840) 15 SC Eq 71. Le Prince v Guillemot (1843) 18 SC Eq 187. Stewart v Kerrison (1872) 3 SC 266. Claflin & Co. v Iseman (1885) 23 SC 416. Trumbo v Hamel (1888) 29 SC 520, 8 SE 83. Clarke v Baker (1892) 36 SC 420, 15 SE 614.

Assignment giving preference to creditors who accept and release is valid. Pfiefer & Co. v Dargan (1880) 14 SC 44. Jaffray v Steedman (1892) 35 SC 33, 14 SE 632. Vaughan v Evans (1834) 10 SC Eq 414. Niolon v Douglas (1836) 11 SC Eq 443. Aiken v Price (1837) 23 SCL 50.

For a transaction to be obnoxious to this section, it is not necessary that the beneficiary as well as the insolvent be shown to have had knowledge of the insolvency and participated in the intent to create the preference. Pryor v. Greene, 1924, 2 F.2d 234.

Judgments cannot properly be set aside under this section where there is no showing that the judgment creditors participated in the mala fides of the debtor, to whatever extent bad faith does appear. Marquette Corp. v. Priester, 1964, 234 F.Supp. 799.

Three elements must be proven to prevail under the South Carolina Anti‑Assignment Act: (1) an assignment of property (2) by insolvent debtor (3) that gives preference or priority to one or more creditors over other creditors. In re J.R. Deans Co., Inc. (Bkrtcy.D.S.C. 2000) 249 B.R. 121. Creditors’ Remedies 1173

“Assignment,” within meaning of the South Carolina Anti‑Assignment Act, is act of transferring to another all or part of one’s property, interest or rights. In re J.R. Deans Co., Inc. (Bkrtcy.D.S.C. 2000) 249 B.R. 121. Creditors’ Remedies 1173

It is not only formal general assignments containing preferences which this section prohibits, but also any transfer which amounts to such general assignment. First Carolinas Joint Stock Land Bank of Columbia v. Knotts (S.C. 1939) 191 S.C. 384, 1 S.E.2d 797.

Under this section and Section 27‑25‑20, it must be shown in order to set aside a deed as void that the grantor was insolvent when he made it, that it was made with intent to give an unlawful preference, and that the grantee had reasonable cause to believe the grantor was insolvent and that the conveyance was made in fraud of the assignment law. Lenhardt v. Ponder (S.C. 1902) 64 S.C. 354, 42 S.E. 169.

The release required by this section was held to affect only the future liability of the assignor, and does not operate to release sureties or others jointly liable with him. Ragsdale v. Winnsboro Nat. Bank (S.C. 1896) 45 S.C. 575, 23 S.E. 947.

Schedule of assets, see Adler v. Cloud (S.C. 1894) 42 S.C. 272, 20 S.E. 393.

Intention of parties to create preference as determining whether a payment was obnoxious to this section, see Livingstain v. Columbia Banking & Trust Co. (S.C. 1908) 81 S.C. 244, 62 S.E. 249.

An assignment is void if it gives any advantage to the assignor to the detriment of the creditors. Stewart v. Kerrison (S.C. 1872) 3 S.C. 266.

Merely placing certain debts at the head of the schedule gives no preference. Winslow v. Ancrum’s Assignees (S.C. 1825). Creditors’ Remedies 1175

A bona fide assignment made not for the partial but for the general benefit of all the creditors, and comprehending all the debtor’s property is not fraudulent. Bush’s Ex’r v. Waring’s Trustees (S.C. 1789). Creditors’ Remedies 1178

2. Purpose of section

The manifest object of this section was to prevent any preference among creditors whatsoever, except such as were, in terms, allowed by this section, and to declare any assignment providing for any preference other than those allowed to be absolutely null and void. Hence, when a deed of assignment is assailed as being in violation of the statutory provision, the question of fraud is not necessarily involved, but the inquiry is whether the assignment provides for any preference whatever, other than those specially allowed, without regard to the intention of the parties. Middleton v. Taber (S.C. 1896) 46 S.C. 337, 24 S.E. 282.

This section takes away from the insolvent debtor the right to make preferences which existed previously, save only as to debts due the public and as to such creditors as may accept under the assignment and release. Claflin & Co. v. Iseman (S.C. 1885) 23 S.C. 416.

3. Conveyances of South Carolina property by nonresidents

Under this section an assignment preferring creditors executed in and by a citizen of Georgia, conveying lands situated in South Carolina, is void, and a proceeding may be instituted in South Carolina to set it aside, though all the parties are nonresidents. Sheldon v Blanvelt (1888) 29 SC 453, 7 SE 593. National Exchange Bank v Stelling (1889) 31 SC 360, 9 SE 1028.

Under this section an assignment preferring employees, executed in and by a citizen of New York, conveying property in South Carolina, is void, though by the law of New York such preference was not only permitted, but required; and it is immaterial that none of the creditors attacking it reside in South Carolina. Sheldon v. Blauvelt (S.C. 1888) 29 S.C. 453, 7 S.E. 593, 13 Am.St.Rep. 749. Creditors’ Remedies 1174

4. Construction with Federal bankruptcy law

This chapter must be construed as subordinate to Federal bankruptcy law, and, insofar as it conflicts therewith, suspended while the Bankruptcy Act of 1898 continues in force. Ex parte Chase (S.C. 1901) 62 S.C. 353, 38 S.E. 718.

5. Petition and ground of attack

Estoppel to attack validity of deed and trust agreement as violative of this section, see Forbes v. Bowman (S.C. 1910) 87 S.C. 495, 70 S.E. 165.

A petition in an action by a creditor of an insolvent debtor to set aside, on the ground of fraud, a conveyance by such debtor of his property, which does not allege that the grantee was a “creditor,” fails to state a cause of action within this section. McGahan v. Crawford (S.C. 1893) 39 S.C. 64, 17 S.E. 561.

Complaint stating sufficient facts to constitute cause of action, see Meinhard v. Youngblood (S.C. 1892) 37 S.C. 231, 15 S.E. 950, rehearing denied 37 S.C. 231, 16 S.E. 771.

A complaint to set aside a sale and a mortgage as void under this section must state that they were made to the creditors of the assignor. Miller v. Hughes (S.C. 1890) 33 S.C. 530, 12 S.E. 419.

The insolvency and incompetency of the trustee is ground of attack. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

Persons who may attack, see Meinhard v. Strickland (S.C. 1888) 29 S.C. 491, 7 S.E. 838.

6. Acceptance of assignment terms

When no time is fixed for acceptance upon the terms prescribed, the creditors may accept at any time before the fund is distributed. Tennant v Executrix of Stoney (1843) 18 SC Eq 222. Adler v Cloud (1894) 42 SC 272, 20 SE 393. Beall v Lowndes (1873) 4 SC 258. Atlantic Phosphate Co. v Law (1896) 45 SC 606, 23 SE 955.

If acceptance is required to be in writing, it must be so. Bank of Newberry v Walker & Glenn (1859) 46 SCL 304. Hewitt v Darlington Phosphate Co. (1895) 43 SC 5, 20 SE 804. Burgiss v Westmoreland (1893) 38 SC 425, 17 SE 56.

If the time is fixed for acceptance upon the terms prescribed, the creditors must do so within such time. Pfeifer & Co. v Dargan (1880) 14 SC 44. Jaffray v Steedman (1892) 35 SC 33, 14 SE 632.

Preference given creditors accepting within limited time, see McElwee v McGill (1900) 57 SC 6, 35 SE 401. Trumbo v Hamel (1888) 29 SC 520, 8 SE 83.

The acceptance and receipt of a share of the proceeds bind the creditor, and he cannot afterwards question the validity of the assignment. Pierce, Butler & Co. v Jones & Son (1876) 8 SC 273. Arnold v Bailey (1884) 24 SC 493.

Acceptance in terms is not necessary, unless required. It may be presumed from conduct. Tennant v. Stoney’s Ex’x & Ex’rs (S.C. 1845) 44 Am.Dec. 213.

Where assignment requires both acceptance and release in writing within a given time, the creditor must give both to be entitled to preference, since written acceptance alone is not sufficient. Jaffray v. Steedman (S.C. 1892) 35 S.C. 33, 14 S.E. 632.

7. Partnerships

Partners may assign partnership property alone. Trumbo v Hamel (1888) 29 SC 520, 8 SE 83 Armstrong v Hurst (1893) 39 SC 498, 18 SE 150.

Since the case of Blair v Black (1889) 31 SC 346, 9 SE 1033, it must be regarded as the settled law of this State that, in the distribution of the assets of insolvent persons, partnership creditors are entitled to be first paid out of the partnership assets. If these assets be insufficient for the payment in full of the partnership creditors, then for any balance due such creditors are entitled to share ratably with the individual creditors of the persons composing the partnership in the individual assets of such persons; but the creditors of the individuals composing the partnership are not entitled to share in the partnership assets until the partnership creditors are paid in full. Middleton v. Taber (S.C. 1896) 46 S.C. 337, 24 S.E. 282.

Where partners assign both their individual and partnership assets, and give the individual creditors preference out of the individual assets, the assignment is void. Blair v. Black (S.C. 1889) 31 S.C. 346, 9 S.E. 1033, 17 Am.St.Rep. 30.

8. Particular assignments held void

A mortgage executed to a deceased father by one who was financially hard pressed, with intent to convey all of his property to the executors of his father as a preference in violation of this section, is void. Allgood v Allgood (1926) 134 SC 233, 132 SE 48. Pryor v Greene (1924, CA4 SC) 2 F2d 234.

A deed of trust executed by an individual and by a corporation controlled by him stipulated that the trustees should apply the proceeds of the sale and collections of the property of the individual only to the payment of his individual obligations, including his endorsements and guarantees, and that after the creditors enumerated in the deed were paid, the surplus should be paid over to the debtors. The deed conveyed the entire property of the individual and of the corporation, and it was contemplated that the creditors enumerated therein should be paid to the exclusion of the other creditors. The individual and the corporation were both insolvent. It was held that the deed was obnoxious to this section. Forbes v. Bowman (S.C. 1910) 87 S.C. 495, 70 S.E. 165. Creditors’ Remedies 1174

A finding that a mortgage of land was an unlawful assignment by the mortgagor of his property to one creditor to the exclusion of other creditors within the prohibition of this section will not be disturbed where it appears that the mortgage covered all of the mortgagor’s land, and, with other mortgages on the land, amounted to over seven eights of its value, and there was no other property out of which creditors for over four thousand dollars could collect their claims. Mitchell v. Mitchell (S.C. 1894) 42 S.C. 475, 20 S.E. 405. Fraudulent Conveyances 88

Attachments procured by collusion between the attachment debtor and attachment creditors, covering all such debtor’s property, are in effect an assignment, and, being an attempt to give such creditors preference, are void under this section. Meinhard v. Youngblood (S.C. 1894) 41 S.C. 312, 19 S.E. 675. Creditors’ Remedies 1174

Where all of an insolvent debtor’s property is transferred to certain of his creditors by confession of judgment and proceedings thereunder, such acts are equivalent to an assignment with preferences and are, therefore, void under this section. Putney v. Freisleben (S.C. 1890) 32 S.C. 492, 11 S.E. 337. Creditors’ Remedies 1174

9. Particular assignments held valid

A mortgage made in good faith to secure notes past due, neither party knowing of the insolvency of mortgagor and no general assignment being made, is valid. Wietz v. Potter, 1887, 32 F. 888.

Certain mortgages executed by the debtor to his wife for a bona fide debt were not an assignment within this section. It is immaterial whether the mortgages were formally delivered when signed, at which time they were left in the charge of the attorney who drew them, or whether the delivery took place several months later, it appearing that they were delivered before the debtor absconded, or any other creditors had sued or attached his property. McIntyre v. Legon (S.C. 1893) 38 S.C. 457, 17 S.E. 253.

A chattel mortgage executed by an insolvent debtor to a creditor to secure a valid claim, with knowledge by the latter of such insolvency, is not, unless followed within ninety days by an assignment for the benefit of creditors, invalidated by this section. Magovern v. Richard (S.C. 1887) 27 S.C. 272, 3 S.E. 340. Creditors’ Remedies 1174

A mortgage given by the debtor as security, which was not executed in order to evade this section although made when the debtor was insolvent and embracing his entire assets, does not come within the operation of this section in the absence of the other requisites to that end. Lamar v. Pool (S.C. 1887) 26 S.C. 441, 2 S.E. 322.

The fact that a debtor engaged in a mercantile business, who owed a large number of debts, sold his stock of goods to one of his creditors at a full and fair price, the debt due the purchaser being taken in part payment and the balance being paid to the debtor, is not sufficient to establish as an unlawful preference for that creditor so as to authorize setting aside the transfer at the instance of the other creditors. Verner v. McGhee (S.C. 1887) 26 S.C. 248, 26 S.C. 607, 2 S.E. 113.

**SECTION 27‑25‑20.** Preferential transactions within ninety days of assignment.

If any person, being insolvent, within ninety days before the making of any assignment by him of his property for the benefit of his creditors, with a view of giving a preference to any creditor or person having a claim against him or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered or seized on execution or makes any payment, pledge, assignment, transfer or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance of any part of his property, or to be benefited thereby or by such attachment, having reasonable cause to believe such person to be insolvent and that such attachment, sequestration, seizure, payment, pledge, assignment or conveyance is made in fraud of the provisions of this chapter, such attachment, sequestration, seizure, payment, pledge, assignment, transfer or conveyance so procured, suffered or made by such insolvent person shall be void and the assignee may recover the property, or the value of it, from the person so receiving it or so to be benefited. Nothing, however, in this section shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith, on the occasion of the making of such loan, or any security bona fide made for advances.

HISTORY: 1962 Code Section 57‑352; 1952 Code Section 57‑352; 1942 Code Section 9107; 1932 Code Section 9107; Civ. C. ‘22 Section 5512; Civ. C. ‘12 Section 3733; Civ. C. ‘02 Section 2648; G. S. 2015; R. S. 2147; 1881 (17) 848.

CROSS REFERENCES

Parol, fraudulent and other void gifts or conveyances, see Sections 27‑23‑10 et seq.

Library References

Debtor and Creditor 2.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 29.

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Purpose of section 2

1. In general

This section has no application unless there is either an actual assignment or a state of facts fully proved or admitted which, in conscience or equity, is tantamount to an assignment with unlawful preferences. Verner v McGhee (1886) 2 SE 113. Lamar v Pool (1887) 26 SC 441, 2 SE 322. Archer v Long (1890) 32 SC 171, 11 SE 86. Putney v Friesleben (1890) 32 SC 492, 11 SE 337. First Carolinas Joint Stock Land Bank v Knotts (1939) 191 SC 384, 1 SE2d 797.

Cited in Rice v Columbia (1928) 143 SC 516, 141 SE 705 Roberts v Pipkin (1902) 63 SC 252, 41 SE 300. Leake v Anderson (1895) 43 SC 448, 21 SE 439. Meinhard v Youngblood (1892) 37 SC 223, 15 SE 947. Hairston v Hairston (1892) 35 SC 298, 14 SE 634. E. Sternberger Co. v Summerford (1927) 150 SC 60, 147 SE 627. Southern Trust Co. v Cudd (1932) 166 SC 108, 164 SE 428.

To make a mortgage void under this section, the following facts must appear: (1) That the mortgagor was insolvent at the time of the execution; (2) that the mortgage was made to give the mortgagee a preference; (3) that the mortgagee had reasonable cause to believe the mortgagor insolvent at the time of execution; (4) that the mortgagee had reasonable cause to believe that the mortgage was made in fraud of the assignment law; and (5) that the mortgage was executed within ninety days previous to the date of the assignment. Akers v Rowan (1890) 33 SC 451, 12 SE 165. Haynes v Hoffman (1896) 46 SC 157, 24 SE 103. Lenhardt v Ponder (1902) 64 SC 354, 42 SE 169.

It matters not whether the preferences is fraudulent or not. Lamar v Pool (1887) 26 SC 441, 2 SE 322. Magovern v Richard (1887) 27 SC 272, 3 SE 340.

It is not only formal general assignments containing preferences which this section prohibits, but also any transfer which amounts to such general assignment. First Carolinas Joint Stock Land Bank of Columbia v. Knotts (S.C. 1939) 191 S.C. 384, 1 S.E.2d 797.

If the instruments employed are bona fide intended merely as security and not as a means of evading the provisions of this section, then they do not fall within its purview. But if the instruments resorted to, whatever may be their form, are intended not merely as security but as a means of transferring the debtor’s property to the favored creditor to the exclusion of others, with a view to evasion of the provisions of this section, then they must be regarded as null and void under such provisions. First Carolinas Joint Stock Land Bank of Columbia v. Knotts (S.C. 1939) 191 S.C. 384, 1 S.E.2d 797.

This section contemplates a valid deed of assignment. Finley v. Cartwright (S.C. 1899) 55 S.C. 198, 33 S.E. 359.

The invalidity of a mortgage executed by an insolvent within ninety days prior to his assignment for the benefit of creditors in violation of this section, or the fact that a mortgage executed by the insolvent before he assigned was tainted with actual fraud, does not affect the validity of the assignment itself. Durham Fertilizer Co. v. Hemphill (S.C. 1896) 45 S.C. 621, 24 S.E. 85. Creditors’ Remedies 1174

Applied in Adler v. Cloud (S.C. 1894) 42 S.C. 272, 20 S.E. 393.

The term “insolvency” means not having a sufficiency of property to pay debts under legal process. Akers v. Rowan (S.C. 1890) 33 S.C. 451, 12 S.E. 165.

This section applies to foreign assignments as well as domestic. Sheldon v. Blauvelt (S.C. 1888) 29 S.C. 453, 7 S.E. 593, 13 Am.St.Rep. 749.

The right of a debtor to give a preference by mortgage, judgment or other paper to one creditor over others and his inability to do so in an assignment for creditors are separate and distinct matters which cannot be intermingled. Each case must stand upon its facts. If these show simply a mortgage executed with no general assignment following it within ninety days, although the debtor may be insolvent at the time to the knowledge of the creditor, it must stand. If the facts show a preference given in an assignment for the benefit of creditors or the execution of a mortgage within ninety days before such an assignment by an insolvent debtor, and known to be so by the mortgagee, then it will be declared void. Magovern v. Richard (S.C. 1887) 27 S.C. 272, 3 S.E. 340.

2. Purpose of section

The manifest object of this section is to prevent an insolvent debtor from transferring his property for the benefit of one or more creditors to the exclusion of others, whether by deed of assignment or in any other mode. Wilks v. Walker (S.C. 1885) 22 S.C. 108, 53 Am.Rep. 706. Creditors’ Remedies 1174

3. Particular transactions held valid

Assignments are not void because they provide preference for counsel fees for services rendered in connection with an assignment and for rents enforceable by distress. Bryce & Co. v Foot (1886) 25 SC 467. Verner v Davis (1886, SC) 2 SE 114. Akers v Rowan (1890) 33 SC 451, 12 SE 165.

Reservation in deed of assignment of “such real and personal property as is exempt from sale under the homestead laws of this State” does not affect the validity of the assignment. Adler v Cloud (1894) 42 SC 272, 20 SE 393. Haynes v Hoffman (1896) 46 SC 157, 24 SE 103.

A conveyance by an insolvent in pursuance of a parol trust entered into before the insolvency, whereby the insolvent took title to land for which another paid half of the price, with the understanding that they should hold as tenants in common in equal shares until a deed should be requested by the latter, is not within this section, since the insolvent had the right to waive the statute of frauds and did so by executing such conveyance. Finley v. Moore (S.C. 1899) 55 S.C. 195, 33 S.E. 362. Creditors’ Remedies 1178

An assignment by an insolvent to his wife of property exempt as a homestead, though made within ninety days of his general assignment for creditors, is not void as an unlawful preference. Finley v. Cartwright (S.C. 1899) 55 S.C. 198, 33 S.E. 359. Creditors’ Remedies 1178

This section does not affect a partner’s mortgage of his individual property to secure a partnership debt within a ninety‑day period prior to a general assignment by the firm. Durham Fertilizer Co. v. Hemphill (S.C. 1896) 45 S.C. 621, 24 S.E. 85. Fraudulent Conveyances 43(1)

Mortgage of an insolvent debtor to secure a creditor, if not accepted with knowledge of the insolvency within ninety days before the general assignment, is not void. Magovern v. Richard (S.C. 1887) 27 S.C. 272, 3 S.E. 340.

A mortgage taken in good faith but not recorded for nineteen months, and then recorded by the mortgagee within two days before the assignment, is not made by the insolvent debtor within ninety days before such assignment, and is not avoided by this section. South Carolina Loan & Trust Co. v. McPherson (S.C. 1887) 26 S.C. 431, 2 S.E. 267.

Where one purchased bona fide the stock of goods of an insolvent, and paid in part with a debt due him by vendor, the transaction is not in violation of this section. Verner v. McGhee (S.C. 1887) 26 S.C. 248, 26 S.C. 607, 2 S.E. 113.

4. Particular transactions held void

Question as to when chattel mortgage is void, see Magovern v Richard (1887) 27 SC 372, 3 SE 340. Secrest v Hartford Fire Ins. Co. (1904) 68 SC 378, 47 SE 680.

Constructive assignments giving preferences are void. Putney v Friesleben (1890) 32 SC 492, 11 SE 337. Meinhard v Youngblood (1894) 41 SC 312, 19 SE 675.

Rights of creditors under assignment, see Ryttenberg v Keels (1893) 39 SC 203, 17 SE 441. McCreery v Garvin (1893) 39 SC 375, 17 SE 828.

Where an insolvent debtor transfers all of his property to one or more creditors by mortgage, bill of sale or deed, or in any mode intended to be an assignment for the benefit of such creditors to the exclusion of all other creditors, the transaction is void. Wilks v Walker (1885) 22 SC 108. Austin, Nichols & Co. v Morris (1885) 23 SC 393. Mann v Poole (1893) 40 SC 1, 18 SE 145, reh dismd 40 SC 15, 18 SE 889. Meinhard v Strickland (1888) 29 SC 491, 7 SE 838. Mitchell v Mitchell (1894) 42 SC 475, 20 SE 405. Archer v Long (1890) 32 SC 171, 11 SE 86. Putney v Friesleben (1890) 32 SC 492, 11 SE 337.

Where an insolvent owner, after the sale of his land at auction, transfer his interest in the excess bid over the amount of the mortgage to his wife by making a deed to her on her executing a mortgage to the purchaser for the amount of the mortgage and the purchaser’s claim against the husband, such assignment of the difference cannot be sustained under this section, and other creditors may follow the difference between the mortgage and the sum bid and are entitled to a pro rata share therein. McInnis v. McRae (S.C. 1926) 134 S.C. 162, 132 S.E. 473.

Proceedings where assignment is set aside, see Younger v. Massey (S.C. 1894) 41 S.C. 50, 19 S.E. 125.

Reservation of property by prior fraudulent conveyance renders assignment void. Younger v. Massey (S.C. 1893) 39 S.C. 115, 17 S.E. 711.

Assignments are void when they give preference for legal services not rendered in connection with the assignments. Clarke v. Baker (S.C. 1892) 36 S.C. 420, 15 S.E. 614.

Preferences in foreign assignments, though valid where made, are void here. Sheldon v. Blauvelt (S.C. 1888) 29 S.C. 453, 7 S.E. 593, 13 Am.St.Rep. 749.

A conveyance by an insolvent debtor to his wife as a preference, within ninety days before his assignment, is embraced in this section and is void. Wagener v. Boynton (S.C. 1888) 29 S.C. 389, 7 S.E. 481.

**SECTION 27‑25‑30.** Assignment for benefit of creditors; attack by creditor.

Whenever any debtor shall assign his property for the benefit of his creditors, any creditor of such debtor, either by simple contract, specialty or in any other manner, may institute proceedings against the debtor, or the assignee named in the assignment, or both, or any other person properly party thereto, either to attack and set aside the deed of assignment or to enforce the provisions thereof, or for any other purpose whatever, without first obtaining and entering up judgment against the debtor upon the claim or demand so held by the creditor.

HISTORY: 1962 Code Section 57‑353; 1952 Code Section 57‑353; 1942 Code Section 9108; 1932 Code Section 9108; Civ. C. ‘22 Section 5513; Civ. C. ‘12 Section 3734; Civ. C. ‘02 Section 2649; G. S. 2016; R. S. 2148; 1882 (18) 848.

CROSS REFERENCES

Parol, fraudulent and other void gifts or conveyances, see Sections 27‑23‑10 et seq.

Library References

Debtor and Creditor 6.

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C.J.S. Creditor and Debtor Sections 2 to 3, 74 to 83.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Coleman v Curtis (1894) 41 SC 288, 19 SE 499. Mann v Poole (1893) 40 SC 1, 18 SE 145, reh dismd 40 SC 15, 18 SE 889. Hairston v Hairston (1892) 35 SC 298, 14 SE 634. Pelzer v Hughes (1887) 27 SC 408, 3 SE 781. E. Sternberger Co. v Summerford (1927) 150 SC 60, 147 SE 627. Southern Trust Co. v Cudd (1932) 166 SC 108, 164 SE 428.

Applied in Austin, Nichols & Co. v Morris (1885) 23 SC 393. Miller v Hughes (1890) 33 SC 530, 12 SE 419.

Receivership on ground of fraudulent assignment, see Whilden v. Chapman (S.C. 1908) 80 S.C. 84, 61 S.E. 249.

Releases under mistake, see Whitehill v. Dacus (S.C. 1897) 49 S.C. 273, 27 S.E. 200.

Under this section a simple contract creditor may maintain an action to set aside an assignment and secure appointment of a receiver on the ground that the assignee is insolvent and incompetent. Regenstein v. Pearlstein (S.C. 1889) 30 S.C. 192, 8 S.E. 850.

An action to restrain a sale under a mortgage amounting to a general assignment and for the appointment of a receiver may be maintained by creditors without first obtaining a judgment at law. Meinhard v. Strickland (S.C. 1888) 29 S.C. 491, 7 S.E. 838. Creditors’ Remedies 1178

**SECTION 27‑25‑40.** Assignment for benefit of creditors; appointment of agents by creditors.

Whenever any debtor shall assign his property for the benefit of his creditors, the creditors may name and appoint an agent or agents, equal in number to the assignees, to act in their behalf jointly with the assignee or assignees named and appointed by the assignor.

HISTORY: 1962 Code Section 57‑354; 1952 Code Section 57‑354; 1942 Code Section 9097; 1932 Code Section 9097; Civ. C. ‘22 Section 5502; Civ. C. ‘12 Section 3723; Civ. C. ‘02 Section 2638; G. S. 2005; R. S. 2137; 1828 (6) 365.

Library References

Debtor and Creditor 4 to 6.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 41 to 65, 74 to 83.

NOTES OF DECISIONS

In general 1

1. In general

Agents and assignees are both trustees. Miller v Sligh (1858) 31 SC Eq 247. McIntyre v McClenaghan (1879) 12 SC 185. Ex parte Wiggins (1833) 10 SC Eq 353. Farrar v Farley (1871) 3 SC 11.

Agents cannot buy at their own sales. Ex parte Wiggins (1833) 10 SC Eq 353. Farrar v Farley (1871) 3 SC 11.

The agents appointed have joint power and responsibility with the assignee. Otis Mills & Co. v Dickson & Mills (1849) 40 SCL 487. Miller v Sligh (1858) 31 SC Eq 247.

Applied in Adler v. Cloud (S.C. 1894) 42 S.C. 272, 20 S.E. 393.

Assignee alone should sue for the assets. Salas v. Cay, Mortimer & Co. (S.C. 1860) 12 Rich. 558.

The provisions of this section as to the administration of the assigned estate do not apply to foreign assignments, and do not render them void. Russell v. Tunno, Pinckney & Co. (S.C. 1858) 11 Rich. 303.

This section only provides for the appointment of an agent by the creditors in case the assignee neglects or refuses to assemble the creditors within ten days after the execution of the deed of assignment. Wallace v. Foster (S.C. 1881) 15 S.C. 214.

Each agent is liable only for his own acts and not for the acts of the others, except where he has contributed to them. Miller v. Sligh (S.C. 1858).

**SECTION 27‑25‑50.** Sales and transfers prior to appointment of agents.

Except as otherwise provided, all sales and transfers of property made by the assignee or assignees prior to the appointment of the agent or agents of the creditors are hereby declared void and of no effect.

HISTORY: 1962 Code Section 57‑355; 1952 Code Section 57‑355; 1942 Code Section 9098; 1932 Code Section 9098; Civ. C. ‘22 Section 5503; Civ. C. ‘12 Section 3724; Civ. C. ‘02 Section 2639; G. S. 2006; R. S. 2138; 1828 (6) 365.

Library References

Debtor and Creditor 5, 6.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65, 74 to 83.

**SECTION 27‑25‑60.** Calling creditors together.

The assignee or assignees, within ten days after the execution of the deed of assignment, shall call the creditors together to proceed to the appointment of their agent or agents.

HISTORY: 1962 Code Section 57‑356; 1952 Code Section 57‑356; 1942 Code Section 9098; 1932 Code Section 9098; Civ. C. ‘22 Section 5503; Civ. C. ‘12 Section 3724; Civ. C. ‘02 Section 2639; G. S. 2006; R. S. 2138; 1828 (6) 365.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

NOTES OF DECISIONS

In general 1

1. In general

The fact that a creditor, after declining to accept the conditions of assignment, attended a meeting called to appoint an agent to act with the assignee does not constitute an acceptance. McCreery v. Garvin (S.C. 1893) 39 S.C. 375, 17 S.E. 828.

**SECTION 27‑25‑70.** Procedure when assignees neglect or refuse to call creditors together.

If the assignee or assignees delay, neglect or refuse to assemble the creditors within the time herein prescribed and limited, the creditors may meet and appoint their agent or agents; and the agent or agents, on application to and by order of the judge of the court of common pleas, shall take into their hands and possession all the property assigned and of which the assignee would by law be entitled to the possession and shall sell and dispose of it agreeably to the deed of assignment.

HISTORY: 1962 Code Section 57‑357; 1952 Code Section 57‑357; 1942 Code Section 9099; 1932 Code Section 9099; Civ. C. ‘22 Section 5504; Civ. C. ‘12 Section 3725; Civ. C. ‘02 Section 2640; G. S. 2007; R. S. 2139; 1828 (6) 365.

Library References

Debtor and Creditor 5, 6.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65, 74 to 83.

**SECTION 27‑25‑80.** Election of agents.

In the appointment of the agent or agents, the majority in amount of the debts represented by the creditors present at the meeting shall govern.

HISTORY: 1962 Code Section 57‑358; 1952 Code Section 57‑358; 1942 Code Section 9100; 1932 Code Section 9100; Civ. C. ‘22 Section 5505; Civ. C. ‘12 Section 3726; Civ. C. ‘02 Section 2641; G. S. 2008; R. S. 2140; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑90.** Rights and powers of agents.

The agent or agents so appointed shall have equal power and authority with the assignee or assignees to sell and dispose of the property assigned and distribute and pay the proceeds, according to the intent and provisions of the deed of assignment. All sales, hypothecations or other transfers of property, whether real or personal, shall be void and null unless made with the consent and concurrence of the assignee or assignees and agent or agents, or a majority of them, and should the assignee or assignees and agent or agents be equally divided on any question such question shall be decided by an umpire appointed as provided in Section 27‑25‑110.

HISTORY: 1962 Code Section 57‑359; 1952 Code Section 57‑359; 1942 Code Section 9100; 1932 Code Section 9100; Civ. C. ‘22 Section 5505; Civ. C. ‘12 Section 3726; Civ. C. ‘02 Section 2641; G. S. 2008; R. S. 2140; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑100.** Effect of neglect or refusal of creditors to appoint agents.

Should the creditors refuse or neglect to appoint an agent or agents within ten days after they have been called together by the assignee or assignees, the assignee or assignees may forthwith proceed to sell or otherwise dispose of the assigned effects, without the concurrence of the creditors.

HISTORY: 1962 Code Section 57‑360; 1952 Code Section 57‑360; 1942 Code Section 9101; 1932 Code Section 9101; Civ. C. ‘22 Section 5506; Civ. C. ‘12 Section 3727; Civ. C. ‘02 Section 2642; G. S. 2009; R. S. 2141; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑110.** Appointment of umpire.

In case of disagreement between the assignee or assignees and agent or agents, any of the judges of the courts of common pleas, at chambers, shall, on application of either of the parties, decide and, if deemed necessary, name and appoint an umpire to act jointly with the assignee or assignees and agent or agents.

HISTORY: 1962 Code Section 57‑361; 1952 Code Section 57‑361; 1942 Code Section 9103; 1932 Code Section 9103; Civ. C. ‘22 Section 5508; Civ. C. ‘12 Section 3729; Civ. C. ‘02 Section 2644; G. S. 2011; R. S. 2143; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑120.** Deposit of proceeds of sales.

The proceeds arising from the sales of the property assigned shall be deposited for safekeeping in a national bank within the State or some banking institution incorporated by the State, in the joint names of the assignee or assignees and agent or agents and subject to their joint drafts.

HISTORY: 1962 Code Section 57‑362; 1952 Code Section 57‑362; 1942 Code Section 9102; 1932 Code Section 9102; Civ. C. ‘22 Section 5507; Civ. C. ‘12 Section 3728; Civ. C. ‘02 Section 2643; G. S. 2010; R. S. 2142; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑130.** General powers of creditors.

The creditors or such committee as they may appoint may direct and prescribe the time and mode of selling and the terms of sale or order a distribution of the assets on hand, and a final closing of the concern. And, in case of need, they may revoke and dismiss their agent or agents and name and appoint another or others in their stead.

HISTORY: 1962 Code Section 57‑363; 1952 Code Section 57‑363; 1942 Code Section 9104; 1932 Code Section 9104; Civ. C. ‘22 Section 5509; Civ. C. ‘12 Section 3730; Civ. C. ‘02 Section 2645; G. S. 2012; R. S. 2144; 1828 (6) 366.

Library References

Debtor and Creditor 6.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 74 to 83.

**SECTION 27‑25‑140.** Statements of proceedings.

The assignee or assignees and agent or agents shall lay, every three months, before the creditors or such committee as they may appoint, an exact statement of their proceedings. The creditors or their committee may, however, call the assignee or assignees and agent or agents oftener to account.

HISTORY: 1962 Code Section 57‑364; 1952 Code Section 57‑364; 1942 Code Section 9104; 1932 Code Section 9104; Civ. C. ‘22 Section 5509; Civ. C. ‘12 Section 3730; Civ. C. ‘02 Section 2645; G. S. 2012; R. S. 2144; 1828 (6) 366.

Library References

Debtor and Creditor 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 47 to 65.

**SECTION 27‑25‑150.** Damages for failure to account or follow directions.

The assignee’s or assignees’ and agent’s or agents’ failure or neglect to lay a statement of their proceedings before the creditors or their committee, as and when directed by Section 27‑25‑140, or whenever called on, or to obey or abide by their directions, renders them answerable for all damages resulting from their refusal or neglect, and they shall forfeit the commission they might otherwise be entitled to.

HISTORY: 1962 Code Section 57‑365; 1952 Code Section 57‑365; 1942 Code Section 9104; 1932 Code Section 9104; Civ. C. ‘22 Section 5509; Civ. C. ‘12 Section 3730; Civ. C. ‘02 Section 2645; G. S. 2012; R. S. 2144; 1828 (6) 366.

Library References

Debtor and Creditor 4.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 41 to 46.

**SECTION 27‑25‑160.** Commissions allowed.

The commission due and owing to the assignee or assignees and agent or agents for their trouble and labor shall be five per cent on receiving and two and a half per cent on paying, to be equally divided between them, that is to say, one half to the assignee or assignees and the other half to the agent or agents. But upon petition to the circuit court or a judge thereof there may, in the discretion of the court or judge, be allowed fees to the assignee or assignees and agent or agents in excess of those above provided.

HISTORY: 1962 Code Section 57‑366; 1952 Code Section 57‑366; 1942 Code Section 9105; 1932 Code Section 9105; Civ. C. ‘22 Section 5510; Civ. C. ‘12 Section 3731; Civ. C. ‘02 Section 2646; G. S. 2013; R. S. 2145; 1828 (6) 367; 1950 (46) 1839.

Library References

Debtor and Creditor 4, 5.

Westlaw Topic No. 117T.

C.J.S. Creditor and Debtor Sections 2 to 3, 41 to 65.

NOTES OF DECISIONS

In general 1

1. In general

An assignee who took a mortgage for the purchase money of property sold, which was foreclosed by a receiver after the assignment was set aside, is not entitled to commissions on the amount of such mortgage, nor on the amount received for the property when sold thereunder, since he neither received nor paid out any part of the purchase money. Mann v. Poole (S.C. 1897) 48 S.C. 154, 26 S.E. 229. Creditors’ Remedies 1180

Extra compensation for extraordinary trouble, see In re Spragins (S.C. 1895) 44 S.C. 65, 21 S.E. 543.