CHAPTER 17

The General Railroad Law

ARTICLE 1

General Provisions

**SECTION 58‑17‑10.** Definitions.

 In the construction of this chapter except when such meaning would be repugnant to the context or contrary to the manifest intention of the General Assembly:

 (1) The phrase “railroads and railways” shall be construed to include all railroads and railways, by whatever motive power they may be operated, except marine railways doing business as common carriers in this State and except street or interurban railroads or railways, whether operated by the corporations owning them or by other corporations or otherwise;

 (2) “Railroad” shall be construed to mean a railroad or railway by whatever motive power operated except such railroads and railways as are excepted under item (1) of this section;

 (3) “The General Railroad Law” shall mean this chapter; and

 (4) The word “person” shall be construed and held to mean an officer, corporation, company, receiver, trustee, lessee, agent or other person acting or engaged in any of the matters and things mentioned in the General Railroad Law.

HISTORY: 1962 Code Section 58‑851; 1952 Code Section 58‑851; 1942 Code Sections 8254, 8257; 1932 Code Sections 8199, 8202; Civ. C. ‘22 Sections 4763, 4766; Civ. C. ‘12 Sections 3098, 3101; Civ. C. ‘02 Sections 2024, 2027; G. S. 1414, 1543; R. S. 1597, 1600; 1882 (17) 840; 1892 (21) 15; 1951 (47) 781.

CROSS REFERENCES

Constitutional provision for regulation of common carriers, see SC Const. Art. IX, Section 1.

Lien on railroads for work or materials, see Section 29‑15‑30.

Notification of railroad officials concerning municipal ordinances, see Section 5‑7‑35.

Offenses of robbery of or on trains, see Sections 16‑11‑350, 16‑11‑360.

Library References

Railroads 2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1 to 22.

NOTES OF DECISIONS

In general 1

1. In general

The word “railroad” in this section [Code 1962 Section 58‑851] is controlling as to the meaning to be given this word wherever it occurs in the chapter. Crawford v Mullins Lumber Co., 110 SC 318, 96 SE 494 (1918). Carroll v United States, 87 F Supp 721 (1949).

Cited in Engelberg v Prettyman & Sons, 159 SC 91, 156 SE 173 (1930). Holmes v Hamilton Ridge Lumber Corp., 120 SC 165, 112 SE 536 (1922). Campbell v Greenville, S. & A. Ry., 97 SC 383, 81 SE 676 (1914).

Logging railroads. In view of this section [Code 1962 Section 58‑851] an ordinary corporation chartered under general laws, which operates a logging railroad, comes within Code 1962 Section 58‑1198 as a railroad corporation responsible for damages by fires. Crawford v. Mullins Lumber Co. (S.C. 1918) 110 S.C. 318, 96 S.E. 494.

Parties in action for damage by fire. There appears to be some inconsistency in the definitions given the terms “railroads and railways,” “railroad,” and “railroad corporation,” in this section [Code 1962 Section 58‑851] and Code 1962 Section 58‑852, which leads to confusion as to whom an action may be brought against to recover for damages by fire. Under these conditions the court, in construing the statute, will look to “the mischief sought to be avoided and the remedy intended to be afforded” by its enactment. Law v. J.F. Prettyman & Sons (S.C. 1929) 149 S.C. 178, 146 S.E. 815.

**SECTION 58‑17‑20.** Definitions applicable to all laws.

 The terms “railroad corporation” and “railroad company” wherever contained in the law of this State shall be deemed and taken to mean all corporations, companies or individuals owning or operating any railroad in whole or in part in this State.

HISTORY: 1962 Code Section 58‑852; 1952 Code Section 58‑852; 1942 Code Section 8254; 1932 Code Section 8199; Civ. C. ‘22 Section 4763; Civ. C. ‘12 Section 3098; Civ. C. ‘02 Section 2024; G. S. 1414; R. S. 1597; 1892 (21) 15; 1951 (47) 781.

Library References

Railroads 2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1 to 22.

**SECTION 58‑17‑30.** Persons to whom chapter shall apply.

 The provisions of the General Railroad Law shall apply to all persons, firms and companies and to all associations, whether incorporated or not, operating as common carriers upon any of the lines of railroads in this State (street railways and express companies excepted) the same as to railroad corporations herein mentioned.

HISTORY: 1962 Code Section 58‑853; 1952 Code Section 58‑853; 1942 Code Section 8254; 1932 Code Section 8199; Civ. C. ‘22 Section 4763; Civ. C. ‘12 Section 3098; Civ. C. ‘02 Section 2024; G. S. 1414; R. S. 1597; 1892 (21) 15; 1951 (47) 781.

Library References

Carriers 5.

Railroads 2.

Westlaw Topic Nos. 70, 320.

C.J.S. Railroads Sections 1 to 22.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 3, Common Carriers.

**SECTION 58‑17‑40.** Property to which chapter shall apply.

 The provisions of the General Railroad Law shall apply to all property, to the receiving, delivery, loading, unloading, handling, storing or carriage of property on one actually or substantially continuous carriage, or as part of such continuous carriage and to the compensation therefor, whether such property be carried wholly on one railroad or partly on several railroads and whether such services are performed or compensation paid by or to one person alone or in connection with another or other persons.

HISTORY: 1962 Code Section 58‑854; 1952 Code Section 58‑854; 1942 Code Section 8299; 1932 Code Section 8299; Civ. C. ‘22 Section 4846; Civ. C. ‘12 Section 3170; Civ. C. ‘02 Section 2088; G. S. 1445; R. S. 1651; 1881 (17) 814.

CROSS REFERENCES

Conveyance of rights‑of‑way to railroads in public lands, see SC Const. Art. III, Section 31.

Library References

Carriers 2.

Westlaw Topic No. 70.

C.J.S. Carriers Section 329.

**SECTION 58‑17‑50.** Chapter applicable to trustees, receivers and the like.

 The provisions of this chapter shall apply to all railroads and railways and to the corporations, trustees, receivers or others owning or operating them.

HISTORY: 1962 Code Section 58‑855; 1952 Code Section 58‑855; 1942 Code Section 8292‑12; 1932 Code Section 8251; Civ. C. ‘22 Section 4811; Civ. C. ‘12 Section 3142; Civ. C. ‘02 Section 2067; G. S. 1455; R. S. 1630; 1881 (17) 817; 1898 (22) 780.

Library References

Carriers 5.

Railroads 204.

Westlaw Topic Nos. 70, 320.

C.J.S. Railroads Section 648.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 3, Common Carriers.

NOTES OF DECISIONS

In general 1

1. In general

Bailee’s negligence was properly imputable to plaintiff where (1) plaintiff railroad which owned locomotive involved in collision with truck, was engaged in joint venture with bailee, parent railroad of system in which plaintiff was wholly owned subsidiary; (2) locomotives owned by each railroad in system were used interchangeably according to need, and owner of locomotive was paid amount which represented reimbursement for cost of ownership; (3) parent company maintained common facilities for repair throughout system; (4) most of employees not covered by union contract were paid ratably by each railroad system; and (5) parent railroad and plaintiff filed consolidated tax returns. Central of Georgia Ry. v. Walker Truck Contractors (S.C. 1978) 270 S.C. 533, 243 S.E.2d 923.

**SECTION 58‑17‑60.** Effect of stock ownership, leases and contracts on application of chapter.

 No ownership or shares of the capital stock of one corporation by another corporation, nor any lease, contract or other agreement between corporations or individuals shall operate as a bar to the provisions of the General Railroad Law.

HISTORY: 1962 Code Section 58‑856; 1952 Code Section 58‑856; 1942 Code Section 8315; 1932 Code Section 8315; Civ. C. ‘22 Section 4862; Civ. C. ‘12 Section 3183; Civ. C. ‘02 Section 2100; G. S. 1474; R. S. 1661; 1882 (18) 823.

Library References

Railroads 16, 119.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41, 403.

**SECTION 58‑17‑70.** Chapter amends charters granted since December 17, 1841.

 Railroad corporations established in this State prior to February 9, 1882, whether by special act or in conformity with the provisions of any general law, shall have the powers and privileges and be subject to the duties, liabilities, restrictions and other provisions contained in the General Railroad Law which, so far as inconsistent with charters granted since December 17, 1841, shall be deemed and taken to be in alteration and amendment thereof.

HISTORY: 1962 Code Section 58‑857; 1952 Code Section 58‑857; 1942 Code Section 8259; 1932 Code Section 8204; Civ. C. ‘22 Section 4768; Civ. C. ‘12 Section 3103; Civ. C. ‘02 Section 2029; G. S. 1545; R. S. 1602; 1882 (17) 791.

Library References

Railroads 19.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 53 to 54.

**SECTION 58‑17‑80.** Benefit of process or proceedings; restrictions.

 Every railroad corporation incorporated under the laws of this State shall have the benefit of every process or proceeding and be subject to all the restrictions which shall or may be provided or imposed by the laws of the State.

HISTORY: 1962 Code Section 58‑858; 1952 Code Section 58‑858; 1942 Code Section 8263; 1932 Code Section 8208; Civ. C. ‘22 Section 4772; Civ. C. ‘12 Section 3107; Civ. C. ‘02 Section 2033; R. S. 1545; 1885 (19) 171.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑90.** General powers and duties of railroad companies.

 Every railroad company incorporated in this State shall have all the rights, powers and privileges set forth and granted in and by this chapter and be subject to all the duties, liabilities, restrictions, provisions and limitations herein contained and such rights, powers, privileges, liabilities, provisions and limitations shall constitute part and parcel of the charter of every such corporation.

HISTORY: 1962 Code Section 58‑859; 1952 Code Section 58‑859; 1942 Code Section 8260; 1932 Code Section 8205; Civ. C. ‘22 Section 4769; Civ. C. ‘12 Section 3104; Civ. C. ‘02 Section 2030; R. S. 1542; 1885 (19) 171.

CROSS REFERENCES

Registration and recordation of deeds of railroads, see Section 30‑11‑10 et seq.

Library References

Railroads 18.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 25 to 26, 47 to 50.

**SECTION 58‑17‑100.** Contracts or combinations in violation of chapter shall be void.

 Any contract, combination, joint ownership or joint management contrary to the provisions of this chapter shall be null, void, and of no effect.

HISTORY: 1962 Code Section 58‑860; 1952 Code Section 58‑860; 1942 Code Section 8315; 1932 Code Section 8315; Civ. C. ‘22 Section 4862; Civ. C. ‘12 Section 3183; Civ. C. ‘02 Section 2100; G. S. 1474; R. S. 1661; 1881 (17) 823.

Library References

Railroads 137.

Westlaw Topic No. 320.

C.J.S. Railroads Section 441.

**SECTION 58‑17‑110.** Mandamus to require compliance with law.

 If any railroad company neglects or refuses to comply with the provisions of the General Railroad Law or with the rules and regulations prescribed by the commission within the limits of its authority, the company is subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge, upon application of the Office of Regulatory Staff, to require compliance with the laws or the rules and regulations and failure to comply with the writ of mandamus shall be punishable as for contempt. And for any wilful violation of any laws or failure to comply with the requirements of the rules or regulations the court may award costs and counsel fees, on the return of the writ and after due deliberation thereon, as may be just.

HISTORY: 1962 Code Section 58‑864; 1952 Code Section 58‑864; 1942 Code Section 8341; 1932 Code Section 8341; Civ. C. ‘22 Section 4888; Civ. C. ‘12 Section 3208; Civ. C. ‘02 Section 2119; R. S. 1670; 1892 (21) 14; 2006 Act No. 318, Section 107, eff May 24, 2006.

CROSS REFERENCES

Mandamus, generally, see SCRCP, Rule 65.

Library References

Mandamus 130.

Westlaw Topic No. 250.

C.J.S. Mandamus Sections 319 to 324.

NOTES OF DECISIONS

In general 1

1. In general

In mandamus proceeding by public service commission to require railroad to comply with commission’s order requiring rebuilding of burned union station within one year and inauguration of passenger train service thereto and therefrom, evidence was not sufficient to show that operation of such station and incidental train dispositions were not necessary to afford suitable passenger service in the city of Charleston. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Mandamus 168(4)

When public service commission has rendered its judicial decision as a court, its orders must be obeyed and will be enforced by mandamus. Code 1932, Sections 8272, 8341. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

Public service commission has authority in a judicial way, after a hearing, to require railroad company to restore passenger trains which it has discontinued without permission of the commission and to apply for writ of mandamus to enforce such judicial order. Code 1932, Sections 8272, 8341. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

Counsel fees. Counsel who brought suit to compel continued operation of public utility entitled to reasonable fees under this section [Code 1962 Section 58‑864]. State v. Broad River Power Co. (S.C. 1931) 164 S.C. 208, 162 S.E. 74.

Mandamus is the remedy provided by Civ.Code 1902, Section 2119, to enforce a decree of the Railroad Commission. Railroad Com’rs v. Atlantic Coast Line R. Co. (S.C. 1905) 71 S.C. 130, 50 S.E. 641.

**SECTION 58‑17‑120.** Rules of evidence shall be same as in civil cases.

 In all cases under the provisions of the General Railroad Law the rules of evidence shall be the same as in civil actions, except as herein otherwise provided.

HISTORY: 1962 Code Section 58‑866; 1952 Code Section 58‑866; 1942 Code Section 8258; 1932 Code Section 8203; Civ. C. ‘22 Section 4767; Civ. C. ‘12 Section 3102; Civ. C. ‘02 Section 2028; 1892 (21) 14.

CROSS REFERENCES

Evidence, generally, see Section 19‑1‑10 et seq.

Library References

Railroads 9(2), 10.

Westlaw Topic No. 320.

C.J.S. Railroads Section 86.

**SECTION 58‑17‑130.** Disposition of fines.

 All fines recovered under the provisions of the General Railroad Law shall be paid one half into the State Treasury, to be used for such purposes as the General Assembly may provide, and the other half into the county treasury of the county in which the case is tried.

HISTORY: 1962 Code Section 58‑867; 1952 Code Section 58‑867; 1942 Code Section 8258; 1932 Code Section 8203; Civ. C. ‘22 Section 4767; Civ. C. ‘12 Section 3102; Civ. C. ‘02 Section 2028; 1892 (21) 14.

Library References

Carriers 20(1).

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 332.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑140.** Annual report of Commission with respect to railroads.

 The Office of Regulatory Staff shall make an annual report to the General Assembly of its official acts, including such statements, facts, and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the State, and suggestions as to the general railroad policy of the State or any part thereof or as to the condition, affairs, or conduct of any of the railroad corporations as may seem to it appropriate, with a special report of all accidents, and the causes thereof, for the preceding year. It shall also recommend legislation as in its judgment may be necessary to secure just and reasonable rates for the transportation of passengers and freights and for the prevention of unjust discrimination. The annual report must be transmitted to the President of the Senate and the Speaker of the House of Representatives on or before the second Monday in November in each year.

HISTORY: 1962 Code Section 58‑868; 1952 Code Section 58‑868; 1942 Code Sections 8292‑19, 8292‑20; 1932 Code Sections 2133, 8278, 8279; Civ. C. ‘22 Sections 94, 4826, 4827; Civ. C. ‘12 Sections 89, 3152, 3153; Civ. C. ‘02 Sections 85, 2074, 2075; G. S. 1462, 1463; R. S. 79, 1637, 1638; 1882 (18) 819; 1883 (18) 485; 2006 Act No. 318, Section 108, eff May 24, 2006.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑150.** Notification of needed repairs or improvements; legal action to enforce.

 (A) Whenever, in the judgment of the Office of Regulatory Staff, it shall appear that repairs are necessary upon any such railroad or that any addition to the rolling stock or any enlargement of, or improvement in, the stations or station houses, any modification in the rates of fare for transporting freight or passengers or any change in the mode of operating the road and conducting its business is reasonable and expedient in order to promote the security, convenience, and accommodation of the public, the Office of Regulatory Staff shall give information in writing to the corporation of the repairs, additions, improvements, or changes which it adjudges to be proper. If the company shall fail, within sixty days, to adopt the suggestions of the Office of Regulatory Staff, it shall take legal proceedings as it may deem expedient and may call upon the Attorney General to institute and conduct such proceedings. The power herein conferred upon the Office of Regulatory Staff shall be sufficient to require of common carriers the establishment and maintenance of terminal facilities, the extension of pass tracks, sidetracks, and other than industrial tracks and all other improvements and changes which seem reasonable and expedient to the Office of Regulatory Staff.

 (B) Any railroad subject to the jurisdiction of the commission may retire any team track within this State upon showing that the track has not been used for at least two years. Before any track is retired for nonuse, the railroad shall give thirty days’ written notice to the commission and to the Office of Regulatory Staff . The notice must be accompanied by a fee of fifty dollars and an affidavit of the railroad’s agent or employee having personal knowledge of the fact that the track has not been used by the public during the two‑year period immediately preceding the retirement date of the track.

HISTORY: 1962 Code Section 58‑981; 1952 Code Section 58‑981; 1942 Code Section 8292‑14; 1932 Code Section 8273; Civ. C. ‘22 Section 4821; Civ. C. ‘12 Section 3147; Civ. C. ‘02 Section 2069; G. S. 1457; R. S. 1632; 1881 (17) 818; 1920 (31) 1086; 1935 (39) 25; 1988 Act No. 658, Part II, Section 23, eff June 8, 1988; 2006 Act No. 318, Section 109, eff May 24, 2006.

CROSS REFERENCES

Proceeding against company for violation, see Section 58‑17‑180.

Library References

Carriers 12(11).

Railroads 9(1), 223.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 350.

C.J.S. Railroads Sections 86, 714 to 726, 731 to 732, 741 to 743, 746, 752, 754, 790 to 791.

NOTES OF DECISIONS

In general 1

1. In general

The State Railroad Commission held to have authority, under the police power of the state, to order a railroad to construct a shed for the traveling public at a station at which trains carrying both interstate and intrastate passengers stop. Shealy v. Southern Ry. Co. (S.C. 1924) 127 S.C. 15, 120 S.E. 561.

Civ.Code 1902, Section 2069 (See Code 1942, Section 8292‑14), providing that when, in the judgment of the railroad commissioners, any enlargement of or improvement in stations, mode of operating a railroad, etc., is reasonable and expedient to promote the security, etc., of the public, they shall give information in writing to the railroad company, and, if the company fail within 60 days to adopt the suggestion, action may be brought, is not violative of Const.U.S. Amend. 14, and Const.S.C. art. 1, Section 5, forbidding any person to be deprived of property without due process of law, because failing to expressly require a notice and hearing before the commissioners could require the changes. Caughman v. Columbia, N. & L. R. Co. (S.C. 1909) 82 S.C. 418, 64 S.E. 240.

This section [Code 1962 Section 58‑981] authorizes the commissioners to ascertain and determine the facts. Railroad Com’rs v. Atlantic Coast Line R. Co. (S.C. 1905) 71 S.C. 130, 50 S.E. 641, reversed 28 S.Ct. 121, 207 U.S. 328, 52 L.Ed. 230.

The railroad commissioners in South Carolina cannot maintain a suit to compel a railroad company to establish and maintain a station house, under the charge of a competent agent, at a certain place on its road, in their own name, under Gen.St. Section 1457 (See Code 1942, Section 8292‑14), as that section imposes no penalty for a violation of its provisions, but such action must be brought under section 1539 (See Code 1942, Section 8455), which provides that, where no penalty has been provided for a violation of the provisions of the statute, the penalty shall be not less than $1,000, to be recovered by the state by action in any circuit court, to be brought by the attorney general upon the request of the commissioners. Bonham v. Columbia & G. R. Co. (S.C. 1887) 26 S.C. 353, 2 S.E. 127.

**SECTION 58‑17‑160.** Railroads shall not remove from towns of more than 500.

 In the exercise of the powers and rights conferred in this chapter no railroad shall remove its line of railway from any incorporated town of more than five hundred inhabitants through which it now runs.

HISTORY: 1962 Code Section 58‑982; 1952 Code Section 58‑982; 1942 Code Section 8274; 1932 Code Section 8219; Civ. C. ‘22 Section 4783; 1915 (29) 539; 1916 (29) 824.

Library References

Railroads 214.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 711 to 713, 729 to 730.

**SECTION 58‑17‑170.** General supervision of railroads; enforcement of chapter.

 The Office of Regulatory Staff shall have the general supervision of all railroads and railways in this State operated by steam and must examine them and keep informed as to their condition and the manner in which they are operated, with reference to the security and accommodation of the public and the compliance of the several corporations with the provisions of their charters and the laws of the State. The Office of Regulatory Staff shall enforce the provisions of this chapter.

HISTORY: 1962 Code Section 58‑1031; 1952 Code Section 58‑1031; 1942 Code Section 8292‑12; 1932 Code Section 8251; Civ. C. ‘22 Section 4811; Civ. C. ‘12 Section 3142; Civ. C. ‘02 Section 2067; G. S. 1455; R. S. 1630; 1881 (17) 817; 1898 (22) 780; 2006 Act No. 318, Section 110, eff May 24, 2006.

CROSS REFERENCES

Rules and regulations promulgated under authority of this section, see S.C. Code of Regulations R. 103‑6 et seq.

Library References

Railroads 9.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

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Presumptions and burden of proof 5

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1. In general

Commission given general supervision of all railroads. Southern Ry. Co. v South Carolina Public Service Comm., 31 F Supp 707 (1940). Southern Ry. Co. v Public Service Comm., 195 SC 247, 10 SE2d 769 (1940). Darby v Southern Ry. Co., 194 SC 421, 10 SE2d 465 (1940).

Power of supervision. This section [Code 1962 Section 58‑1031] confers powers of supervision. Railroad Com’rs v Atlantic Coast Line R. Co., 71 SC 130, 50 SE 641 (1905). Railroad Com’rs v Columbia, N. & L. R. Co., 82 SC 418, 64 SE 240 (1909).

Order of Commission has force and effect of law. An order of the Public Service Commission, issued under the power and authority conferred upon it, has the force and effect of law. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Public Utilities 169.1

Section deals with administrative matters. This section [Code 1962 Section 58‑1031], in the light of the constitutional provision under which the Commission was created (SC Const, Art 9, Section 14) and of the legislation under which it operates, goes no further than to deal with administrative as distinguished from regulatory matters, nor does it purport to nullify the legislative purpose so clearly expressed in the whole scheme of legislation applicable to railroad operation. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

Notice of hearing. Caughman v. Columbia, N. & L. R. Co. (S.C. 1909) 82 S.C. 418, 64 S.E. 240.

Power to regulate. Commission’s power to regulate does not exclude that of municipalities within their limits. Boggero v. Southern Ry. Co. (S.C. 1902) 64 S.C. 104, 41 S.E. 819.

Regulation of hours when ticket office must be opened. Hall v. South Carolina Ry. Co. (S.C. 1886) 25 S.C. 564.

2. Constitutional issues

Upon question whether union station operation and train dispositions incidental thereto will result in an undue burden on interstate commerce, the serious injury to which the community may be subjected by abandonment is to be weighed against the burden upon a prosperous carrier. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Commerce 58

3. Facilities

Railroads may be required at their own expense to provide reasonably adequate and suitable facilities for the convenience of the communities served by them. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Railroads 225

The power to regulate railroads concerning adequacy of facilities furnished by them for convenience of communities serviced by them is not unlimited, and the question in each case is whether the regulation is essentially reasonable, and matter of expense is an important criterion to be considered. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 9(1)

Where railroads, who owned passenger service and facilities under the franchises, did not show an over‑all loss from exercise of their franchise rights in either city involved or state, they failed to establish that use of union station which they were ordered to rebuild would constitute an undue burden on interstate commerce because of losses which they claimed would result. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Commerce 58

Railroads, which had franchises which included the duty of furnishing adequate passenger service and facilities, could not continue to enjoy franchises and escape burden thereof. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 31

Where railroads failed to show that rebuilding of burned union station within one year inauguration of passenger train service thereto and therefrom was not necessary to afford suitable passenger service, public service commission’s order requiring such to be done was not arbitrary or unreasonable, and fact that station operation and incidental train dispositions may not be profitable by themselves would not make such order result in confiscation of railroad’s property. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 226

Trackage agreement between two railroads was a necessary incident to the joint maintenance and operation of the union station by such railroads, and attempted cancellation of such agreement without authority of the public service commission was invalid. Code 1942, Sections 8292‑12, 8341, 8415; Act Feb. 20, 1902, 23 St. at Large, p. 1168; 28 U.S.C.A. Section 2284. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 124

4. Mandamus

In mandamus proceeding by public service commission to require railroad to comply with commission’s order requiring rebuilding of burned union station within one year and inauguration of passenger train service thereto and therefrom, evidence was not sufficient to show that operation of such station and incidental train dispositions were not necessary to afford suitable passenger service in the city of Charleston. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Mandamus 168(4)

5. Presumptions and burden of proof

And is presumptively valid, reasonable and correct. Decisions and orders of the Public Service Commission with respect to the regulation of public utilities are prima facie or presumptively valid, reasonable, and correct. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Public Utilities 183; Public Utilities 185

Attack on order of Commission. A utility attacking an order of the Commission “carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.” Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Public Utilities 184

Public service commission’s order requiring two railroads to rebuild their passenger station building, which had previously burned to inaugurate passenger service thereto and therefrom, to make monthly reports of progress, and to complete station within one year was presumptively just and reasonable, and commission’s findings of fact were prima facie correct. Code 1942, Sections 8292‑12, 8341, 8415; Act Feb. 20, 1902, 23 St. at Large, p. 1168; 28 U.S.C.A. Section 2284. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Administrative Law And Procedure 924; Railroads 9(2)

6. Review

Judicial correction of Commission’s order. The Commission’s order made pursuant to legislative authority or in the exercise of the police powers of the State is subject to judicial correction only in so far as it might be held, as a matter of law, to embody arbitrary or capricious action. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Public Utilities 183

A court cannot substitute its judgment for that of the Commission upon a question as to which there is room for a difference of intelligent opinion, and will not set aside an order of the Commission merely upon the conception of the court as to the wisdom or expediency of the order. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 226 S.C. 136, 84 S.E.2d 132. Public Utilities 183

Review of findings of fact by Commission. Court will not review findings of fact by Commission. Railroad Com’rs v. Atlantic Coast Line R. Co. (S.C. 1906) 74 S.C. 80, 54 S.E. 224, reversed 28 S.Ct. 121, 207 U.S. 328, 52 L.Ed. 230.

**SECTION 58‑17‑180.** Notification to railroad of violation of charter or law; suit for mandamus or to restrain continued violations.

 Whenever in the judgment of the Office of Regulatory Staff it shall appear that any such corporation has violated any law or neglected, in any respect or particular, to comply with the terms of its charter or with the provisions of any of the laws of the State, especially in regard to connections with other railroads, its rates of toll, or its time schedule, the Office of Regulatory Staff shall give notice thereof in writing to such corporation and if the violation or neglect is continued after such notice, the Office of Regulatory Staff shall make application to a circuit court or a judge thereof in vacation for an injunction to restrain the company complained of from further continuing to violate the law or the terms of its charter or for a writ of mandamus as provided in Section 58‑17‑110.

HISTORY: 1962 Code Section 58‑1032; 1952 Code Section 58‑1032; 1942 Code Section 8292‑13; 1932 Code Section 8272; Civ. C. ‘22 Section 4820; Civ. C. ‘12 Section 3146; Civ. C. ‘02 Section 2068; G. S. 1456; R. S. 1631; 1881 (17) 817; 1935 (39) 25; 2006 Act No. 318, Section 111, eff May 24, 2006.

Library References

Mandamus 130.

Railroads 9.

Westlaw Topic Nos. 250, 320.

C.J.S. Mandamus Sections 319 to 324.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

NOTES OF DECISIONS

In general 1

1. In general

Public service commission has authority in a judicial way, after a hearing, to require railroad company to restore passenger trains which it has discontinued without permission of the commission and to apply for writ of mandamus to enforce such judicial order. Code 1932, Sections 8272, 8341. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

When public service commission has rendered its judicial decision as a court, its orders must be obeyed and will be enforced by mandamus. Code 1932, Sections 8272, 8341. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

**SECTION 58‑17‑190.** Investigation of petitions of local governments; notice.

 Upon the petition of the mayor and aldermen or council of any city or town or the governing body of any county within which any part of any such railroad is located, the commission shall request the Office of Regulatory Staff to make an examination of the condition and operation thereof. Before proceeding to make the examination, the Office of Regulatory Staff shall give to the petitioner and the railroad corporation reasonable notice, in writing, of the time and place of entering upon it.

HISTORY: 1962 Code Section 58‑1033; 1952 Code Section 58‑1033; 1942 Code Section 8292‑15; 1932 Code Section 8274; Civ. C. ‘22 Section 4822; Civ. C. ‘12 Section 3148; Civ. C. ‘02 Section 2070; G. S. 1458; R. S. 1633; 1881 (17) 818; 1935 (39) 25; 2006 Act No. 318, Section 112, eff May 24, 2006.

Library References

Railroads 9(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

NOTES OF DECISIONS

In general 1

1. In general

Right of municipal authorities to regulate speed, etc., of railroads in their limits. Boggero v. Southern Ry. Co. (S.C. 1902) 64 S.C. 104, 41 S.E. 819.

**SECTION 58‑17‑200.** Notice of railroad to remove cause of petition; report to General Assembly; institution of legal proceedings.

 If, upon such examination, it shall appear to the Office of Regulatory Staff that the matter alleged by the petitioner is well founded, it must inform the corporation operating the railroad in the manner provided in Section 58‑17‑180. If the company fails for sixty days after such notice to remove the cause of the petition, the Office of Regulatory Staff shall make a report to the General Assembly for any action as it may consider expedient or, if there be necessity for prompt action, it may take any legal proceedings as may be proper and the Office of Regulatory Staff shall institute the proceedings.

HISTORY: 1962 Code Section 58‑1034; 1952 Code Section 58‑1034; 1942 Code Section 8292‑15; 1932 Code Section 8274; Civ. C. ‘22 Section 4822; Civ. C. ‘12 Section 3148; Civ. C. ‘02 Section 2070; G. S. 1458; R. S. 1633; 1881 (17) 818; 1935 (39) 25; 2006 Act No. 318, Section 113, eff May 24, 2006.

Library References

Railroads 9.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

ARTICLE 3

Incorporation and Operation by Purchaser of Railroad

**SECTION 58‑17‑310.** Purchaser of railroad shall reorganize and commence operation within sixty days; exceptions.

 Any person acquiring any railroad within this State by purchase, foreclosure, or otherwise shall organize under the provisions of this article and put into operation such road within sixty days from the purchase or acquisition thereof.

 The provisions of this section do not apply to acquisitions of railroads by merger or consolidation.

HISTORY: 1962 Code Section 58‑901; 1952 Code Section 58‑901; 1942 Code Section 8277; 1932 Code Section 8222; Civ. C. ‘22 Section 4786; Civ. C. ‘12 Section 3117; Civ. C. ‘02 Section 2043; 1897 (22) 533; 1994 Act No. 479, Section 1, eff July 14, 1994.

CROSS REFERENCES

Acquisition and operation of terminal railroads by State Ports Authority, see Sections 54‑3‑200 to 54‑3‑220.

Library References

Railroads 30, 129(1), 214.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 406, 645, 647, 711 to 713, 729 to 730.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 21, Subsequent Purchasers.

NOTES OF DECISIONS

In general 1

1. In general

Though operation of South Carolina railroad by receiver had been discontinued as dangerous to passengers and crews, held, in view of Civ.Code S.C.1912, Section 3117 (See Code 1942, Section 8277), receiver should be directed to issue certificates to obtain funds for repair of roadbed and to resume operations, there being much traffic ready for movement by railroad. Central Bank & Trust Co. v. Greenville & Western R. Co., 1917, 248 F. 350.

**SECTION 58‑17‑320.** Penalties for failure to reorganize.

 Should any such person mentioned in Section 58‑17‑310 fail to reorganize such company as provided by said section, within the time therein limited, such person shall pay a penalty of fifty dollars per day for each and every day they shall fail to operate such railroad, this penalty to be collected by the Office of Regulatory Staff. But the penalty herein provided shall not attach when reasonable cause for failure to operate can be shown.

 Any person shall, in addition to the penalty above provided, forfeit all of his franchises, powers, and privileges.

HISTORY: 1962 Code Section 58‑902; 1952 Code Section 58‑902; 1942 Code Section 8278; 1932 Code Section 8223; Civ. C. ‘22 Section 4787; Civ. C. ‘12 Section 3118; Civ. C. ‘02 Section 2044; 1897 (22) 533; 1935 (39) 25; 2006 Act No. 318, Section 114, eff May 24, 2006.

Library References

Railroads 30, 254(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 645, 647.

NOTES OF DECISIONS

In general 1

1. In general

Purchasers of railroad who have forfeited their franchise will not be required to restore rails to roadbed, repair trestles, etc., of railroad that has been dismantled under order of court after it was demonstrated that it could not be operated except at a loss. State of South Carolina v. Jack, 1906, 145 F. 281, 76 C.C.A. 165.

**SECTION 58‑17‑330.** Reorganization provisions not applicable to certain sidetracks or spur tracks.

 The provisions of Section 58‑17‑310 shall only apply to the main lines and regular branches of railroads and shall not apply to any sidetracks or spur tracks constructed for special or temporary purpose or occasional use.

HISTORY: 1962 Code Section 58‑903; 1952 Code Section 58‑903; 1942 Code Section 8279; 1932 Code Section 8224; Civ. C. ‘22 Section 4788; Civ. C. ‘12 Section 3119; Civ. C. ‘02 Section 2045.

Library References

Railroads 30.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 645, 647.

**SECTION 58‑17‑340.** Formation of corporation following purchase of railroad by virtue of mortgage or deed of trust by filing certificate.

 In case of the sale of any railroad situated wholly or partly within this State, by virtue of any mortgage or deed of trust, whether under foreclosure or other judicial proceeding or pursuant to any power contained in such mortgage or deed of trust, the purchaser thereof or his survivor representatives or assigns may, together with his associates, if any, form a corporation for the purpose of owning, possessing, maintaining and operating such railroad, or such portion thereof as may be situated within this State, by filing in the office of the Secretary of State a certificate specifying the name and style of such corporation, the number of its directors, the names of its directors and the period of their services, not exceeding one year, the amount of the capital stock of such corporation and the number of shares into which it is to be divided.

 But nothing herein contained shall be construed to authorize in any manner the purchase or lease of such railroad by any railroad corporation or steamship company chartered either by this or any other state except as herein provided.

HISTORY: 1962 Code Section 58‑904; 1952 Code Section 58‑904; 1942 Code Section 8276; 1932 Code Section 8221; Civ. C. ‘22 Section 4785; Civ. C. ‘12 Section 3116; Civ. C. ‘02 Section 2042; G. S. 1420; R. S. 1610; 1881 (17) 793; 1889 (20) 377.

Library References

Railroads 129(1).

Westlaw Topic No. 320.

C.J.S. Railroads Section 406.

NOTES OF DECISIONS

In general 1

1. In general

Where a railroad company holding a charter that was, in express terms, not liable to amendment, was sold out under orders of the court, and the purchasers formed a new corporation under a general law permitting it in such cases, with all the rights, immunities, &c., possessed by the old corporation previous to the sale under its charter, and amendments thereto, and of other laws of the State, the new corporation became subject to all laws on the statute book, applicable to railroads, at the date of their organization. Columbia & Greenville R. Co. v. Gibbes (S.C. 1885) 24 S.C. 60, 1885 WL 3704, Unreported.

**SECTION 58‑17‑350.** Maximum amount of capital stock which may be named in certificate; increase.

 The capital stock to be named in the certificate aforesaid shall in no case be greater than the amount of the capital stock specified in the original charter of the railroad so sold and any amendment or amendments thereto. Nothing herein contained, however, shall be construed to prevent an increase of capital stock to such additional amount as may be needed to convert any bonds or other indebtedness of the original corporation into stock and the corporation so formed may divide its capital stock into common and preferred stock upon such terms and with such conditions as may be prescribed.

HISTORY: 1962 Code Section 58‑905; 1952 Code Section 58‑905; 1942 Code Section 8276; 1932 Code Section 8221; Civ. C. ‘22 Section 4785; Civ. C. ‘12 Section 3116; Civ. C. ‘02 Section 2042; G. S. 1420; R. S. 1610; 1881 (17) 793; 1889 (20) 377.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

**SECTION 58‑17‑360.** Persons signing certificate shall be body corporate; powers.

 The persons signing such certificate and their successors shall be a body corporate and politic, by the name specified in such certificate, with power to sue and be sued, contract and be contracted with and to own, possess, maintain and operate the railroad referred to in such certificate and to transact all business connected therewith.

HISTORY: 1962 Code Section 58‑906; 1952 Code Section 58‑906; 1942 Code Section 8276; 1932 Code Section 8221; Civ. C. ‘22 Section 4785; Civ. C. ‘12 Section 3116; Civ. C. ‘02 Section 2042; G. S. 1420; R. S. 1610; 1881 (17) 793; 1889 (20) 377.

Library References

Railroads 14, 18.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 25 to 26, 33 to 36, 47 to 52.

Attorney General’s Opinions

The Boogaloo Railroad Crossing north of Sycamore in Allendale County. SC Op.Atty.Gen. (Feb. 26, 2008) 2008 WL 608965.

**SECTION 58‑17‑370.** Powers, rights and the like of corporation organized under article.

 Any corporation organized under the provisions of this article shall possess all the powers, rights, immunities, privileges and franchises in respect to such railroad, or the part thereof included in such certificate, and in respect to the real and personal property appertaining to it, which were possessed or enjoyed by the corporation which owned or held such railroad previous to such sale, under or by virtue of its charter and any amendments thereto and of other laws of this State or the laws of any other state in which any part of such railroad may have been situated, not inconsistent with the laws of this State.

HISTORY: 1962 Code Section 58‑907; 1952 Code Section 58‑907; 1942 Code Section 8280; 1932 Code Section 8225; Civ. C. ‘22 Section 4789; Civ. C. ‘12 Section 3120; Civ. C. ‘02 Section 2046; G. S. 1421; R. S. 1611; 1881 (17) 793.

Library References

Railroads 18.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 25 to 26, 47 to 50.

**SECTION 58‑17‑380.** Adoption of bylaws, rules and regulations by corporation.

 Any such corporation may make bylaws, rules and regulations in relation to its business, the number of its directors and the times and places of holding meetings of the stockholders and directors and may alter and change such bylaws as may be deemed expedient; provided, that such bylaws, rules and regulations shall conform to the laws of this State.

HISTORY: 1962 Code Section 58‑908; 1952 Code Section 58‑908; 1942 Code Section 8283; 1932 Code Section 8228; Civ. C. ‘22 Section 4792; Civ. C. ‘12 Section 3123; Civ. C. ‘02 Section 2048; G. S. 1423; R. S. 1612; 1881 (17) 794.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

**SECTION 58‑17‑390.** Amount of capital stock corporation may issue.

 Any such corporation may issue capital stock to such an aggregate amount as may be deemed necessary, not exceeding the amount named in its certificate of organization.

HISTORY: 1962 Code Section 58‑909; 1952 Code Section 58‑909; 1942 Code Section 8283; 1932 Code Section 8228; Civ. C. ‘22 Section 4792; Civ. C. ‘12 Section 3123; Civ. C. ‘02 Section 2048; G. S. 1423; R. S. 1612; 1881 (17) 794.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

**SECTION 58‑17‑400.** Issuance and sale of bonds; execution of mortgage or deed of trust to secure payment of bonds.

 Any such corporation may make and issue bonds bearing such rate of interest, not exceeding seven per cent per annum, payable at such times and places and in such amount or amounts as it may deem expedient and may sell and dispose of such bonds at such prices and in such manner as it may deem proper and secure the payment of such bonds by mortgage or deeds of trust on its railroad or any part thereof and its real and personal property and franchises. And all of the property and franchises of such corporation embraced or intended to be embodied in any such mortgage or deed of trust, whether then held or thereafter acquired, shall be subject to the lien and operation of such mortgage or deed of trust and, in case of sale under it, shall pass to and become vested in the purchaser thereof so as to enable him to form a new corporation in the manner herein prescribed and to vest in such new corporation all the faculties, rights, immunities, privileges and franchises possessed by its predecessor or conferred by this chapter.

HISTORY: 1962 Code Section 58‑910; 1952 Code Section 58‑910; 1942 Code Section 8281; 1932 Code Section 8226; Civ. C. ‘22 Section 4790; Civ. C. ‘12 Section 3121; Civ. C. ‘02 Section 2047; G. S. 1422; R. S. 1612; 1881 (17) 793.

Library References

Railroads 149.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 473 to 485.

**SECTION 58‑17‑410.** Sinking fund.

 Any such corporation may so establish sinking funds for the payment of its liabilities.

HISTORY: 1962 Code Section 58‑911; 1952 Code Section 58‑911; 1942 Code Section 8283; 1932 Code Section 8228; Civ. C. ‘22 Section 4792; Civ. C. ‘12 Section 3123; Civ. C. ‘02 Section 2048; G. S. 1423; R. S. 1612; 1881 (17) 794.

Library References

Railroads 173.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 582 to 586.

**SECTION 58‑17‑420.** Charter subject to amendment, alteration or repeal by State.

 Any railroad corporation formed under the provisions of this article shall be subject, as to the charter of such corporation, to the provisions of Section 12‑401 of the Code of Laws of South Carolina, 1962, any provision in the original charter of the company which owned or held such railroad previous to such sale or any amendment thereto to the contrary notwithstanding.

HISTORY: 1962 Code Section 58‑912; 1952 Code Section 58‑912; 1942 Code Section 8284; 1932 Code Section 8229; Civ. C. ‘22 Section 4793; Civ. C. ‘12 Section 3124; Civ. C. ‘02 Section 2049; 1881 (17) 795.

Editor’s Note

Section 12‑401 of the Code of Laws of South Carolina, 1962, referred to in this section, was repealed by 1962 Act No. 847 (1962 (52) 1896). Prior to its repeal that section read as follows:

“It shall be deemed a part of the charter of every corporation created under the provisions of any general law and of every charter granted, renewed, or amended by act or joint resolution of the General Assembly, unless such act or joint resolution shall, in express terms, declare the contrary, that such charter and every amendment and renewal thereof shall always remain subject to amendment, alteration or repeal by the General Assembly.”

Library References

Railroads 19.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 53 to 54.

**SECTION 58‑17‑430.** Certificate as evidence of incorporation.

 A copy of such certificate, attested by the Secretary of State or his deputy, shall, in all courts and places, be evidence of the due organization and existence of such corporation and of the matters specified in such certificate.

HISTORY: 1962 Code Section 58‑913; 1952 Code Section 58‑913; 1942 Code Section 8276; 1932 Code Section 8221; Civ. C. ‘22 Section 4785; Civ. C. ‘12 Section 3116; Civ. C. ‘02 Section 2042; G. S. 1420; R. S. 1610; 1881 (17) 793; 1889 (20) 377.

Library References

Railroads 14.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 33 to 36, 51 to 52.

ARTICLE 5

Consolidation or Acquisition of Railroad Companies or Interests

**SECTION 58‑17‑610.** Merger or consolidation with continuous or connected railroad authorized.

 Any railroad company organized under the laws of this State and operating a railroad, whether wholly within or partly within and partly without this State, under the authority of this State, or of this State and any adjoining state, may consolidate its capital stock, franchises, and property with those of any other railroad company organized and operated under the laws of this or any other state so as to form a new consolidated corporation, or either of such companies may merge or be merged into the other when two or more railroads of the companies proposed to be consolidated or merged are continuous or are connected either directly with each other or by means of any intervening railroad. Railroads terminating on the banks of any river which are or may be connected by ferry or otherwise shall be considered continuous within the meaning of this article. Any consolidation of railroad companies shall be carried out by each railroad company according to the provisions of this article. Any merger of railroad companies shall be carried out by each railroad company according to and with the effects stated in Title 33, Chapter 11, and in such a merger, dissenting stockholders’ rights shall be determined in accordance with Title 33, Chapter 13.

HISTORY: 1962 Code Section 58‑921; 1952 Code Section 58‑921; 1942 Code Section 8285; 1932 Code Section 8230; Civ. C. ‘22 Section 4794; Civ. C. ‘12 Section 3125; Civ. C. ‘02 Section 2050; G. S. 1425; R. S. 1615; 1901 (23) 717; 1994 Act No. 479, Section 2, eff July 14, 1994.

Library References

Railroads 120, 140.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 402, 447 to 465.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 22, Mergers.

NOTES OF DECISIONS

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For additional related cases, see State v Southern Ry. Co., 82 SC 12, 62 SE 1116 (1908). Southern Ry. Co., v Howell, 79 SC 281, 60 SE 677 (1908). Geraty v Atlantic Coast Line R. Co., 80 SC 355, 60 SE 936 (1908). Reed v Southern Ry. Co., 75 SC 162, 55 SE 218 (1906). Best v Seaboard Air Line Ry. Co., 72 SC 479, 52 SE 223 (1905).

Agreement held to be merger and not a consolidation. Lee v. Atlantic Coast Line R. Co., 1906, 150 F. 775, reversed 166 F. 850, 94 C.C.A. 128.

Citizenship of consolidating foreign corporation. Where the company into which was merged the other company was a foreign corporation, such merger does not change the citizenship of the consolidating company for purpose of Federal jurisdiction, although for other purposes it becomes a domestic corporation. Lee v. Atlantic Coast Line R. Co., 1906, 150 F. 775, reversed 166 F. 850, 94 C.C.A. 128.

Duties and liabilities of the new company. Joseph v. Southern Ry. Co., 1904, 127 F. 606.

Liability for torts previously committed. Where two railroad companies consolidate, a corporation so consolidated is not relieved of its liability for a tort previously committed. Stewart v. Walterboro & W. Ry. Co. (S.C. 1902) 64 S.C. 92, 41 S.E. 827.

**SECTION 58‑17‑620.** Procedure for consolidation.

 Any consolidation of railroad companies must be made under the conditions, provisions, and restrictions and with the powers in this article mentioned and contained, that is to say:

 (1) The directors of the several corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each company, for the consolidation of such companies and railroads and prescribing the terms and conditions of them, the mode of carrying it into effect, the name of the new corporation, the number and names of the directors and other officers of it who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount of par value of each share, the manner of converting the capital stock of each of the companies into that of the new corporation and how and when directors and officers must be chosen, with such other details as they shall consider necessary to perfect such new organization and the consolidation of such companies;

 (2) Such agreement must be submitted to the stockholders of each of the companies at a meeting thereof, called separately, for the purpose of taking it into consideration; due notice of the time and place of holding such meeting and the object of it must be given by a general notice published in some newspaper in the city, town, or county in which the company has its principal office or place of business; at the meeting of stockholders the agreement of the directors must be considered and a vote, by ballot, taken for the adoption or rejection of it, each share entitling the holder of it to one vote; the ballots must be cast in person or by proxy; if a majority of all the votes of all the stockholders are for the adoption of the agreement that fact must be certified thereon by the secretary of the respective companies, under the seal of it; and the agreement so adopted, or a certified copy of it, must be filed in the office of the Secretary of State, and must from thence be deemed and taken to be the agreement and the act of consolidation of the companies and a copy of the agreement and act of consolidation, duly certified by the Secretary of State under the seal of it, must be evidence of the existence of such new corporation.

HISTORY: 1962 Code Section 58‑922; 1952 Code Section 58‑922; 1942 Code Section 8286; 1932 Code Section 8231; Civ. C. ‘22 Section 4795; Civ. C. ‘12 Section 3126; Civ. C. ‘02 Section 2051; G. S. 1426; R. S. 1616; 1881 (17) 795; 1994 Act No. 479, Section 3, eff July 14, 1994.

Library References

Railroads 142.

Westlaw Topic No. 320.

C.J.S. Railroads Section 453.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 22, Mergers.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Pickett v Southern Ry. Co., 69 SC 445, 48 SE 466 (1903). Phinizy v Augusta, etc., R. Co., 56 F 273 (1893). Phinizy v Augusta, etc., R. Co., 62 F 678 (1894).

Under Code of Laws, S.C.1902, Section 2050 et seq. (See Code 1942, Section 8285 et seq.), which authorize either the merger or consolidation of a railroad company of the state with another company of the state or of another state when domesticated in the state, and, in case of consolidation, the issuing of a certificate or charter to the consolidated company, where a union of two such companies is by merger instead of consolidation, by virtue of which a corporation of another state absorbs and acquires the property of the other, such corporation does not, by applying for and obtaining a certificate or charter of consolidation, become a citizen of South Carolina for the purposes of the jurisdiction of a federal court, but remains a citizen of the state in which it was originally incorporated, although the effect is to make it a domestic corporation of the state for other purposes. Lee v. Atlantic Coast Line R. Co., 1906, 150 F. 775.

Proof of charter and consolidation agreement. Montgomery v. Seaboard Air Line Ry. (S.C. 1906) 73 S.C. 503, 53 S.E. 987.

**SECTION 58‑17‑630.** Consolidation fees.

 Upon the consolidation of any railroad company there shall be paid to the Secretary of State a fee upon the capital stock of the combined company as in the organization of a new company; provided, that credit shall be given thereon for any charter fees paid by companies forming the consolidated company.

HISTORY: 1962 Code Section 58‑922.1; 1952 Code Section 12‑455; 1942 Code Sections 7738, 7757; 1932 Code Sections 7738, 7757; Civ. C. ‘22 Section 4312; Civ. C. ‘12 Section 2842; Civ. C. ‘02 Section 1888; 1901 (23) 710; 1925 (34) 246; 1927 (35) 30.

Library References

Railroads 140.1.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 447 to 452, 455 to 456.

**SECTION 58‑17‑640.** New charter shall be issued to consolidated company; no additional fee shall be charged.

 When railroad companies are consolidated under the provisions of this article a charter of incorporation for the new company so formed by such consolidation shall be issued to the owners and stockholders of the companies so consolidating or to such of them as the stockholders of each of such companies shall designate. Only the fees provided by law for consolidation shall be charged and no additional fee shall be charged for any such charter.

HISTORY: 1962 Code Section 58‑923; 1952 Code Section 58‑923; 1942 Code Section 8285; 1932 Code Section 8230; Civ. C. ‘22 Section 4794; Civ. C. ‘12 Section 3125; Civ. C. ‘02 Section 2050; G. S. 1425; R. S. 1615; 1901 (23) 717.

Library References

Railroads 143.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 457 to 465.

NOTES OF DECISIONS

In general 1

1. In general

Charter issued but not recorded. While a charter is required to be issued, there is no requirement that such charter shall be recorded, although doubtless as a matter of fact they are customarily recorded. Montgomery v. Seaboard Air Line Ry. (S.C. 1906) 73 S.C. 503, 53 S.E. 987.

**SECTION 58‑17‑650.** Procedure for assessment of damages of dissenting stockholder.

 Any stockholder of any company hereby authorized to consolidate with any other who shall refuse to convert his stock into the stock of the consolidated company may, at any time within thirty days after the adoption of the agreement of consolidation by the stockholders, as in this article provided, apply, by petition, to the court of common pleas of the county in which the chief office of the company may be kept or to a judge of such court in vacation, if no such court sits within such period, on reasonable notice to the company, to appoint three disinterested persons to estimate the damage, if any, done to such stockholder by the proposed consolidation and whose award, or that of a majority of them, when confirmed by the court, shall be final and conclusive. The persons so appointed shall also appraise the stock of any such stockholder at the full market value thereof, without regard to any depreciation or appreciation in consequence of such consolidation and the company may, at its election, either pay to the stockholder the amount of damages so found and awarded, if any, or the value of the stock so ascertained and determined. And upon the payment of the value of the stock, as aforesaid, the stockholder shall transfer the stock so held by him to the company, to be disposed of by the directors of the company or to be retained for the benefit of the remaining stockholders. In case the value of the stock, as aforesaid, is not paid within thirty days from the filing of the award and confirmation thereof by the court and notice to the company, the damages so found and confirmed shall be a judgment against the company and collected as other judgments in such court are by law recoverable.

HISTORY: 1962 Code Section 58‑924; 1952 Code Section 58‑924; 1942 Code Section 8292; 1932 Code Section 8237; Civ. C. ‘22 Section 4801; Civ. C. ‘12 Section 3132; Civ. C. ‘02 Section 2057; G. S. 1432; R. S. 1622; 1881 (17) 796.

Library References

Railroads 142, 144(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 453 to 454.

**SECTION 58‑17‑660.** Rights, duties and the like of consolidated corporation.

 Upon the making and perfecting the agreement and act of consolidation, as provided in Section 58‑17‑620, and filing it, or a copy, with the Secretary of State as aforesaid, the several corporations parties thereto shall be deemed and taken to be one corporation by the name provided in such agreement and act, possessing within this State all the rights, privileges and franchises and subject to all the restrictions, disabilities and duties of each of such corporations so consolidated.

HISTORY: 1962 Code Section 58‑925; 1952 Code Section 58‑925; 1942 Code Section 8287; 1932 Code Section 8232; Civ. C. ‘22 Section 4796; Civ. C. ‘12 Section 3127; Civ. C. ‘02 Section 2052; G. S. 1427; R. S. 1617; 1881 (17) 796.

Library References

Railroads 143, 144(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 454, 457 to 465.

NOTES OF DECISIONS

In general 1

1. In general

Substituting bonds of new corporation for those of old ones. Under this section [Code 1962 Section 58‑925] and Code 1962 Section 58‑926 the directors of a new corporation may, without the vote of the stockholders, issue a mortgage on the property of the new corporation in order to take up and substitute bonds of the new corporation for the bonds of the old corporations. Phinizy v Augusta, etc., R. Co., 62 F 678 (1894).

Under Act Feb. 19, 1902, 23 St. at Large, p. 1152, providing for the consolidation of certain railroads under the laws of the state, and that the consolidated company shall be subject to all the liabilities of the several constituent companies, the consolidated company is liable for a tort committed by a constituent company before the consolidation. Pickett v. Southern Ry. Co., Carolina Division (S.C. 1904) 69 S.C. 445, 48 S.E. 466.

Liability for tort previously committed. One corporation so consolidated is not dissolved so as to relieve it of its liability for a tort previously committed. Stewart v. Walterboro & W. Ry. Co. (S.C. 1902) 64 S.C. 92, 41 S.E. 827.

**SECTION 58‑17‑670.** Transfer of rights, liabilities and the like to consolidated corporation.

 Upon the consummation of the act of consolidation all and singular the rights, privileges and franchises of each of such corporations, parties to such consolidation and all the property, real, personal and mixed, and all debts due on whatever account, as well as all stocks, subscriptions and other things in action belonging to each of such corporations, shall be taken and deemed to be transferred to, and vested in, such new corporation, without further act or deed and all property and rights‑of‑way and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement. The title to real estate, either by deed or otherwise, under the laws of this State vested in either of such corporations shall not be deemed to revert or be in any way impaired by reason of this chapter. But all rights of creditors and all liens upon the property of such corporations shall be preserved unimpaired and the respective corporations may be deemed to continue in existence to preserve them and all debts, liabilities and duties of either of such companies shall thenceforth attach to the new corporation and be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

HISTORY: 1962 Code Section 58‑926; 1952 Code Section 58‑926; 1942 Code Section 8288; 1932 Code Section 8233; Civ. C. ‘22 Section 4797; Civ. C. ‘12 Section 3128; Civ. C. ‘02 Section 2053; G. S. 1428; R. S. 1618; 1881 (17) 796.

Library References

Railroads 143, 144(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 454, 457 to 465.

NOTES OF DECISIONS

In general 1

Federal courts 2

1. In general

Liability for torts committed before consolidation. Corporation created by consolidating railroad companies in this State, is liable for tort committed by constituent company before consolidation. Pickett v Southern Ry. Co., 69 SC 445, 48 SE 466 (1904), distinguishing Stewart v Walterboro, etc., R. Co., 64 SC 92, 41 SE 827 (1902).

Action for debt or tort before consolidation. It seems that action for debt or tort arising before consolidation should be brought against the constituent companies incurring liability. Joseph v. Southern Ry. Co., 1904, 127 F. 606.

Substituting bonds of new corporation for those of constituents. Where constituent corporations had outstanding bonds secured by mortgages, directors of new corporation may, without vote of stockholders, issue bonds and mortgage on property in place of such bonds and mortgage of old corporations. Phinizy v. Augusta & K.R. Co., 1894, 62 F. 678.

The term creditor includes one having a claim for damages against a consolidating road arising out of tort. Though not reduced to judgment, suit may be brought against the original corporation. Stewart v. Walterboro & W. Ry. Co. (S.C. 1902) 64 S.C. 92, 41 S.E. 827.

2. Federal courts

Under Code of Laws, S.C.1902, Section 2050 et seq. (See Code 1942, Section 8285 et seq.), which authorize either the merger or consolidation of a railroad company of the state with another company of the state or of another state when domesticated in the state, and, in case of consolidation, the issuing of a certificate or charter to the consolidated company, where a union of two such companies is by merger instead of consolidation, by virtue of which a corporation of another state absorbs and acquires the property of the other, such corporation does not, by applying for and obtaining a certificate or charter of consolidation, become a citizen of South Carolina for the purposes of the jurisdiction of a federal court, but remains a citizen of the state in which it was originally incorporated, although the effect is to make it a domestic corporation of the state for other purposes. Lee v. Atlantic Coast Line R. Co., 1906, 150 F. 775.

**SECTION 58‑17‑680.** Consolidated corporation shall not acquire greater rights than those of consolidating corporations.

 No new consolidated corporation coming into existence under this article shall thereby acquire any extraordinary rights, privileges and exemptions not enjoyed by one or more of the companies consolidating under their respective charters.

HISTORY: 1962 Code Section 58‑927; 1952 Code Section 58‑927; 1942 Code Section 8292‑3; 1932 Code Section 8240; Civ. C. ‘22 Section 4804; Civ. C. ‘12 Section 3135; Civ. C. ‘02 Section 2060; G. S. 1434; R. S. 1624; 1881 (17) 798.

Library References

Railroads 143, 144(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 454, 457 to 465.

**SECTION 58‑17‑690.** Consolidated corporation shall establish offices.

 Such new company shall, as soon as convenient after such consolidation, establish such offices as may be desirable, one of which shall be at some point in this State, on the line of its road, and may change them at pleasure, giving public notice thereof in some newspaper published on the line of the road.

HISTORY: 1962 Code Section 58‑928; 1952 Code Section 58‑928; 1942 Code Section 8289; 1932 Code Section 8234; Civ. C. ‘22 Section 4798; Civ. C. ‘12 Section 3129; Civ. C. ‘02 Section 2054; G. S. 1429; R. S. 1619; 1881 (17) 796.

Library References

Railroads 143.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 457 to 465.

**SECTION 58‑17‑700.** Liability of consolidated corporation to suits.

 Suits may be brought and maintained against such new company in any of the courts of this State for all causes of action in the same manner as against other railroad companies therein.

HISTORY: 1962 Code Section 58‑929; 1952 Code Section 58‑929; 1942 Code Section 8290; 1932 Code Section 8235; Civ. C. ‘22 Section 4799; Civ. C. ‘12 Section 3130; Civ. C. ‘02 Section 2055; G. S. 1430; R. S. 1620; 1881 (17) 796.

Library References

Railroads 144.

Westlaw Topic No. 320.

C.J.S. Railroads Section 454.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 22, Mergers.

**SECTION 58‑17‑710.** Property of consolidated corporation subject to taxation.

 The portion of the road of such consolidated company in this State and all its real estate and other property theretofore subject to taxation shall be subject to like taxation and assessed in the same manner, and with like effect, as the property of other railroad companies in this State.

HISTORY: 1962 Code Section 58‑930; 1952 Code Section 58‑930; 1942 Code Section 8291; 1932 Code Section 8236; Civ. C. ‘22 Section 4800; Civ. C. ‘12 Section 3131; Civ. C. ‘02 Section 2056; G. S. 1431; R. S. 1621; 1881 (17) 796.

Library References

Taxation 2245.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 215 to 217.

**SECTION 58‑17‑720.** Consolidations and the like of competing railroads prohibited.

 No corporations owning and controlling lines of railroad which can compete as set forth in Section 58‑17‑740 shall make any consolidation, amalgamation or merger of stocks or franchises or of railroads or interests and any contract or agreement for the same shall be null and void.

HISTORY: 1962 Code Section 58‑931; 1952 Code Section 58‑931; 1942 Code Section 8292‑2; 1932 Code Section 8239; Civ. C. ‘22 Section 4803; Civ. C. ‘12 Section 3134; Civ. C. ‘02 Section 2059; 1894 (21) 811.

Library References

Railroads 121, 141.

Westlaw Topic No. 320.

C.J.S. Railroads Section 403.

NOTES OF DECISIONS

In general 1

1. In general

Act 1894, 21 St. at Large, p. 812, providing that no corporation shall purchase or lease any railroad in the state where such purchaser or lessee is interested in any competing line within or without the state, is not repealed by Const. 1895, art. 9, Section 8, relating to the consolidation of railroad lines in the state; and a complaint that defendant railroad company has purchased the stock of a competing line under Act 1897, 22 St. at Large, p. 492, authorizing the recovery of a penalty against any railroad company leasing or operating competing railroad lines within the state, states a good cause of action. Edwards v. Southern Ry. (S.C. 1903) 66 S.C. 277, 44 S.E. 748.

**SECTION 58‑17‑730.** Certain consolidations with companies of other states not authorized.

 Nothing in this article contained shall be taken to authorize the consolidation of any company of this State with any company of any other state whose laws shall not also authorize such consolidation.

HISTORY: 1962 Code Section 58‑932; 1952 Code Section 58‑932; 1942 Code Section 8285; 1932 Code Section 8230; Civ. C. ‘22 Section 4794; Civ. C. ‘12 Section 3125; Civ. C. ‘02 Section 2050; G. S. 1425; R. S. 1615; 1901 (23) 717.

Library References

Railroads 122, 141.

Westlaw Topic No. 320.

C.J.S. Railroads Section 416.

**SECTION 58‑17‑740.** Purchase of connecting railroad sold under mortgage, deed of trust or judicial process.

 When any railroad shall be sold and conveyed by virtue of any mortgage or deed of trust or under and by virtue of any process or decree of any court of this State or of the circuit court of the United States, any company with which such railroad connects may purchase and pay for such railroad, may issue its own stock for such an amount as the purchasers may deem the full and fair value thereof and may hold and enjoy the railroad so purchased with all the rights, privileges and franchises and with the same rights to charge for tolls, transportation and car services and subject to the same restrictions as were held, enjoyed and limited by and in respect to the company of which the road may be so sold. But no person shall purchase or lease any railroad lying in whole or in part within this State, or any interest therein or shall operate any such railroad when such purchaser or lessee already owns, operates or is interested in a line or lines of railroad which, either alone or in conjunction with other connecting railroads lying within or without this State, can compete between any two or more points within this State and any such purchase, lease or acquisition is hereby declared to be null and void. Nor shall any person owning or exercising a controlling interest in any such competing company or companies, either directly or indirectly, purchase or lease, in whole or in part, any such railroad. Any incorporators or individuals so offending by making any such acquisition shall also forfeit any franchise or license which they may hold from this State to operate or hold the competing road which they own, operate or are interested in and the company owning the railroad so to be controlled shall forfeit its charter, franchise or license to own and operate such railroad.

HISTORY: 1962 Code Section 58‑933; 1952 Code Section 58‑933; 1942 Code Section 8292‑1; 1932 Code Section 8238; Civ. C. ‘22 Section 4802; Civ. C. ‘12 Section 3133; Civ. C. ‘02 Section 2058; G. S. 1433; R. S. 1623; 1881 (17) 798; 1894 (21) 811.

Library References

Railroads 125.1.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 397 to 399.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑933] practically works a consolidation of the roads. Southern Ry. Co. v. City Council (S.C. 1896) 45 S.C. 602, 23 S.E. 952.

**SECTION 58‑17‑750.** Purchase or guarantee of bonds and stock of other companies; purchase, use or lease of other roads.

 Except as prohibited in Section 58‑17‑770 and in sections 7 and 20 of article 9 of the Constitution of 1895, any railroad company created by and existing under the laws of this State may from time to time, purchase and hold the stocks or bonds of any other railroad company chartered by or of which the road is authorized to extend into this State. And except as prohibited in Section 58‑17‑770 and in sections 7 and 20 of article 9 of the Constitution of 1895, any railroad company may enter into a contract for the purchase, use or lease of any other railroad, upon such terms as may be agreed upon with the company owning it and may run, use and operate such road in accordance with such contract or lease; provided, the roads of the companies so contracting or leasing shall be directly, or by means of intervening railroads, connected with each other. Any railroad corporation organized under the laws of this State may guarantee the bonds, stocks or dividends of any other railroad corporation, whenever the roads of such corporations shall connect with each other or shall form a continuous line or railroad directly or by means of any connecting railroad or by steamboat or steamship line, such guaranty to be upon such terms and conditions as may be agreed upon by the stockholders of the corporations making it.

 But all such agreements and all parts of them shall, at all times, be subject to amendment, alteration or repeal by the General Assembly.

HISTORY: 1962 Code Section 58‑934; 1952 Code Section 58‑934; 1942 Code Section 8292‑3; 1932 Code Section 8240; Civ. C. ‘22 Section 4804; Civ. C. ‘12 Section 3135; Civ. C. ‘02 Section 2060; G. S. 1434; R. S. 1624; 1881 (17) 798.

Editor’s Note

Sections 7 and 20 of article 9 of the Constitution of 1895, referred to in this Code section, no longer appear in the Constitution following the revision and rewriting of that article by amendment ratified by 1971 Act No. 64 (1971 (57) 47). Prior to the amendment the sections read as follows:

“Section 7. Consolidation, etc., with competing line; jury may decide whether lines are parallel or competing. ‑ No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.”

“Section 20. Right of way. ‑ No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.”

Library References

Railroads 125.1, 130.1, 154.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 397 to 399, 409 to 416, 426, 432 to 433, 486 to 487.

**SECTION 58‑17‑760.** Ownership of stock or bonds of connecting railroad or steamboat company.

 A railroad corporation may aid in the construction of any branch or connecting railroad within the limits of this State, whether connecting by railroad or steamboat lines, by subscribing for shares of stock in such corporation or of any steamship line connecting the terminus of such railroad company with any port of the United States or by taking its notes or bonds, to be secured by mortgage or otherwise, as the parties may agree, and shall be entitled to vote on all shares of stock so subscribed for and held.

HISTORY: 1962 Code Section 58‑935; 1952 Code Section 58‑935; 1942 Code Section 8292‑5; 1932 Code Section 8242; Civ. C. ‘22 Section 4806; Civ. C. ‘12 Section 3137; Civ. C. ‘02 Section 2062; G. S. 1435; R. S. 1625; 1881 (17) 799.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

**SECTION 58‑17‑770.** Ownership of stock or company controlling stock of competing railroad prohibited; dissolution.

 No person owning or operating directly or indirectly any railroad lying in whole or in part within this State or owning or controlling at the time, either solely or in connection with others, a majority of the stock of a corporation owning or controlling, by stock, ownership or otherwise, any such railroad shall own or be interested in the stock of any corporation chartered by this State which owns or leases, in whole or in part, or is otherwise interested in any railroad which competes in the manner set forth in Section 58‑17‑720 with the railroad or railroads so owned or operated by such person. A purchase or acquisition of the stock of a company controlling such last‑named company by stock ownership is likewise prohibited. In the event of such acquisition of such stock, or an interest therein, by any such person first in this section above named, the charter of the corporation of this State last mentioned owning such railroad shall be forfeited and its franchises are ipso facto withdrawn and all railroad charters hereafter accepted are declared to be granted subject to this condition. And the Attorney General of this State shall proceed at once, in the name of the State, to have such dissolution decreed by a court of competent jurisdiction and to dispose of the property of such corporation and distribute its assets to its creditors and stockholders according to law. The Attorney General shall see to the observance of this section and shall proceed by action, or other appropriate proceedings, legal or equitable, to inquire into, restrain or terminate the unlawful exercise of any franchise or disobedience to the terms hereof.

HISTORY: 1962 Code Section 58‑936; 1952 Code Section 58‑936; 1942 Code Section 8292‑4; 1932 Code Section 8241; Civ. C. ‘22 Section 4805; Civ. C. ‘12 Section 3136; Civ. C. ‘02 Section 2061; 1894 (21) 811.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

NOTES OF DECISIONS

In general 1

1. In general

Allegation as to purchase of stock in competing line. Edwards v. Southern Ry. (S.C. 1903) 66 S.C. 277, 44 S.E. 748.

**SECTION 58‑17‑780.** Penalty for owning, leasing or operating competing lines.

 Any railroad company owning, leasing or operating competing railroad lines within this State in violation of law shall be subject to a penalty of one hundred dollars for every day that such competing lines are owned, leased or operated, such penalty to be recovered in any court of competent jurisdiction in any county through which either of such competing lines may pass by any citizen thereof who may sue for it, one half of such penalty to go to the person suing therefor and the other half to the State. But the provisions of this section shall be without prejudice to any remedy which the State may be entitled to in its own behalf.

HISTORY: 1962 Code Section 58‑936; 1952 Code Section 58‑937; 1942 Code Section 8461; 1932 Code Section 8478; Civ. C. ‘22 Section 5014; Civ. C. ‘12 Section 3316; Civ. C. ‘02 Section 2210; 1897 (22) 492.

Library References

Railroads 121.

Westlaw Topic No. 320.

C.J.S. Railroads Section 403.

ARTICLE 7

Stock and Stockholders

**SECTION 58‑17‑910.** Stock subscriptions.

 For the purpose of raising the capital stock of any railroad company incorporated in this State it shall be lawful to open books of subscription at such times and places and under the direction of such persons as the incorporators may appoint. Such subscriptions to the capital stock may be made in land, money, bonds, machinery, materials and work, at such rates as may be agreed upon with the company.

HISTORY: 1962 Code Section 58‑941; 1952 Code Section 58‑941; 1942 Code Section 8262; 1932 Code Section 8207; Civ. C. ‘22 Section 4771; Civ. C. ‘12 Section 3106; Civ. C. ‘02 Section 2032; R. S. 1544; 1885 (19) 171.

Library References

Railroads 15.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 38 to 39.

NOTES OF DECISIONS

In general 1

1. In general

Payment of stock in part by note and helping in organization estop stockholder from refusing to pay balance. Greenville & C.R. Co. v. Woodsides (S.C. 1851) 5 Rich. 145, 55 Am.Dec. 708.

**SECTION 58‑17‑920.** Time within which proxy must be executed.

 No proxy executed by a stockholder of any railroad company shall be valid unless executed and dated within six months previous to the meeting at which it is issued.

HISTORY: 1962 Code Section 58‑942; 1952 Code Section 58‑942; 1942 Code Section 8268; 1932 Code Section 8213; Civ. C. ‘22 Section 4777; Civ. C. ‘12 Section 3112; Civ. C. ‘02 Section 2038; G. S. 1437; R. S. 1607; 1903 (24) 79.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

NOTES OF DECISIONS

In general 1

1. In general

Voted by others than owner. There is no indication in the Constitution and this section [Code 1962 Section 58‑942] of the Code that it is against the public policy of the State for stock in corporations to be held and voted by others than the true owners. Alderman v. Alderman (S.C. 1935) 178 S.C. 9, 181 S.E. 897, 105 A.L.R. 102.

**SECTION 58‑17‑930.** Access to lists of stockholders.

 The Office of Regulatory Staff shall have, at all times, access to the list of stockholders of every corporation operating a railroad and may, in its discretion, at any time, cause the list to be copied, in whole or in part, for its own information or for the information of persons owning stock in such corporation.

HISTORY: 1962 Code Section 58‑943; 1952 Code Section 58‑943; 1942 Code Section 8292‑26; 1932 Code Section 8287; Civ. C. ‘22 Section 4835; Civ. C. ‘12 Section 3159; Civ. C. ‘02 Section 2081; G. S. 1469; R. S. 1644; 1881 (17) 821; 1935 (39) 25; 2006 Act No. 318, Section 115, eff May 24, 2006.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

**SECTION 58‑17‑940.** Application for examination of books.

 On the application in writing of a director or of any person or persons owning one‑fiftieth part of the entire paid‑in capital stock of any corporation operating a railroad or the bonds or other evidences of indebtedness of the corporation equal in amount to one‑fiftieth part of its paid‑in capital stock, the Office of Regulatory Staff must make an examination into the books of the corporation.

HISTORY: 1962 Code Section 58‑944; 1952 Code Section 58‑944; 1942 Code Section 8292‑25; 1932 Code Section 8286; Civ. C. ‘22 Section 4834; Civ. C. ‘12 Section 3158; Civ. C. ‘02 Section 2080; G. S. 1468; R. S. 1643; 1881 (17) 821; 2006 Act No. 318, Section 116, eff May 24, 2006.

Library References

Railroads 9(1), 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41, 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑950.** Liability of stockholders of certain corporations.

 Every stockholder in a railroad corporation, created under the Constitution of 1868 and prior to the adoption of the Constitution of 1895, shall be jointly and severally liable to the creditors thereof in an amount, besides the value of his share or shares therein, not exceeding five per cent of the par value of the share or shares held by him at the time the obligation held by or the debt due the creditor was created; provided, that such obligation or debt shall have been payable within one year after it was created or incurred, and that proceedings to hold such stockholder liable therefor shall be commenced whilst he remains a stockholder therein or within two years after he shall have ceased to be such stockholder.

 Persons holding stock in such company as executors, administrators or by way of collateral security shall not be personally subject to the liabilities of the stockholders under the foregoing provisions, but the persons pledging such stock shall be liable as a stockholder and the estates and funds in the hands of such executors or administrators shall be liable in their hands in like manner and to the same extent as the deceased testator or intestate or the ward or person interested in such trust fund would have been if they had respectively been living and competent to act and hold the stock in their own names.

HISTORY: 1962 Code Section 58‑945; 1952 Code Section 58‑945; 1942 Code Section 8266; 1932 Code Section 8211; Civ. C. ‘22 Section 4775; Civ. C. ‘12 Section 3110; Civ. C. ‘02 Section 2036; R. S. 1548; 1885 (19) 171.

Library References

Railroads 16.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 40 to 41.

ARTICLE 9

General Powers of Railroads

**SECTION 58‑17‑1110.** Powers and authority conferred by chapter additional.

 The powers and authority conferred by this chapter are in addition to the powers and authority which any such railroad company may have by virtue of its charter or by virtue of the general laws of this State.

HISTORY: 1962 Code Section 58‑951; 1952 Code Section 58‑951; 1942 Code Section 8273; 1932 Code Section 8218; Civ. C. ‘22 Section 4782; 1915 (29) 539.

CROSS REFERENCES

Constitutional provisions for regulation of common carriers, see SC Const. Art. IX, Section 1.

Library References

Railroads 18.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 25 to 26, 47 to 50.

**SECTION 58‑17‑1120.** General corporate powers.

 Every such corporation may make such bylaws for its regulation and government in any and all matters whatsoever, not inconsistent with the Constitution and laws of the United States and of this State, as may be deemed necessary and may add to, alter or amend them from time to time as may be desired; may appoint all necessary officers and prescribe their duties; may sue and be sued and plead and be impleaded in any court in this State or in the United States; may accept, purchase, hold, lease or otherwise acquire any property, real or personal, necessary or convenient to, and for the purposes of, the corporation and may use, sell, convey and dispose of such property as the interest of the company may require; may make contracts; may have and use a common seal; and may do all other lawful acts properly incident to and connected with such corporation and necessary and convenient for the control and transaction of its business.

HISTORY: 1962 Code Section 58‑952; 1952 Code Section 58‑952; 1942 Code Section 8261; 1932 Code Section 8206; Civ. C. ‘22 Section 4770; Civ. C. ‘12 Section 3105; Civ. C. ‘02 Section 2031; R. S. 1543; 1885 (19) 172.

Library References

Railroads 18.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 25 to 26, 47 to 50.

NOTES OF DECISIONS

In general 1

1. In general

Section not referring to place of trial. This section [Code 1962 Section 58‑952] providing that a railroad corporation may sue and be sued “in any court of law or equity in this State,” does not refer to the place of trial. Tobin v. Chester & L. Narrow‑Gauge R. Co. (S.C. 1896) 47 S.C. 387, 25 S.E. 283, 58 Am.St.Rep. 890.

**SECTION 58‑17‑1130.** Execution of mortgages; issuance of bonds.

 Any such company may mortgage its property and franchises and issue bonds on such terms and conditions and for such purposes and uses of the corporation as the company may from time to time deem necessary.

HISTORY: 1962 Code Section 58‑953; 1952 Code Section 58‑953; 1942 Code Section 8262; 1932 Code Section 8207; Civ. C. ‘22 Section 4771; Civ. C. ‘12 Section 3106; Civ. C. ‘02 Section 2032; R. S. 1544; 1885 (19) 171.

Library References

Railroads 150, 163.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 473 to 474, 514.

**SECTION 58‑17‑1140.** Certain mortgages shall secure certain previous bonds and other debts.

 No railroad corporation which has previously issued bonds shall subsequently make or execute any mortgage upon its road, equipment and franchises, or any of its property, real or personal, without including in and securing by such mortgage all bonds previously issued and all pre‑existing debts and liabilities of the corporation. But nothing in this section contained shall apply to a mortgage for the purchase money of any such road, equipment, franchise or property, real or personal, or to a mortgage made or executed for the purpose, in whole or in part, of building, extending, improving or equipping such railroad, or any part thereof, or any other railroad, the greater part of whose stock is held by it, or to any pledge or hypothecation of any choses in action or other securities held or owned by it. Nor shall this section require that a mortgage executed by a corporation shall secure the payment of previously issued bonds or pre‑existing debts and liabilities of the corporation when the bonds to be issued under the mortgage are intended, in whole or in part, to take up, by funding or otherwise, such previously issued bonds or pre‑existing debts and liabilities or when such previously issued bonds or pre‑existing debts and liabilities are secured by a pre‑existing mortgage or other lien.

HISTORY: 1962 Code Section 58‑954; 1952 Code Section 58‑954; 1942 Code Section 8267; 1932 Code Section 8212; Civ. C. ‘22 Section 4776; Civ. C. ‘12 Section 3111; Civ. C. ‘02 Section 2037; G. S. 1436; R. S. 1605; 1882 (18) 709; 1896 (22) 118; 1904 (24) 414.

Library References

Railroads 168.

Westlaw Topic No. 320.

C.J.S. Railroads Section 518.

**SECTION 58‑17‑1150.** Acquisition of land and rights‑of‑way.

 Every railroad company shall have every right, power and privilege necessary for the purpose of acquiring such lands or rights‑of‑way as it may require for the location or construction of such railway, for the erection or location of depots, warehouses, stations and other necessary and convenient establishments or for extending or altering them.

HISTORY: 1962 Code Section 58‑961; 1952 Code Section 58‑961; 1942 Code Section 8263; 1932 Code Section 8208; Civ. C. ‘22 Section 4772; Civ. C. ‘12 Section 3107; Civ. C. ‘02 Section 2033; R. S. 1545; 1885 (19) 171.

Library References

Railroads 61.

Westlaw Topic No. 320.

C.J.S. Railroads Section 146.

**SECTION 58‑17‑1160.** Acquisition of rights‑of‑way around tracks.

 Railroad corporations organized under the provisions of this chapter may acquire rights‑of‑way, not exceeding seventy‑five feet from the center of their track in each direction, and additional land necessary for deep cuts, high fills, borrow pits, streams and highway changes made necessary by the construction of the railroad; provided, that in no case shall the right of way acquired exceed one hundred and fifty feet from the center of the track in each direction. And such corporations may exercise the same powers with relation to such tracks and their depots and crossing other railroads, highways and streams as railroads chartered by the General Assembly.

HISTORY: 1962 Code Section 58‑962; 1952 Code Section 58‑962; 1942 Code Section 8186; 1932 Code Section 8186; Civ. C. ‘22 Section 4366; Civ. C. ‘12 Section 2880; Civ. C. ‘02 Section 1924; 1909 (26) 45.

Library References

Railroads 61, 62.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 146 to 147.

**SECTION 58‑17‑1170.** Crossing or connecting with other railroads; purchase, sale, lease or consolidation of property and franchises.

 Every such company may connect with or cross any other railroad on its line and may purchase, lease or consolidate with, or sell or lease its property and franchises to, any other railroad in or out of this State, in such manner and upon such terms as may be agreed between such railroad companies not inconsistent with laws of this State or of the United States.

HISTORY: 1962 Code Section 58‑963; 1952 Code Section 58‑963; 1942 Code Section 8264; 1932 Code Section 8209; Civ. C. ‘22 Section 4773; Civ. C. ‘12 Section 3108; Civ. C. ‘02 Section 2034; R. S. 1546; 1885 (19) 171; 1908 (25) 1090.

Library References

Railroads 51, 89, 118.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 118 to 119, 278 to 280, 397 to 399, 404.

NOTES OF DECISIONS

In general 1

1. In general

Liability of corporation permitting another to operate railraod. Corporation owning railroad and permitting another corporation to operate it must be considered liable for injury caused by negligence of corporation operating road. Smalley v. Atlanta & C. Air Line Ry. Co. (S.C. 1906) 73 S.C. 572, 53 S.E. 1000.

**SECTION 58‑17‑1180.** Extension of lines and construction and extension of branches; rights and restrictions in acquiring rights‑of‑way.

 It shall be lawful for any railroad or railway corporation chartered by this State, and it shall be taken as the exercise of powers conferred by its charter, to continue or extend the main track or line of such railroad or any extension thereof or to build or extend branch roads from such main track or line to any point or points in the vicinity thereof whenever it may be deemed advisable by such corporation so to do; but such extension or branch shall not exceed five miles in length. For the purpose of acquiring a right of way for any such extension or branch track, such railroad or railway corporation shall have and be entitled to all the rights and privileges and be subject to all the restrictions contained in the General Railroad Law in reference to the manner of acquiring the right of way.

HISTORY: 1962 Code Section 58‑964; 1952 Code Section 58‑964; 1942 Code Section 8270; 1932 Code Section 8215; Civ. C. ‘22 Section 4779; Civ. C. ‘12 Section 3114; Civ. C. ‘02 Section 2040; G. S. 1561a; R. S. 1609; 1885 (19) 168.

Library References

Railroads 49, 52, 62, 87.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 112, 114 to 115, 120, 147, 276.

NOTES OF DECISIONS

In general 1

1. In general

On the hearing of a petition to restrain the construction of a tramway across certain premises, it appeared that petitioner, a railroad company, had power to construct branch roads not more than five miles in length; that it located its right of way on and procured sufficient land on which to build its road, and that defendants were about to construct a tramway crossing said road; that, prior to the grant to petitioner, defendants acquired the right to build its tramway on the premises in question; that the point where the roads would cross was more than five miles from the main line; that defendants had already constructed their tramway, a part of which petitioner had torn up; that defendants had brought an action against petitioner’s president for so doing, which was then pending, and the court below had enjoined petitioner from interfering with defendants’ tramway. Held, that petitioner was not entitled to an injunction. Ex parte Hampton & B.R. & Lumber Co. (S.C. 1895) 45 S.C. 122, 22 S.E. 804.

**SECTION 58‑17‑1190.** Relocation of lines and other changes in tracks and facilities.

 Any railroad company owning or operating a railroad, or any part thereof, in this State, under authority of the laws of this State, may reconstruct its lines, tracks or any part of them, relocate or straighten any line or lines or portion of a line or lines, build embankments for the purpose of avoiding trestles, bridges or other openings upon which such railroad may be constructed, change the grade of a track or tracks, widen cuts or embankments when necessary for proper construction or maintenance, build such additional main line or lines, track or tracks, turnouts, switches, spur tracks, sidetracks, depots, depot facilities, yards, terminal facilities, water facilities, storage facilities and other such additional tracks, buildings, facilities, ways and appliances as may be necessary for the proper accommodation of the public business of such railroad company and build cutoff lines, branch lines and other lines for the purpose of the better and more expeditious handling of the public business.

HISTORY: 1962 Code Section 58‑965; 1952 Code Section 58‑965; 1942 Code Section 8271; 1932 Code Section 8216; Civ. C. ‘22 Section 4780; 1915 (29) 539.

Library References

Railroads 54, 87.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 132 to 135, 139, 141, 143, 276.

**SECTION 58‑17‑1200.** Acquisition of real estate for relocation of lines and other changes in tracks and facilities.

 For the purposes mentioned in Section 58‑17‑1190 any railroad company may acquire by purchase or gift and hold real estate necessary, and if the real estate is not acquired by purchase or gift, the railroad company may acquire it by condemnation.

HISTORY: 1962 Code Section 58‑966; 1952 Code Section 58‑966; 1942 Code Section 8272; 1932 Code Section 8217; Civ. C. ‘22 Section 4781; 1915 (29) 539; 1987 Act No. 173 Section 47, eff nine months from approval by Governor (approved by Governor on June 30, 1987).

CROSS REFERENCES

Procedures for the condemnation of property, Eminent Domain Procedure Act, see Section 28‑2‑10 et seq.

Library References

Eminent Domain 20(1).

Railroads 54, 61.

Westlaw Topic Nos. 148, 320.

C.J.S. Eminent Domain Sections 32 to 33.

C.J.S. Railroads Sections 132 to 135, 139, 141, 143, 146.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

**SECTION 58‑17‑1210.** Operation of sections of road completed or acquired.

 Every such company may also forthwith, upon the completion or acquirement by purchase, lease or consolidation of any portion or section of its railroad between any points through which it may run under its charter, operate and maintain such portion or section, with all the rights, powers and privileges hereby granted to the company.

HISTORY: 1962 Code Section 58‑968; 1952 Code Section 58‑968; 1942 Code Section 8265; 1932 Code Section 8210; Civ. C. ‘22 Section 4774; Civ. C. ‘12 Section 3109; Civ. C. ‘02 Section 2035; R. S. 1547; 1908 (25) 1090.

Library References

Railroads 143.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 457 to 465.

ARTICLE 11

Railroad Crossings

**SECTION 58‑17‑1310.** Commission shall regulate crossings and culverts.

 The Public Service Commission shall regulate and control by special order in each case the manner in which any street, street railway or other railroad track may cross any railroad track and the manner of constructing culverts under any railroad so as to effect proper drainage of adjacent territory.

HISTORY: 1962 Code Section 58‑991; 1952 Code Section 58‑991; 1942 Code Section 8227; 1932 Code Section 8269; Civ. C. ‘22 Section 4817; 1912 (27) 791; 1935 (39) 25.

CROSS REFERENCES

Closing of certain railroad highway crossings, see Section 57‑17‑100.

Stopping of vehicles at railroad crossings, see Sections 56‑5‑2710, 56‑5‑2720, 59‑67‑230.

Library References

Railroads 90, 91(0.5), 92.1, 94(2), 108, 240 to 245.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 281 to 286, 290 to 296, 385 to 387, 786, 788 to 789.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

Legislative intent. With crossings “at the same level” already within the jurisdiction of the Commission under Code 1962 Section 58‑992, it must have been the intention of the legislature in the enactment of this section [Code 1962 Section 58‑991] to include within the jurisdiction of the Commission any sort of crossing of one railroad by another. Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

“Crossing” within the purview of this section [Code 1962 Section 58‑991] means any sort of crossing, whether or not on the same level. Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

A railroad may be required to maintain gatemen, watchmen or flagmen at highway crossings, under the police power of the State, where such measure to safeguard against danger is reasonable. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357. Railroads 243

And it does not supersede or repeal Code 1962 Section 58‑996 as to authority of board of county commissioners to lay out a highway or town way across railroad right of way. Thomas v. Atlantic Coast Line R. Co. (S.C. 1933) 168 S.C. 185, 167 S.E. 239.

It is not retroactive. This section [Code 1962 Section 58‑991] is not retroactive, and hence does not apply to a crossing made before its enactment. Richards v. Southern Ry. Co. (S.C. 1914) 97 S.C. 77, 81 S.E. 314.

Discretion of Commission. The kind of a crossing and safeguards which may be required under this section [Code 1962 Section 58‑991], is in the discretion of the Commission. Richards v. Southern Ry. Co. (S.C. 1914) 97 S.C. 77, 81 S.E. 314.

2. Constitutional issues

This section [Code 1962 Section 58‑991] is a proper exercise of the police power to insure the safety and convenience of the citizens of the State. Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

Exclusive jurisdiction of Interstate Commerce Commission does not deprive State of its power to regulate. While the Interstate Commerce Commission has exclusive jurisdiction over the extension of lines of railroads that are engaged in interstate transportation, it does not follow that the State is thereby deprived of its police power to regulate reasonably the location and construction of such extension in order to insure the maximum safety and convenience of the public. Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

Effect of obtaining certificate of public convenience and necessity. The obtaining of a certificate of public convenience and necessity from the Interstate Commerce Commission does not avoid the necessity of compliance with this section [Code 1962 Section 58‑991]. Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

**SECTION 58‑17‑1320.** Consent of Office of Regulatory Staff to one railroad crossing another at same grade.

 A railroad shall not be constructed to cross another railroad at the same level or across navigable or tidewaters without the consent, in writing, of the Office of Regulatory Staff, in the manner as the Office of Regulatory Staff prescribes. It is unlawful for any corporation to construct a branch or extension or otherwise to take any proceedings contemplating a new crossing of one railroad with another, at the same level, unless the crossing has been approved, in advance and in writing, by the Office of Regulatory Staff. Preliminary approval of any crossing plan is subject to revision by the Office of Regulatory Staff. The court of common pleas shall have full equity jurisdiction of the provisions of this section.

HISTORY: 1962 Code Section 58‑992; 1952 Code Section 58‑992; 1942 Code Section 8429; 1932 Code Section 8429; Civ. C. ‘22 Section 4982; Civ. C. ‘12 Section 3284; Civ. C. ‘02 Section 2179; G. S. 1530; R. S. 1723; 1881 (17) 834; 1935 (39) 25; 2006 Act No. 318, Section 117, eff May 24, 2006.

CROSS REFERENCES

Elimination of grade crossings at instance of others than the Public Service Commission, see Section 58‑15‑1610 et seq.

Library References

Railroads 88, 240.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 278 to 289, 786.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

NOTES OF DECISIONS

In general 1

1. In general

The ordinary definition of the verb “cross” is to pass from side to side, as from one side of a street or river to the other, and when applied to railroads and intended to refer to a crossing at grade, it is usually described as a “grade crossing,” or, as in this section [Code 1962 Section 58‑992], a crossing “at the same level.” Atlanta & C. A. L. Ry. Co. v. Spartanburg Terminal Co. (S.C. 1960) 237 S.C. 404, 117 S.E.2d 574.

Authority and discretion of Commission. Under this section [Code 1962 Section 58‑992] no restrictions are imposed on the Commission as to the terms and conditions upon which it will consent to such crossings, and it has the power to withhold its consent altogether or to grant it on such terms and conditions as it may see fit, and, so long as it acts within the law and with a reasonable discretion, it is subject to no control save that of the legislature. The Commission’s requirements that a railroad petitioning for a right to a grade crossing furnish it with preliminary plans for an interlocking switch, that all necessary material be assembled before the work is begun, and that no engine or train be operated over such tracks until inspected by the Commission are within its authority and discretion. Atlantic Coast Line R. Co. v. Caughman (S.C. 1911) 89 S.C. 472, 72 S.E. 18. Railroads 91(4)

Where Commission made orders granting the petition of a road for the right to cross another road at grade, with certain condition as to plans and methods of construction and operation to be approved by the Commission, the orders were not final, but under the express provisions of this section [Code 1962 Section 58‑992], were provisional, and before the approval of the Commission they gave the road no vested rights. Atlantic Coast Line R. Co. v. Caughman (S.C. 1911) 89 S.C. 472, 72 S.E. 18. Constitutional Law 2632

Consent on conditions precedent. If consent be granted upon conditions precedent, no consent is given until the performance of such conditions. Seaboard Air Line Ry. v. Atlantic Coast Line R. Co. (S.C. 1911) 88 S.C. 477, 71 S.E. 39.

Where a railroad obtains an order from the Railroad Commission, authorizing it to cross the right of way of another company, provided that such crossing be protected with an interlocking switch, and that the crossing and switch be subject to the approval of the Commission, and by another order, the Commission imposes conditions as to furnishing preliminary plans, and as to the method of construction and operation, the railroad has no authority or absolute right to condemn a right of way and to construct such crossing without a compliance with the orders of the Commission. Atlantic Coast Line R. Co. v. Seaboard Air Line Ry. (S.C. 1911) 88 S.C. 464, 71 S.E. 34.

**SECTION 58‑17‑1330.** Railroad shall not obstruct highways at crossings.

 When a railroad is laid out across a highway or other way it shall be constructed so as not to obstruct such way.

HISTORY: 1962 Code Section 58‑993; 1952 Code Section 58‑993; 1942 Code Section 8430; 1932 Code Section 8430; Civ. C. ‘22 Section 4983; Civ. C. ‘12 Section 3285; Civ. C. ‘02 Section 2180; G. S. 1531; R. S. 1724; 1881 (17) 836.

CROSS REFERENCES

Obstruction of roads by railroads, see Sections 57‑7‑240 to 57‑7‑260.

Railroad companies maintaining standard signs at all grade crossings, see Section 56‑5‑1010.

Signals to be given at crossings, see Section 58‑15‑910.

Library References

Railroads 94.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 290, 295 to 300.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

NOTES OF DECISIONS

In general 1

Federal court 2

1. In general

Navigable streams are not be be obstructed. State v Northeastern R. Co., 9 Rich (43 SCL) 247. State v South Carolina Ry. Co., 28 SC 23, 4 SE 796 (1888).

Liability for injuries. Under this section [Code 1962 Section 58‑993] a railroad is liable to a person in a vehicle who is injured by insufficient clearance between the roadbed of a city street and the railroad’s trestle above, whether or not the insufficiency of the clearance resulted from a raising of the road under the trestle or by other causes, such as filling in by deposits, after the trestle was built. Brown v. Southern Ry. Co. (S.C. 1918) 111 S.C. 140, 96 S.E. 701. Railroads 303(4)

Liability to private landowners. Notwithstanding this section [Code 1962 Section 58‑993], where a railraod constructed a cut and built a bridge, no recovery could be had by reason of the approaches extending onto private land, where the landowner did not object to plaintiff or others crossing his land to the road, and the passage was reasonably good and convenient. Sandifer v. Southern Ry. Co. (S.C. 1918) 109 S.C. 347, 96 S.E. 120. Railroads 102(6)

Liability for obstructing private ways. Ross v. Georgia, C. & N. R. Co. (S.C. 1890) 33 S.C. 477, 12 S.E. 101.

Public roads. Murray v. South Carolina R. Co. (S.C. 1857) 10 Rich. 227, 70 Am.Dec. 219.

2. Federal court

Where plaintiff, in death action against railroad and its employee, alleged joint and concurrent acts of negligence some of which charged common‑law negligence and others charged a violation of South Carolina statutes and which are alleged to have combined and concurred with each other, directly and proximately to cause death of plaintiff’s intestate, there was no “separable controversy” between plaintiff and railroad within meaning of removal statute which would preclude remand to state court. 28 U.S.C.A. Sections 1441, 1445, 1447; Code S.C.1932, Section 5832 (repealed 1931), Sections 8355, 8356, 8430, 8448 (See Code 1942, Sections 8355, 8356, 8430, 8473). Forrest v. Southern Ry. Co., 1937, 20 F.Supp. 851. Removal Of Cases 49.1(8)

**SECTION 58‑17‑1340.** Altering course of highway.

 A railroad corporation may alter the course of a highway or other way, other than a street in any incorporated city or town, for the purpose of facilitating the crossing of it by its road, or permitting its road to pass at the side thereof without crossing, upon obtaining a decree of the governing body of the county prescribing the manner and time of such alteration. The corporation shall pay all damages occasioned to private property by the alteration, as in the case of land taken for its road.

HISTORY: 1962 Code Section 58‑994; 1952 Code Section 58‑994; 1942 Code Section 8432; 1932 Code Section 8432; Civ. C. ‘22 Section 4985; Civ. C. ‘12 Section 3287; Civ. C. ‘02 Section 2182; G. S. 1533; R. S. 1726; 1881 (17) 836; 1893 (21) 481.

Library References

Railroads 94(5).

Westlaw Topic No. 320.

C.J.S. Railroads Section 298.

**SECTION 58‑17‑1350.** Crossing on level shall be protected.

 A railroad corporation whose road is crossed by a highway or other way within the corporate limits of any city or town on a level therewith, shall, at its own expense, so guard or protect its rails by plank, timber or otherwise as to secure a safe and easy passage across its road and if, in the opinion of the proper municipal authorities thereof, any subsequent alteration of the highway or other way, or any additional safeguards, are required at the crossing they may order the corporation to establish the same.

HISTORY: 1962 Code Section 58‑995; 1952 Code Section 58‑995; 1942 Code Section 8433; 1932 Code Section 8433; Civ. C. ‘22 Section 4986; Civ. C. ‘12 Section 3288; Civ. C. ‘02 Section 2183; G. S. 1534; R. S. 1727; 1881 (17) 837; 1931 (37) 152.

CROSS REFERENCES

Construction and maintenance of grade crossings of highways by operators of railways, see Section 58‑15‑2110 et seq.

Elimination of grade crossing, see Section 58‑15‑1610 et seq.

Railroad companies maintaining standard signs at all grade crossings, see Section 56‑5‑1010.

Regulation of grade crossings of State highways and county roads, see Section 58‑15‑1510 et seq.

Library References

Railroads 94(5), 95(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 298, 301.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Negligence Section 14, Weight or Sufficiency of Proof.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 3

Damages 2

1. In general

Violation of section as negligence per se. Williams v Seaboard Air Line Ry. Co., 76 SC 1, 56 SE 652 (1907). Crawford v Atlantic Coast Line Co., 179 SC 264, 184 SE 569 (1936).

Railroad’s failure to cut down vegetation at crossing to maintain sight lines breached statutory duty to maintain safe crossing, even though railroad claimed it was insulated from liability for car passenger’s death at crossing on grounds that regulatory agency had not deemed growth of vegetation at crossing unacceptable on day of accident. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Railroads 314

It is for the benefit of those engaged in using the crossing, or waiting for the train to pass so that they can use it. A person who is injured by a flying plank while standing some twenty feet distant from the crossing for the purpose of watching the train go by cannot predicate a claim for punitive damages on an alleged violation of this section [Code 1962 Section 58‑995]. Bell v. Atlantic Coast Line R. Co. (S.C. 1943) 202 S.C. 160, 24 S.E.2d 177.

This section [Code 1962 Section 58‑995] establishes a fixed standard by which the fact of negligence may be determined; the gist of an action brought thereunder is still negligence, or the nonperformance of a legal duty, to the person injured. Crawford v. Atlantic Coast Line R. Co. (S.C. 1936) 179 S.C. 264, 184 S.E. 569.

This section [Code 1962 Section 58‑995] does not apply to private crossings. Moragne v. Charleston & W.C. Ry. Co. (S.C. 1907) 77 S.C. 437, 58 S.E. 150.

Duty to repair bridges. Felder v. Southern Ry. (S.C. 1907) 76 S.C. 554, 57 S.E. 524.

Liability for injury. As to proximate cause of injury, and punitive damages, see Thompson v. Seaboard Air Line Ry. (S.C. 1908) 81 S.C. 333, 62 S.E. 396.

2. Damages

Issue of punitive damages was for the jury in wrongful death action resulting from railroad crossing collision; there was evidence that train engineer failed to sound his horn for the statutorily prescribed distance, and there was evidence that the vegetation at the crossing was so overgrown that driver had to pull onto the tracks to see if a train was approaching. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Railroads 350(34)

3. Admissibility of evidence

Evidence of subsequent remedial measures taken by alleged tortfeasor that under the plaintiff’s theory would have made the accident less likely to happen are not admissible to show the negligence of the defendant, but may be admitted to show ownership, control, impeachment, or feasibility of precautionary measures. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Evidence 219.25(1); Evidence 219.35

**SECTION 58‑17‑1360.** County may authorize highway or town way to cross railroad.

 A highway or town way may be laid out across a railroad previously constructed when the governing body of the county adjudge that the public convenience and necessity require it and, in such case, after due notice to the railroad corporation and hearing all parties interested, such body may thus lay out a highway across a railroad or may authorize a city or town, on the petition of the mayor and aldermen thereof, to lay out a way across a railroad in such manner as not to injure or obstruct the railroad.

HISTORY: 1962 Code Section 58‑996; 1952 Code Section 58‑996; 1942 Code Section 8434; 1932 Code Section 8434; Civ. C. ‘22 Section 4987; Civ. C. ‘12 Section 3289; Civ. C. ‘02 Section 2184; G. S. 1535; R. S. 1728; 1881 (17) 837.

Library References

Railroads 96.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 310 to 314.

Attorney General’s Opinions

A railroad corporation’s responsibility to replace an antiquated and hazardous wooden automobile bridge that crosses over its tracks with one which would accommodate today’s traffic. SC Op.Atty.Gen. (May 29, 1996) 1996 WL 452805.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

It is not necessary to construe Code 1962 Section 47‑1301 authorizing a town to purchase land for streets, with this section [Code 1962 Section 58‑996]. Prosser v. Seaboard Air Line R. Co. (S.C. 1949) 216 S.C. 33, 56 S.E.2d 591, certiorari denied 70 S.Ct. 569, 339 U.S. 911, 94 L.Ed. 1338.

Code 1962 section 58‑991 does not repeal this section [Code 1962 Section 58‑996]. ‑ The authority to lay out a highway or town way across railroad right of way does not rest with the Public Service Commission. This section [Code 1962 Section 58‑996] gives to the board of county commissioners authority to act in the matter and Code 1962 Section 58‑991 does not supersede or repeal this section [Code 1962 Section 58‑996]. Thomas v. Atlantic Coast Line R. Co. (S.C. 1933) 168 S.C. 185, 167 S.E. 239.

Liability of railroad. When the county commissioners, without notice, change a highway so as to run it under a narrow span of a trestle, the railroad is not liable for damages received from the narrowness of the span. Hill v. Port Royal & W.C.R. Co. (S.C. 1889) 31 S.C. 393, 10 S.E. 91.

2. Constitutional issues

Constitutionality. Railroad companies may be required at their own expense not only to establish crossings, but to abolish grade crossings, to build and maintain suitable bridges or viaducts to cary highways newly laid out over their tracks or to carry their tracks over such highways, and this is not unlawfully depriving railroads of property without compensation or due process. Prosser v. Seaboard Air Line R. Co. (S.C. 1949) 216 S.C. 33, 56 S.E.2d 591, certiorari denied 70 S.Ct. 569, 339 U.S. 911, 94 L.Ed. 1338. Railroads 94(2)

**SECTION 58‑17‑1370.** Stock guards or cattle gaps shall be constructed.

 Each railroad company whose line of road lies wholly or partly in this State shall construct and keep in repair an adequate stock guard or cattle gap at every point where the line of railroad of any such company crosses the line of any fence in this State. For every violation of this section the railroad company so violating it shall pay to the owner of the fence upon the line of which such stock guard or cattle gap should have been constructed and kept in repair the sum of one hundred dollars, to be recovered by action in the court of common pleas for the county in which such stock guard or cattle gap should have been constructed and kept in repair.

HISTORY: 1962 Code Section 58‑997; 1952 Code Section 58‑997; 1942 Code Sections 8435, 8436; 1932 Code Sections 8435, 8436; Civ. C. ‘22 Sections 4988, 4989; Civ. C. ‘12 Sections 3290, 3291; Civ. C. ‘02 Sections 2185, 2186; G. S. 1536, 1537; R. S. 1729, 1730; 1881 (17) 837.

Library References

Railroads 103.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 371 to 383.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑997] refers to fences built after construction as well as before. Burnett v. Southern Ry. Co. (S.C. 1902) 62 S.C. 281, 40 S.E. 679.

And it applies to fences built as near the railroad track as can be built because of obstacles and the railroad right of way. Burnett v. Southern Ry. Co. (S.C. 1902) 62 S.C. 281, 40 S.E. 679.

Right of grantee to sue purchaser of railroad. A grantee of land on which a line of fence runs across a railroad, who repaired the fence, can sue the purchaser and operator of such a railroad for failure to maintain cattle guards where such fence crosses the track. Burnett v. Southern Ry. Co. (S.C. 1902) 62 S.C. 281, 40 S.E. 679.

This section [Code 1962 Section 58‑997] does not apply where the company has acquired the title to the land itself, as by conveyance in fee. Anderson v. Atlantic Coast Line Ry. Co. (S.C. 1901) 59 S.C. 350, 37 S.E. 944.

**SECTION 58‑17‑1380.** Trains shall stop at crossings of railroad lines; exceptions.

 Whenever lines of two steam railroads cross each other on the same grade in this State, every train on either shall be brought to a full stop before reaching the crossing. But this section shall not apply when the crossing is equipped with interlocking devices, signal lights, semaphores or other safety appliances which shall indicate that the train may cross in safety or when a flagman or watchman is stationed at the crossing and he signals that the train may cross in safety.

HISTORY: 1962 Code Section 58‑998; 1952 Code Section 58‑998; 1942 Code Section 8354; 1932 (37) 1144.

Library References

Railroads 240.

Westlaw Topic No. 320.

C.J.S. Railroads Section 786.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

**SECTION 58‑17‑1390.** Signs shall be maintained at crossings with public roads.

 Every railroad corporation shall cause signs to be placed and constantly maintained alongside of each public road or street where it is crossed by the railroad on the same level. Each such sign shall be elevated so as to be easily seen by travelers and on each side of it shall be printed in large letters the words “Railroad Crossing” unless the railroad corporation elects to place two of such signs at each crossing, one on each side of the track in which case each of such signs may have thereon in large letters, only on the side facing the traffic approaching the crossing, the words “Railroad Crossing.” But this section shall not apply to streets in cities, towns and villages unless the corporation be required to put up such sign by the officers having charge of such streets.

HISTORY: 1962 Code Section 58‑999; 1952 Code Section 58‑999; 1942 Code Section 8356; 1932 Code Section 8356; Civ. C. ‘22 Section 4904; Civ. C. ‘12 Section 3223; Civ. C. ‘02 Section 2133; G. S. 1484; R. S. 1686; 1891 (20) 116; 1937 (40) 155.

CROSS REFERENCES

Railroad companies maintaining standard signs at all grade crossings, see Section 56‑5‑1010.

Signals to be given at crossings, see Section 58‑15‑910.

Stopping at railroad crossings, see Section 56‑5‑2710.

Library References

Railroads 243, 307.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789, 973 to 974.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 4

Federal courts 2

Instructions 4.5

Presumptions and burden of proof 3

Review 6

Sufficiency of evidence 5

1. In general

This section was not intended to relieve railroads of their common‑law duty to provide safe passage across their rails. Bowman v. Norfolk Southern Ry. Co., 1993, 832 F.Supp. 1014, affirmed 66 F.3d 315.

Under “occupied crossing doctrine” a railroad company, in absence of special hazard, has right to occupy a crossing for its legitimate purposes, furnishing only such warning to travelers as may be required by statute. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

In absence of evidence that railroad company knew, or should have known, that on approach to crossing from the south, automobile headlights would be incapable of performing the function for which they were designed, railroad was not negligent in operation of its railroad by its failure to take extraordinary precautions to give warning of the train’s occupancy of the crossing. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

A railroad company and a highway traveler have correlative duties which require both to exercise at least average care and prudence at a grade crossing, and when evidence is susceptible of only one reasonable inference with respect to a controlling issue, it becomes a matter of law for decision without reference to jury. Taylor v. Atlantic Coast Line R. Co. (S.C. 1950) 217 S.C. 435, 60 S.E.2d 889. Railroads 301; Railroads 350(1)

Failure to erect signs on a highway crossing a railroad track was not negligence insofar as it affected the train conductor. Hilton v. Southern Ry. Co. (S.C. 1940) 192 S.C. 476, 7 S.E.2d 161. Highways 194

One sign at crossing all that is necessary. Myers v. Atlantic Coast Line R. Co. (S.C. 1933) 169 S.C. 310, 168 S.E. 730.

2. Federal courts

Where plaintiff, in death action against railroad and its employee, alleged joint and concurrent acts of negligence some of which charged common‑law negligence and others charged a violation of South Carolina statutes and which are alleged to have combined and concurred with each other, directly and proximately to cause death of plaintiff’s intestate, there was no “separable controversy” between plaintiff and railroad within meaning of removal statute which would preclude remand to state court. 28 U.S.C.A. Sections 1441, 1445, 1447; Code S.C.1932, Section 5832 (repealed 1931), Sections 8355, 8356, 8430, 8448 (See Code 1942, Sections 8355, 8356, 8430, 8473). Forrest v. Southern Ry. Co., 1937, 20 F.Supp. 851. Removal Of Cases 49.1(8)

3. Presumptions and burden of proof

The burden on railroad company to take extraordinary precautions in an occupied crossing situation does not arrive until it knows or by the exercise of due care should have known of unusual hazard existing at the crossing. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

4. Admissibility of evidence

Photographs of scene of train‑automobile collision, including photograph which was taken on night of the collision and photographs which were taken in daytime about two weeks after the accident, which corroborated oral testimony that the downhill‑uphill grades on approach to the crossing were only slight, that the roadway was straight and that the vegetation and trees in the area did not obstruct a motorist’s view of the crossing were properly admitted in evidence in motorist’s personal injury action against railroad and State Highway Department. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

4.5. Instructions

Railroad and Department of Transportation were entitled to jury instructions on statutes related to placement of signs at railroad crossings and Department’s authority to close unsafe crossings, in negligence action against railroad and Department for traumatic brain injury minor sustained when train collided with automobile; statutes were relevant, as plaintiff alleged that railroad was negligent in maintaining unreasonably hazardous and unsafe crossing, expert opined that crossing could have been made safer with installation of active traffic‑control devices, and jury was informed that railroad could not close crossing of its own accord. Stephens v. CSX Transp., Inc. (S.C. 2015) 415 S.C. 182, 781 S.E.2d 534, rehearing denied. Automobiles 309(2); Evidence 571(6); Railroads 351(1)

5. Sufficiency of evidence

Where crossing at state highway was in rural area, highway was straight for 1,500 feet from the last crest south of the crossing, grades were insignificant, weather was fair, motorist’s headlights furnished good visibility for 400 feet and there were no obstructions to his view of the train as it moved across the highway directly in front of him, railroad company’s alleged failure to give warning of the train’s occupancy of the crossing did not constitute negligence in the operation of its railroad. Code 1962, Sections 46‑310, 58‑999. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

Where highway was straight for 1,500 feet from last crest south of crossing, grades were insignificant, weather was fair, the cars of which the train occupying the crossing were composed were capable of being seen, motorist’s lights were on high beam and furnished good visibility for 400 feet ahead, motorist’s failure to see the train occupying the crossing until he was within 100 feet of the crossing was contributory negligence. Code 1962, Section 33‑232. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

In action against railroad and engineer by administrator of deceased motorist for death of motorist, who ran into the side of diesel locomotive at highway grade crossing in rural section, evidence was insufficient to support finding of recklessness, willfulness, or wantonness, which was implicit in the verdict against railroad for punitive damages. Code 1952, Section 58‑999. Carter v. Peace (S.C. 1956) 229 S.C. 346, 93 S.E.2d 113. Railroads 348(11)

Where motorist approached a railroad grade crossing at almost a right angle, and at a point 34 feet from tracks could have seen approaching train for half a mile, and statutory crossing signals were being continuously given as train traveled 40 miles per hour, but motorist did not see train until just before it hit him, motorist was contributorily negligent. Code 1942, Sections 8355, 8356, 8377. Taylor v. Atlantic Coast Line R. Co. (S.C. 1950) 217 S.C. 435, 60 S.E.2d 889. Railroads 327(2); Railroads 333(1)

6. Review

Where plaintiff motorist did not except to direction of verdict in favor of railroad on ground that railroad’s failure to comply with its statutory duty to paint cross arms of crossbuck signs in manner prescribed by highway department manual required submission of case to jury, no issue with respect to the marking of the crossing was presented for review. Code 1962, Sections 46‑310, 58‑999; Supreme Court Rules, rule 8, Section 3. Still v. Hampton and Branchville R. R. (S.C. 1972) 258 S.C. 416, 189 S.E.2d 15.

**SECTION 58‑17‑1410.** Commission may require flagman to be stationed at important crossings.

 The Public Service Commission may, upon the application of a county supervisor, if it deem it necessary, require any railroad corporation to have a stationary flagman at any crossing the importance of which may demand it.

HISTORY: 1962 Code Section 58‑1001; 1952 Code Section 58‑1001; 1942 Code Section 8380; 1932 Code Section 8380; Civ. C. ‘22 Section 4928; Civ. C. ‘12 Section 3233; Civ. C. ‘02 Section 2142; G. S. 1489; R. S. 1695; 1881 (17) 826; 1935 (39) 25.

Library References

Railroads 243, 307.4(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789, 978 to 979.

NOTES OF DECISIONS

In general 1

1. In general

Under the evidence, order of Public Service Commission requiring railroad to provide round‑the‑clock watchman at railroad crossing was reasonable and was not invalid as imposing unnecessary burden on interstate commerce in violation of commerce and due process clauses of federal and state constitutions. Code 1952, Sections 58‑801, 58‑991, 58‑1001. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357. Commerce 58; Constitutional Law 4363; Railroads 243

A railroad may be required, under police power of state, to maintain gatemen, watchmen, or flagmen at highway crossings, where such measure to safeguard against danger is reasonable. Code 1952, Sections 58‑801, 58‑991, 58‑1001. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357. Railroads 243

The Public Service Commission, in determining what public safety requires in way of protection at grade crossings, may take into consideration the frailties of human nature, as well as volume of travel, and existing physical conditions surrounding crossing, and may also consider consequences which may flow from negligent conduct of imprudent. Code 1952, Sections 58‑801, 58‑991, 58‑1001. Atlantic Coast Line R. Co. v. Public Service Commission (S.C. 1954) 225 S.C. 196, 81 S.E.2d 357. Railroads 242.1

Section does not have to be alleged. Motorist who ran into boxcars obstructing highway did not have to allege in his complaint that the defendant railroad had violated this section [Code 1962 Section 58‑1001] and Code 1962 Section 33‑495, if this action was based on common‑law principles of negligence. Myers v. Atlantic Coast Line R. Co. (S.C. 1934) 172 S.C. 236, 173 S.E. 812.

**SECTION 58‑17‑1420.** Appeal from Commission order requiring flagman; appointment of civil engineer to decide matter.

 Any such railroad company, after receiving such notice, may, within ten days after such receipt, apply to the circuit court of the circuit in which such crossing is situated, or to a judge thereof if the court be not in session, and claim a re‑examination of the locality and a revision of the action of the Commission. The court or judge, as the case may be, shall appoint forthwith some civil engineer, not connected with any railroad, to examine into the matter forthwith and he may either affirm the demand of the Commission or modify it and his determination shall be final.

HISTORY: 1962 Code Section 58‑1002; 1952 Code Section 58‑1002; 1942 Code Section 8381; 1932 Code Section 8381; Civ. C. ‘22 Section 4929; Civ. C. ‘12 Section 3234; Civ. C. ‘02 Section 2143; G. S. 1490; R. S. 1696; 1881 (17) 826; 1935 (39) 25.

Library References

Railroads 243.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 788 to 789.

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative Law ‑ The Scope of Judicial Review of Decisions of Administrative Agencies in South Carolina. 23 S.C. L. Rev. 472.

**SECTION 58‑17‑1430.** Railroad shall comply with orders as to crossings or flagmen.

 Every railroad company shall, within the time indicated by the Commission or county supervisor, as the case may be, or within the time given by the civil engineer to such corporation upon re‑examination, maintain and construct such crossing in the manner demanded of it by the Commission or county supervisor, as the case may be, or civil engineer, or station a flagman, if such should be required, at the locality where it has been found necessary, as aforesaid.

HISTORY: 1962 Code Section 58‑1003; 1952 Code Section 58‑1003; 1942 Code Section 8382; 1932 Code Section 8382; Civ. C. ‘22 Section 4930; Civ. C. ‘12 Section 3235; Civ. C. ‘02 Section 2144; G. S. 1491; R. S. 1697; 1881 (17) 826; 1935 (39) 25.

CROSS REFERENCES

Construction and maintenance of grade crossings of highways by operators of railways, see Sections 58‑15‑2110 to 58‑15‑2130.

Library References

Railroads 92.1, 242.1, 243.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 290 to 294, 788 to 789.

**SECTION 58‑17‑1440.** Penalty and damages for injury at crossing not having required signals.

 If a person is injured in his person or property by collision with the engine or any car of a railroad corporation at a crossing and it appears that the corporation neglected to give the signals required by the General Railroad Law and that such neglect contributed to the injury, the corporation shall be liable for all damages caused by the collision or to a fine recoverable by indictment, unless it is shown that in addition to a mere want of ordinary care the person injured or the person having charge of his person or property was at the time of the collision guilty of gross or wilful negligence or was acting in violation of the law and that such gross or wilful negligence or unlawful act contributed to the injury.

HISTORY: 1962 Code Section 58‑1004; 1952 Code Section 58‑1004; 1942 Code Section 8377; 1932 Code Section 8377; Civ. C. ‘22 Section 4925; Civ. C. ‘12 Section 3230; Civ. C. ‘02 Section 2139; G. S. 1529; R. S. 1692; 1881 (17) 824; 1919 (31) 102.

CROSS REFERENCES

Certain vehicles stopping at grade crossings, see Section 56‑5‑2720.

Driving on right at grade crossings, see Section 56‑5‑1880.

Signals to be given at crossings, see Section 58‑15‑910.

Stopping at railroad crossings, see Section 56‑5‑2710.

Library References

Railroads 253, 255(1), 312.2.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 798, 803 to 806, 984, 986, 1280.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 37, Crossing Injuries.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Negligence; Contributory Negligence. 31 S.C. L. Rev. 133.

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Cited in Snipes v Davis, 131 SC 298, 127 SE 447 (1925). Dyson v Southern R. Co., 83 SC 354, 65 SE 344 (1909). Lee v Northwestern R. Co., 84 SC 125, 65 SE 1031 (1909). McFail v Barnwell County, 57 SC 294, 35 SE 562 (1900). Stabler v Southern Ry. Co., 160 SC 191, 158 SE 267 (1931). Key v Carolina & N. W. Ry. Co., 165 SC 43, 162 SE 582 (1931). McAbee v Southern Ry. Co., 166 SC 166, 164 SE 444 (1932). Myers v Atlantic Coast Line R. Co., 172 SC 236, 173 SE 812 (1934). Taylor v Powell, 195 SC 486, 12 SE2d 27 (1940). Ballard v Southern R. Co., 197 SC 288, 15 SE2d 342 (1941). Crapse v Southern Ry. Co., 201 SC 176, 21 SE2d 737 (1942). Gleaton v Southern Ry. Co., 208 SC 507, 38 SE2d 710 (1946). Cammer v Atlantic Coast Line R. Co., 214 SC 71, 51 SE2d 174 (1948). Swindler v Peay, 227 SC 157, 87 SE2d 296 (1955). Ard v Seaboard Coast Line R.R., 487 F2d 456 (4th Cir 1973).

Applied in Sanders v Southern Ry. Co., 97 SC 423, 81 SE 786 (1914). Neely v Charlotte, C. & A. R. Co., 33 SC 136, 11 SE 636 (1890). Norwood v Atlantic Coast Line R. Co., 203 SC 456, 27 SE2d 803 (1943). Limehouse v Southern Ry. Co., 216 SC 424, 58 SE2d 685 (1950). Taylor v Atlantic Coast Line R. Co., 217 SC 435, 60 SE2d 889 (1950).

For additional related cases, see Duncan v Greenville County, 73 SC 254, 53 SE 367 (1906). Walker v Southern Ry. Co., 77 SC 161, 57 SE 764 (1907).

Section is in derogation of common law, and must be construed strictly. Whilton v. Richmond & D.R. Co., 1893, 57 F. 551.

2. Construction with other laws

This section [Code 1962 Section 58‑1004] and Code 1962 Section 58‑743 are independent. Code 1962 section 58‑743 and this section [Code 1962 Section 58‑ 1004] are commonly thought of together as the crossing or signal statutes. However, they are entirely independent of each other. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

Code 1962 section 58‑743 is a safety statute which may be applicable in a common‑law action, while this section [Code 1962 Section 58‑1004] creates a statutory cause of action, unfettered by the defense of contributory negligence. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

3. Constitutional issues

Limiting the presumption of negligence raised by this section [Code 1962 Section 58‑1004] to railway companies does not deprive them of equal protection of the laws. Atlantic Coast Line R. Co. v. Ford (U.S.S.C. 1933) 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

The presumption raised does not violate the commerce clause. Atlantic Coast Line R. Co. v. Ford (U.S.S.C. 1933) 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

A state statute that raises a presumption of negligence against the railroad in a grade crossing accident upon proof of failure to give prescribed warning signals, is not contrary to due process if the presumption amounts merely to a temporary inference which may be rebutted by evidence and is thereafter to be excluded in determining proximate cause. Atlantic Coast Line R. Co. v. Ford (U.S.S.C. 1933) 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

The constitutionality of this section [Code 1962 Section 58‑1004] was reaffirmed in Driggers v. Southern Ry. Co. (S.C. 1933) 169 S.C. 157, 168 S.E. 185.

This section [Code 1962 Section 58‑1004] was held not to violate the due process clause, equal protection clause or the interstate commerce clause of the Federal Constitution, nor the due process clause of the State Constitution, in Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

Constitutionality. This section [Code 1962 Section 58‑1004] is not in violation of the constitutional provision inhibiting a denial of equal protection of the law; for the purpose of the statute is to compel railroad companies to give the statutory notice, and, while abolishing the ordinary defense of contributory negligence, the classification of all railroad companies is reasonable. Drennan v. Southern Ry., Carolina Div. (S.C. 1912) 91 S.C. 507, 75 S.E. 45.

4. Common‑law remedy

Remedy given by section is cumulative and does not supersede remedy at common law. Kaminitsky v Northeastern R. Co., 25 SC 53 (1886). Spires v South Bound R. Co., 47 SC 28, 24 SE 992 (1896). Burns v Southern Ry. Co., 61 SC 404, 39 SE 567 (1901).

In an action at common law such as Murray v South Carolina R. Co., 10 Rich (44 SCL) 227, on the question of negligence, failure to give the statutory signals at a crossing near the place of injury may be shown in evidence. Mack v South Bound R. Co., 52 SC 323, 29 SE 905 (1898). Mason v Southern Ry. Co., 58 SC 70, 36 SE 440 (1900).

The right of action conferred by this section [Code 1962 Section 58‑1004] is cumulative and does not take away the common‑law right of action. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

And injured party may elect to sue at common law. Since the remedy is cumulative, under appropriate circumstances the injured party may elect to sue at common law, subject to common‑law defenses but not subject to the statutory limitation. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

At common law, defense of contributory negligence is available. In pursuing the common‑law remedy plaintiff is subject to the ordinary defense of contributory negligence, but not burdened by limitations impressed by the legislature on the cumulative right of recovery under this section [Code 1962 Section 58‑1004]. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

Imputation of gross negligence is not applicable to action solely at common law. Padgett v. Southern Ry. Co. (S.C. 1950) 216 S.C. 487, 58 S.E.2d 895.

5. Applicability

This section [Code 1962 Section 58‑1004] applies only where the injury occurs at a crossing and by reason of a collision. Hasting v Southern Ry. Co., 143 F 260 (1906), cert denied 201 US 649, 26 S Ct 762, 50 L Ed 905 (1906). Kinard v Columbia, etc., R. Co., 39 SC 514, 18 SE 119 (1893). Clifford v Southern Ry. Co., 87 SC 324, 69 SE 513 (1910).

A traveled place is one to which persons are accustomed and have a right to use. Hale v Columbia, etc., R. Co., 34 SC 292, 13 SE 537 (1891). Barber v Richmond, etc., R. Co., 34 SC 444, 13 SE 630 (1891). Hankinson v Charlotte, etc., R. Co., 41 SC 1, 19 SE 206 (1894). Risinger v Southern Ry. Co., 59 SC 429, 38 SE 1 (1901). Strother v South Carolina, etc., R. Co., 47 SC 375, 25 SE 272 (1896).

Collision following failure to give warning. If the required warning is not given and a collision occurs, the railroad is liable for damages unless the injured party was guilty of gross or willful negligence. Craven v. Southern Ry. Co. (C.A.4 (S.C.) 1969) 412 F.2d 835.

Nor does this section [Code 1962 Section 58‑1004] apply where a boy is killed by reason of being thrown off a shanty car, which is shoved by the engineer engaged in coupling cars, the accident occurring while he was trying to cross the railroad some distance from highway which was obstructed and none of the railroad’s employees had any knowledge of the boy’s presence. Hasting v. Southern Ry. Co., 1906, 143 F. 260, 74 C.C.A. 398, 74 C.C.A. 775, certiorari denied 26 S.Ct. 762, 201 U.S. 649, 50 L.Ed. 905.

Nor does it apply to injuries sustained from being thrown off wagon by team becoming frightened. Whilton v. Richmond & D.R. Co., 1893, 57 F. 551.

Section applies where railroad neglects to give statutory signals. This section [Code 1962 Section 58‑1004] only comes into play when a railroad company neglects to give the statutory signals required by Code 1962 Section 58‑743. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

This section [Code 1962 Section 58‑1004] is not applicable where there was no actual collision. Breeden v. Rockingham R. Co. (S.C. 1940) 193 S.C. 220, 8 S.E.2d 366.

It does not refer to one who runs an automobile into a ditch to avoid a collision. Dobbins v. Seaboard Air Line R. Co. (S.C. 1917) 108 S.C. 254, 93 S.E. 932.

And this section [Code 1962 Section 58‑1004] is applicable, though there is no actual contact, as where a horse, frightened by a train backing without giving the statutory signals, ran up the track, injuring the occupants of the buggy. Folk v. Seaboard Air Line Ry. (S.C. 1914) 99 S.C. 284, 83 S.E. 452.

But it is also held that to render a railroad company liable, under this section [Code 1962 Section 58‑1004], a collision at the crossing is unnecessary to entitle plaintiff to recover for injury caused by the mule she was driving taking fright at the train. Spears v. Atlantic Coast Line R. Co. (S.C. 1912) 92 S.C. 297, 75 S.E. 498.

As to traveled place established by adverse use, see Kirby v. Southern Ry. (S.C. 1902) 63 S.C. 494, 41 S.E. 765.

One attempting to cross between cars standing on crossing is within statute. Littlejohn v. Richmond & D.R. Co. (S.C. 1897) 49 S.C. 12, 26 S.E. 967.

6. crossing

The injury must occur “at the crossing” or “on the crossing,” which must be a traveled place. Hutto v South Bound R. Co., 61 SC 495, 39 SE 710 (1901). Hale v Columbia & G. R. Co., 34 SC 292, 13 SE 537 (1891). Neely v Charlotte, C. & A. Ry. Co., 33 SC 136, 11 SE 636 (1890). Haltiwanger v Columbia, N. & L. R. Co., 64 SC 7, 41 SE 810 (1902). Ruddell v Seaboard Air Line Ry. Co., 75 SC 290, 55 SE 528 (1906). Goodwin v Atlantic Coast Line R. Co., 82 SC 321, 64 SE 242 (1909).

Where a truck struck the twenty‑sixth car moving over a crossing, the statutory requirement of a signal was inapplicable because of the distance that the engine had passed beyond the crossing before the collision occurred; and so the gross or willful contributory negligence requisite to defeat recovery under this section [Code 1962 Section 58‑1004] was not required. Jones v. Southern Ry. Co. (S.C. 1961) 238 S.C. 27, 118 S.E.2d 880.

What is “at a crossing.” Bishop v. Southern Ry. (S.C. 1902) 63 S.C. 532, 41 S.E. 808.

7. Negligence of railroad—In general

Failure to ring bell or blow whistle when approaching crossing is negligence per se. Davis v Atlanta & C. Air Line Ry. Co., 63 SC 370, 41 SE 468 (1902). Bowen v Southern Ry. Co., 58 SC 222, 36 SE 590 (1900). Seaboard Coast Line R.R. v Owen Steel Co., 348 F Supp 1363 (D SC 1972).

Railroads must sound warnings when approaching crossings with public highways. Craven v. Southern Ry. Co. (C.A.4 (S.C.) 1969) 412 F.2d 835.

The violation of a valid city ordinance regulating the speed of trains within a municipality and the violation of the statutory law requiring the giving of crossing signals, resulting in injury to another, is negligence as a matter of law. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

Bailee’s negligence was properly imputable to plaintiff where plaintiff, railroad which owned locomotive involved in collision with truck, was engaged in joint venture with bailee, parent railroad of system in which plaintiff was wholly owned subsidiary, using locomotives owned by each railroad in system interchangeably according to need, and paying owner of locomotive amount which represented reimbursement for cost of ownership, with parent company maintaining common facilities for repair throughout system, and most of employees not covered by union contract being paid ratably by each railroad system, and where parent railroad and plaintiff filed consolidated tax returns. Central of Georgia Ry. v. Walker Truck Contractors (S.C. 1978) 270 S.C. 533, 243 S.E.2d 923.

In a case under this section [Code 1962 Section 58‑1004], if the plaintiff proves the failure to give the signals required, it is negligence per se. King v. Southern Ry. Co. (S.C. 1967) 249 S.C. 236, 153 S.E.2d 690.

Railroad’s omission to ring bell or sound whistle at a public crossing was sufficient to authorize recovery by motorist colliding with a train, even though by exercise of ordinary care he might have avoided the accident. Nofal v. Atlantic Coast Line R. Co. (S.C. 1935) 175 S.C. 94, 178 S.E. 541. Railroads 335(3)

Sufficiency of giving signals. Giving of statutory signal under conditions making hearing thereof improbable is insufficient. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 368

Allegation as to negligence. Proctor v. Southern Ry. Co. (S.C. 1901) 61 S.C. 170, 39 S.E. 351.

8. —— Proximate cause, negligence of railroad

The omission to give the statutory signal need not be the proximate or efficient cause of the injury; the company is liable if it contributes in any way thereto. Wragge v South Carolina & G. R. Co., 47 SC 105, 25 SE 76 (1896). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896).

Absence of signals must be shown to have been contributing factor. The force of this section [Code 1962 Section 58‑1004] is conditioned upon proof that the absence of signals was an effectively contributing factor to the disaster. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

Omission of signals held not to have contributed to accident. The sounding of signals by a locomotive when only five hundred yards away from a crossing and coming at eighty miles per hour would have told the driver of a car stalled at the crossing nothing more than the horror he already knew. At that moment the shriek of the whistle would have been no more than a perfunctory and sadistic warning of imminent death. The tracks themselves had been the initial admonishment of peril; the oncoming locomotive confirmed it. Omission of the signal therefore played no part in the tragedy. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

9. —— Effect on railroad’s right to recover, negligence of railroad

The doctrine of “comparative negligence” is not recognized in South Carolina unless required by statute. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

To accept the theory that a railroad can recover even if it was negligent (assuming violation of Code 1962 Section 58‑743) if it shows that defendant motorist was guilty of gross contributory negligence would be to recognize the doctrine of comparative negligence. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

And any contributory negligence of the railroad is sufficient, regardless of degree or extent, if it contributes to injury as a proximate cause thereof, without which it would not have occurred. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Negligence 453; Negligence 549(2)

A railroad’s contributory negligence by virtue of violation of the statutory signal requirement would bar its claim no matter what degree of negligence is assigned to the motorist. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

Counterclaim based on this section [Code 1962 Section 58‑1004] may be defeated. A counterclaim based on this section [Code 1962 Section 58‑1004], which requires a finding of contributory gross negligence of recklessness on the part of the defendant motorist before recovery by the railroad, may be defeated in crossing cases where there is evidence that the statutory warning signals required by Code 1962 Section 58‑743 were not given by the train crew. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

10. Negligence of injured person—In general

Test for determining negligence of motorist. In determining the negligence of a motorist in a railroad crossing collision, the test is always the conduct of an average, reasonably prudent person under existing conditions. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 324(1); Railroads 330(3)

Simple contributory negligence no defense to action under terms of this section [Code 1962 Section 58‑1004]. Clark v. Southern Ry. Co. (S.C. 1963) 243 S.C. 27, 131 S.E.2d 844.

Simple contributory negligence defeating recovery. Where engine had proceeded beyond the crossing before collision occurred, the issue of willfulness on the part of the railroad having been eliminated, proof of simple contributory negligence was all that was required to defeat plaintiff’s recovery. Jones v. Southern Ry. Co. (S.C. 1961) 238 S.C. 27, 118 S.E.2d 880.

Ordinary negligence of plaintiff in crawling between stationary cars did not preclude recovery for injuries caused by failure of railroad to give statutory signals before moving train. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 326(2)

This section [Code 1962 Section 58‑1004] was not intended to vary the rule that contributory negligence is no defense to an action for injuries caused by the willful act or omission of a railway company, since the section has no reference whatever to willful misconduct by the railway company, but relates to misconduct of the party injured as a defense to negligence of the company in failing to give required signals. Harbert v. Atlanta & C.A.L. Ry. Co. (S.C. 1907) 78 S.C. 537, 59 S.E. 644.

11. —— Gross or wilful negligence, negligence of injured person

If the statutory signals were not given, simple negligence would not preclude recovery, but it would be necessary to show contributory gross or willful negligence. Mize v Blue Ridge Ry. Co., 219 SC 119, 64 SE2d 253 (1951). Vernon v Atlantic Coast Line R. Co., 221 SC 376, 70 SE2d 862 (1952). Atlantic Coast Line R. Co. v Glenn, 198 F2d 232 (1952).

Gross negligence exemplified. Crossing track without stopping to look or listen is gross negligence. Ward v Richmond & D. R. Co., 43 F 422 (1890). Byrd v Atlantic Coast Line R. Co., 2 F2d 672 (1924).

Gross negligence as a matter of law. One who approaches a railroad crossing with which he is entirely familiar, in the daylight, where the view of approaching trains, to his knowledge, is obstructed until a point is reached approximately thirty feet from the railroad tracks, in an automobile at a speed of thirty to thirty‑five miles per hour, without slackening his speed or taking any precautions to have his automobile under such control at a point where he could obtain a view of an approaching train as to be able to stop before reaching the crossing, is guilty, as a matter of law, not only of negligence, but of gross negligence. Breeden v Rockingham R. Co., 193 SC 220, 8 SE2d 366 (1940). Osborne v Southern Ry., 263 F Supp 718 (D SC 1967).

The common‑law defense of contributory negligence is eliminated under this section [Code 1962 Section 58‑1004] unless, in addition to mere want of ordinary care, it is shown that gross or willful negligence or unlawful act, chargeable to person injured, contributed to injury. Wright v Southern Ry. Co., 210 SC 432, 43 SE2d 139 (1947). Rock v Atlantic Coast Line R. Co., 222 SC 362, 72 SE2d 900 (1952).

The term “gross negligence” does not stand by itself in this statute, but the context characterizes the meaning and gives it the significance of willfulness. Driggers v Southern Ry. Co., 169 SC 157, 168 SE 185 (1933), quoting Glenn v Southern Ry. Co., 145 SC 41, 142 SE 801 (1928).

Sufficiency of contributory negligence to defeat recovery. Gross or willful contributory negligence defeats recovery against railroad failing to give statutory crossing signals. Timmons v Southern Ry. Co., 138 SC 82, 136 SE 27 (1926). Hughes v Southern R. Co., 82 SC 45, 61 SE 1079, 63 SE 5 (1908).

Gross negligence precludes recovery regardless of statutory signals. Reynolds v Atlantic Coast Line R. Co., 44 F2d 338 (1930). Southern Ry. Co. v Priester, 289 F 945 (1923). Charleston Coast Line & W. C. R. Co. v Alwang, 258 F 297 (1919). Weaver v Southern Ry. Co., 76 SC 40, 56 SE 657 (1907). Osteen v Southern Ry. Co., 76 SC 368, 57 SE 196 (1907).

In order to bar recovery the gross or willful negligence of the plaintiff must be a proximate or efficient cause. Bowen v Southern Ry. Co., 58 SC 222, 36 SE 590 (1900). Cooper v Georgia, C. & N. Ry. Co., 56 SC 91, 34 SE 16 (1899).

The Supreme Court of South Carolina has defined gross contributory negligence as a failure to use even slight care or as “negligence so gross and reckless as to amount to willfulness.” Craven v. Southern Ry. Co. (C.A.4 (S.C.) 1969) 412 F.2d 835. Negligence 520

Where a car stalled at a railroad crossing was struck by a locomotive which gave no signals, the railroad would be responsible for the death of the driver of the car unless it could show that he was guilty of gross or willful negligence. Isgett v. Atlantic Coast Line R. Co. (C.A.4 (S.C.) 1964) 328 F.2d 364.

Where there was evidence from which the trier of facts could have concluded that the defendant railroad failed in its duty to give warning, by bell or whistle, of the train’s approach, at least five hundred yards before it reached the crossing, and this failure was a proximate contributing cause of the injury, the plaintiff would not be barred from recovery unless his own conduct amounted to gross or willful negligence contributing to the injuries. Westley v. Southern Ry. Co. (C.A.4 (S.C.) 1957) 250 F.2d 188, rehearing denied 252 F.2d 79.

Where plaintiff, who is driving automobile struck by an electric locomotive operated by the United States, was familiar with the crossing, and had an unobstructed view of the track and approaching engine for at least seventy feet from the crossing, such plaintiff was guilty of gross negligence and could not recover even though locomotive did not give the required statutory signals. Carroll v. U.S., 1949, 87 F.Supp. 721.

Contributory gross negligence is an affirmative defense and, to be entitled to a nonsuit or directed verdict, the burden is upon the defendant to prove that plaintiff’s decedent failed to use even slight care for her own safety. Simmons v. Atlantic Coast Line R. Co. (S.C. 1967) 250 S.C. 199, 157 S.E.2d 172. Negligence 1531; Negligence 1571

Where it is conceded that the statutory signals were not given by the employees of the railroad as required by Code 1962 Section 58‑743, in order to require reversal of the judgment against the railroad, it must appear from the evidence that the deceased was guilty of contributory “gross or willful negligence” as a matter of law. Wingate v. Seaboard Air Line R. Co. (S.C. 1964) 244 S.C. 332, 137 S.E.2d 258.

Failure to exercise even slight care is gross negligence. There was no explanation for plaintiff’s intestate driving into the path of the train except that he failed to exercise even slight care for his own safety and under the circumstances such would constitute contributory gross or willful negligence and bar recovery by the plaintiff. Wingate v. Seaboard Air Line R. Co. (S.C. 1964) 244 S.C. 332, 137 S.E.2d 258.

Gross negligence within meaning of this section [Code 1962 Section 58‑1004] is a failure to exercise slight care or negligence so gross and reckless as to amount to willfullness. Clark v. Southern Ry. Co. (S.C. 1963) 243 S.C. 27, 131 S.E.2d 844.

Gross negligence within meaning of this section [Code 1962 Section 58‑1004], which must appear as only reasonable inference from record to justify reversal, is failure to exercise slight care or negligence so gross and reckless as to amount to willfullness. Gossett v. Piedmont & N. Ry. Co. (S.C. 1963) 241 S.C. 501, 129 S.E.2d 326.

Where jury believed that statutory crossing signal was not given, and that the failure to give it contributed to the accident, then plaintiff’s recovery could not be defeated by less than gross contributory negligence on part of the driver of the car in which the plaintiff’s decedent was a passenger. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777.

Automobile driver’s failure to make a left hand turn into another highway and thus avoid a collision, or his failure to see a boxcar across the highway, is not gross contributory negligence as a matter of law. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777.

Where there was some evidence that the bell on an engine was not ringing, as required by this section [Code 1962 Section 58‑1004], and a city ordinance prohibited the blowing of the whistle, it was incumbent upon the defendant railroad to show that the plaintiff truck driver, in addition to mere want of ordinary care, was guilty of gross or willful negligence, and that such gross or willful negligence contributed to the injury. Barnett v. Charleston & W. C. Ry. Co. (S.C. 1957) 230 S.C. 525, 96 S.E.2d 555.

If the driver of an automobile was negligent in the operation of the automobile, which negligence contributed as a proximate cause to the death of a passenger, even then such negligence would not bar a recovery either under the statute or the common law if the train was operated in a grossly negligent, reckless and willful manner. In order to bar a recovery, the driver would have had to operate the automobile in a grossly negligent, reckless and willful manner, which contributed as a proximate cause to respondent’s intestate’s death, or was the sole cause. Mock v. Atlantic Coast Line R. Co. (S.C. 1955) 227 S.C. 245, 87 S.E.2d 830.

Question is whether driver failed to exercise slight care. The question is not whether the driver of the automobile exercised ordinary care, but whether she failed to exercise slight care, and hence was guilty of gross negligence, willfulness and recklessness contributing as a proximate cause to the death of plaintiff’s intestate. Mock v. Atlantic Coast Line R. Co. (S.C. 1955) 227 S.C. 245, 87 S.E.2d 830.

In order to set up the defense of contributory negligence for the violation of a statute, the violation of the statute, although declared negligence per se, must be shown to have been the proximate cause of the injury. Seay v. Southern Railway‑Carolina Division (S.C. 1944) 205 S.C. 162, 31 S.E.2d 133.

As to evidence of gross or willful negligence being sufficient for directed verdict in favor of railroad, see Smith v. Southern Ry.‑Carolina Division (S.C. 1940) 193 S.C. 44, 7 S.E.2d 630.

“Gross negligence,” as distinguished from ordinary negligence, is the intentional, conscious failure to do a thing that is encumbent upon one to do, or the doing of a thing intentionally that one ought not to do. Carter v. Atlantic Coast Line R. Co. (S.C. 1940) 192 S.C. 441, 7 S.E.2d 163.

To avoid liability for crossing accident where statutory signals were not given, railroad must show that person injured, or person having charge of his person or property, was grossly or willfully negligent or acting in violation of law, and that such conduct contributed to injury. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457. Railroads 346(5.1)

“Gross negligence” is the failure to exercise slight care; and as distinguished from “ordinary negligence” or “simple negligence,” it is the intentional, conscious failure to do a thing that is incumbent upon one to do, or the doing of a thing intentionally that one ought not to do. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

Negligence of person injured must have been willful to preclude recovery for injury caused by railroad’s failure to give statutory signals. Glenn v. Southern Ry. Co. (S.C. 1928) 145 S.C. 41, 142 S.E. 801. Railroads 326(2)

Gross or willful negligence compared. This section [Code 1962 Section 58‑1004] uses the expression “gross or willful negligence.” Such expression may not be technically accurate, for, theoretically, the same act cannot be both negligent and willful. But it is not misleading. Negligence may be so gross that it would be difficult, if not impossible, to distinguish it from willfulness; and so it may be so gross as to warrant the inference of willfulness, which shows that the one shades into the other almost imperceptibly. Furman v. A.C. Tuxbury Land & Timber Co. (S.C. 1919) 112 S.C. 71, 99 S.E. 111.

12. —— Duty injured person, negligence of injured person

Failure to look and listen upon entering crossing. Where a traveler about to enter upon a crossing has an opportunity, by exercising his sense of hearing or sight, to discover an approaching train in time to stop in a place of safety, it is his duty under such circumstances to look and listen, and, if he fails to do so, or fails or neglects, as he approaches the crossing, to see or discover an approaching train dangerously near the crossing, which the evidence shows he could or must have discovered in the exercise of ordinary care, had he looked or listened, such failure to look and listen amounts not only to negligence, but to gross negligence as a matter of law. Wingate v Seaboard Air Line R.R., 244 SC 332, 137 SE2d 258 (1964). Osborne v Southern Ry., 263 F Supp 718 (D SC 1967).

As to failure to look and listen, see Bamberg v Atlantic Coast Line R. Co., 72 SC 389, 51 SE 988 (1905). Drawdy v Atlantic Coast Line R. Co., 78 SC 374, 58 SE 980 (1907). Griskell v Southern Ry. Co., 81 SC 193, 62 SE 205 (1908).

The rule is that a traveler is not bound to see or to hear, but is bound to make all reasonable effort to see and to hear that an ordinarily prudent man would make under like circumstances. Cook v Atlantic Coast Line R. Co., 196 SC 230, 12 SE2d 1 (1941). Edwards v Southern Ry. Co., 63 SC 271, 41 SE 458 (1902).

Despite the negligence of the railroad, a traveler cannot recover who takes no precaution whatsoever at the crossing, when any precaution would have warned him before going on the track and prevented the injury. Atlantic Coast Line R. Co. v. Glenn (C.A.4 (S.C.) 1952) 198 F.2d 232, certiorari denied 73 S.Ct. 505, 344 U.S. 935, 97 L.Ed. 719. Railroads 335(1)

The duty of a motorist is to look and see what reasonably could be seen, to listen and hear what reasonably could be heard. There is no absolute duty to see what reasonably cannot be seen or to hear what reasonably cannot be heard. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 327(4)

When assumption of safety to cross railroad arises. When railroad whistles or other warnings are not being sounded, a resulting assumption of safety to cross the railroad arises. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363. Railroads 324(1); Railroads 330(3)

There is no absolute duty to stop at a railroad crossing. Seaboard Coast Line R. Co. v. Owen Steel Co. (D.C.S.C. 1972) 348 F.Supp. 1363.

It is the duty of a traveler, upon the approach to a railroad crossing of which he he is aware, to use due care to observe the approach of trains at said crossing for “it is always train time at a railroad crossing.” Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

In approaching a crossing, the duty rests upon the traveler to use his senses of sight and hearing to the best of his ability under the existing and surrounding circumstances, to look and listen in both directions for approaching trains unless prevented from doing so by the fault of the railroad company, and to the extent the matter is under his control, to look and listen at a place and in a manner that would make the use of his senses effective. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

Obstructed view of crossing imposes additional duty of care on traveler. Even though the view of the railroad track be partially obstructed at a crossing, that fact does not relieve the traveler of the obligation to look and listen for an approaching train. The very fact of the existence of such obstruction, and particularly when it is known to the traveler, imposes additional care and caution upon him when approaching the track. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

One who fails to carefully use opportunity to look and listen is negligent as matter of law. Where the evidence shows that the opportunity of the injured person or deceased for seeing or hearing the approaching train was such that he could not fail to have seen or heard it in time to avert the accident if he had used due care in looking and listening, he is guilty of contributory negligence as a matter of law. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

The duty of a traveler to look and listen in both directions for approaching trains is not an absolute one, but may be qualified by attendant circumstances. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

Both the traveler and the company are charged with the same degree of care; the one to avoid being injured, and the other to avoid inflicting injury. The care of each must be commensurate with the risk and danger involved. The greater the risk, the greater the care. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

The mere omission to give the statutory signals and the failure to observe a municipal speed ordinance do not relieve the traveler from the imputation of negligence if he fails on his part to exercise ordinary care in looking and listening. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

There is a mutual duty upon the traveler and the railroad to exercise due care. Graham v. Seaboard Air Line R. Co. (D.C.S.C. 1966) 250 F.Supp. 566.

While the railroad is required to give the statutory crossing signals, the failure of the railroad to give such signals does not relieve a traveler of the duty to exercise due care to observe the approach of trains at the crossing. Wingate v. Seaboard Air Line R. Co. (S.C. 1964) 244 S.C. 332, 137 S.E.2d 258. Railroads 312.2; Railroads 330(3)

Mutual duty. Railroad company and traveler on highway crossing charged with mutual duty of keeping lookout for danger and degree of vigilance required of both in proportion to known risk, the greater the danger the greater care required of both. Clark v. Southern Ry. Co. (S.C. 1963) 243 S.C. 27, 131 S.E.2d 844.

But rule barring recovery as matter of law is qualified. Rule barring recovery as matter of law by one who fails to make effective use of opportunity to see approaching train is subject to applicable qualifications and limitations, and the duty of traveler is not an absolute one, but may be qualified by attendant circumstances. Gossett v. Piedmont & N. Ry. Co. (S.C. 1963) 241 S.C. 501, 129 S.E.2d 326.

The traveler crossing railroad tracks is not bound to see or hear, but is bound to make all reasonable effort to see and hear that an ordinarily prudent man would make under like circumstances. Gross or willful contributory negligence defeats recovery even though the railroad failed to give the statutory crossing signals. Wright v. Southern Ry. Co. (S.C. 1947) 210 S.C. 432, 43 S.E.2d 139.

A traveler on reaching a railroad crossing and before attempting to go upon the track, must use his senses of sight and hearing to the best of his ability under the existing and surrounding circumstances; he must look and listen in both directions for approaching trains; if not prevented from doing so by the fault of the railroad company, and to the extent the matter is under his control, he must look and listen at a place and in a manner that will make the use of his senses effective. The duty of a traveler arising under the foregoing rule is not an absolute one, but may be qualified by attendant circumstances. Cook v. Atlantic Coast Line R. Co. (S.C. 1941) 196 S.C. 230, 13 S.E.2d 1, 133 A.L.R. 1144. Railroads 327(1); Railroads 327(5); Railroads 327(8)

It is the duty of a traveler, upon the approach to a railroad crossing of which he is aware, to use due care to observe the approach of trains at such crossing. Breeden v. Rockingham R. Co. (S.C. 1940) 193 S.C. 220, 8 S.E.2d 366. Railroads 327(1)

13. —— Imputation of driver’s negligence to guest, negligence of injured person

Under this section [Code 1962 Section 58‑1004] automobile driver’s unlawful act is imputed to guest injured at railroad crossing. Neely v Carolina & N. W. R. Co., 123 SC 449, 117 SE 55 (1923). Smith v Southern Ry. Co., 193 SC 44, 7 SE2d 630 (1940).

Under this section [Code 1962 Section 58‑1004], the negligence, recklessness and willfulness of the driver of the vehicle would be imputable to a passenger in the vehicle, whereas under the common law it would not be imputable. Mock v. Atlantic Coast Line R. Co. (S.C. 1955) 227 S.C. 245, 87 S.E.2d 830.

Imputation of gross negligence not applicable to action solely at common law. In an action brought by the administratrix for death of intestate who was a passenger in a car struck by a train, the absence of evidence of failure of the train to give the statutory crossing signals converted the action to one solely at common law, so the provision of this section [Code 1962 Section 58‑1004] to the effect that gross negligence of the driver of the automobile is imputable to the guest passenger is inapplicable. Padgett v. Southern Ry. Co. (S.C. 1950) 216 S.C. 487, 58 S.E.2d 895. Railroads 335.5

Unnecessary to consider whether joint enterprise. The right of a plaintiff to recover under this section [Code 1962 Section 58‑1004] would be defeated by the contributory gross negligence, either of herself or of the driver of the automobile, who had charge of her person. In the light of the provisions of this statute, it is unnecessary to consider whether or not the driver of the automobile and the passenger were engaged in a joint enterprise. Carter v. Atlantic Coast Line R. Co. (S.C. 1940) 192 S.C. 441, 7 S.E.2d 163.

14. Damages

As to damages recoverable, see Hart v Railroad Co., 33 SC 427, 12 SE 9 (1890). Strother v South Carolina, etc., R. Co., 47 SC 375, 25 SE 272 (1896).

Punitive damages. Under this section [Code 1962 Section 58‑1004] punitive damages may be awarded for willful or reckless failure to give the signals required at a railroad crossing, where the complaint alleges that defendant recklessly failed to give such signal. Cole v. Blue Ridge Ry. Co. (S.C. 1906) 75 S.C. 156, 55 S.E. 126. Railroads 349

15. Presumptions and burden of proof

Burden of proof to show gross negligence of plaintiff is on defendant. Nohrden v Northeastern R. Co., 59 SC 87, 37 SE 228 (1900). Petrie v Columbia & G. R. Co., 29 SC 303, 7 SE 515 (1888).

Railroad’s failure to give statutory signals at crossing is presumed proximate cause of injury. McBride v Atlantic Coast Line R. Co., 140 SC 260, 138 SE 803 (1927). King v Southern Ry., 249 SC 236, 153 SE2d 690 (1967).

Traveler may presume that railroad will give proper signals. A traveler approaching a railroad crossing has a right to presume that the railroad will obey the law and give the statutory signals; while the wrongful conduct of the railroad in this regard will not excuse the traveler from the exercise of slight care, yet in determining whether he did not use such care, his conduct is to be judged in the light of such presumption. Simmons v. Atlantic Coast Line R. Co. (S.C. 1967) 250 S.C. 199, 157 S.E.2d 172. Railroads 330(3)

Upon the failure to give the statutory signals and resulting injury at the places stated in this statute, there is a rebuttable presumption that such failure produced the injury as a proximate cause. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457.

Contributory gross or willful negligence inferred from circumstances. See Byrd v. Atlantic Coast Line R. Co. (S.C. 1967) 249 S.C. 310, 154 S.E.2d 1.

16. Questions for jury

Gross negligence as question for jury. Carter v Atlantic Coast Line R. Co., 192 SC 441, 7 SE2d 163 (1940). Barnett v Charleston & Western Carolina Ry. Co., 230 SC 525, 96 SE2d 555 (1957). Simmons v Atlantic Coast Line R.R., 250 SC 199, 157 SE2d 172 (1967).

Existence of negligence for jury. The existence of negligence is a question for the jury. Carter v Columbia & G. R. Co., 19 SC 20 (1883). Crouch v Charleston & S. Ry. Co., 21 SC 495 (1884). Kaminitsky v Northeastern R. Co., 25 SC 53 (1886). White v Augusta & K. R. Co., 30 SC 218, 9 SE 96 (1889). Strother v South Carolina & G. R. Co., 47 SC 375, 25 SE 272 (1896). Littlejohn v Richmond & D. R. Co., 45 SC 181, 22 SE 789 (1895).

It is ordinarily a question for the jury in the application of the standard of due care to say whether the attempt of the traveler to cross without looking and listening effectively was excusable or culpable. Osborne v. Southern Ry. Co. (D.C.S.C. 1967) 263 F.Supp. 718.

One about to cross railroad track at public highway crossings not under absolute duty to stop, look, and listen, unless exercise of ordinary care and prudence required, and it is ordinarily question for jury to determine whether attempt of traveler to cross without looking or listening effectively was excusable or culpable. Clark v. Southern Ry. Co. (S.C. 1963) 243 S.C. 27, 131 S.E.2d 844. Railroads 327(1)

Willful contributory negligence as question for jury. See Doremus v. Atlantic Coast Line R. Co. (S.C. 1963) 242 S.C. 123, 130 S.E.2d 370.

As is credibility of testimony. Credibility of testimony that statutory crossing signal was not given was for the jury, not the trial judge; and it is not the Supreme Court’s function to pass upon it. Johnson v. Charleston & W. C. Ry. Co. (S.C. 1959) 234 S.C. 448, 108 S.E.2d 777.

In action against railroad for death of truck driver in grade crossing collision, evidence was insufficient to carry case to the jury notwithstanding driver’s gross contributory negligence under the humanitarian doctrine. Bishop v. Atlantic Coast Line R. Co. (S.C. 1948) 213 S.C. 125, 48 S.E.2d 620. Railroads 350(33)

In action against railroad for death of truck driver in grade crossing collision conflicting evidence as to whether railroad failed to give statutory crossing signals was for the jury. Code 1942, Section 8377. Bishop v. Atlantic Coast Line R. Co. (S.C. 1948) 213 S.C. 125, 48 S.E.2d 620. Railroads 350(7.1)

The failure to give the statutory signals by a train does not relieve a traveler of his duty to look and listen before going upon a railroad crossing. But this rule is not arbitrary as to the time and the distance at which such precaution shall be taken. Ordinarily such questions are for the jury. Cook v. Atlantic Coast Line R. Co. (S.C. 1941) 196 S.C. 230, 13 S.E.2d 1, 133 A.L.R. 1144.

Failure to give statutory crossing signals is not recklessness, willfulness, or wantonness per se, but only affords basis of inference sufficient to carry such issues to jury. Ford v. Atlantic Coast Line R. Co. (S.C. 1932) 169 S.C. 41, 168 S.E. 143, affirmed 53 S.Ct. 249, 287 U.S. 502, 77 L.Ed. 457. Railroads 350(7.1)

Failure to train obstructing public crossing to give statutory signals warrants submission of issue of negligence and willfulness to jury. Miller v. Atlantic Coast Line R. Co. (S.C. 1926) 140 S.C. 123, 138 S.E. 675, certiorari denied 48 S.Ct. 117, 275 U.S. 556, 72 L.Ed. 424. Railroads 350(34)

17. Instructions

As to instructions in cases arising under this section [Code 1962 Section 58‑1004], see Lee v Northwestern R. Co., 89 SC 274, 71 SE 840 (1911). Clifford V Southern Ry. Co., 87 SC 324, 69 SE 513 (1910). Gosa v Southern Ry. Co., 67 SC 347, 45 SE 810 (1903). Burns v Southern Ry. Co., 65 SC 229, 43 SE 679 (1903). Bowen v Southern Ry. Co., 58 SC 222, 36 SE 590 (1900). Smith v Southern Ry. Co., 53 SC 121, 30 SE 697 (1898). Bamberg v Atlantic Coast Line R. Co., 72 SC 389, 51 SE 988 (1905). Mercer v Southern Ry. Co., 66 SC 246, 44 SE 750 (1903). Osteen v Southern Ry. Co., 76 SC 368, 57 SE 196 (1907).

Neglect to give statutory signal renders railroad liable for all damages unless contributory gross negligence on part of other party is shown, and trial judge properly charged jury that if it determined statutory signals were not given, and such failure was proximate cause of accident, plaintiff railroad’s negligence would bar recovery unless defendant’s truck driver was shown to be guilty of gross or willful negligence which proximately caused accident. Central of Georgia Ry. v. Walker Truck Contractors (S.C. 1978) 270 S.C. 533, 243 S.E.2d 923. Railroads 312.2

An instruction that the law of contributory negligence does not apply to plaintiff injured at a crossing, unless his contributory negligence was of a gross and reckless kind amounting to a violation of law, is erroneous under this section [Code 1962 Section 58‑1004]. Howard v. Payne (S.C. 1922) 120 S.C. 1, 112 S.E. 437. Railroads 335(1)

In an action for death at a crossing, the court properly read to the jury the statute requiring signals and imposing liability for neglect to give signals, unless decedent was guilty of gross or willful negligence or violation of law contributing to the injury. Wideman v. Hines (S.C. 1921) 117 S.C. 516, 109 S.E. 123. Railroads 351(9)

18. Sufficiency of evidence

In action against railroad for death of truck driver in grade crossing collision, evidence was insufficient to sustain finding that unusual circumstances existed requiring railroad to take extra precautions while backing locomotive across highway on spur track so as to excuse failure of driver to discover clearly visible backing locomotive in time to avert accident. Bishop v. Atlantic Coast Line R. Co. (S.C. 1948) 213 S.C. 125, 48 S.E.2d 620. Railroads 348(1)

In action against railroad for death of truck driver in grade crossing collision, conflicting evidence as to whether signal lights failed to flash thereby amounting to an assurance that crossing was safe and excusing truck driver’s failure to discover clearly visible backing locomotive in time to avert accident was insufficient for the jury on question of gross contributory negligence. Bishop v. Atlantic Coast Line R. Co. (S.C. 1948) 213 S.C. 125, 48 S.E.2d 620. Railroads 350(28)

In action against railroad for death of truck driver in grade crossing collision where complaint did not allege that decedent was in position of peril which should have been discovered by defendant in time to avoid injuring him, an allegation that railroad neglected to keep a proper lookout tended to negative the thought that railroad discovered decedent in a perilous position in time to charge it with liability under the humanitarian doctrine. Bishop v. Atlantic Coast Line R. Co. (S.C. 1948) 213 S.C. 125, 48 S.E.2d 620. Railroads 344(1)

**SECTION 58‑17‑1450.** Railroad crossing safety requirements.

 All railroad crossings on public highways must be inspected for conditions which unsafely obstruct a motorist’s view of approaching trains, for the presence of crossbucks prescribed by Section 58‑17‑1390, and for the presence of stop signs authorized by law to be placed at railroad crossings. The Department of Transportation hereinafter referred to as the department, is responsible for inspecting railroad crossings on state maintained highways, the governing body of each county is responsible for inspecting railroad crossings on county maintained roads, and the governing body of each municipality is responsible for inspecting railroad crossings on road and street rights‑of‑way maintained by municipalities. The department shall inform counties and municipalities of the railroad crossings they are responsible for inspecting. By January 1, 1989, the governing body of each county and municipality must notify the department of the office and public official to whom the governing body has assigned responsibility for performing the inspections. If the person inspecting a railroad crossing finds that the required crossbucks are not in place, properly in place or maintained, or finds that a motorist’s view of approaching trains is unsafely obstructed by vegetation, growth, or objects not permanently affixed to realty which are within the right‑of‑way of the railway, the person inspecting the crossing must immediately notify the Deputy Director of Engineering within the Department of Transportation of the hazard. The notice must identify the crossing and describe the hazard. The inspector in the notice shall also inform the State Highway Engineer whether or not there is a stop sign at the crossing and, if not, whether or not in his opinion one should be added. Upon receipt of notice from the person inspecting the crossing, the department must give written notice of the hazard immediately by certified mail to any officer or registered agent of the railroad within the State. Notice from the department shall direct the railroad to cut or remove the vegetation, growth, and objects not permanently affixed to realty that are obstructing a motorist’s view or to erect, maintain, or properly situate crossbucks.

 The department must also notify the governing body of any county or municipality which maintains the highways or roadways at the crossing that the inspector stated in his opinion that a stop sign should be added at the crossing.

 Removal and elimination of obstructions must be made by the responsible railroad within sixty days of receipt of notification from the department. Measures to assure that crossbucks are properly in place and maintained must be taken by the responsible railroad within thirty days of receipt of notification from the department; however, if crossbucks are not present or have been removed, then the railroad has ten days from the notification to erect new crossbucks. Failure of the railroad company to remove or eliminate the obstruction within the railroad’s right‑of‑way and to erect or properly place and maintain crossbucks within the specified time period subjects the railroad company to a civil penalty of not less than one hundred dollars nor more than five hundred dollars. The railroad company is subject to an additional civil penalty of one hundred dollars a day for each day obstructions remain after the specified period and for each day crossbucks are not erected or properly placed and maintained after the specified period.

 The person initially inspecting the railroad crossing is responsible for inspecting the crossing at appropriate intervals after notice to the railroad of the hazard to determine if obstructions have been eliminated and crossbucks properly placed and serviced within the period allowed before civil penalties may be assessed.

 If the person inspecting the railroad crossing finds that a motorist’s view of approaching trains is obstructed by vegetation, growth, or objects not permanently affixed to realty that lie outside the right‑of‑way of the railroad but within right‑of‑way of highways and roads maintained by the State, county, or municipality, the person inspecting the railroad crossing must immediately give written notice of the hazard to the appropriate department of the State, county, or municipality, upon whose right‑of‑way the obstruction exists. If the obstruction is on the right‑of‑way maintained by a county or municipality, the person inspecting the crossing must also give immediate written notice of the hazard to the Deputy Director of Engineering within the Department of Transportation.

 The department, counties, and municipalities have sixty days from issuance of the written notice by the person inspecting the crossing to eliminate the obstructions within their respective rights‑of‑way.

 The person initially inspecting the railroad crossing is responsible for inspecting the crossing after notice of the hazard has been given and reporting to the department the date upon which obstructions are eliminated. If counties or municipalities do not eliminate the obstructions within sixty days of receipt of notification, the department must remove or eliminate the obstructions. Counties and municipalities must reimburse the Department of Transportation for the department’s cost in eliminating the obstructions.

 If the person inspecting the railroad crossing finds that motorists’ view of approaching trains is obstructed by vegetation, growth, or objects not permanently affixed to realty that lie on private property outside the right‑of‑way of the railroad and outside the highway or road right‑of‑way of the State, county, or municipality, he must immediately give written notice of the hazard to the owner of the property and to the appropriate agency of the State, county, or municipality which maintains that highway or roadway. The owner of the property has sixty days after receipt of the notice to eliminate the obstructions and the inspector shall reinspect the crossing after this sixty‑day period has expired to determine if the obstructions have been eliminated.

 By January first of each year, counties and municipalities must report all railroad crossings that were inspected during the preceding year and at which no obstructions were found to the department. The department must make an annual report of inspections conducted during the preceding year. The annual report must be provided to the Senate Transportation Committee and the Education and Public Works Committee of the House of Representatives.

HISTORY: 1962 Code Section 58‑1005; 1952 Code Section 58‑1005; 1942 Code Section 8378; 1932 Code Section 8378; Civ. C. ‘22 Section 4926; Civ. C. ‘12 Section 3231; Civ. C. ‘02 Section 2140; G. S. 1487; R. S. 1693; 1881 (17) 824; 1988 Act No. 319, Section 1, eff February 24, 1988; 1990 Act No. 420, Section 1, eff April 24, 1990; 1993 Act No. 181, Section 1564, eff July 1, 1993.

Editor’s Note

1988 Act No. 319, section 3, provides as follows:

“SECTION 3. Nothing contained in this act shall be construed to increase, diminish, or otherwise affect liability with respect to provisions of law in force and effect pertaining to railroad crossings in this State prior to the enactment of this act.”

Library References

Automobiles 277.1, 279.

Railroads 242.1, 243.

Westlaw Topic Nos. 48A, 320.

C.J.S. Highways Sections 440, 442, 444 to 445.

C.J.S. Motor Vehicles Sections 508 to 509, 511 to 512, 516, 519 to 522, 525, 535, 564 to 567.

C.J.S. Railroads Sections 788 to 789.

C.J.S. Schools and School Districts Sections 687 to 694, 1065.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 36, Regulation of Crossings.

NOTES OF DECISIONS

In general 1

1. In general

Bridges. This section [Code 1962 Section 58‑1005] does not require railroad corporations to keep in repair bridges on public highways on their rights of way but not on their roadbeds. Felder v. Southern Ry. (S.C. 1907) 76 S.C. 554, 57 S.E. 524. Railroads 109

ARTICLE 13

Reports and Investigations Generally

**SECTION 58‑17‑1610.** Filing of annual schedule and report.

 Each railroad company chartered by this State is required to file in the Office of Regulatory Staff, on or before the thirty‑first day of March in each year, a full and detailed schedule and report of the condition and operations of the road for the current year ending on the thirty‑first day of December then immediately preceding. The schedule and report must be made in accordance with the following rules and form:

 (1) All liabilities, including interest accrued on funded debt, must be entered upon the books in the month when they were incurred, without reference to the date of payment.

 (2) Expenses must be charged each month with such supplies, materials, and similar articles as have been used during that month, without reference to the time when they were purchased or paid for.

 (3) No expenditure must be charged to property accounts except for actual interest during construction, equipment, or other property, unless it is made on old work in such a way as clearly to increase the value of the property over and above the cost of renewing the old work and in such cases only the amount of increased cost must be charged, and the amount allowed on account of the old work must be stated.

 (4) Mileage of passenger and freight trains must include only the miles shown to be run by distances between stations and allowances made to passenger or freight trains for switching and all mileage of switch engines, computed on a basis of eight miles per hour for the time of actual service, must be stated separately.

 (5) Season ticket passengers must be computed on the basis of twelve passengers per week for the time of each ticket.

 (6) Local traffic must include all passengers carried on local tickets and all freight carried at local tariff or special local rates and all other traffic must be considered through.

 These rules are subject to any changes as may be made upon petition by the Office of Regulatory Staff by the Public Service Commission under the authority conferred on it by Section 58‑17‑1900.

HISTORY: 1962 Code Section 58‑1041; 1952 Code Section 58‑1041; 1942 Code Section 8269; 1932 Code Section 8214; Civ. C. ‘22 Section 4778; Civ. C. ‘12 Section 3113; Civ. C. ‘02 Section 2039; G. S. 1438, 1439; R. S. 1608; 1935 (39) 25; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 9.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 329.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1620.** Manner and form of reports; amendment of defective reports; preservation of reports.

 The Office of Regulatory Staff must require the annual reports to be made by railroad companies in manner and form and at the time provided for herein and may require reports to be made of other matters. The Office of Regulatory Staff may, from time to time, make changes it considers proper, giving the corporations one year’s notice of any changes or additions that require any alterations in the method or form of keeping their accounts. The Office of Regulatory Staff shall, on or before the first day of June in each year, furnish to the several railroads blank forms of any reports. When the report received from any corporation is defective or probably erroneous, the Office of Regulatory Staff must notify the corporation to amend it within fifteen days. The originals of the report or reports, as amended, subscribed and sworn to by the officers of the corporation, must be preserved in the office of the Office of Regulatory Staff. The Office of Regulatory Staff must prepare tables and abstracts of all the returns it considers expedient.

HISTORY: 1962 Code Section 58‑1042; 1952 Code Section 58‑1042; 1942 Code Section 8292‑20; 1932 Code Section 8279; Civ. C. ‘22 Section 4827; Civ. C. ‘12 Section 3153; Civ. C. ‘02 Section 2075; G. S. 1463; R. S. 1638; 1881 (17) 819; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 9.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 329.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1630.** List of names and residences of president and directors shall be filed.

 Every railroad company owning or operating a line of railroad situated in whole or in part within the limits of this State must deposit with the Office of Regulatory Staff a list containing the names and residences of the president and board of directors of the railroad company owning or operating the line of railroad.

HISTORY: 1962 Code Section 58‑1043; 1952 Code Section 58‑1043; 1942 Code Section 8342; 1932 Code Section 8342; Civ. C. ‘22 Section 4889; Civ. C. ‘12 Section 3209; Civ. C. ‘02 Section 2120; 1892 (21) 14; 1935 (39) 25; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 9.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 329.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1640.** Information to be furnished Office of Regulatory Staff on request.

 Every railroad corporation must at all times, on request, furnish the Office of Regulatory Staff any information required by it concerning the condition, management, and operation of its railroad and particularly with copies of time tables and the rates of transporting freight and passengers upon its road and other roads with which its business is connected.

HISTORY: 1962 Code Section 58‑1044; 1952 Code Section 58‑1044; 1942 Code Section 8292‑17; 1932 Code Section 8276; Civ. C ‘22 Section 4824; Civ. C. ‘12 Section 3150; Civ. C. ‘02 Section 2072; G. S. 1460; R. S. 1635; 1881 (17) 819; 1935 (39) 25; 2006 Act No. 318, Section 118, eff May 24, 2006.

CROSS REFERENCES

Railroads required to furnish information, see S.C. Code of Regulations R. 103‑40.

Library References

Carriers 9.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 329.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1650.** Interrogatories.

 The Office of Regulatory Staff may make and propound to any of the railroad companies of this State any interrogatories additional to those contained in the schedule and report herein provided for, which must be answered by the companies in the same manner.

HISTORY: 1962 Code Section 58‑1045; 1952 Code Section 58‑1045; 1942 Code Section 8292‑24; 1932 Code Section 8285; Civ. C. ‘22 Section 4833; Civ. C. ‘12 Section 3157; Civ. C. ‘02 Section 2079; G. S. 1467; R. S. 1642; 1892 (21) 16; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 9.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 329.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1660.** Investigations and examinations of books and places of business; rules and regulations.

 The Office of Regulatory Staff must, when necessary, investigate the books and papers of the railroad companies doing business in this State, ascertain if the rules and regulations of the commission have been complied with, and make personal visitations of railroad offices, stations, and other places of business for the purpose of examination. The Public Service Commission must make rules and regulations concerning the examinations, which rules and regulations must be observed and obeyed as other rules and regulations of the commission.

HISTORY: 1962 Code Section 58‑1046; 1952 Code Section 58‑1046; 1942 Code Section 8292‑27; 1932 Code Section 8288; Civ. C. ‘22 Section 4836; Civ. C. ‘12 Section 3160; Civ. C. ‘02 Section 2082; R. S. 1645; 1892 (21) 13; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 10.

Railroads 9(1).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Section 330.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1670.** Examination of agents and employees.

 The Office of Regulatory Staff may examine all agents and employees of railroad companies and other persons under oath and otherwise, in order to procure the necessary information to make just and reasonable rates of freight and passenger tariffs, and to ascertain if rules and regulations are observed or violated and to propose to the commission necessary and proper rules and regulations concerning the examinations. The rules and regulations herein provided for must be obeyed and enforced as all other rules and regulations provided for in this chapter.

HISTORY: 1962 Code Section 58‑1047; 1952 Code Section 58‑1047; 1942 Code Section 8292‑27; 1932 Code Section 8288; Civ. C. ‘22 Section 4836; Civ. C. ‘12 Section 3160; Civ. C. ‘02 Section 2082; R. S. 1645; 1892 (21) 13; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

**SECTION 58‑17‑1680.** Issuance of subpoenas; fees; issuance of attachment to compel attendance; contempt for refusal to obey court order.

 The Office of Regulatory Staff, in making an examination for the purpose of obtaining information pursuant to this chapter, may obtain from the commission subpoenas for the attendance of witnesses pursuant to such rules as the commission may prescribe and the witnesses must receive from the State Treasury one dollar per day and five cents per mile traveled by the nearest practical route in going to and returning from the place of meeting of the Office of Regulatory Staff, to be ordered paid by the Comptroller General upon presentation of subpoenas by the witnesses as to the number of days served and miles traveled sworn to before the clerk of the Office of Regulatory Staff. In case any person wilfully fails or refuses to obey a subpoena, any circuit judge of the court of common pleas and general sessions of any county, upon application of the Office of Regulatory Staff, must issue an attachment for the witness and compel him to attend and give his testimony upon matters lawfully required by the Office of Regulatory Staff. A circuit judge may punish for contempt as in other cases of refusal to obey the process or order of the court.

HISTORY: 1962 Code Section 58‑1048; 1952 Code Section 58‑1048; 1942 Code Sections 8292‑22, 8292‑27; 1932 Code Sections 8283, 8288; Civ. C. ‘22 Sections 4831, 4836; Civ. C. ‘12 Sections 3155, 3160; Civ. C. ‘02 Sections 2077, 2082; G. S. 1465; R. S. 1640, 1645; 1892 (21) 13, 16; 1935 (39) 25; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 10, 12(11).

Railroads 9.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 330, 350.

C.J.S. Railroads Sections 86, 716 to 717, 731 to 732, 741.

**SECTION 58‑17‑1690.** Penalty for failing to furnish reports or obstructing commission.

 Every officer, agent, or employee of any railroad company who wilfully neglects or refuses to make and furnish any report required by the commission as necessary to the purposes of this chapter or who wilfully hinders, delays, or obstructs the commission in the discharge of the duties imposed upon it shall forfeit and pay a sum of not less than one hundred dollars nor more than one thousand dollars for each offense, to be recovered in any action in the name of the State as provided in Section 58‑17‑3940.

HISTORY: 1962 Code Section 58‑1049; 1952 Code Section 58‑1049; 1942 Code Section 8292‑23; 1932 Code Section 8284; Civ. C. ‘22 Section 4832; Civ. C. ‘12 Section 3156; Civ. C. ‘02 Section 2078; G. S. 1465; R. S. 1640; 1892 (21) 16; 2006 Act No. 318, Section 118, eff May 24, 2006.

Library References

Carriers 9, 20(1).

Railroads 9(2).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 329, 332.

C.J.S. Railroads Section 86.

ARTICLE 15

Rates and Charges; Routes

**SECTION 58‑17‑1810.** Extent of rate‑making power.

 The powers herein conferred upon the Commission to fix passenger and freight rates, joint and several, are hereby delegated to it by the General Assembly as fully as the General Assembly itself could exercise them.

HISTORY: 1962 Code Section 58‑1061; 1952 Code Section 58‑1061; 1942 Code Section 8292‑27; 1932 Code Section 8288; Civ. C. ‘22 Section 4836; Civ. C. ‘12 Section 3160; Civ. C. ‘02 Section 2082; R. S. 1645; 1892 (21) 13.

Library References

Carriers 12(0.5), 189.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 468 to 470, 472.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

NOTES OF DECISIONS

In general 1

1. In general

Legislative power is not delegated to commissioners. Jones Bros. v. Southern Ry. Co. (S.C. 1907) 76 S.C. 67, 56 S.E. 666.

The court will not take judicial notice of the proceedings, rules and regulations of the Commission. Jones Bros. v. Southern Ry. Co. (S.C. 1907) 76 S.C. 67, 56 S.E. 666.

**SECTION 58‑17‑1820.** Rates to which chapter not applicable.

 Nothing in the General Railroad Law shall be taken as in any manner abridging or controlling the rates for freight charged by any railroad company in this State for carrying freight which comes from or goes beyond the boundaries of the State or on which less than local rates on any railroad carrying it are charged by such railroad, but such railroad companies shall possess the same power and right to charge such rates for carrying such freights as they possessed prior to December 19, 1892.

HISTORY: 1962 Code Section 58‑1062; 1952 Code Section 58‑1062; 1942 Code Section 8304; 1932 Code Section 8304; Civ. C. ‘22 Section 4851; Civ. C. ‘12 Section 3174; Civ. C. ‘02 Section 2092; R. S. 1656; 1892 (21) 8.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

**SECTION 58‑17‑1830.** Power of Commission over rates and routes.

 The Public Service Commission shall:

 (1) As provided in Section 58‑17‑1850, make reasonable and just rates of freight and passenger tariffs, to be observed by all railroad companies doing business in this State on the railroads therein;

 (2) Make reasonable and just routes to be observed by all railroad companies doing business in this State and reasonable and just rules and regulations to be observed by all such railroad companies as to charges to any and all points for the necessary hauling and delivery of all freight;

 (3) Make such just and reasonable rules and regulations as may be necessary for preventing unjust discrimination in the transportation of freight and passengers on the railroads in this State;

 (4) Have the power to make just and reasonable joint rates for all connecting roads doing business in this State as to all traffic or business passing from one of such roads to another and to require the making of such connections at intersecting points of the schedules of trains as the public convenience may in its judgment demand;

 (5) Make reasonable and just rates of charges for the use of railroad cars carrying any kind of freight and passengers on such railroad, no matter by whom owned or carried;

 (6) Make just and reasonable rules and regulations to be observed by such railroad companies or railroads to prevent the giving or paying of any rebate or bonus, directly or indirectly, and the misleading or deceiving of the public in any manner as to the real rates charged for freight and passengers; and

 (7) Have power, by rules and regulations, to designate and fix the difference in rates of freight and passenger transportation to be allowed for shorter and longer distances on the same or different railroads and to ascertain what shall be the limit of longer and shorter distances.

HISTORY: 1962 Code Section 58‑1063; 1952 Code Section 58‑1063; 1942 Code Section 8304; 1932 Code Section 8304; Civ. C. ‘22 Section 4851; Civ. C. ‘12 Section 3174; Civ. C. ‘02 Section 2092; R. S. 1656; 1892 (21) 11; 1944 (43) 1228.

CROSS REFERENCES

Rules and regulations promulgated under authority of this section, see S.C. Code of Regulations R. 103‑6 et seq.

Library References

Carriers 11, 12(0.5).

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

NOTES OF DECISIONS

In general 1

1. In general

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

Statutory authority of Public Service Commission in connection with fixing rates to establish joint rates for connecting carriers did not authorize Commission to make regulations the effect of which was to impose circuity limitations on the handling of railroad traffic. Code 1942, Sections 8199, 8304; Const. Art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

A complaint against a railroad company for failure to post schedule of rates under Civ.Code 1902, Sections 2092, 2093 (See Code 1942, Sections 8304, 8305), providing that the railroad commissioners shall make reasonable rates of freight and passenger tariffs, and that the schedule of rates shall be posted by the railroad companies at their respective stations, must allege that each and every act required of the railroad commissioners has been done, in order to state a cause of action for failure to post said schedules. Johnson v. Seaboard Air Line Ry. (S.C. 1905) 73 S.C. 36, 52 S.E. 644.

Regulations as to hours for ticket office to be open. Hall v. South Carolina Ry. Co. (S.C. 1886) 25 S.C. 564.

**SECTION 58‑17‑1840.** Notice before establishment of joint rates; hearing.

 Before applying joint rates to roads that are not under the management and control of one company the Commission shall give thirty days’ notice to such roads of the joint rate contemplated and of its division between such roads and shall give a hearing to any road desiring to object thereto.

HISTORY: 1962 Code Section 58‑1064; 1952 Code Section 58‑1064; 1942 Code Section 8304; 1932 Code Section 8304; Civ. C. ‘22 Section 4851; Civ. C. ‘12 Section 3174; Civ. C. ‘02 Section 2092; R. S. 1656; 1892 (21) 11.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

NOTES OF DECISIONS

In general 1

1. In general

Right to contest validity of rates. A railroad company may contest the reasonableness and validity of rates fixed by the Commission. Augusta‑Aiken Ry. & Electric Corp. v. Railroad Commission of South Carolina, 1922, 281 F. 977.

A complaint against a railroad company for failure to post schedule of rates under Civ.Code 1902, Sections 2092, 2093 (See Code 1942, Sections 8304, 8305), providing that the railroad commissioners shall make reasonable rates of freight and passenger tariffs, and that the schedule of rates shall be posted by the railroad companies at their respective stations, must allege that each and every act required of the railroad commissioners has been done, in order to state a cause of action for failure to post said schedules. Johnson v. Seaboard Air Line Ry. (S.C. 1905) 73 S.C. 36, 52 S.E. 644.

**SECTION 58‑17‑1850.** Prescribing schedule of rates; schedules as evidence.

 The commission must make for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of just and reasonable rates of charges for transportation of passengers and freight cars on each of the railroads. When a lawsuit involves a railroad corporation’s charges for the transportation of passengers, freight, or cars or unjust discrimination in relation to these charges, the schedule shall be considered in all of the courts of this State as sufficient evidence that the rates therein fixed are just and reasonable rates of charges for the transportation of passengers, freights, and cars upon the railroad when the schedules have been prepared and published for all the railroad companies organized under the laws of this State as provided in this section. The commission must not be a party to any lawsuit.

HISTORY: 1962 Code Section 58‑1065; 1952 Code Section 58‑1065; 1942 Code Section 8305; 1932 Code Section 8305; Civ. C. ‘22 Section 4852; Civ. C. ‘12 Section 3175; Civ. C. ‘02 Section 2093; R. S. 1657; 1898 (22) 810; 1935 (39) 25; 2006 Act No. 318, Section 119, eff May 24, 2006.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Strock v Southern Ry. Co., 142 SC 207, 140 SE 470 (1927). Darby v Southern Ry. Co., 194 SC 421, 10 SE2d 465 (1940).

Contesting validity of rates. The validity of rates fixed by the Commission may be contested by the railroad company. Augusta‑Aiken Ry. & Electric Corp. v. Railroad Commission of South Carolina, 1922, 281 F. 977.

In an action for a penalty for failure to post rates made by a railroad commission, the railroad company cannot interpose as a defense that the commission has not published schedules of rates for all the railroads in the state; Civ.Code 1902, Section 2093 (See Code, 1942, Section 8305), providing that the schedule shall not be taken as evidence until schedules have been prepared for all the railroad companies in the state, only applying to the reception of the schedule as evidence. Johnson v. Seaboard Air Line Ry. (S.C. 1905) 73 S.C. 36, 52 S.E. 644.

A complaint against a railroad company for failure to post schedule of rates under Civ.Code 1902, Sections 2092, 2093 (See Code 1942, Sections 8304, 8305), providing that the railroad commissioners shall make reasonable rates of freight and passenger tariffs, and that the schedule of rates shall be posted by the railroad companies at their respective stations, must allege that each and every act required of the railroad commissioners has been done, in order to state a cause of action for failure to post said schedules. Johnson v. Seaboard Air Line Ry. (S.C. 1905) 73 S.C. 36, 52 S.E. 644.

Applied in Kibler v. Southern Ry. (S.C. 1902) 62 S.C. 252, 40 S.E. 556.

**SECTION 58‑17‑1860.** Copies of schedules shall be posted.

 When any such schedule for any such railroad company shall have been made or revised such railroad company shall post at each of its stations a copy of such schedule for the protection of the people. Any railroad corporation which shall fail to post at any of its stations a copy of the schedule of rates as provided in this section shall be liable to a penalty of one hundred dollars for each and every day in which it shall fail to post such schedule, to be recovered by any citizen who will sue therefor, one half of such penalty to go to the State, the other half to the citizen suing for the same.

HISTORY: 1962 Code Section 58‑1066; 1952 Code Section 58‑1066; 1942 Code Section 8305; 1932 Code Section 8305; Civ. C. ‘22 Section 4852; Civ. C. ‘12 Section 3175; Civ. C. ‘02 Section 2093; R. S. 1657; 1898 (22) 810; 1935 (39) 25.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

NOTES OF DECISIONS

In general 1

1. In general

Action for penalty for failure to post rates. Johnson v. Seaboard Air Line Ry. (S.C. 1905) 73 S.C. 36, 52 S.E. 644.

**SECTION 58‑17‑1870.** Annual publications of freight rates on watermelons and cantaloupes.

 All railroad companies doing business in this State shall publish during the months of January and February of each year, the rates of freight on watermelons and cantaloupes per carload of twenty‑four thousand pounds and upwards, from the various points in this State to the different markets of the country. Such rates shall not be increased during the year in which they are published. Any railroad company violating the provisions of this section by charging rates higher than those so published shall forfeit to the person injured double the amount of the freight charged, to be recovered in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑1067; 1952 Code Section 58‑1067; 1942 Code Section 8309; 1932 Code Section 8309; Civ. C. ‘22 Section 4856; Civ. C. ‘12 Section 3179; 1903 (24) 82.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

**SECTION 58‑17‑1880.** Revision of schedules.

 The Commission shall from time to time and as often as circumstances may require, change and revise each such schedule. Thirty days’ notice of any such change or revision shall first be given to the railroad company to be affected thereby before such change or revision shall go into effect.

HISTORY: 1962 Code Section 58‑1068; 1952 Code Section 58‑1068; 1942 Code Section 8305; 1932 Code Section 8305; Civ. C. ‘22 Section 4852; Civ. C. ‘12 Section 3175; Civ. C. ‘02 Section 2093; R. S. 1657; 1898 (22) 810; 1935 (39) 25.

Library References

Carriers 12(0.5).

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

**SECTION 58‑17‑1890.** Printed schedules shall be prima facie evidence.

 Any such schedule purporting to have been printed and published as aforesaid shall be received and held in any such suit as is referred to in Section 58‑17‑1850 as prima facie the schedule of the Commission without further proof than the production of the schedule desired to be used as evidence, with a certificate of the Commission that it is a true copy of the schedule prepared by it for the railroad company therein named and that it has been duly published as required by law.

HISTORY: 1962 Code Section 58‑1069; 1952 Code Section 58‑1069; 1942 Code Section 8305; 1932 Code Section 8305; Civ. C. ‘22 Section 4852; Civ. C. ‘12 Section 3175; Civ. C. ‘02 Section 2093; R. S. 1657; 1898 (22) 810; 1935 (39) 25.

Library References

Carriers 12(0.5), 12(11).

Westlaw Topic No. 70.

C.J.S. Carriers Section 350.

**SECTION 58‑17‑1900.** Supervision of contracts concerning rates and division of earnings.

 All contracts and agreements between railroad companies doing business in this State as to rates of freight and passenger tariffs must be submitted to the Office of Regulatory Staff for inspection and correction, that it may be seen whether or not they are in violation of the law, of the provisions of the Constitution or of the rules and regulations of the commission, and all arrangements and agreements whatever as to the division of earnings of any kind by competing railroad companies doing business in this State shall be submitted to the Office of Regulatory Staff for inspection and approval, insofar as they affect rules and regulations made by the commission to secure to all persons doing business with such companies just and reasonable rates of freight and passenger tariffs and so far as they are affected by any of the provisions contained in this chapter for securing to all persons just, equal, and reasonable facilities for the transportation of freight and passengers. The commission may make such rules and regulations as to such contracts and agreements as may be considered necessary and proper. Any agreements not approved by the commission or by virtue of which rates shall be charged exceeding the rates fixed for freight and passengers shall be violations of this chapter and are unlawful and void.

HISTORY: 1962 Code Section 58‑1070; 1952 Code Section 58‑1070; 1942 Code Section 8292‑21; 1932 Code Section 8282; Civ. C. ‘22 Section 4830; Civ. C. ‘12 Section 3154; Civ. C. ‘02 Section 2076; G. S. 1464; R. S. 1639, 1665; 1892 (21) 13; 2006 Act No. 318, Section 120, eff May 24, 2006.

Library References

Carriers 12(0.5), 192.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 141 to 142, 146, 178, 471.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

**SECTION 58‑17‑1910.** Procedure when contracts concerning rates violate chapter.

 If any contract, agreement, or arrangement is, in the opinion of the Office of Regulatory Staff, in violation of any of the provisions of this chapter, the Office of Regulatory Staff must notify the railroad companies in writing specifying its objections. If, within five days after receipt of the notice, the railroad companies fail or neglect to amend and alter the contract, agreement, or arrangement in a manner satisfactory to the Office of Regulatory Staff, the Office of Regulatory Staff must institute and conduct any legal proceedings necessary to enforce the penalties prescribed in this chapter for violations of its provisions.

HISTORY: 1962 Code Section 58‑1071; 1952 Code Section 58‑1071; 1942 Code Section 8292‑21; 1932 Code Section 8282; Civ. C. ‘22 Section 4830; Civ. C. ‘12 Section 3154; Civ. C. ‘02 Section 2076; G. S. 1464; R. S. 1639, 1665; 1892 (21) 13; 2006 Act No. 318, Section 121, eff May 24, 2006.

Library References

Carriers 12(11).

Westlaw Topic No. 70.

C.J.S. Carriers Section 350.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

**SECTION 58‑17‑1920.** Use of mileage books.

 Any railroad company selling mileage books for transportation shall receive coupons from mileage books sold by such railroad company on its trains for transportation within the State and check baggage upon presentation of such mileage books. But any railroad company selling or honoring mileage books for transportation which are interchangeable may require the holder thereof to present them in exchange for tickets.

HISTORY: 1962 Code Section 58‑1073; 1952 Code Section 58‑1073; 1942 Code Section 8409; 1932 Code Section 8409; Civ. C. ‘22 Section 4957; 1912 (27) 778; 1915 (29) 102.

Library References

Carriers 249.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 495 to 496, 499 to 502.

**SECTION 58‑17‑1930.** Sale of interchangeable mileage shall be continued; family use.

 No railroad company selling such interchangeable mileage books shall discontinue the use of local mileage but the use of interchangeable mileage books shall not be extended to the members of the purchaser’s family unless such selling company shall so elect; if it is so extended such ticket shall be valid and good for the carriage over the lines of such railroad of the purchaser and the actual members of his family living with him at the time of purchase if the name of the person so entitled to use such ticket shall be furnished in writing to the railroad selling it by the purchaser at the time of the purchase and shall be inserted in the ticket.

HISTORY: 1962 Code Section 58‑1074; 1952 Code Section 58‑1074; 1942 Code Sections 8408, 8409; 1932 Code Sections 8408, 8409; Civ. C. ‘22 Sections 4956, 4957; Civ. C. ‘12 Section 3262; 1904 (24) 439; 1912 (27) 778; 1915 (29) 102.

Library References

Carriers 249.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 495 to 496, 499 to 502.

**SECTION 58‑17‑1940.** Surcharge for intrastate Pullman transportation shall be unlawful.

 It shall be unlawful for any railroad or Pullman car company doing business in this State to collect from any person within the boundaries of the State any surtax or surcharge for Pullman car transportation from one point to any other point within the bounds of the State. But nothing in this section shall be construed to affect in any way the charge which any railroad or Pullman car company requires for transportation in interstate travel.

HISTORY: 1962 Code Section 58‑1075; 1952 Code Section 58‑1075; 1942 Code Section 1692; 1932 Code Section 8296; 1924 (33) 945.

Library References

Carriers 249.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 495 to 496, 499 to 502.

**SECTION 58‑17‑1950.** Charge of unreasonable rates shall constitute extortion.

 If any railroad corporation organized or doing business in this State shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for transportation of passengers or freight of any description or for the use and transportation of any railroad car upon its tracks or any of its branches or upon any railroad within this State which it has the right, license or permission to use, operate or control, it shall be guilty of extortion and, upon conviction thereof, shall be fined in a sum not less than one hundred nor more than one thousand dollars.

HISTORY: 1962 Code Section 58‑1076; 1952 Code Section 58‑1076; 1942 Code Section 8293; 1932 Code Sections 1696, 8293; Civ. C. ‘22 Section 4841; Cr. C. ‘22 Section 642; Civ. C. ‘12 Section 3165; Cr. C. ‘12 Section 667; Civ. C. ‘02 Section 2083; Cr. C. ‘02 Section 476; G. S. 373; R. S. 1646; 1892 (21) 10.

CROSS REFERENCES

Bond required of public utilities appealing from rate decisions, see Section 58‑1‑30.

Library References

Carriers 21(2).

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 11, Sentence and Punishment.

**SECTION 58‑17‑1960.** Unjust discrimination in rates unlawful.

 If any such railroad corporation shall make any unjust discrimination in its rates and charges of toll as compensation for the transportation of passengers or freight of any description or for the use and transportation of any railroad car upon its road or upon any of the branches thereof or upon any railroads connected therewith which it has the right, license or permission to operate or control within this State, it shall be guilty of having violated the provisions of this chapter and, upon conviction thereof, shall be fined in a sum of not less than one hundred nor more than one thousand dollars.

HISTORY: 1962 Code Section 58‑1077; 1952 Code Section 58‑1077; 1942 Code Section 8294; 1932 Code Sections 1697, 8294; Civ. C. ‘22 Section 4842; Cr. C. ‘22 Section 643; Civ. C. ‘12 Section 3166; Cr. C. ‘12 Section 668; Civ. C. ‘02 Section 2084; Cr. C. ‘02 Section 477; G. S. 374; R. S. 1647; 1892 (21) 10, 11.

Library References

Carriers 21(2).

Westlaw Topic No. 70.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 23, Rates Generally.

S.C. Jur. Carriers Section 24, Rate Discrimination.

NOTES OF DECISIONS

In general 1

1. In general

A carrier cannot discriminate except as between those whom it serves or whom it may lawfully be required to serve. Atlantic Coast Line R. Co. v. South Carolina Public Service Commission (S.C. 1965) 246 S.C. 447, 144 S.E.2d 212.

Hence, where none of the plaintiffs were shippers or receivers located upon the lines of the railroad or served by it, they were not discriminated against by its rate charges. Atlantic Coast Line R. Co. v. South Carolina Public Service Commission (S.C. 1965) 246 S.C. 447, 144 S.E.2d 212.

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑1970.** Allowing or receiving rebate or other advantage shall be unlawful.

 It shall be unlawful for any such railroad or person engaged solely in shipping or receiving property, directly or indirectly, to allow or receive any rebate, drawback or other advantage, in any form, upon shipments made or services rendered or received by them as aforesaid.

HISTORY: 1962 Code Section 58‑1078; 1952 Code Section 58‑1078; 1942 Code Section 8294; 1932 Code Sections 1697, 8294; Civ. C. ‘22 Section 4842; Cr. C. ‘22 Section 643; Civ. C. ‘12 Section 3166; Cr. C. ‘12 Section 668; Civ. C. ‘02 Section 2084; Cr. C. ‘02 Section 477; G. S. 374; R. S. 1647; 1892 (21) 10, 11.

Library References

Carriers 21(1), 22, 192.5.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 320, 333, 470.

NOTES OF DECISIONS

In general 1

1. In general

Contract to furnish cars to shipper on specified day for transportation of property intrastate is valid and enforceable. Strock v. Southern Ry.‑Carolina Division (S.C. 1927) 142 S.C. 207, 140 S.E. 470. Carriers 66

**SECTION 58‑17‑1980.** Charges to be in proportion to distance traveled and freight handled.

 It shall be unlawful for any such railroad to charge, collect or receive:

 (1) For the transportation of any passenger or freight of any description upon its railroad for any distance within this State the same or a greater amount of toll or compensation than is at the same time charged, collected or received for the transportation of any passenger of the same class or a like quantity of freight of the same class over a greater distance on the same railroad;

 (2) At any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity than it shall at the same time charge, collect or receive at any other point upon the same railroad;

 (3) For transportation of any passenger or freight of any description over its railroad a greater amount as toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger of the same class or a like quantity of freight of the same class being transported over any portion of the same railroad of equal distance;

 (4) From any person a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person for receiving, handling or delivering freight of the same class and like quantity at the same time upon its railroad;

 (5) From any person for the transportation of any freight upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any person for the transportation of a like quantity of freight of the same class being transported from the same point over equal distances of the same railroad;

 (6) From any person for the use and transportation of any railroad car or cars upon its railroad for any distance the same or a greater amount of toll or compensation than is at the same time charged, collected or received from any other person for the use and transportation of any railroad car or cars of the same class and number for a like purpose being transported over a greater distance of the same railroad; or

 (7) From any person for the use and transportation of any railroad car or cars upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any other person for the use and transportation of any railroad car or cars of the same class and number for a like purpose being transported from the same point over an equal distance of the same railroad.

 But nothing herein contained shall be so construed as to prevent any such railroad from issuing commutation, excursion or thousand mile tickets as they were issued by such corporations on December 21, 1882.

HISTORY: 1962 Code Section 58‑1079; 1952 Code Section 58‑1079; 1942 Code Section 8295; 1932 Code Section 8295; Civ. C. ‘22 Section 4843; Civ. C. ‘12 Section 3167; Civ. C. ‘02 Section 2085; G. S. 1442; R. S. 1648; 1881 (17) 790; 1882 (18) 10; 1883 (18) 480.

CROSS REFERENCES

Discrimination, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑15.

Library References

Carriers 12(0.5), 13(1).

Westlaw Topic No. 70.

C.J.S. Carriers Section 351.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 24, Rate Discrimination.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

There is no prohibition against the use of point‑to‑point rates. Atlantic Coast Line R. Co. v. South Carolina Public Service Commission (S.C. 1965) 246 S.C. 447, 144 S.E.2d 212.

In action against railroad to recover statutory penalty for charging excessive fare, conflicting evidence held to take case to jury. (Code 1932, Sections 8295, 8470). Kinsey v. Southern Ry. Co. (S.C. 1934) 174 S.C. 192, 177 S.E. 149.

Fare originally fixed by director general. Statutory provision penalizing receipt of excess fare was held applicable to fare originally fixed by director general. Brown v. Seaboard Air Line Ry. Co. (S.C. 1924) 128 S.C. 114, 121 S.E. 669.

Section not unreasonable. Brown v. Seaboard Air Line Ry. Co. (S.C. 1923) 122 S.C. 333, 115 S.E. 638.

Receipt of excess fares by ticket agent is only prima facie evidence of violation of this section [Code 1962 Section 58‑1079]. Brown v. Seaboard Air Line Ry. Co. (S.C. 1923) 122 S.C. 333, 115 S.E. 638. Carriers 20(4)

2. Constitutional issues

Interstate commerce. This section [Code 1962 Section 58‑1079] is not applicable to interstate commerce. Railroad Com’rs v Railroad Co., 22 SC 220 (1885). Hall v South Carolina Ry. Co., 25 SC 564 (1886). Sternberger v Cape Fear & Y. V. R. Co., 29 SC 510, 7 SE 836 (1888).

As to what are interstate shipments, see Frasier & Co. v Charleston & W. C. R. Co., 81 SC 162, 62 SE 14 (1909). Hunter v Charleston & W. C. R. Co., 81 SC 169, 62 SE 13 (1908). Hanley v Kansas City Southern Ry. Co., 187 US 617, 23 S Ct 214, 47 L Ed 333 (1903).

Provided such rates are nondiscriminatory. The South Carolina Public Service Commission may, in the proper exercise of the authority delegated to it by the General Assembly, make reasonable rates on a point‑to‑point basis, provided such rates are nondiscriminatory. Atlantic Coast Line R. Co. v. South Carolina Public Service Commission (S.C. 1965) 246 S.C. 447, 144 S.E.2d 212. Carriers 12(2)

It was not discriminatory to charge a lower rate for shipping the same commodity the same distance, but in a special hopper car, where the order authorizing the special rate required that it also be applied to regular cars when the hopper cars were not available. Atlantic Coast Line R. Co. v. South Carolina Public Service Commission (S.C. 1965) 246 S.C. 447, 144 S.E.2d 212.

**SECTION 58‑17‑1990.** Discriminating rates shall be prima facie evidence of unjust discrimination.

 All such discriminating rates, charges, collections or receipts as are described in Section 58‑17‑1980, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such railroad as prima facie evidence of the unjust discrimination prohibited by the provisions of this article. This section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates.

HISTORY: 1962 Code Section 58‑1080; 1952 Code Section 58‑1080; 1942 Code Section 8295; 1932 Code Section 8295; Civ. C. ‘22 Section 4843; Civ. C. ‘12 Section 3167; Civ. C. ‘02 Section 2085; G. S. 1442; R. S. 1648; 1882 (18) 487.

Library References

Carriers 18(1), 21(2).

Westlaw Topic No. 70.

C.J.S. Carriers Section 331.

**SECTION 58‑17‑2000.** Charging greater compensation for certain services for shorter distance than for longer distance shall be unlawful; exceptions.

 It is unlawful for any railroad to charge or receive any greater compensation for carrying, receiving, storing, forwarding, or handling articles of the same character and description for a shorter than a longer distance in one continuous carriage; provided, that:

 (1) Nothing in the General Railroad Law contained shall be construed so as to require any corporation or combination of corporations to regulate their charges for shorter distances by their proportion of through rates between terminal or junctional competitive points.

 (2) If one corporation uses, operates, or otherwise controls, wholly or in part, several lines or divisions of theretofore independent railroads within the State, the Public Service Commission may fix different rates of toll or compensation for freight traffic on each of such previously independent lines or divisions.

 (3) The commission may make special rates for the purpose of developing all manufacturing, mining, milling, and internal improvements in this State.

HISTORY: 1962 Code Section 58‑1081; 1952 Code Section 58‑1081; 1942 Code Section 8297; 1932 Code Section 8297; Civ. C. ‘22 Section 4844; Civ. C. ‘12 Section 3168; Civ. C. ‘02 Section 2086; G. S. 1443; R. S. 1649; 1887 (19) 790; 2006 Act No. 318, Section 122, eff May 24, 2006.

CROSS REFERENCES

Regulating charges for shorter distances, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑44.

Library References

Carriers 12(3).

Westlaw Topic No. 70.

NOTES OF DECISIONS

In general 1

1. In general

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

Terminal point. Sternberger v. Cape Fear & Y.V.R. Co. (S.C. 1888) 29 S.C. 510, 7 S.E. 836.

**SECTION 58‑17‑2010.** Exceptions as to uniformity in freight charges.

 Nothing in the General Railroad Law shall apply to the carriage, receiving, storing, handling or forwarding of property carried for the United States, or any state thereof, at lower rates of freight and charges than for the general public or to the transportation of articles free or at reduced rates of freight for charitable purposes or to or from public fairs or expositions for exhibition.

HISTORY: 1962 Code Section 58‑1082; 1952 Code Section 58‑1082; 1942 Code Section 8298; 1932 Code Section 8298; Civ. C. ‘22 Section 4845; Civ. C. ‘12 Section 3169; Civ. C. ‘02 Section 2087; G. S. 1444; R. S. 1650; 1887 (19) 840.

Library References

Carriers 13(3).

Westlaw Topic No. 70.

C.J.S. Carriers Section 352.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 24, Rate Discrimination.

**SECTION 58‑17‑2020.** Commission shall fix storage charges on freight.

 The Commission shall fix and prescribe a schedule of maximum rates and charges for storage of freight made and charged by railroad companies doing business in this State and shall fix the time after the reception of freight at the place of destination at which such charges of storage shall begin, with power to vary the time according to the value and character of the freight stored, the nature of the place of destination, the residence of the consignee and such other circumstances as in its judgment should be considered in fixing such time.

HISTORY: 1962 Code Section 58‑1083; 1952 Code Section 58‑1083; 1942 Code Section 8306; 1932 Code Sections 7211, 8306; Civ. C. ‘22 Sections 3925, 4853; Civ. C. ‘12 Sections 2607, 3176; Civ. C. ‘02 Sections 1733, 2094; 1901 (23) 719; 1935 (39) 25.

CROSS REFERENCES

Bond required of public utilities appealing from rate decisions, see Section 58‑1‑30.

Library References

Carriers 12(0.5), 191.

Westlaw Topic No. 70.

C.J.S. Carriers Section 468.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 25, Rates for Storage.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑1083] does not delegate legislative power. Jones Bros. v. Southern Ry. Co. (S.C. 1907) 76 S.C. 67, 56 S.E. 666.

**SECTION 58‑17‑2030.** Procedure for fixing or changing storage rates and charges.

 All the provisions of this title prescribing the procedure of the commission in fixing freight and passenger tariffs, hearing petitions of carriers and shippers, and altering and amending such tariffs apply to the subject of fixing and amending rates and charges for storage.

HISTORY: 1962 Code Section 58‑1084; 1952 Code Section 58‑1084; 1942 Code Section 8306; 1932 Code Sections 7211, 8306; Civ. C. ‘22 Sections 3925, 4853; Civ. C. ‘12 Sections 2607, 3176; Civ. C. ‘02 Sections 1733, 2094; 1901 (23) 719; 1935 (39) 25; 2006 Act No. 318, Section 123, eff May 24, 2006.

Library References

Carriers 12(11), 191.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 350, 468.

**SECTION 58‑17‑2040.** Discrimination and excessive charges for storage prohibited.

 No railroad company shall make or retain, directly or indirectly, any charge for storage of freight greater than that fixed by the Commission for each particular storage, nor shall it discriminate between persons directly or indirectly by means of rebate or any other device in such charges.

HISTORY: 1962 Code Section 58‑1085; 1952 Code Section 58‑1085; 1942 Code Section 8307; 1932 Code Sections 7212, 8307; Civ. C. ‘22 Sections 3926, 4854; Civ. C. ‘12 Sections 2608, 3177; Civ. C. ‘02 Sections 1733, 2095; 1901 (23) 719, 720.

Library References

Carriers 13(1), 191, 192.5.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 351, 468, 470.

**SECTION 58‑17‑2050.** Suit to recover for discrimination or excessive charges for storage.

 If any railroad company shall violate any provisions of Sections 58‑17‑2020 to 58‑17‑2040 either by exceeding the rates of storage prescribed or by discriminating, as aforesaid, the person so paying such overcharge or subjected to such discrimination may sue therefor in any court of this State having jurisdiction of the claim and shall have all the remedies, and be entitled to recover the same penalties and measure of damages, as are prescribed in the case of overcharge of freight rates, upon making like demand as is prescribed in such case and after like failure of the company to pay such claim.

HISTORY: 1962 Code Section 58‑1086; 1952 Code Section 58‑1086; 1942 Code Section 8308; 1932 Code Sections 7213, 8308; Civ. C. ‘22 Sections 3927, 4855; Civ. C. ‘12 Sections 2609, 3178; Civ. C. ‘02 Sections 1734, 2096; 1901 (23) 719, 720.

CROSS REFERENCES

Recovery of excess charges, see Section 58‑17‑2090.

Library References

Carriers 19, 20(3), 20(4).

Westlaw Topic No. 70.

C.J.S. Carriers Section 331.

**SECTION 58‑17‑2060.** Promulgation of reciprocal demurrage rules.

 The Public Service Commission may make and promulgate reciprocal demurrage rules governing the regulation of railroads and shippers in this State as fully and effectually as if they were made and promulgated by the General Assembly.

HISTORY: 1962 Code Section 58‑1087; 1952 Code Section 58‑1087; 1942 Code Section 8223; 1932 Code Section 8266; Civ. C. ‘22 Section 4814; 1917 (30) 163; 1935 (39) 25.

Library References

Carriers 12(1), 100.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 473 to 474, 483, 485.

NOTES OF DECISIONS

In general 1

1. In general

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2070.** Consignee entitled to itemized statement of charges; correction of errors.

 Whenever any article of freight shall be shipped to any point within the limits of this State, whether shipped from a point beyond the limits of this State or not, it shall be lawful for the consignee of such article to demand and receive from the agent of the railroad company delivering it, and before the payment of any charges upon it, a full and correct statement of such charges, the class to which such article belongs, the rates of freight charged for such class and the total amount to be paid by the consignee together with the proportion thereof to be paid to each road over which, or any part of which, such freight may have passed, whether such road be beyond the limits of this State or not. If such itemized statement be not incorporated in the waybill the agent shall deliver the article on the payment of the freight and procure as soon as possible such required items when demanded. If any errors should then appear it shall be immediately corrected by such agent.

HISTORY: 1962 Code Section 58‑1088; 1952 Code Section 58‑1088; 1942 Code Section 8300; 1932 Code Section 8300; Civ. C. ‘22 Section 4847; Civ. C. ‘12 Section 3171; Civ. C. ‘02 Section 2089; G. S. 1446; R. S. 1652; 1889 (20) 378.

Library References

Carriers 195.

Westlaw Topic No. 70.

C.J.S. Carriers Section 480.

**SECTION 58‑17‑2080.** Consignee may require settlement according to contract.

 In all cases the railroad company delivering freight to a consignee shall be required to settle its freight charges according to the contract as set forth in the bill of lading from the shipping point and no such company shall retain the article of freight after the consignee offers and is ready and willing to comply with the terms of such bill of lading.

HISTORY: 1962 Code Section 58‑1089; 1952 Code Section 58‑1089; 1942 Code Section 8301; 1932 Code Section 8301; Civ. C. ‘22 Section 4848; Civ. C. ‘12 Section 3172; Civ. C. ‘02 Section 2090; G. S. 1448; R. S. 1654; 1889 (20) 378.

Library References

Carriers 195.

Westlaw Topic No. 70.

C.J.S. Carriers Section 480.

**SECTION 58‑17‑2090.** Suit to recover charges in excess of legal rate.

 When any common carrier charges more than the legal rate of transportation applying to any goods, commodities, livestock, or any other kind of property, as shown by any rates fixed by law or by the tariffs filed with the Office of Regulatory Staff and approved by the Public Service Commission or, in the case of interstate transportation, by the Interstate Commerce Commission, as required by law, the consignee or owner and holder of a bill of lading, or the owner of any property transported, who may have paid the illegal charge has the right to recover in any court of competent jurisdiction the amount paid in excess of the legal rate applying to the property and the person shall not be defeated of a recovery on account of the fact that the payment may have been made voluntarily. But an action shall not be maintained hereunder until after thirty days from demand upon the common carrier for the repayment of the excess charges.

HISTORY: 1962 Code Section 58‑1090; 1952 Code Section 58‑1090; 1942 Code Section 8302; 1932 Code Section 8302; Civ. C. ‘22 Section 4849; 1914 (28) 641; 1935 (39) 25; 2006 Act No. 318, Section 124, eff May 24, 2006.

Library References

Carriers 202.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 487, 489.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 26, Overcharge.

**SECTION 58‑17‑2100.** Classification of cotton as “heavy goods”; weights.

 All cotton packed in bales transported by common carriers within the limits of this State shall be classed as “heavy goods,” that is to say an article to be weighed and charged for and treated accordingly. But any common carrier before receiving such cotton for shipment may demand from the shipper the weights of the several bales thereof and may adopt them as the weights upon which freight is to be charged. And in case of loss, no recovery shall be had by any shipper for a greater amount than the weights so furnished by him.

HISTORY: 1962 Code Section 58‑1091; 1952 Code Section 58‑1091; 1942 Code Section 8303; 1932 Code Section 8303; Civ. C. ‘22 Section 4850; Civ. C. ‘12 Section 3173; Civ. C. ‘02 Section 2091; G. S. 1449; R. S. 1655; 1889 (20) 378.

Library References

Carriers 189.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 468 to 470, 472.

ARTICLE 17

Receipts for and Delivery of Goods

**SECTION 58‑17‑2210.** Issuance and contents of duplicate freight receipts; delivery of goods on presentation of receipt.

 All railroad companies in this State shall on demand issue duplicate freight receipts to shippers, describing the articles received or the marks and numbers on the packages received, in which shall be stated the class or classes of freight shipped, the freight charges over the road giving the receipt and, so far as practicable, the freight charges over other roads that carry such freight. No additional charge shall be made for giving any such receipt. When the consignee presents the railroad receipt to the agent of the railroad that delivers such freight, such agent shall deliver the articles shipped on payment of the rate charged for the class of freights mentioned in the receipt. If any railroad company shall violate the provision of this section such railroad company shall incur a penalty to be fixed and collected as provided in Section 58‑17‑3940.

HISTORY: 1962 Code Section 58‑1101; 1952 Code Section 58‑1101; 1942 Code Sections 8340, 8422; 1932 Code Sections 8340, 8422; Civ. C. ‘22 Sections 4887, 4970; Civ. C. ‘12 Sections 3207, 3275; Civ. C. ‘02 Sections 2118, 2175; G. S. 1512; R. S. 1669, 1719; 1881 (17) 831; 1892 (21) 14.

Library References

Carriers 60, 83.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 374, 398.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 45, Bills of Lading, Shipping Receipts, and Special Contracts.

**SECTION 58‑17‑2220.** Merchandise must be promptly forwarded according to directions.

 Every railroad corporation shall promptly forward merchandise consigned or directed to be sent over another road connecting with its road according to the directions contained thereon or accompanying such merchandise and shall not receive and forward over its road any merchandise consigned, ordered or expressly directed to be received and forwarded by a different route.

HISTORY: 1962 Code Section 58‑1102; 1952 Code Section 58‑1102; 1942 Code Section 8427; 1932 Code Section 8427; Civ. C. ‘22 Section 4975; Civ. C. ‘12 Section 3277; Civ. C. ‘02 Section 2177; G. S. 1514; R. S. 1721; 1881 (17) 832.

Library References

Carriers 174, 178.

Westlaw Topic No. 70.

C.J.S. Carriers Section 466.

NOTES OF DECISIONS

In general 1

1. In general

Deviation from designated route. Davis Bros. v. Blue Ridge Ry. Co. (S.C. 1908) 81 S.C. 466, 62 S.E. 856.

ARTICLE 19

Reweighing Coal or Other ARTICLEs Delivered in Carload Lots; Scales

**SECTION 58‑17‑2310.** Consignees of coal or other articles delivered in carload lots may have same reweighed.

 Any consignee of coal or other articles to be delivered to him in carload lots by any common carrier at any point within the limits of this State where such common carrier maintains track scales may demand that such coal or other articles to be reweighed before delivery to him by such common carrier and such common carrier, within forty‑eight hours after such demand, shall reweigh such articles and deliver to such consignee a written, or partly written and partly printed, statement, showing the true weight thereof.

HISTORY: 1962 Code Section 58‑1111; 1952 Code Section 58‑1111; 1942 Code Section 8319; 1932 Code Section 8319; Civ. C. ‘22 Section 4866; Civ. C. ‘12 Section 3187; 1906 (25) 117.

CROSS REFERENCES

Weighing carload shipments, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑47.

Library References

Carriers 77.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 371, 393.

**SECTION 58‑17‑2320.** Forfeiture of freight for failure to reweigh.

 Any common carrier refusing or failing to comply with any of the provisions of Section 58‑17‑2310 shall forfeit the right to any freight incurred through transportation of such coal or other article or, in the event that such freight shall have been prepaid, shall be liable as a penalty to the consignee for the amount of freight so prepaid, to be recovered by suit in any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑1112; 1952 Code Section 58‑1112; 1942 Code Section 8320; 1932 Code Section 8320; Civ. C. ‘22 Section 4867; Civ. C. ‘12 Section 3188; 1906 (25) 117.

Library References

Carriers 20(1).

Westlaw Topic No. 70.

C.J.S. Carriers Section 332.

**SECTION 58‑17‑2330.** No demurrage or similar charge shall be made after demand for reweighing.

 No demurrage or other similar charges shall be made by any common carrier against a consignee making the demand specified in Section 58‑17‑2310 between the time of the making of such demand and the time of delivery by such common carrier to such consignee of the statement required in said section.

HISTORY: 1962 Code Section 58‑1113; 1952 Code Section 58‑1113; 1942 Code Section 8321; 1932 Code Section 8321; Civ. C. ‘22 Section 4868; Civ. C. ‘12 Section 3189; 1906 (25) 117.

Library References

Carriers 100(1).

Westlaw Topic No. 70.

C.J.S. Carriers Sections 473 to 474.

**SECTION 58‑17‑2340.** Common carriers shall maintain scales under certain conditions.

 Every common carrier doing business in this State shall, upon demand of any person having a sidetrack adjacent to and used in connection with the business of such person, erect and maintain on such sidetrack suitable scales for reweighing such coal or other articles in carload lots. But such person shall agree and become liable to such common carrier to pay the amount incurred by such common carrier in the erection and maintenance of such scales. In such event, the common carrier shall reweigh such coal or other articles delivered in carload lots to such person upon such sidetrack, as provided for in Section 58‑17‑2310. Upon refusal so to weigh, such common carrier shall be liable for the same penalties provided in Sections 58‑17‑2320 and 58‑17‑2330.

HISTORY: 1962 Code Section 58‑1114; 1952 Code Section 58‑1114; 1942 Code Section 8322; 1932 Code Section 8322; Civ. C. ‘22 Section 4869; Civ. C. ‘12 Section 3190; 1906 (25) 117.

Library References

Carriers 77.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 371, 393.

**SECTION 58‑17‑2350.** Jurisdiction over railroad track and platform scales; penalties.

 All railroad track and platform scales used in connection with shipping are hereby placed under the jurisdiction of the Office of Regulatory Staff for inspection and it may require the installation or replacement of scales when needed. A failure or refusal to carry out the instructions of the Office of Regulatory Staff in reference to the scales shall be punished by a penalty of two hundred dollars for each refusal to be recovered by suit in any court of competent jurisdiction by any person aggrieved. Any sum so recovered must be turned into the State Treasury for general use.

HISTORY: 1962 Code Section 58‑1115; 1952 Code Section 58‑1115; 1942 Code Section 8323; 1932 Code Section 8323; Civ. C. ‘22 Section 4870; 1912 (27) 578; 1935 (39) 25; 2006 Act No. 318, Section 125, eff May 24, 2006.

CROSS REFERENCES

Weighing carload shipments, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑47.

Library References

Carriers 10.

Westlaw Topic No. 70.

C.J.S. Carriers Section 330.

ARTICLE 21

Transportation of Livestock

**SECTION 58‑17‑2510.** Prompt loading and unloading of livestock required.

 Every railroad company receiving livestock for transportation shall cause such livestock to be loaded not more than two hours before the scheduled departure of the train carrying them and every railroad company delivering livestock at its destination for unloading shall cause them to be unloaded within two hours after the arrival of the trains carrying them, except that a longer time may be allowed if voluntarily consented to in writing by the owner or shipper on a paper other than the bill of lading. But this section shall apply in the unloading of stock only if the consignee in person or his duly authorized agent shall make demand in writing for such unloading within two hours after the arrival of the train carrying such livestock.

 This section shall not apply at stations where no unloading pen is maintained or where there is no agent of the railroad on duty upon the arrival of such train.

HISTORY: 1962 Code Section 58‑1122; 1952 Code Section 58‑1122; 1942 Code Section 8348; 1932 Code Section 8348; Civ. C. ‘22 Section 4896; 1916 (29) 822.

CROSS REFERENCES

Further regulations for transportation of animals by railroad, see Sections 47‑1‑90 to 47‑1‑110.

Library References

Carriers 210.

Westlaw Topic No. 70.

C.J.S. Carriers Section 394.

NOTES OF DECISIONS

In general 1

1. In general

Carrier would not be liable for loss or death of animals transported resulting from inherent vice or nature and propensity of animals. Ward v. Atlantic Coast Line R. Co. (S.C. 1930) 155 S.C. 54, 151 S.E. 904.

**SECTION 58‑17‑2520.** Information required to be furnished owners or shippers of livestock.

 Any railroad company doing business in this State shall be required to furnish the owner or shipper, or their agents, full information concerning the shipment, movement and delivery of livestock when en route and on said company’s line or in said company’s possession. If the company cannot make the time published in its schedule it must, whenever as much as three hours behind schedule time, wire the owner and agent at destination the extent and cause of the delay and advise him of the expected time of arrival. Upon failure to furnish such information and upon failure to give the shipper benefit of the best connection as published in its schedule, the railroad company shall pay a fine of not more than twenty‑five dollars.

 Nothing herein contained shall interfere with the transmission of train orders. In the event of a failure upon the part of any common carrier to give the information herein required, it shall be incumbent upon such common carrier affirmatively to show that such failure was due to the necessary use of its wire or wires for the transmission of train orders.

HISTORY: 1962 Code Section 58‑1127; 1952 Code Section 58‑1127; 1942 Code Section 8349; 1932 Code Sections 1715, 8349; Civ. C. ‘22 Section 4897; Cr. C. ‘22 Section 660; Civ. C. ‘12 Section 3216; Cr. C. ‘12 Section 685; 1906 (25) 114.

Library References

Carriers 208.1, 212.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 394, 399.

ARTICLE 23

Connecting Carriers

**SECTION 58‑17‑2610.** Connecting railroads shall operate as one for rate purposes when operated by same company.

 All connecting railroads doing business in this State and under the management or control, by lease, ownership, association or otherwise, of one and the same person shall for purposes of transportation, in applying freight and passenger tariffs, be considered as constituting but one and the same road and the rate shall be computed as upon parts of one and the same road unless otherwise specified by the Commission.

HISTORY: 1962 Code Section 58‑1141; 1952 Code Section 58‑1141; 1942 Code Section 8337; 1932 Code Section 8337; Civ. C. ‘22 Section 4884; Civ. C. ‘12 Section 3204; Civ. C. ‘02 Section 2115; 1896 (22) 118; 1935 (39) 25.

CROSS REFERENCES

Constitutional provisions for regulation of common carriers, see SC Const. Art. IX, Section 1.

Rates applicable to roads under one management or control, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑21.

Library References

Carriers 189.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 468 to 470, 472.

NOTES OF DECISIONS

In general 1

1. In general

Connecting roads are regarded as one road for purpose of license tax. Southern Ry. Co. v. City Council (S.C. 1896) 45 S.C. 602, 23 S.E. 952.

**SECTION 58‑17‑2620.** Railroads authorized to join tracks; expenses.

 When any railroad company owning, leasing or operating a railroad in or through any part of this State shall have its terminus or any part of its track at or near the terminus of any other railroad in this State having the same gauge or shall cross such other railroad’s track, such railroad company may join its track by safe and proper switches, with such other railroad and for this purpose may enter upon the right of way of such other railroad. But if the railroad with which such connection is proposed shall refuse to join in paying the expenses of making such connection the railroad proposing the connection shall pay them.

HISTORY: 1962 Code Section 58‑1142; 1952 Code Section 58‑1142; 1942 Code Section 8335; 1932 Code Section 8335; Civ. C. ‘22 Section 4882; Civ. C. ‘12 Section 3202; Civ. C. ‘02 Section 2113; 1887 (19) 823.

Library References

Railroads 87.

Westlaw Topic No. 320.

C.J.S. Railroads Section 276.

**SECTION 58‑17‑2630.** Condemnation when connecting switches are refused.

 Should any railroad company refuse to allow the connecting switches put in its line, when requested under Section 58‑17‑2620, the other road seeking such connection may proceed to procure the right to use so much of the franchise of the former as may be necessary for such purpose in the manner provided by law for taking private property for the use of a railroad.

HISTORY: 1962 Code Section 58‑1143; 1952 Code Section 58‑1143; 1942 Code Section 8336; 1932 Code Section 8336; Civ. C. ‘22 Section 4883; Civ. C. ‘12 Section 3203; Civ. C. ‘02 Section 2114; 1887 (19) 823.

Library References

Eminent Domain 20(1).

Westlaw Topic No. 148.

C.J.S. Eminent Domain Sections 32 to 33.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

**SECTION 58‑17‑2640.** Facilities for interchange of traffic shall be furnished.

 Railroads subject to this chapter shall afford all reasonable, proper and equal facilities for the interchange of traffic between their own roads and other carriers, whether at terminal or junction points, for the receiving, forwarding and delivering of freight and passengers to and from points on their lines beyond and shall not discriminate in their rates or charges between or against any such connecting carriers.

HISTORY: 1962 Code Section 58‑1144; 1952 Code Section 58‑1144; 1942 Code Section 8330; 1932 Code Section 8330; Civ. C. ‘22 Section 4877; Civ. C. ‘12 Section 3197; Civ. C. ‘02 Section 2108.

Library References

Carriers 171, 193.

Railroads 120.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 465, 481.

C.J.S. Railroads Section 402.

NOTES OF DECISIONS

In general 1

1. In general

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2650.** Lines of two or more railroads which pass through city or town shall be connected; expenses.

 Whenever the lines of railroad of two or more corporations may enter or pass through the corporate limits of any city or town in this State, the corporations owning such lines shall build such connecting tracks as may be necessary to effect an actual connection of such lines for the purpose of interchanging and delivering cars and freight in carload lots. The entire reasonable cost of construction and maintenance of such connecting track shall be borne by such railroad corporations whose tracks are so connected, in such ratable proportion as shall be determined and adjusted by the Public Service Commission. Failure to comply with the provisions of this section for six months after the building of any new line of railroad into such city or town shall subject each and every such corporation so failing to a penalty of twenty‑five dollars per day, to be recovered in an action by any citizen of such city or town, one half for his own benefit and the other half for the benefit of the State. But any one of such railroad corporations may relieve itself from liability to such penalty by giving notice in writing within thirty days from the date when it shall become liable to the operation of this section to the other corporations so liable thereto of its readiness to proceed with the construction of such connecting track and if the other corporation or corporations so notified shall fail to unite in such construction within ten days after such written notice the corporation giving such notice may proceed to the construction of such track and may recover of each and every other line so connected such proportion of the costs of such construction as shall be determined by the Commission. But the recovery thereof shall not operate to discharge such delinquent corporation or corporations from liability to the penalty above imposed up to the time of the full completion of such connecting track. But the Commission may suspend the operation of the requirements of this section at such junctional points when it can be shown, upon a full and fair hearing before it, that the erection and operation of such connection would be unreasonable and unnecessary.

HISTORY: 1962 Code Section 58‑1145; 1952 Code Section 58‑1145; 1942 Code Section 8331; 1932 Code Section 8331; Civ. C. ‘22 Section 4878; Civ. C. ‘12 Section 3198; Civ. C. ‘02 Section 2109; 1900 (23) 388; 1935 (39) 25.

Library References

Railroads 87.

Westlaw Topic No. 320.

C.J.S. Railroads Section 276.

**SECTION 58‑17‑2660.** Rights‑of‑way for connecting tracks in cities and towns; condemnation if track crosses private property.

 For the purpose of building any such track the right of way may be taken over and across the property of either or all of such railroad corporations and by and with consent of the council of such city or town such connecting track may be laid across or along any of the streets of such city or town or the public grounds thereof. But such compensation shall be made to abutting landowners as they may be entitled to by law. In case it should be necessary for such connecting track to cross any private property other than as above specified, the right of condemnation is hereby given under the provisions of this Code upon the subject, to be exercised upon the application of either or all of such railroad corporations.

HISTORY: 1962 Code Section 58‑1146; 1952 Code Section 58‑1146; 1942 Code Section 8332; 1932 Code Section 8332; Civ. C. ‘22 Section 4879; Civ. C. ‘12 Section 3199; Civ. C. ‘02 Section 2110; 1900 (23) 388.

CROSS REFERENCES

Eminent domain, generally, see Section 28‑2‑10 et seq.

Library References

Eminent Domain 20(1).

Railroads 63, 87.

Westlaw Topic Nos. 148, 320.

C.J.S. Eminent Domain Sections 32 to 33.

C.J.S. Railroads Sections 148 to 149, 276.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Eminent Domain Section 18, Corporations.

**SECTION 58‑17‑2670.** Railroad building new line into city or town shall connect and pay part of cost of original connecting track.

 Any railroad corporation building a new line into such city or town after the construction of such connecting track shall be required to connect its line with such track and to pay to each and every corporation owning such track a part of the costs thereof which shall be fixed and determined by the Commission.

HISTORY: 1962 Code Section 58‑1147; 1952 Code Section 58‑1147; 1942 Code Section 8333; 1932 Code Section 8333; Civ. C. ‘22 Section 4880; Civ. C. ‘12 Section 3200; Civ. C. ‘02 Section 2111; 1900 (23) 388; 1935 (39) 25.

Library References

Railroads 87.

Westlaw Topic No. 320.

C.J.S. Railroads Section 276.

**SECTION 58‑17‑2680.** Connecting line may cross other tracks.

 In building such connecting line the right is granted, under the supervision of the Office of Regulatory Staff, to run across or along any existing track at grade.

HISTORY: 1962 Code Section 58‑1148; 1952 Code Section 58‑1148; 1942 Code Section 8333; 1932 Code Section 8333; Civ. C. ‘22 Section 4880; Civ. C. ‘12 Section 3200; Civ. C. ‘02 Section 2111; 1900 (23) 388; 1935 (39) 25; 2006 Act No. 318, Section 126, eff May 24, 2006.

Library References

Railroads 89.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 278 to 280.

**SECTION 58‑17‑2690.** No discrimination between connections at same point.

 Each railroad company chartered by this State shall deal with all its connections at any one point on the same terms and shall afford the like usual facilities for the interchange of freight between all of its connections at the same point.

HISTORY: 1962 Code Section 58‑1149; 1952 Code Section 58‑1149; 1942 Code Section 8315; 1932 Code Section 8315; Civ. C. ‘22 Section 4862; Civ. C. ‘12 Section 3183; Civ. C. ‘02 Section 2100; G. S. 1474; R. S. 1661; 1881 (17) 823.

Library References

Carriers 171.

Westlaw Topic No. 70.

C.J.S. Carriers Section 465.

**SECTION 58‑17‑2700.** Cars shall be transferred to connected track on demand; fees.

 All railroad corporations whose tracks shall be so connected shall transfer to any railroad track any car upon demand of the consignee or owner of the freight in such car, at such transfer charges as may be fixed by the Commission, not to exceed one dollar per car in any case, empty cars to be returned free. Failure to comply with the written demand of the consignee or owner within twenty‑four hours shall subject the railroad corporation so failing to a penalty of one dollar per hour so long as such failure may continue, to be deducted from the freight bill of such owner or consignee or to be recovered by an action of law, unless it be determined by the jury to be reasonably impracticable for such railroad corporation to make such transfer within such time.

HISTORY: 1962 Code Section 58‑1150; 1952 Code Section 58‑1150; 1942 Code Section 8334; 1932 Code Section 8334; Civ. C. ‘22 Section 4881; Civ. C. ‘12 Section 3201; Civ. C. ‘02 Section 2112; 1900 (23) 388; 1935 (39) 25.

**SECTION 58‑17‑2710.** Each connected railroad shall furnish facilities for receiving and forwarding traffic of another without delay, preference or prejudice.

 Every railroad company doing business in this State working railways which form a part of a continuous line of railway communication shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic, freight or passengers arriving by the other, without any unreasonable delay and without any preference or advantage or prejudice or disadvantage, so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication and so that all reasonable accommodation may, by means of the railways of the several companies, be at all times afforded to the public in that behalf.

 The above‑mentioned facilities and benefits shall be afforded as well to other railroads as to the public.

HISTORY: 1962 Code Section 58‑1151; 1952 Code Section 58‑1151; 1942 Code Section 8326; 1932 Code Section 8326; Civ. C. ‘22 Section 4873; Civ. C. ‘12 Section 3193; Civ. C. ‘02 Section 2104; 1896 (22) 119.

CROSS REFERENCES

Conductors on Pullman, dining cars, etc., common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑20.

Delays in transportation, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑33.

Library References

Carriers 15, 171.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 329, 465.

**SECTION 58‑17‑2720.** Railroads shall receive and deliver cars to and from connecting lines at uniform rates and with uniform service.

 All railroad corporations doing business in this State shall receive from, deliver to and handle with connecting lines at each of its junctions or terminal points in this State all cars or trains bound to or from any point upon its own line or beyond upon the same terms and upon the same charges, either by way of trackage or by way of its proportion of the entire rate charged upon such cars, trains or freight, that it charges or demands either under the law or by contract or agreement with any other railroad connecting with it at such junction or terminal point where it performs the same or similar service for each of such railroads and shall furnish the same facilities to each of such railroads.

HISTORY: 1962 Code Section 58‑1152; 1952 Code Section 58‑1152; 1942 Code Section 8324; 1932 Code Section 8324; Civ. C. ‘22 Section 4871; Civ. C. ‘12 Section 3191; Civ. C. ‘02 Section 2102; 1896 (22) 119.

Library References

Carriers 179, 193.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 458, 481.

**SECTION 58‑17‑2730.** Railroad shall issue or recognize through bills of lading between competitive points.

 No railroad doing business in this State shall be allowed to refuse to issue or recognize a through bill of lading between competitive points when issued over or by one railroad with which it connects when it issues or recognizes such bills of lading when goods are shipped to or from such points over any other competitive railroad with which it connects reaching such point. Such railroad shall not charge or receive for such goods passing over its lines, either by the appropriate schedule for local freight or a division of a through freight rate, a greater sum when such goods are shipped by or over one line of railroad with which it connects than it would charge or receive when such goods are shipped by or over any other line of railroad with which it connects. But nothing herein contained shall prevent any such railroad from demanding payment of its charges in advance of performing the service of carrying such goods or from limiting its liability to losses or damage to such freight upon its own line by a clause inserted in the bill of lading.

HISTORY: 1962 Code Section 58‑1153; 1952 Code Section 58‑1153; 1942 Code Section 8325; 1932 Code Section 8325; Civ. C. ‘22 Section 4872; Civ. C. ‘12 Section 3192; Civ. C. ‘02 Section 2103; 1896 (22) 119.

Library References

Carriers 46.5, 49.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 372 to 373, 377 to 378.

**SECTION 58‑17‑2740.** Shipper may designate routes; changing of route shall be unlawful.

 All persons shipping from, into, within or through this State may designate the route or routes by which such goods shall be shipped, subject to such reasonable exceptions and regulations as the Public Service Commission shall from time to time prescribe, and it shall be unlawful for any person other than the holder of the bill of lading to vary such route so designated or to ship such goods by any other route or to receive such goods if so diverted, unless the route so designated shall be interrupted or be incapable of being used at the time by strike or casualty preventing the running of trains thereon.

HISTORY: 1962 Code Section 58‑1154; 1952 Code Section 58‑1154; 1942 Code Section 8327; 1932 Code Section 8327; Civ. C. ‘22 Section 4874; Civ. C. ‘12 Section 3194; Civ. C. ‘02 Section 2105; 1896 (22) 119; 1944 (43) 1231.

Library References

Carriers 79.

Westlaw Topic No. 70.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑1154] cannot apply to interstate shipments. Lowe v Seaboard Air Line Ry. Co., 63 SC 248, 41 SE 297 (1902). Mitchell v Greenville, S. & A. R. Co., 99 SC 319, 83 SE 261 (1914).

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2750.** Civil penalty on railroad for violation of certain statutory provisions.

 Any transportation company violating any of the provisions of Sections 58‑17‑2710 to 58‑17‑2740 wilfully or knowingly shall be subject to a suit for each violation thereof at the instance of any person and upon proof of such violation the person instituting such suit shall be entitled to recover a penalty of five hundred dollars for such violation. Each violation of any of said sections shall constitute a separate cause of action.

HISTORY: 1962 Code Section 58‑1155; 1952 Code Section 58‑1155; 1942 Code Section 8328; 1932 Code Section 8328; Civ. C. ‘22 Section 4875; Civ. C. ‘12 Section 3195; Civ. C. ‘02 Section 2106; 1896 (22) 119.

Library References

Carriers 20(6).

Westlaw Topic No. 70.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 58‑1155] cannot apply to interstate commerce. Mitchell v. Greenville, S. & A. Ry. Co. (S.C. 1914) 99 S.C. 319, 83 S.E. 261.

**SECTION 58‑17‑2760.** Criminal penalty on individuals for violation of certain statutory provisions.

 Any person who shall wilfully violate, aid in violating or direct or order any one to violate any of the provisions of Sections 58‑17‑2710 to 58‑17‑2740 as to the transportation of through freight shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment not less than three months nor more than twelve months, or both, in the discretion of the court.

HISTORY: 1962 Code Section 58‑1156; 1952 Code Section 58‑1156; 1942 Code Section 8328‑1; 1932 Code Section 1698; Cr. C. ‘22 Section 644; Cr. C. ‘12 Section 669; Cr. C. ‘02 Section 478; 1896 (22) 121.

Library References

Carriers 21(1).

Westlaw Topic No. 70.

C.J.S. Carriers Section 333.

**SECTION 58‑17‑2770.** Discrimination in deliveries prohibited.

 It shall not be lawful for any railroad company, chartered by this State, to discriminate against any railroad company which may connect with it, either at one of its terminal stations or at any intermediate point on its line where such companies have stations and agents established, by neglecting or refusing to deliver with due diligence to such connecting road, in the yard or on the track of such road, all cars wholly or partly loaded with freight consigned to points on such connecting road or to points beyond its line. When freight is to be delivered to a connecting road to complete its transportation, such delivery shall be made by the railroad which brought the freight to the connecting point and no additional charge shall be made therefor. But the delivering road may demand of its connection payment of all charges which have accrued thereon, on or before delivery of such freight on the tracks or in the yards of such connecting road.

HISTORY: 1962 Code Section 58‑1157; 1952 Code Section 58‑1157; 1942 Code Section 8312; 1932 Code Section 8312; Civ. C. ‘22 Section 4859; Civ. C. ‘12 Section 3180; Civ. C. ‘02 Section 2097; G. S. 1471; R. S. 1658; 1881 (17) 822.

Library References

Carriers 13(1), 199.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 178 to 180, 182, 351.

NOTES OF DECISIONS

In general 1

1. In general

Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2780.** Discrimination by refusing to receive freight or to issue bills of lading prohibited.

 It shall not be lawful for any railroad company chartered by this State to discriminate in favor of or against any railroad company which may connect with it, either at one of its terminal stations or at an intermediate point on its line where such companies have stations and agents established, as against any other railroad company which may connect with it at the same station or point, by refusing either to receive freight for shipment or to issue through bills of lading, at equal rates of freight therefor, to any one given destination reached by any or all of such connecting roads, or their connections, for which freight is received or through bills of lading are issued, to be forwarded by any other of such connecting roads at the same point, except that if any of such connections shall refuse to transport freight from its own terminus to the ultimate destination of such freight at the same rate as is charged by any other connection at the same point, the initial road shall be released from the provisions of this section and the connecting road shall not be entitled to the benefit of its provisions.

HISTORY: 1962 Code Section 58‑1158; 1952 Code Section 58‑1158; 1942 Code Section 8313; 1932 Code Section 8313; Civ. C. ‘22 Section 4860; Civ. C. ‘12 Section 3181; Civ. C. ‘02 Section 2098; G. S. 1472; R. S. 1659; 1881 (17) 822.

Library References

Carriers 13(1), 199.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 178 to 180, 182, 351.

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Power of Public Service Commission to exercise any fundamental regulatory power over railroads in the state must be found in specific legislative provisions. Code 1942, Sections 8199 et seq., 8204, 8223, 8227, 8228, 8292‑21, 8294, 8297, 8304, 8310‑8315, 8327, 8330; Const. art. 9, Section 14. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2790.** Discrimination in rates of freight as to other railroads prohibited.

 It shall not be lawful for any railroad company chartered by this State to discriminate in its rates of freight in favor of or against any railroad company which may connect with it, either at one of its terminal stations, or at any intermediate point on its line. In all cases the charges on freight of the same character, having the same original point of shipment and the same destination, shall be uniform to and from all lines making connections with such railroad at the same point.

HISTORY: 1962 Code Section 58‑1159; 1952 Code Section 58‑1159; 1942 Code Section 8314; 1932 Code Section 8314; Civ. C. ‘22 Section 4861; Civ. C. ‘12 Section 3182; Civ. C. ‘02 Section 2099; G. S. 1473; R. S. 1660; 1881 (17) 822.

Library References

Carriers 13(1), 199.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 178 to 180, 182, 351.

NOTES OF DECISIONS

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1. In general

Different routes of varying lengths. A reasonable implication from this statutory direction is that freight rates between given points may not be varied by reason of the fact that different routes covering these two points are of varying lengths. Piedmont & Northern Ry. Co. v. Scott (S.C. 1943) 202 S.C. 207, 24 S.E.2d 353.

**SECTION 58‑17‑2800.** “Railroad company chartered by this State” defined.

 In the construction of Sections 58‑17‑2770 to 58‑17‑2790 the term “railroad company chartered by this State” shall be held to mean each railroad company holding its franchise under a separate charter granted by this State.

HISTORY: 1962 Code Section 58‑1160; 1952 Code Section 58‑1160; 1942 Code Section 8315; 1932 Code Section 8315; Civ. C. ‘22 Section 4862; Civ. C. ‘12 Section 3183; Civ. C. ‘02 Section 2100; G. S. 1474; R. S. 1661; 1881 (17) 823.

**SECTION 58‑17‑2810.** Railroads shall deliver cars from other roads on equal terms; damages; effect of rebates or fraud.

 Each railroad company in this State shall, at its terminus or any intermediate station, be required to switch off and deliver to any connecting road having the same gauge, in the yard of the latter, all cars passing over its lines, or any portion of them, containing goods or freights consigned, without rebate or deception, by any route, at the option of the shipper, according to customary or published rates, to any point over or beyond such connecting road. Any failure to do so with reasonable diligence shall render the railroad company so failing liable to the owner or consignee for all damages that may result therefrom with interest and all costs and disbursements. Should the defendant in any suit brought under this section set up as a defense that the plaintiff has accepted a rebate, or practiced fraud or deception touching the rate, it shall be a complete reply to such defense if the plaintiff can prove that defendant or its agents has allowed a rebate or rebates, or practiced like fraud or deception, from the same competing points against the rival line.

HISTORY: 1962 Code Section 58‑1161; 1952 Code Section 58‑1161; 1942 Code Section 8316; 1932 Code Section 8316; Civ. C. ‘22 Section 4863; Civ. C. ‘12 Section 3184; Civ. C. ‘02 Section 2101; R. S. 1662; 1887 (19) 822.

Library References

Carriers 179.

Westlaw Topic No. 70.

C.J.S. Carriers Section 458.

**SECTION 58‑17‑2820.** Refusal to pay freight to connecting carrier shall be unlawful.

 It shall be unlawful for any railroad chartered or operated in this State to refuse to pay any carrier on traffic delivered at any of its terminal or junction points such freight charges as may have accrued from the original point of shipment to the terminal or junction points, wherever delivery may be made, and to which at current rates the carrier making such delivery and previous carriers interested may be justly entitled to whenever such freight may be collected by the road making the delivery to consignee; provided, that:

 (1) The total amount of freight charges does not exceed an amount equal to one half the market value of the property transported;

 (2) This section does not apply on property which, from its nature, is classed as “prepaid freight” or which may be destined for points designated and conducted as prepaid stations, of which due public notice has been given; and

 (3) Such carrier shall afford to such railroad company making the delivery to the consignee the same advantages and facilities, in the handling and interchange of business, that it affords any other railroad at the same point.

HISTORY: 1962 Code Section 58‑1162; 1952 Code Section 58‑1162; 1942 Code Section 8329; 1932 Code Section 8329; Civ. C. ‘22 Section 4876; Civ. C. ‘12 Section 3196; Civ. C. ‘02 Section 2107; 1896 (22) 117.

CROSS REFERENCES

Delays in transportation, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑33.

Library References

Carriers 193.

Westlaw Topic No. 70.

C.J.S. Carriers Section 481.

ARTICLE 25

Passenger Service

**SECTION 58‑17‑3010.** Passenger trains shall stop at stations advertised as stops.

 Every railroad company in this State shall cause all its trains of cars for passengers to stop entirely upon each arrival at a station advertised by such company as a station for receiving passengers upon such trains for a time sufficient to receive and let off passengers.

HISTORY: 1962 Code Section 58‑1171; 1952 Code Section 58‑1171; 1942 Code Section 8361; 1932 Code Section 8361; Civ. C. ‘22 Section 4909; Civ. C. ‘12 Section 3225; Civ. C. ‘02 Section 2134; G. S. 1486; R. S. 1687; 1881 (17) 824.

Library References

Carriers 262.

Railroads 227.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 503 to 504.

C.J.S. Railroads Sections 753, 758, 760 to 766.

NOTES OF DECISIONS

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1. In general

As to failure to stop at flag station, see Berley v Seaboard Air Line Ry. Co., 83 SC 411, 65 SE 456 (1909). Davis v Atlanta & C. Air Line R. Co., 83 SC 66, 64 SE 1015 (1909).

Passenger injured in alighting from train before it stopped. Hollingsworth v Southern Ry. Co., 72 SC 114, 51 SE 560 (1905). Smith v Southern Ry. Co., 80 SC 1, 61 SE 205 (1908).

For additional related cases, as to sufficient time, see Shealey v South Carolina & G. R. Co., 67 SC 61, 45 SE 119 (1903). Gyles v Southern Ry. Co., 79 SC 176, 60 SE 433 (1908).

But does not apply to flag stations. Rountree v Atlantic Coast Line R. Co., 73 SC 268, 53 SE 424 (1906). Milhous v Southern Ry. Co., 72 SC 442, 52 SE 41 (1904).

As to carrying by station, see Carter v Southern Ry. Co., 75 SC 355, 55 SE 771 (1906). Trapp v Southern Ry. Co., 72 SC 343, 51 SE 919 (1905).

This section [Code 1962 Section 58‑1171] is only for the benefit of passengers. Carter v Charleston & W. C. R. Co., 64 SC 316, 42 SE 161 (1902). Creech v Charleston & W. C. Ry. Co., 66 SC 528, 45 SE 86 (1903).

As to carrying passengers beyond destination, see Samuels v Richmond & D. R. Co., 35 SC 493, 14 SE 943 (1892). Thomas v Charlotte, C. & A. R. Co., 38 SC 485, 17 SE 226 (1893).

Failure to stop a passenger train at the usual place for letting off passengers is prima facie negligence. Martin v Southern Ry. Co., 77 SC 370, 58 SE 3 (1907). Martin v Columbia & G. R. Co., 32 SC 592, 10 SE 960 (1890).

As to duty to assist passenger, see Madden v Port Royal & W. C. Ry. Co., 35 SC 381, 14 SE 713 (1892). Simms v South Carolina Ry. Co., 27 SC 268, 3 SE 301 (1887).

Cited in Gladden v. Southern Ry. Co. (S.C. 1928) 142 S.C. 492, 141 S.E. 90.

It refers merely to passengers beginning or ending passage at such station, and cannot be construed as requiring a carrier to receive as a passenger one who had been expelled for misconduct affording ground for ejection from the train which he is seeking to re‑enter. Phillips v. Atlantic Coast Line R. Co. (S.C. 1911) 90 S.C. 187, 73 S.E. 75, Am.Ann.Cas. 1913C,1244.

Belated passenger has no right to require carrier to hold car at flag station of electric road which has stopped to take switch, and stands there long enough to let off and take on passengers. Mitchell v. Augusta & A. Ry. Co. (S.C. 1910) 87 S.C. 375, 69 S.E. 664.

Persons intending to take passage. McLean v. Atlantic Coast Line R. Co. (S.C. 1908) 81 S.C. 100, 61 S.E. 900, 128 Am.St.Rep. 892.

As to stopping electric car on signal from passenger, see Ussery v. Augusta‑Aiken R. Co. (S.C. 1908) 79 S.C. 209, 60 S.E. 527.

As to ejecting through mistake at wrong station, see Ford v. Southern Ry. (S.C. 1906) 75 S.C. 286, 55 S.E. 448.

As to injury to passenger boarding train, see Talbert v. Charleston & W.C. Ry. (S.C. 1906) 75 S.C. 136, 55 S.E. 138.

As to damages for failure to stop, see Caldwell v. Atlantic Coast Line R. Co. (S.C. 1906) 75 S.C. 74, 55 S.E. 131.

As to passenger’s own negligence, see Hunter v. Atlantic Coast Line R. Co. (S.C. 1905) 72 S.C. 336, 51 S.E. 860, 110 Am.St.Rep. 605.

Attempting to board moving train. Whether it was contributory negligence for a man with only one arm to attempt to board a moving train without assistance was a question for the jury. Talbert v. Charleston & W.C. Ry. Co. (S.C. 1905) 72 S.C. 137, 51 S.E. 564. Carriers 347

As to injuries sustained because of failure to stop entirely at crossing of another railroad, where it was customary to receive passengers, see Creech v. Charleston & W.C. Ry. Co. (S.C. 1903) 66 S.C. 528, 45 S.E. 86.

It applies to excursion trains. Oliver v. Columbia, N. & L.R. Co. (S.C. 1902) 65 S.C. 1, 43 S.E. 307.

Under this section [Code 1962 Section 58‑1171] a railroad company which receives a passenger on board a mixed train, and collects his fare, is obliged to transport him safely, and stop the train at the station to which he has paid his fare. Thomas v. Charlotte, C. & A.R. Co. (S.C. 1893) 38 S.C. 485, 17 S.E. 226.

The railroad company owes no duty to a belated passenger to stop its train in any other manner than that required by the statute. Pickett v. Southern Ry. Co., Carolina Division (S.C. 1904) 69 S.C. 445, 48 S.E. 466.

**SECTION 58‑17‑3020.** Passenger trains shall stop at county seats.

 All passenger trains operated by and upon any railroad in this State shall stop to let off a passenger or upon signal to take on a passenger at all stations located at any county seat within this State. In case the county seat is not located on the main line of such railroad, but is served by a branch line therefrom, then such passenger trains shall stop at the junctional point of such branch line with such main line when such junctional point is not more than twenty‑three miles distant from the county seat and the provisions of this section shall apply as to each junctional point in such county where such junctional points are more than thirty miles apart. Any railroad company violating any provision of this section shall pay a penalty of one hundred dollars for each and every offense, one half of such penalty to go to any person who shall sue for it and one half to the county in which the offense occurs. Nothing herein contained shall bar any action for actual or punitive damages growing out of any violation of this section and any such causes of action may be united in the same complaint.

HISTORY: 1962 Code Section 58‑1172; 1952 Code Section 58‑1172; 1942 Code Section 8401; 1932 Code Section 8401; Civ. C. ‘22 Section 4949; Civ. C. ‘12 Section 3254; 1907 (25) 658; 1914 (28) 730; 1919 (31) 170.

Library References

Carriers 262.

Railroads 227.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 503 to 504.

C.J.S. Railroads Sections 753, 758, 760 to 766.

**SECTION 58‑17‑3030.** Connections with intersecting railroads; passenger train requirement.

 The Office of Regulatory Staff must, from time to time, examine into the schedules of all the railroads in this State for the carriage of passengers, with a view to ascertaining if the roads can reasonably make close connection with intersecting roads and wherever, in its opinion, close connection can be made without injustice or material injury to any road it shall make the appropriate orders to require such connection. And, to better secure connections, upon petition of the Office of Regulatory Staff, the commission may require all persons operating railroads, except those in the hands of receivers, to run at least one unmixed daily passenger train each way over the railroad and may likewise require those persons to furnish to the traveling public facilities for passage over the railroads twice each way daily. A road may appeal an order of the commission as in cases of appeals from inferior courts.

HISTORY: 1962 Code Section 58‑1173; 1952 Code Section 58‑1173; 1942 Code Section 8405; 1932 Code Section 8405; Civ. C. ‘22 Section 4953; Civ. C. ‘12 Section 3258; Civ. C. ‘02 Section 2163; 1896 (22) 115; 1897 (22) 455; 1901 (23) 718; 1935 (39) 25; 2006 Act No. 318, Section 127, eff May 24, 2006.

Library References

Railroads 227.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 753, 758, 760 to 766.

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1. In general

A railroad having accepted from South Carolina a franchise imposing on it the burden of maintaining passenger service over a particular line may not accept the benefits and reject the burdens of the franchise, but must operate the line in accordance with its charter and the state laws unless relieved by state authority, and, if interstate operations are burdened by state requirements, relief may be had by application to the Interstate Commerce Commission to abandon the line or a part of it. Code S.C.1932, Sections 8251, 8405 (See Code 1942, Sections 8292‑12, 8405); Interstate Commerce Act Section 1(18‑20), 49 U.S.C.A. Section 1(18‑20). Southern Ry. Co. v. South Carolina Public Service Commission, 1940, 31 F.Supp. 707. Railroads 227

The South Carolina statute empowering the public service commission to require railroads to run at least one unmixed daily passenger train each way over their lines vests discretion in the commission with respect to prescribing what service shall be a sufficient discharge of a railroad’s statutory duty to furnish passenger service, and the exercise by the commission of its discretion to require the minimum service on a regular railroad line is not unreasonable. Code S.C. 1942, Sections 8395, 8405. Southern Ry. Co. v. South Carolina Public Service Commission, 1940, 31 F.Supp. 707. Railroads 227

This section [Code 1962 Section 58‑1173] does not make it obligatory upon the railroad to operate at least one unmixed daily passenger train each way before it has been ordered to do so, nor before a hearing has been had, nor until after an appeal is taken. It is not the plain mandate of the law that the railroad must operate at least one unmixed daily passenger train each way under all circumstances and at all times. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

Though this section [Code 1962 Section 58‑1173] gives the Commission the right to require the operation of one unmixed train daily, it is for the purpose of making connections with intersecting lines, and there is no inference in the section that the Commission can arbitrarily make such a requirement for any other purpose, nor even then without granting to the corporation a hearing on the merits. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

**SECTION 58‑17‑3040.** Posting bulletins as to late trains.

 Whenever any passenger train on any railroad in this State shall be more than one half hour behind its schedule time the railroad company shall keep posted at every telegraph station along its line, when a telegraph operator is on duty at such station, the time such train is behind its schedule and shall change such bulletin every quarter hour until such train arrives, stating therein the time such train is behind and the hour at which it is expected to arrive. But such bulletins shall not be required to be posted at any station until one half hour before the regular schedule time at which such train is to arrive at such station. Any railroad company which shall refuse or neglect to comply with the provisions of this section shall forfeit and pay the sum of ten dollars for each and every such refusal or neglect, such sum to be sued for and recovered by any person aggrieved in any court of competent jurisdiction in the county where such refusal or neglect occurs.

HISTORY: 1962 Code Section 58‑1174; 1952 Code Section 58‑1174; 1942 Code Section 8417; 1932 Code Section 8417; Civ. C. ‘22 Section 4965; Civ. C. ‘12 Section 3270; Civ. C. ‘02 Section 2170; G. S. 1495; R. S. 1714; 1887 (19) 811; 1903 (24) 80; 1908 (25) 1075.

Library References

Carriers 262.

Railroads 227.

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 503 to 504.

C.J.S. Railroads Sections 753, 758, 760 to 766.

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1. In general

Civ.Code 1902, Section 2170 (See Code 1942, Section 8417), requires railroad companies to keep posted, in stations along its line, bulletins of trains delayed for more than half an hour, and gives a remedy for any grievance for noncompliance with its terms. Plaintiff, in an action against a railroad company, because of the delay of a train upon which he expected to travel, was allowed to testify as to the posting of bulletins by the agent as to the time his train was expected, and that the agent told him of a telegram announcing that his train had been annulled, and that the agent said he did not know what the trouble was with the train. Held that, although section 2170 gives an exclusive remedy for noncompliance with its terms, this testimony was admissible, it being responsive to the allegation of the complaint; it also being the agent’s duty to give a passenger, upon request, all reasonable information within his knowledge, and not known by the passenger, as to the arrival of a train which he was to take. Mulligan v. Southern Ry. Co. (S.C. 1909) 84 S.C. 171, 65 S.E. 1040.

**SECTION 58‑17‑3050.** Publishing change of timetable.

 Notice of any change in passenger schedules or timetables shall be published at least three days before such change goes into effect.

HISTORY: 1962 Code Section 58‑1175; 1952 Code Section 58‑1175; 1942 Code Section 8418; 1932 Code Section 8418; Civ. C. ‘22 Section 4966; Civ. C. ‘12 Section 3271; Civ. C. ‘02 Section 2171; R. S. 1715; 1889 (20) 378.

CROSS REFERENCES

Notice as to delayed trains, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑11.

Library References

Railroads 227.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 753, 758, 760 to 766.

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1. In general

There is nothing in the statute which requires a railway company to do more than give notice. Neither the statute nor the rule of the Commission itself mentions the necessity of permission from the Commission. Darby v. Southern Ry. Co. (S.C. 1940) 194 S.C. 421, 10 S.E.2d 465.

**SECTION 58‑17‑3060.** Discontinuing passenger train or changing it to mixed train without approval of Commission shall be unlawful.

 It shall be unlawful for any railroad company or person operating a railroad service in this State to discontinue the operation of any passenger train or to change any passenger train into a mixed passenger and freight train and operate it as such without first making application to and securing the approval of the Public Service Commission. Each day of the violation of the provisions of this section shall be considered a separate offense. Any person violating any of the provisions of this section shall be punishable by a fine not exceeding twenty‑five dollars, to be imposed and collected by any court of competent jurisdiction.

HISTORY: 1962 Code Section 58‑1176; 1952 Code Section 58‑1176; 1942 Code Section 8250; 1940 (41) 1839.

Library References

Railroads 227.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 753, 758, 760 to 766.

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1. In general

Railroad company does not have to apply to the Commission for a rehearing as a condition of seeking judicial relief. Atlantic Coast Line R. Co. v. Public Service Commission of S.C., 1948, 77 F.Supp. 675.

**SECTION 58‑17‑3070.** Accommodations for passengers.

 Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers. For every wilful neglect to provide such accommodations such railroad corporation shall forfeit not less than five nor more than twenty dollars, to be recovered in an action against such corporation.

HISTORY: 1962 Code Section 58‑1177; 1952 Code Section 58‑1177; 1942 Code Section 8395; 1932 Code Section 8395; Civ. C. ‘22 Section 4943; Civ. C. ‘12 Section 3248; Civ. C. ‘02 Section 2157; G. S. 1502; R. S. 1710; 1881 (17) 830.

CROSS REFERENCES

Stopping passenger trains at stations, common carriers by RAIL and express carriers, see S.C. Code of Regulations R. 103‑19.

Library References

Railroads 226.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 744 to 745, 747 to 751, 758, 760, 765 to 766.

NOTES OF DECISIONS

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Cited in Darby v Southern Ry. Co., 194 SC 421, 10 SE2d 465 (1940). Southern Ry. Co. v South Carolina Public Service Comm., 31 F Supp 707 (1940).

Presumption from injury to passenger. Anderson v South Carolina & G. R. Co., 77 SC 434, 58 SE 149 (1907). Brown v Atlantic Coast Line R. Co., 83 SC 53, 64 SE 1012 (1909). Sutton v Southern Ry. Co., 82 SC 345, 64 SE 401 (1909).

Passengers on freight trains assume the incident risks. Steele v Southern Ry. Co., 55 SC 389, 33 SE 509 (1899). McLean v Atlantic Coast Line R. Co., 81 SC 100, 61 SE 900, 1071 (1908).

Alighting from or boarding trains. Sevier v Southern Ry. Co., 82 SC 311, 64 SE 390 (1909). Norton v Columbia St. Ry., Light & Power Co., 83 SC 26, 64 SE 962 (1909). Horn v Southern Ry. Co., 78 SC 67, 58 SE 963 (1907). Smith v Southern Ry. Co., 80 SC 1, 61 SE 205 (1908). Richardson v Augusta & A. R. Co., 79 SC 535, 61 SE 83 (1908).

Who are passengers. McCarter v Greenville Tract. Co., 72 SC 134, 51 SE 545 (1905). Kirkland v Charleston & W. C. Ry. Co., 79 SC 273, 60 SE 668 (1908).

“Reasonable” accommodations is a question for jury. Anderson v South Carolina & G. R. Co., 81 SC 1, 61 SE 1096 (1908). Anderson v South Carolina & G. R. Co., 77 SC 434, 58 SE 149 (1907).

Duty towards passengers. Taber v Seaboard Air Line Ry. Co., 81 SC 317, 62 SE 311 (1908). Anderson v South Carolina & G. R. Co., 81 SC 1, 61 SE 1096 (1908). Anderson v South Carolina & G. R. Co., 77 SC 434, 58 SE 149 (1907). Hasseltine v Southern Ry. Co., 75 SC 141, 55 SE 142 (1906). Franklin v Atlantic & C. A. L. R. Co., 74 SC 332, 54 SE 578 (1906).

For additional related cases, see Davis v Atlanta & C. Air Line R. Co., 83 SC 66, 64 SE 1015 (1909). DuBose v Atlantic Coast Line R. Co., 81 SC 271, 62 SE 255 (1908). Crosby v Seaboard Air Line Ry. Co., 81 SC 24, 61 SE 1064 (1908). Hollingsworth v Southern Ry. Co., 72 SC 114, 51 SE 560 (1905). Madden v Port Royal & W. C. Ry. Co., 35 SC 381, 14 SE 713 (1892). Johnson v Southern Ry. Co., 53 SC 203, 31 SE 212 (1898).

Dangerous premises. Izlar v Manchester & A. R. Co., 57 SC 332, 35 SE 583 (1900). Johns v Charlotte, C. & A. R. Co., 39 SC 162, 17 SE 698 (1893).

In action for injuries to passenger who slipped on banana peel in aisle of train, whether railroad and conductor were negligent, and, if so, whether such negligence proximately caused passenger’s injury, held for jury. Hall v. Southern Ry. Co. (S.C. 1931) 162 S.C. 260, 160 S.E. 584. Carriers 320(1)

Rules as to transacting passenger business. Funderburg v. Augusta & A. Ry. Co. (S.C. 1908) 81 S.C. 141, 61 S.E. 1075.

Passenger out of his proper place. McLean v. Atlantic Coast Line R. Co. (S.C. 1908) 81 S.C. 100, 61 S.E. 900, 128 Am.St.Rep. 892.

Duty to person assisting passenger to board. Cooper v. Atlantic Coast Line R. Co. (S.C. 1907) 78 S.C. 562, 59 S.E. 704.

Duty continues until passenger leaves station. Taylor v. Atlantic Coast Line R. Co. (S.C. 1907) 78 S.C. 552, 59 S.E. 641.

This duty extends to “persons who are on the premises to welcome the coming or speed the parting guests.” Izlar v. Manchester & A.R. Co. (S.C. 1900) 57 S.C. 332, 35 S.E. 583.

Passenger changing cars. Oliver v. Columbia, N. & L. R. Co. (S.C. 1899) 55 S.C. 541, 33 S.E. 584.

Where a colored person is compelled to leave a depot waiting room provided for white people, in which no chewing or smoking is allowed, and to go into another room, provided for colored persons, in which there is then no chewing or smoking, the accommodations in the two rooms are not unequal because smoking and chewing had been allowed at some other time in the latter room. Smith v. Chamberlain (S.C. 1893) 38 S.C. 529, 17 S.E. 371.

**SECTION 58‑17‑3080.** Waiting rooms for passengers.

 Every railroad company owning or operating a railroad in this State shall erect and keep at every office where tickets are sold for travel over its road two good rooms or apartments of reasonable size for the amount of travel at such office, which must be furnished with comfortable seats for the accommodation of passengers. The rooms must be in charge of an employee of the company and kept open at such hours as to accommodate passengers traveling over the road on any of its passenger trains. The Office of Regulatory Staff must enforce the provisions of this section.

HISTORY: 1962 Code Section 58‑1178; 1952 Code Section 58‑1178; 1942 Code Section 8413; 1932 Code Section 8413; Civ. C. ‘22 Section 4961; Civ. C. ‘12 Section 3266; Civ. C. ‘02 Section 2168; G. S. 1494; R. S. 1712; 1935 (39) 25; 2006 Act No. 318, Section 128, eff May 24, 2006.

CROSS REFERENCES

Opening waiting rooms, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑7.

Waiting rooms, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑8.

Library References

Railroads 226.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 744 to 745, 747 to 751, 758, 760, 765 to 766.

NOTES OF DECISIONS

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1. In general

Liability to incoming passengers for violation of section. The benefits of this section [Code 1962 Section 58‑1178] are not limited to outgoing passengers, but apply equally to incoming passengers, and the railroad company is liable in damages for injuries caused to an incoming passenger because of failure to comply with this section [Code 1962 Section 58‑1178]. Bessinger v. Seaboard Air Line Ry. (S.C. 1914) 99 S.C. 256, 83 S.E. 457.

Evidence, in an action against a carrier by a passenger who caught cold, the waiting room for white people at a station where she was waiting for a train to connect with that from which she had alighted being washed out while she was there, held sufficient to warrant submission of the issues of negligence. Neal v. Southern Ry. Co. (S.C. 1912) 92 S.C. 197, 75 S.E. 405.

A passenger who had to change cars, once at S. and later at B., and who, from the washing of the waiting room at B. while she was there, caught cold, was not guilty of contributory negligence because not waiting longer at S. and taking a later train from there, which would have enabled her to connect with her train at B. without waiting there so long. Neal v. Southern Ry. Co. (S.C. 1912) 92 S.C. 197, 75 S.E. 405.

A carrier’s duty to passengers as to opening waiting rooms is not fully fixed by the rule of the railroad commission that they be opened 30 minutes before train time; but Civ.Code 1902, Section 2168 (See Code 1942, Section 8413), requires a reasonable time, which the jury may, under the circumstances, determine to be more than 30 minutes. Neal v. Southern Ry. Co. (S.C. 1912) 92 S.C. 197, 75 S.E. 405.

Evidence, in an action against a carrier by a passenger who caught cold, the waiting room for white people at a station where she was waiting for a train to connect with that from which she had alighted being washed out while she was there, held sufficient to warrant submission of the issue of contributory negligence and wantonness. Neal v. Southern Ry. Co. (S.C. 1912) 92 S.C. 197, 75 S.E. 405.

Liability to persons meeting passengers. This section [Code 1962 Section 58‑1178] includes persons who are there to meet passengers. Izlar v. Manchester & A.R. Co. (S.C. 1900) 57 S.C. 332, 35 S.E. 583.

Damages for failure to provide proper accommodations. Pickens v. South Carolina & G.R. Co. (S.C. 1899) 54 S.C. 498, 32 S.E. 567.

Separate accommodations for colored persons. Smith v. Chamberlain (S.C. 1893) 38 S.C. 529, 17 S.E. 371.

**SECTION 58‑17‑3090.** Requiring erection of depots.

 The Public Service Commission may require all railroads at junctional points, and at other points as the travel and public interest in its judgment shall justify in this State, to erect union or other depots for the convenience and accommodation of the public and if any railroad company refuses or fails so to do, when required by the commission within the time specified by the commission, it shall forfeit and pay a sum of not less than fifty dollars per day after the expiration of time as set forth in the order or circular of the commission, to be recovered in an action in any county in this State in which such violation has occurred in the name of the State. The Office of Regulatory Staff shall institute any action.

HISTORY: 1962 Code Section 58‑1179; 1952 Code Section 58‑1179; 1942 Code Section 8415; 1932 Code Section 8415; Civ. C. ‘22 Section 4963; Civ. C. ‘12 Section 3268; Civ. C. ‘02 Section 2169; 1897 (22) 418; 1907 (25) 504; 1906 (25) 9; 1935 (39) 25; 2006 Act No. 318, Section 129, eff May 24, 2006.

CROSS REFERENCES

Erecting depots, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑45.

Library References

Railroads 58, 59, 226.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 128, 131, 744 to 745, 747 to 751, 758, 760, 765 to 766.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

Sufficiency of evidence 3

1. In general

Trackage agreement between two railroads was a necessary incident to the joint maintenance and operation of the union station by such railroads, and attempted cancellation of such agreement without authority of the public service commission was invalid. Code 1942, Sections 8292‑12, 8341, 8415; Act Feb. 20, 1902, 23 St. at Large, p. 1168; 28 U.S.C.A. Section 2284. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 124

Where railroads determined question of public convenience and necessity to their own satisfaction when they originally established a union station, upon their subsequent assertion of right to discontinue the station and abandon passenger train service thereto and therefrom, railroads had burden of showing that public convenience and necessity therefor no longer existed. Code 1942, Sections 8292‑12, 8341, 8415; Act Feb. 20, 1902, 23 St. at Large, p. 1168; 28 U.S.C.A. Section 2284. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 60

Public service commission’s order requiring two railroads to rebuild their passenger station building, which had previously burned to inaugurate passenger service thereto and therefrom, to make monthly reports of progress, and to complete station within one year was presumptively just and reasonable, and commission’s findings of fact were prima facie correct. Code 1942, Sections 8292‑12, 8341, 8415; Act Feb. 20, 1902, 23 St. at Large, p. 1168; 28 U.S.C.A. Section 2284. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Administrative Law And Procedure 924; Railroads 9(2)

The power to regulate railroads concerning adequacy of facilities furnished by them for convenience of communities serviced by them is not unlimited, and the question in each case is whether the regulation is essentially reasonable, and matter of expense is an important criterion to be considered. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 9(1)

Where railroads failed to show that rebuilding of burned union station within one year inauguration of passenger train service thereto and therefrom was not necessary to afford suitable passenger service, public service commission’s order requiring such to be done was not arbitrary or unreasonable, and fact that station operation and incidental train dispositions may not be profitable by themselves would not make such order result in confiscation of railroad’s property. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 226

Railroads, which had franchises which included the duty of furnishing adequate passenger service and facilities, could not continue to enjoy franchises and escape burden thereof. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Railroads 31

2. Constitutional issues

Upon question whether union station operation and train dispositions incidental thereto will result in an undue burden on interstate commerce, the serious injury to which the community may be subjected by abandonment is to be weighed against the burden upon a prosperous carrier. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Commerce 58

Where railroads, who owned passenger service and facilities under the franchises, did not show an over‑all loss from exercise of their franchise rights in either city involved or state, they failed to establish that use of union station which they were ordered to rebuild would constitute an undue burden on interstate commerce because of losses which they claimed would result. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Commerce 58

3. Sufficiency of evidence

In mandamus proceeding by public service commission to require railroad to comply with commission’s order requiring rebuilding of burned union station within one year and inauguration of passenger train service thereto and therefrom, evidence was not sufficient to show that operation of such station and incidental train dispositions were not necessary to afford suitable passenger service in the city of Charleston. Code 1942, Sections 8292‑12, 8341, 8415. State ex rel. Public Service Commission v. Atlantic Coast Line R. Co. (S.C. 1952) 222 S.C. 266, 72 S.E.2d 438. Mandamus 168(4)

**SECTION 58‑17‑3100.** Separate water closets shall be maintained at stations.

 All railroads or other persons operating any system of cars, carriages or other conveyances for the purpose of transporting passengers for hire shall, when ordered so to do by the Public Service Commission, build, keep and maintain at all passenger stations and other places where people are regularly taken on and put off of such cars, carriages or other conveyances, two separate and distinct water closets, one for female passengers and one for male passengers and such closets shall be kept in fit and suitable condition for the use and convenience of passengers. But this section shall not be construed to have reference to flag stations on railroad lines where there is no regularly kept passenger station. Any person refusing, failing or neglecting to observe the provisions of this section shall be liable to pay a penalty of fifty dollars for each and every day he shall fail, refuse or neglect to provide such water closets, such penalty to be recovered by any citizen who will sue therefor, one half of such penalty to go to the school fund of the county in which such suit is brought and the other half to the citizen suing for it.

HISTORY: 1962 Code Section 58‑1180; 1952 Code Section 58‑1180; 1942 Code Section 8414; 1932 Code Section 8414; Civ. C. ‘22 Section 4962; Civ. C. ‘12 Section 3267; 1906 (25) 4; 1935 (39) 25.

Library References

Railroads 226.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 744 to 745, 747 to 751, 758, 760, 765 to 766.

**SECTION 58‑17‑3110.** Railroads not required to have second‑class coaches.

 No railroad to which the provisions of this chapter apply shall be required to have second‑class coaches or to sell second‑class tickets.

HISTORY: 1962 Code Section 58‑1181; 1952 Code Section 58‑1181; 1942 Code Section 8407; 1932 Code Section 8407; Civ. C. ‘22 Section 4955; Civ. C. ‘12 Section 3260; 1906 (25) 44; 1920 (31) 900; 1923 (33) 124; 1935 (39) 25.

Library References

Carriers 249.

Railroads 229(0.5).

Westlaw Topic Nos. 70, 320.

C.J.S. Carriers Sections 495 to 496, 499 to 502.

**SECTION 58‑17‑3120.** Installation of cinder deflectors or wire screens; enforcement of requirement.

 All railroad companies operating passenger trains or coaches by steam, within or through this State, must put cinder deflectors or wire screens that will effectually keep cinders from engines from entering cars upon all windows of passenger coaches, so as to protect passengers when the windows are raised. The deflectors must extend from the bottom of windows the entire length and three inches above the top of the sash and must be six inches wide and permanently fastened to each outside edge of each window. Any railroad company refusing or neglecting to comply with the provisions of this section is subject to a penalty of not less than five hundred dollars nor more than one thousand dollars for each coach not screened as required by this section, to be recovered by the Office of Regulatory Staff at the request of any person aggrieved by such refusal or neglect, for the benefit of the State. The Office of Regulatory Staff must enforce this section.

HISTORY: 1962 Code Section 58‑1182; 1952 Code Section 58‑1182; 1942 Code Section 8402; 1932 Code Sections 1693, 8402; Civ. C. ‘22 Section 4950; Cr. C. ‘22 Section 639; Civ. C. ‘12 Section 3255; Cr. C. ‘12 Section 664; 1908 (25) 1052; 1909 (26) 119; 1910 (26) 119; 1912 (27) 777; 1931 (37) 89; 1935 (39) 25; 1936 (39) 1713; 2006 Act No. 318, Section 130, eff May 24, 2006.

Library References

Railroads 229(0.5).

Westlaw Topic No. 320.

**SECTION 58‑17‑3130.** Exemptions from requirements of cinder deflectors.

 The provisions of Section 58‑17‑3120 shall not be construed to apply to Pullman or sleeping cars operated in this State which are equipped with deflectors that effectually prevent cinders from entering cars, nor shall it be necessary to equip any air‑conditioned railroad passenger coaches, Pullman cars or dining cars with cinder deflectors or wire screens.

HISTORY: 1962 Code Section 58‑1183; 1952 Code Section 58‑1183; 1942 Code Section 8402; 1932 Code Sections 1693, 8402; Civ. C. ‘22 Section 4950; Cr. C. ‘22 Section 639; Civ. C. ‘12 Section 3255; Cr. C. ‘12 Section 664; 1908 (25) 1052; 1909 (26) 119; 1910 (26) 119; 1912 (27) 777; 1931 (37) 89; 1935 (39) 25; 1936 (39) 1713.

Library References

Railroads 229(0.5).

Westlaw Topic No. 320.

**SECTION 58‑17‑3140.** Use of baggage checks.

 Every railroad corporation, when requested, shall give checks to their passengers for their baggage when delivered for transportation in good shipping order and shall redeliver such baggage to the passengers upon the surrender of their checks. Any corporation which wilfully refuses to comply with the provisions of this section shall forfeit ten dollars for each offense.

HISTORY: 1962 Code Section 58‑1184; 1952 Code Section 58‑1184; 1942 Code Section 8410; 1932 Code Section 8410; Civ. C. ‘22 Section 4958; Civ. C. ‘12 Section 3263; Civ. C. ‘02 Section 2166; G. S. 1503; R. S. 1711; 1881 (17) 829.

CROSS REFERENCES

Handling baggage, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑10.

Library References

Carriers 387.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 608 to 610, 616.

NOTES OF DECISIONS

In general 1

1. In general

Remedy herein provided is not exclusive. Sullivan v. Southern Ry. (S.C. 1906) 74 S.C. 377, 54 S.E. 586.

ARTICLE 27

Safety; Notice of Accidents

**SECTION 58‑17‑3310.** Certification of compliance of railroad or branch extension.

 A railroad or branch or extension of a railroad must not be opened for public use until the Office of Regulatory Staff, after an examination, certifies that all laws relating to the construction thereof have been complied with and that the road appears to be in a safe condition for operation, unless the Office of Regulatory Staff, after ten days’ written notice to it by the railroad company of such proposed opening, fails to make an examination.

HISTORY: 1962 Code Section 58‑1191; 1952 Code Section 58‑1191; 1942 Code Section 8363; 1932 Code Section 8363; Civ. C. ‘22 Section 4911; Civ. C. ‘12 Section 3227; Civ. C. ‘02 Section 2136; G. S. 1516; R. S. 1689; 1881 (17) 824; 1935 (39) 25; 2006 Act No. 318, Section 131, eff May 24, 2006.

Library References

Railroads 223.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 714 to 726, 742 to 743, 746, 752, 754, 790 to 791.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Railroads Section 95 , Introductory Comments.

**SECTION 58‑17‑3320.** Safety devices shall be installed and used on direction of Commission.

 The Public Service Commission may require the installation and use by the railroads operating trains in or through this State of any safety device which, in its judgment, after due consideration and trial, shall have been proven materially to contribute to the safety of operation of trains and the protection of the lives and limbs of the crews operating such trains or the traveling public or to their reasonable comfort or the sanitation of passenger and freight trains on which passengers travel or employees work, as well as depots, both passenger and freight.

HISTORY: 1962 Code Section 58‑1192; 1952 Code Section 58‑1192; 1942 Code Section 8225; 1932 Code Section 8268; Civ. C. ‘22 Section 4816; Civ. C. ‘12 Section 3144; 1911 (27) 159; 1935 (39) 25.

Library References

Railroads 223.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 714 to 726, 742 to 743, 746, 752, 754, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

**SECTION 58‑17‑3330.** Penalty for failure to obey orders of Commission regarding safety devices.

 A failure to comply with any such order of the Commission within the time fixed by the Commission shall subject the railroad to a penalty of five hundred dollars, to be collected by suit in any court of competent jurisdiction by any person aggrieved. All penalties and forfeitures collected hereunder shall be paid over, one half into the State Treasury, and the other half into the county treasury of the county in which the suit is brought imposing the penalty, such revenues accruing from such collections to be used for general State and county purposes.

HISTORY: 1962 Code Section 58‑1193; 1952 Code Section 58‑1193; 1942 Code Section 8226; 1932 Code Section 8271; Civ. C. ‘22 Section 4819; Civ. C. ‘12 Section 3145; 1911 (27) 159; 1935 (39) 25.

CROSS REFERENCES

Additional section providing penalties for failure to obey orders of the Public Service Commission, see Section 58‑17‑3930.

Library References

Railroads 254(2).

Westlaw Topic No. 320.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑3340.** Brakes and brakemen.

 Every railroad corporation shall cause a good and sufficient brake to be attached to every car used upon its railroad for the transportation of passengers or freight, except four wheeled freight cars used only for transporting freight and shall cause to be stationed on every passenger train trusty and skillful brakemen, equal in number at least to one for every two cars in the train, except on passenger trains on which power brakes are used, and one such brakeman upon the last car of every freight train, which must always be equipped with a good and sufficient brake.

HISTORY: 1962 Code Section 58‑1194; 1952 Code Section 58‑1194; 1942 Code Section 8350; 1932 Code Section 8350; Civ. C. ‘22 Section 4898; Civ. C. ‘12 Section 3217; Civ. C. ‘02 Section 2127; G. S. 1499; R. S. 1681.

Library References

Railroads 229(0.5), 230.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 734 to 741.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Palmetto Lbr. Co. v Southern R. Co., 154 SC 129, 151 SE 279 (1929). Pinckney v Atlantic Coast Line R. Co., 147 SC 227, 145 SE 135 (1928).

Foreign cars. Youngblood v South Carolina & G. R. Co., 60 SC 9, 38 SE 232 (1901). Wallingford v Columbia & G. R. Co., 26 SC 258, 2 SE 19 (1887).

Obstructing crossing. Whether train obstructing crossing at time of collision of automobile with another train was operated in violation of this section [Code 1962 Section 58‑1194], was for jury. Miller v. Atlantic Coast Line R. Co. (S.C. 1926) 140 S.C. 123, 138 S.E. 675, certiorari denied 48 S.Ct. 117, 275 U.S. 556, 72 L.Ed. 424. Railroads 350(3)

Duty of reasonable inspection. This duty involves reasonable inspection to see that brakes attached remain good and sufficient. Boyd v. Seaboard Air Line R. Co. (S.C. 1903) 67 S.C. 218, 45 S.E. 186.

Injury from defective coupling. Stuckey v. Atlantic Coast‑Line R. Co. of South Carolina (S.C. 1901) 60 S.C. 237, 38 S.E. 416, 85 Am.St.Rep. 842.

Gondolas and flatcars. This section [Code 1962 Section 58‑1194] requires brakes for gondolas and flatcars having eight wheels. Mew v. Charleston & S. R. Co. (S.C. 1899) 55 S.C. 90, 32 S.E. 828.

Liability for injury. In order that the company be held liable, the failure to comply with this section [Code 1962 Section 58‑1194] must be the proximate cause of the injury. Adkins v. Atlanta & C. A. L. R. Co. (S.C. 1887) 27 S.C. 71, 2 S.E. 849.

Presumption of compliance with section. In the absence of testimony to the contrary, a railroad company will be presumed to have complied with this section [Code 1962 Section 58‑1194]. Joyner v. South Carolina Ry. Co. (S.C. 1887) 26 S.C. 49, 1 S.E. 52.

Mixed passenger and freight trains. Joyner v. South Carolina Ry. Co. (S.C. 1887) 26 S.C. 49, 1 S.E. 52.

**SECTION 58‑17‑3350.** Tools and appliances.

 Every railroad corporation must equip each of its trains, for use in case of accident, with such tools and appliances as the Office of Regulatory Staff may direct.

HISTORY: 1962 Code Section 58‑1195; 1952 Code Section 58‑1195; 1942 Code Section 8351; 1932 Code Section 8351; Civ. C. ‘22 Section 4899; Civ. C. ‘12 Section 3218; Civ. C. ‘02 Section 2128; G. S. 1500; R. S. 1682; 1935 (39) 25; 2006 Act No. 318, Section 132, eff May 24, 2006.

Library References

Railroads 229(0.5).

Westlaw Topic No. 320.

**SECTION 58‑17‑3360.** Electric hand lanterns.

 All railroad carriers must equip trainmen in their employ engaged in switching and train movements in intrastate commerce in this State with electric hand lanterns, of a type approved by the Office of Regulatory Staff, containing at least one extra bulb capable of being immediately lighted in case of failure of the main bulb. The use by any railroad carrier of oil lanterns in connection with such movements is hereby prohibited. Any railroad carrier violating any of the provisions of this section must be punished by a fine not less than twenty‑five dollars nor more than one hundred dollars and each day during which any flagrant violation continues constitutes a separate offense.

HISTORY: 1962 Code Section 58‑1196; 1952 Code Section 58‑1196; 1942 Code Section 1696; 1938 (40) 1621; 2006 Act No. 318, Section 133, eff May 24, 2006.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑17‑3370.** Formation of passenger trains.

 In forming a passenger train, baggage, freight, merchandise or lumber cars shall not be placed in rear of passenger cars.

HISTORY: 1962 Code Section 58‑1199; 1952 Code Section 58‑1199; 1942 Code Section 8353; 1932 Code Section 8353; Civ. C. ‘22 Section 4901; Civ. C. ‘12 Section 3220; Civ. C. ‘02 Section 2130; G. S. 1481; R. S. 1680; 1881 (17) 823.

Library References

Railroads 223.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 714 to 726, 742 to 743, 746, 752, 754, 790 to 791.

**SECTION 58‑17‑3380.** Warning boards shall be maintained near drawbridges and grade crossings.

 Every company, lessee, manager or receiver owning or operating a railroad in this State shall provide, maintain and place warning boards near drawbridges and places where railroads cross at grade. Such boards shall have letters of sufficient size to be clearly seen from the engine and to describe the place of danger and shall be placed not more than eight feet from the side of the track.

HISTORY: 1962 Code Section 58‑1200; 1952 Code Section 58‑1200; 1942 Code Section 8357; 1932 Code Section 8357; Civ. C. ‘22 Section 4905; 1914 (28) 103; 1972 (57) 3061.

Library References

Railroads 232.

Westlaw Topic No. 320.

**SECTION 58‑17‑3390.** Penalty for failure to erect or replace warning boards.

 Any railroad company, receiver or lessee thereof doing business within this State which shall fail to comply with the provisions of Section 58‑17‑3380 after ten days’ notice thereof in writing shall be subject to a fine of five dollars per day for every day thereafter that such failure shall continue and any such railroad, receiver or lessee failing to re‑erect such warning board, in case any such board for any cause be down or removed, after ten days’ notice in writing, shall be subject to the penalty herein provided of five dollars per day for each day that such railroad, receiver or lessee shall fail to so re‑erect such warning boards. This penalty shall be recoverable by any person resident in this State in any court of competent jurisdiction, one half to go to the person bringing the action and one half to go into the county treasury in which such action may be brought, to be used for ordinary county purposes.

HISTORY: 1962 Code Section 58‑1201; 1952 Code Section 58‑1201; 1942 Code Section 8359; 1932 Code Section 8359; Civ. C. ‘22 Section 4907; 1914 (28) 103.

Library References

Railroads 254(0.5).

Westlaw Topic No. 320.

**SECTION 58‑17‑3400.** Removal of hand or lever cars from track and leaving it near crossing shall be unlawful.

 It shall be unlawful for any railroad section master or any person in charge of or connected with any hand car or lever car to remove it from any railroad track and continue it stationary within fifty yards of any public crossing other than at any regular railroad section house except when necessary to avoid an approaching train or when in charge of employees engaged in actual work upon such crossing, and then only for such a period as is necessary to avoid such train or to perform such work. Any person violating the provisions of this section shall, upon conviction, be fined not exceeding fifty dollars or be imprisoned not exceeding thirty days. Any railroad company shall be liable for damages for any horse frightened as a result of the violation of the provisions of this section by any of its employees.

HISTORY: 1962 Code Section 58‑1202; 1952 Code Section 58‑1202; 1942 Code Section 8360; 1932 Code Sections 1692, 8360; Civ. C. ‘22 Section 4908; Cr. C. ‘22 Section 638; Civ. C. ‘12 Section 3224; Cr. C. ‘12 Section 663; 1902 (23) 1055.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑17‑3410.** Shelter for employees in railroad shops or yards.

 All railway companies having railroad shops in this State at division points, where cars are regularly taken out of trains for repairs or construction work or where other railroad equipment is regularly made, repaired, or constructed, must furnish or construct a building or shed in the shops or yards, with a suitable and sufficient roof over the repair and construction track or tracks so as to provide that all men or employees employed in the construction and repair of locomotives, cars, trucks, or other railroad equipment, except when slight or minor repairs or repairs are done in an emergency, must be under shelter and protected during snow, rain, sleet, hot sunshine, and other inclement weather. The Office of Regulatory Staff may direct the points at which sheds shall be erected and the character of the sheds after a hearing before the Public Service Commission of which public notice has been given. Any railroad found guilty of violating the provisions of this section is subject to a fine of fifty dollars per day for every day of the violation.

HISTORY: 1962 Code Section 58‑1203; 1952 Code Section 58‑1203; 1942 Code Sections 8364, 8365; 1932 Code Sections 8364, 8365; Civ. C. ‘22 Sections 4912, 4913; 1914 (28) 706; 1935 (39) 25; 2006 Act No. 318, Section 134, eff May 24, 2006.

Library References

Railroads 230.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 734 to 741.

**SECTION 58‑17‑3420.** Construction and maintenance of bridges.

 Every railroad corporation shall, at its own expense, construct, and afterwards maintain and keep in repair, all bridges, with their approaches or abutments, which it is authorized or required to construct over or under any turnpike road, canal, highway or other way and any city or town may recover of the railroad corporation whose road crosses a highway or town way therein all damages, charges and expenses incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing. But if, after the laying out and making of a railroad, the governing body of a county has authorized a turnpike, highway or other way to be laid out across the railroad, all expenses of and incident to constructing and maintaining the turnpike or way at such crossing shall be borne by the turnpike corporation or the county, city, town or other owner of it.

HISTORY: 1962 Code Section 58‑1204; 1952 Code Section 58‑1204; 1942 Code Section 8387; 1932 Code Section 8387; Civ. C. ‘22 Section 4935; Civ. C. ‘12 Section 3240; Civ. C. ‘02 Section 2149; G. S. 1498; R. S. 1702; 1881 (17) 826.

Library References

Railroads 95(6), 109, 237.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 266, 271, 303 to 304, 327 to 328.

Attorney General’s Opinions

A railroad corporation’s responsibility to replace an antiquated and hazardous wooden automobile bridge that crosses over its tracks with one which would accommodate today’s traffic. SC Op.Atty.Gen. (May 29, 1996) 1996 WL 452805.

NOTES OF DECISIONS

In general 1

Negligence actions 2

1. In general

The width of bridges is not prescribed. Rembert v South Carolina Ry. Co., 31 SC 309, 9 SE 968 (1889). Snipes v Atlantic Coast Line R. Co., 76 SC 207, 56 SE 959 (1907). Thompson v Seaboard Air Line Ry. Co., 78 SC 384, 58 SE 1094 (1907), overruling Brown v Spartanburg U. & C. R. Co., 57 SC 433, 35 SE 731 (1900).

Repair of bridges. This section [Code 1962 Section 58‑1204] does not require railroad corporations to keep in repair bridges on public highways on their rights of way but not on their road beds. Felder v. Southern Ry. (S.C. 1907) 76 S.C. 554, 57 S.E. 524. Railroads 109

2. Negligence actions

Admission of evidence before the jury in wrongful death action that railroad failed to repair rail bridge was prejudicial error, in wrongful death action resulting from fatal railroad crossing accident; claim that railroad violation of state law in failing to repair bridge was proximate cause of car passenger’s death was, by statute, an equitable matter to be tried to the court, evidence was used in closing argument, and jury returned advisory interrogatory that violation was proximate cause of passenger’s death. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Appeal And Error 1050.1(7)

Railroad’s failure to repair a rail bridge, which required trains to use another route, was not the proximate cause of railroad crossing collision that killed car passenger, even though the failure to repair the bridge violated the state railroad law; there was no “continual operation” linking the failure to repair the bridge and the fatal accident. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Railroads 337(1)

**SECTION 58‑17‑3430.** Railroads shall keep grade at stations level with track.

 Every railroad company operating a railroad within this State shall keep the grade of its right of way at all stations level with the ties and four feet wide on the station side for a distance of one hundred and fifty feet on each side of such station or stopping place. But in the case of a terminal station the provisions aforesaid shall be operative only as to so much of the territory as is opposite to those portions of such terminal station used for passenger service and the approaches thereto on one side. Any railroad company violating the provisions of this section shall be liable to a penalty of not more than one hundred dollars, on complaint of any person aggrieved thereby, one half of the penalty shall go to complainant and the other half thereof to the use of the public school in the county in which the complaint is made.

HISTORY: 1962 Code Section 58‑1205; 1952 Code Section 58‑1205; 1942 Code Section 8416; 1932 Code Section 8416; Civ. C. ‘22 Section 4964; Civ. C. ‘12 Section 3269; 1910 (26) 680.

Library References

Railroads 87.

Westlaw Topic No. 320.

C.J.S. Railroads Section 276.

NOTES OF DECISIONS

In general 1

1. In general

Applies to employees. Where it was contended that this section [Code 1962 Section 58‑1205] has no application to an employee of a railroad company, it was held that at least this is a legislative enactment of the standard or yardstick to be used for the protection of all citizens in the ordinary use of the depot in any capacity. McClain v. Charleston & W. C. Ry. Co. (S.C. 1939) 191 S.C. 332, 4 S.E.2d 280.

**SECTION 58‑17‑3440.** Notice of accidents.

 Every railroad corporation must cause immediate notice of each accident, in cases of an accident occurring on its road attended with injury to any person as the Public Service Commission may, by rules and regulations adopted by it, require, to be given to a physician most accessible to the place of accident, the Office of Regulatory Staff, and the commission by telegraph, telephone, or such other means as may be the quickest under the circumstances at the same time that notice is given officials of the road on which the accident occurred. A railroad corporation shall also give notice in like manner of any accident falling within any description of accidents of which the commission may by general regulation require notice to be given. For each omission to give notice, a corporation shall forfeit a sum not exceeding five hundred dollars.

HISTORY: 1962 Code Section 58‑1206; 1952 Code Section 58‑1206; 1942 Code Section 8375; 1932 Code Section 8375; Civ. C. ‘22 Section 4923; Civ. C. ‘12 Section 3228; Civ. C. ‘02 Section 2137; G. S. 1525; R. S. 1690; 1881 (17) 824; 1905 (24) 844; 1935 (39) 25; 2006 Act No. 318, Section 135, eff May 24, 2006.

CROSS REFERENCES

Accidents, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑13.

Library References

Railroads 250.

Westlaw Topic No. 320.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

NOTES OF DECISIONS

In general 1

1. In general

Knowledge of accident and excuse for failure to give notice. Adkins v. Atlanta & C. A. L. R. Co. (S.C. 1887) 27 S.C. 71, 2 S.E. 849.

**SECTION 58‑17‑3450.** Investigation of causes of accidents.

 The Office of Regulatory Staff shall investigate the cause of any accident on a railroad resulting in loss of life and of any accident not so resulting which, in its judgment, requires investigation.

HISTORY: 1962 Code Section 58‑1207; 1952 Code Section 58‑1207; 1942 Code Section 8292‑16; 1932 Code Section 8275; Civ. C. ‘22 Section 4823; Civ. C. ‘12 Section 3149; Civ. C. ‘02 Section 2071; G. S. 1459; R. S. 1634; 1881 (17) 819; 1935 (39) 25; 2006 Act No. 318, Section 136, eff May 24, 2006.

CROSS REFERENCES

Accidents, common carriers by RAIL and express companies, see S.C. Code of Regulations R. 103‑13.

Library References

Railroads 223.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 714 to 726, 742 to 743, 746, 752, 754, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

**SECTION 58‑17‑3460.** Transportation to accident site.

 Every railroad corporation must furnish immediate transportation for the Office of Regulatory Staff over its line to the place of accident occurring on its road and attended with any injury to any person of which it is required to give notice under the provisions of Section 58‑17‑3440, free of expense to the Office of Regulatory Staff and, if the Office of Regulatory Staff uses another railroad to reach the place of accident, the corporation on whose line the accident occurred must pay the expense of transportation thereon.

HISTORY: 1962 Code Section 58‑1208; 1952 Code Section 58‑1208; 1942 Code Section 8375; 1932 Code Section 8375; Civ. C. ‘22 Section 4923; Civ. C. ‘12 Section 3228; Civ. C. ‘02 Section 2137; G. S. 1525; R. S. 1690; 1881 (17) 824; 1905 (24) 844; 1935 (39) 25; 2006 Act No. 318, Section 137, eff May 24, 2006.

Library References

Railroads 223.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 714 to 726, 742 to 743, 746, 752, 754, 790 to 791.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

ARTICLE 29

Police Powers of Agents

**SECTION 58‑17‑3610.** Police powers of conductors and station agents.

 Conductors of railroad trains and station or depot agents are hereby declared to be conservators of the peace and they shall have the common‑law power of constables to make arrests, except that the conductors shall only have such power on board of their respective trains and the agents at their respective places of business. Such conductors and agents may cause any person so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.

HISTORY: 1962 Code Section 58‑1221; 1952 Code Section 58‑1221; 1942 Code Section 8420; 1932 Code Sections 1701, 8420; Civ. C. ‘22 Section 4968; Cr. C. ‘22 Section 647; Civ. C. ‘12 Section 3273; Cr. C. ‘12 Section 672; Civ. C. ‘02 Section 2173; Cr. C. ‘02 Section 482; G. S. 1516; R. S. 1717; 1898 (22) 776; 1905 (24) 954.

Library References

Arrest 64.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 11 to 13.

NOTES OF DECISIONS

In general 1

1. In general

State Public Service Commission rule requiring that each railroad sleeping car operated in or through state be in charge of an employee or agent of rank of conductor was unreasonable as applied to single car operations where use of porters instead of conductors in each car would not affect service and would effect an annual saving of approximately $50,000 to sleeping car operator over entire state operations. Common Carriers by Rail and Express Companies Rules, rule 20, Vol. 7, Code 1952, p. 753; Code 1952, Section 58‑1221. Pullman Co. v. Public Service Commission (S.C. 1961) 238 S.C. 358, 120 S.E.2d 214. Carriers 10

Arrest without warrant. Conductors may arrest without warrant for offenses committed within view. Loggins v. Southern Ry. (S.C. 1902) 64 S.C. 321, 42 S.E. 163.

Conductor may arrest disorderly passenger without warrant. Where a passenger on a train has acted in a disorderly and boisterous manner, and after being put off, threw rocks at the conductor and the cars, the conductor has the right to arrest him without a warrant, and detain him until he can turn him over to the proper authorities, though at the time of his arrest he was acting in an orderly manner. Loggins v. Southern Ry. (S.C. 1902) 64 S.C. 321, 42 S.E. 163. Arrest 64

Depot agents of a railroad company have the power, as incident to their position, to make reasonable regulations as to the conduct of business at their depots, respectively, unless restricted, limited, or controlled in that respect. Smith v. Chamberlain (S.C. 1893) 38 S.C. 529, 17 S.E. 371.

**SECTION 58‑17‑3620.** Ejection of disorderly passenger from train.

 When any passenger shall be guilty of disorderly conduct, use any obscene or grossly profane language to the annoyance and vexation of passengers or play any game of cards or other game of chance for money or other valuable thing upon any railroad train, the conductor of such train may stop his train at any place where such offense has been committed and eject such passenger from the train, using only such force as may be necessary to accomplish such removal, and may command the assistance of the employees of the railroad company or any of the passengers to assist in such removal.

HISTORY: 1962 Code Section 58‑1222; 1952 Code Section 58‑1222; 1942 Code Section 8421; 1932 Code Section 8421; Civ. C. ‘22 Section 4969; Civ. C. ‘12 Section 3274; Civ. C. ‘02 Section 2174; G. S. 1516a; R. S. 1718; 1882 (18) 17.

Library References

Carriers 236(1.1), 350.

Westlaw Topic No. 70.

C.J.S. Carriers Sections 493, 601 to 604, 606 to 607.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Carriers Section 38, Miscellaneous Safety Issues.

NOTES OF DECISIONS

In general 1

1. In general

Right to eject passenger for disorderly conduct. Loggins v. Southern Ry. (S.C. 1902) 64 S.C. 321, 42 S.E. 163.

**SECTION 58‑17‑3630.** Badges shall be worn by employees.

 Every conductor, baggagemaster, engineer, brakeman or other servant of any railroad corporation employed on a passenger train, or at stations for passengers, shall wear on his hat or cap a badge which shall indicate his office and the initial letters of the style of the corporation by which he is employed. No conductor or collector without such badge shall have any authority to meddle or interfere with any passenger, his baggage or his property. Each railroad corporation shall see that such badges are worn.

HISTORY: 1962 Code Section 58‑1223; 1952 Code Section 58‑1223; 1942 Code Section 8419; 1932 Code Section 8419; Civ. C. ‘22 Section 4967; Civ. C. ‘12 Section 3272; Civ. C. ‘02 Section 2172; G. S. 1485; R. S. 1716.

Library References

Railroads 230.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 734 to 741.

ARTICLE 31

Liability for Injuries to Employees

**SECTION 58‑17‑3710.** “Common carrier” defined.

 The term “common carrier” as used in this article shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

HISTORY: 1962 Code Section 58‑1239; 1952 Code Section 58‑1239; 1942 Code Section 8372; 1932 Code Section 8372; Civ. C. ‘22 Section 4920; 1916 (29) 970.

Library References

Carriers 4.

Labor and Employment 2773.

Westlaw Topic Nos. 70, 231H.

C.J.S. Carriers Sections 3 to 4.

**SECTION 58‑17‑3720.** Liability of railroads for negligence resulting in injuries to or death of employees; amount and disposition of damages in case of death of employee.

 Every common carrier by railroad while engaging in commerce within this State shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce or, in case of the death of such employee, to his personal representative for the benefit (a) of the surviving widow or husband and children of such employee, (b) if none, of such employee’s parents and (c) if none, then of the next of kin, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employees of such carrier or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment. And in every such action the jury may give such damages as they may think proportioned to the injury or injuries resulting from such death to the parties, respectively, for whom and for whose benefit such action shall be brought and the amount so recovered shall be divided among the before‑mentioned parties in such shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his estate.

HISTORY: 1962 Code Section 58‑1231; 1952 Code Section 58‑1231; 1942 Code Section 8366; 1932 Code Section 8366; Civ. C. ‘22 Section 4914; 1916 (29) 970.

Library References

Labor and Employment 2801, 2823.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Section 426.

NOTES OF DECISIONS

In general 1

Federal Employers’ Liability Act 2

1. In general

An action brought by an employee in a South Carolina state court against a Virginia railroad corporation and another for personal injury claimed to have been inflicted through the joint negligence of the defendants is not removable, in view of the decisions of the South Carolina Supreme Court, because the liability of the railroad company would be governed by the South Carolina Employers’ Liability Act, while the responsibility of the individual defendant would be measured by the common law; the holding of the local court being that, although a different rule of law would be applied as measuring the liability of the two defendants, that would not be sufficient to change the general nature of the tort. Atlantic Coast Line R. Co. v. Feaster, 1919, 260 F. 881.

Defense of comparative negligence. This section [Code 1962 Section 58‑1231], together with Code 1962 Sections 58‑1232 and 58‑1233, which cover liability of railroads for injuries to employees, eliminated the defense of assumption of risk and contributory negligence and substituted in place thereof the defense of comparative negligence. The burden is upon the plaintiff to prove negligence on the part of the defendant, and that such negligence was the direct and proximate cause of the physical injury suffered by him. Boyleston v. Southern Ry. Co. (S.C. 1947) 211 S.C. 232, 44 S.E.2d 537, 173 A.L.R. 788.

Contracts for exemption from liability. Code 1962 section 58‑1234 applies to this section [Code 1962 Section 58‑1231] and the following sections. Palmetto Lumber Co. v. Southern Ry. (S.C. 1929) 154 S.C. 129, 151 S.E. 279.

Whether carrier was negligent toward passenger injured while alighting from train which suddenly started held for jury. Gladden v. Southern Ry. Co. (S.C. 1928) 142 S.C. 492, 141 S.E. 90.

2. Federal Employers’ Liability Act

Federal Employers’ Liability Act (FELA) (45 USCA Sections 51‑60) creates cause of action enforceable in state court against state‑owned railroad, because policies in favor of adhering to 1964 US Supreme Court decision which, in describing class of employers subject to FELA, first interpreted phrase “every common carrier by railroad” in 45 USCA Section 51 to include state‑owned railroads, far outweigh policies suggesting departure from such precedent. Hilton v. South Carolina Public Railways Com’n (U.S.S.C. 1991) 112 S.Ct. 560, 502 U.S. 197, 116 L.Ed.2d 560, on remand 307 S.C. 63, 413 S.E.2d 845.

The Federal Employer’s Liability Act has not excluded all state law on interstate commerce from the field. Boyleston v. Southern Ry. Co. (S.C. 1947) 211 S.C. 232, 44 S.E.2d 537, 173 A.L.R. 788.

**SECTION 58‑17‑3730.** Effect of contributory negligence.

 In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this article to recover damages for personal injuries to any employee or when such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. But no such employee who may be injured or killed shall be held to have been guilty of contributory negligence when the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

HISTORY: 1962 Code Section 58‑1232; 1952 Code Section 58‑1232; 1942 Code Section 8367; 1932 Code Section 8367; Civ. C. ‘22 Section 4915; 1916 (29) 970.

Library References

Labor and Employment 2983.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Sections 351 to 355.

NOTES OF DECISIONS

In general 1

1. In general

Comparative negligence substituted. This section [Code 1962 Section 58‑1232], together with Code 1962 Section 58‑1231, eliminated the defense of contributory negligence and substituted in place thereof the defense of comparative negligence. Boyleston v. Southern Ry. Co. (S.C. 1947) 211 S.C. 232, 44 S.E.2d 537, 173 A.L.R. 788.

Under the doctrine of comparative negligence, the employer would be wholly exonerated only where the employee’s act or omission is shown to have been the sole cause of the injury, the employer’s conduct not having operated in any degree to have induced the injurious occurrence. Boyleston v. Southern Ry. Co. (S.C. 1947) 211 S.C. 232, 44 S.E.2d 537, 173 A.L.R. 788. Labor And Employment 2997

This statutory provision is an exception to the law upon the subject of comparative negligence, for outside of this provision the doctrine does not exist in this State. Bedford v. Armory Wholesale Grocery Co. (S.C. 1940) 195 S.C. 150, 10 S.E.2d 330.

The doctrine of comparative negligence does not exist in this State except in cases falling within this article. Whisenhunt v. Atlantic Coast Line R. Co. (S.C. 1940) 195 S.C. 213, 10 S.E.2d 305.

**SECTION 58‑17‑3740.** Assumption of risk.

 In any action brought against any common carrier under or by virtue of any of the provisions of this article to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment when the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

HISTORY: 1962 Code Section 58‑1233; 1952 Code Section 58‑1233; 1942 Code Section 8368; 1932 Code Section 8368; Civ. C. ‘22 Section 4916; 1916 (29) 970.

Library References

Labor and Employment 2950.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Section 277.

NOTES OF DECISIONS

In general 1

1. In general

Work must appear obviously or inherently dangerous. Under SC Const, Art 9, Section 15, and this section [Code 1962 Section 58‑1233], even if plaintiff had knowledge that he might suffer injury by reason of undertaking the work which he was directed to do with insufficient help, he would not be deemed to have assumed the risks of going ahead with it, where it did not appear obviously or inherently dangerous. Boyleston v. Southern Ry. Co. (S.C. 1947) 211 S.C. 232, 44 S.E.2d 537, 173 A.L.R. 788. Labor And Employment 2963

**SECTION 58‑17‑3750.** Any exemption from liability under article shall be void.

 Any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this article shall to that extent be void.

HISTORY: 1962 Code Section 58‑1234; 1952 Code Section 58‑1234; 1942 Code Section 8369; 1932 Code Section 8369; Civ. C. ‘22 Section 4917; 1916 (29) 970.

Library References

Labor and Employment 2790.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Sections 67 to 70.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, written contract exempting railroad company furnishing facilities on industrial track from liability for fires communicated from trains is valid and not against public policy, notwithstanding statute imposing liability on railroad company for fire damage. Code S.C.1942, Sections 8350 et seq., 8362, 8369. Fraser‑Patterson Lumber Co. v. Southern Ry. Co., 1948, 79 F.Supp. 424. Contracts 114; Railroads 469

A railroad company sued under South Carolina statute for damage for property destroyed by fire could interpose defense of contract exempting railroad from liability for fire damage in consideration of railroad company’s furnishing plaintiff facilities on industrial track, notwithstanding that fire was communicated from engine on company’s main line and not from engine on industrial track. Code S.C.1942, Sections 8350 et seq., 8362, 8369. Fraser‑Patterson Lumber Co. v. Southern Ry. Co., 1948, 79 F.Supp. 424. Railroads 469

Application of section. This section [Code 1962 Section 58‑1234] does not refer to Code 1962 Section 58‑1198, fixing responsibility of railroads for damages by fires, but only to that part of this article which includes the Employers’ Liability Act. Hence a contract, exempting a railroad from liability for fires communicated, in consideration of extension of sidetrack, was valid. Palmetto Lumber Co. v. Southern Ry. (S.C. 1929) 154 S.C. 129, 151 S.E. 279.

**SECTION 58‑17‑3760.** Survival of right of action.

 Any right of action given by this article to a person suffering injury shall survive to his personal representatives, for the benefit of (a) the surviving widow or husband and children of such employee, (b) if none, such employee’s parents and (c) if none, then of the next of kin of such employee. But in such case there shall be only one recovery for the same injury.

HISTORY: 1962 Code Section 58‑1235; 1952 Code Section 58‑1235; 1942 Code Section 8371; 1932 Code Section 8371; Civ. C. ‘22 Section 4919; 1916 (29) 970.

Library References

Abatement and Revival 54.

Death 10.

Westlaw Topic Nos. 2, 117.

C.J.S. Abatement and Revival Sections 142, 156 to 162.

C.J.S. Death Section 162.

**SECTION 58‑17‑3770.** Limitation of actions.

 No action shall be maintained under this article unless commenced within two years from the day the cause of action accrued.

HISTORY: 1962 Code Section 58‑1236; 1952 Code Section 58‑1236; 1942 Code Section 8370; 1932 Code Section 8370; Civ. C. ‘22 Section 4918; 1916 (29) 970.

Library References

Labor and Employment 2806.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Sections 390 to 391.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

NOTES OF DECISIONS

In general 1

1. In general

Example of a type of action where this section [Code 1962 Section 58‑1236] is not applicable. Whisenhunt v. Atlantic Coast Line R. Co. (S.C. 1940) 195 S.C. 213, 10 S.E.2d 305.

**SECTION 58‑17‑3780.** Setoffs.

 In any action brought against any such common carrier under or by virtue of any of the provisions of this article such common carrier may set off therein any sum it has contributed or paid to any insurance, relief, benefit or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which such action was brought.

HISTORY: 1962 Code Section 58‑1237; 1952 Code Section 58‑1237; 1942 Code Section 8369; 1932 Code Section 8369; Civ. C. ‘22 Section 4917; 1916 (29) 970.

Library References

Damages 63, 64.

Westlaw Topic No. 115.

C.J.S. Damages Sections 186 to 188, 190.

**SECTION 58‑17‑3790.** Punitive damages.

 Punitive damages shall not be recoverable in cases arising under this article except under circumstances under which exemplary damages are recoverable in cases arising under Section 58‑17‑3950.

HISTORY: 1962 Code Section 58‑1238; 1952 Code Section 58‑1238; 1942 Code Section 8374; 1932 Code Section 8374; Civ. C. ‘22 Section 4922; 1916 (29) 970; 1951 (47) 782.

Library References

Labor and Employment 2825.

Westlaw Topic No. 231H.

C.J.S. Employer’s Liability For Injuries to Employees Section 427.

NOTES OF DECISIONS

In general 1

1. In general

Punitive damages generally are not recoverable in the absence of proof of actual damages. Dykema v. Carolina Emergency Physicians, P.C. (S.C. 2002) 348 S.C. 549, 560 S.E.2d 894. Damages 87(2)

**SECTION 58‑17‑3800.** Article shall be cumulative.

 Nothing in this article shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other law not inconsistent with the provisions of this article but the remedies and provisions herein shall be held to be in addition to, and cumulative of, existing remedies.

HISTORY: 1962 Code Section 58‑1240; 1952 Code Section 58‑1240; 1942 Code Section 8373; 1932 Code Section 8373; Civ. C. ‘22 Section 4921; 1916 (29) 970.

Library References

Labor and Employment 2801.

Westlaw Topic No. 231H.

ARTICLE 33

Penalties and Liabilities Generally

**SECTION 58‑17‑3910.** Liability to landowners for damages for wrongful obstruction of watercourses.

 Railroad corporations shall be liable to landowners for all damages resulting from the wrongful obstruction of watercourses by such corporations and it shall not be necessary to allege and prove that such damages resulted from the negligent construction of the road or other works of such corporations, but any person who is damaged shall be entitled to recover as in actions against individuals upon showing the wrongful obstruction of such watercourses.

HISTORY: 1962 Code Section 58‑967; 1952 Code Section 58‑967; 1942 Code Section 8275; 1932 Code Section 8220; Civ. C. ‘22 Section 4784; Civ. C. ‘12 Section 3115; Civ. C. ‘02 Section 2041; 1897 (22) 489.

Library References

Railroads 106, 113(5).

Water Law 1172.

Westlaw Topic Nos. 320, 405.

C.J.S. Railroads Sections 384 to 387, 815.

C.J.S. Waters Sections 263 to 265, 273.

NOTES OF DECISIONS

In general 1

1. In general

The lessee of the grantee of the creator of an obstruction of a water course constituting a nuisance was, prior to the passage of this section [Code 1962 Section 58‑967] liable in damages where he either increased the obstruction, or continued it, after notice and demand for removal. Elliott v Rhett, 5 Rich (39 SCL) 405. Hammond v Port Royal, etc., Ry. Co., 16 SC 567 (1882). Leitzsey v Columbia Water Power Co., 47 SC 464, 25 SE 744 (1896). Townes v City Council, 52 SC 396, 29 SE 851 (1898). Privett v Wilmington, etc., R. Co., 54 SC 98, 32 SE 75 (1899). De Laney v Georgia, etc., Ry. Co., 58 SC 357, 36 SE 699 (1900). Sutton v Catawba Power Co., 76 SC 320, 56 SE 966 (1907). Lawton v Seaboard Air Line Ry. Co., 75 SC 82, 55 SE 128 (1906). Lampley v Atlantic Coast Line R. Co., 71 SC 156, 50 SE 773 (1905). Touchberry v Northwestern R. Co., 83 SC 315, 65 SE 341 (1909). Shores v Southern Ry. Co., 72 SC 244, 51 SE 699 (1905). Jones v Seaboard Air Line Ry. Co., 67 SC 181, 45 SE 188 (1903).

Liability for acts prior to passage of section. Railroad corporation obtaining right of way prior to passage of this section [Code 1962 Section 58‑967] is not liable to landowner for flooding water unless negligence in construction be shown. Lampley v. Atlantic Coast Line R. Co. (S.C. 1905) 71 S.C. 156, 50 S.E. 773.

Damages caused by the overflowing of land through negligent construction of a railroad embankment, where the crops were immature, consist of the rental value of the land, the cost of fertilization, cost of preparation and cultivation of the crops, value of the services of the owner in overlooking the work, and interest on amount lost until verdict. Lampley v. Atlantic Coast Line R. Co. (S.C. 1902) 63 S.C. 462, 41 S.E. 517.

A complaint alleging that plaintiff’s crop of oats was destroyed by a freshet by reason of the fact that the waters were held on such oats by the negligent construction of defendant’s embankment longer than they would have been, and were collected in great volumes above such embankment, and discharged with great force through the narrow and insufficient openings, whereby his land was washed away by its force, states a cause of action. Lampley v. Atlantic Coast Line R. Co. (S.C. 1902) 63 S.C. 462, 41 S.E. 517.

**SECTION 58‑17‑3920.** Liability for damage caused by fire.

 Every railroad corporation shall be responsible in damages to any person whose buildings or other property may be injured by fire communicated by its locomotive engines or originating within the limits of the right of way of such road in consequence of the act of any of its authorized agents or employees, except when property shall have been placed on the right of way of such corporation unlawfully or without its consent, and each such corporation shall have an insurable interest in the property upon its route for which it may be so held responsible and may procure insurance thereon in its own behalf.

HISTORY: 1962 Code Section 58‑1198; 1952 Code Section 58‑1198; 1942 Code Section 8362; 1932 Code Section 8362; Civ. C. ‘22 Section 4910; Civ. C. ‘12 Section 3226; Civ. C. ‘02 Section 2135; G. S. 1511; R. S. 1688; 1881 (17) 824.

Library References

Railroads 453.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 829 to 832, 835 to 839.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 11

Assignment 8

Consent to placing property on right of way 4

Constitutional issues 2

Exemption from liability 6

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Insurance 7

Nature and extent of liability 3

Negligence and proximate cause 5

Plaintiff’s interest in property 10

Pleadings 9

Presumptions and burden of proof 12

Questions for jury 14

Sufficiency of evidence 15

1. In general

Cited in Powell v Greenwood County, 189 SC 463, 1 SE2d 624 (1939). Engleberg v Prettyman & Sons, 159 SC 91, 156 SE 173 (1930). Holmes v Hamilton Ridge Lbr. Corp., 120 SC 165, 112 SE 536 (1922). Behrman v Atlantic Coast Line R. Co., 118 SC 48, 109 SE 397 (1921). Wragge v South Carolina & G. R. Co., 47 SC 105, 25 SE 76 (1896). Whitney Mfg. Co. v Richmond & D. R. Co., 38 SC 365, 17 SE 147 (1893). Laney v Chesterfield County, 29 SC 140, 7 SE 56 (1888). Springfield Fire & Marine Ins. Co. v Richmond & D. R. Co., 48 F 360 (1891). St. Louis & San Francisco Ry. Co. v Mathews, 165 US 1, 17 S Ct 243, 41 L Ed 611 (1897).

“Right of way,” as used in this section [Code 1962 Section 58‑1198] does not refer to the title of the railroad company, but is used to designate the locality from which a fire must originate to render the company liable. Brown v. Carolina Midland Ry. Co. (S.C. 1903) 67 S.C. 481, 46 S.E. 283, 100 Am.St.Rep. 756.

2. Constitutional issues

This section [Code 1962 Section 58‑1198] is constitutional. Brown v Carolina Midland Ry., 67 SC 481, 46 SE 283 (1903). Lipfeld v Charlotte, C. & A. R. Co., 41 SC 285, 19 SE 497 (1894). Mobile Ins. Co. v Columbia & G. R. Co., 41 SC 408, 19 SE 858 (1894). McCandless v Richmond & D. R. Co., 38 SC 103, 16 SE 429 (1892). Hines v Rittenberg, 262 F 87 (1919).

3. Nature and extent of liability

This section [Code 1962 Section 58‑1198] embraces any kind of property, real or personal, which may be injured by fire and supplements the common‑law liability, by making the liability not to depend on the negligence of the railroad corporation. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936). Dent v South‑Bound R. Co., 61 SC 329, 39 SE 527 (1901). Dean v Charleston & W. C. Ry. Co., 55 SC 504, 33 SE 579 (1899).

The statutory liability only extends to fire communicated from its own engines, and not to those communicated from the engines of its lessors, lessees, or of a third party. Rogers v Florence R. Co., 31 SC 378, 9 SE 1059 (1889). Hunter v Columbia, N. & L. R. Co., 41 SC 86, 19 SE 197 (1894). Lipfeld v Charlotte, C. & A. R. Co., 41 SC 285, 19 SE 497 (1894).

The company is not liable for fire originating from act of employee, while not in performance of his duty. Southern Ry. Co. v. Power Fuel Co., 1907, 152 F. 917, 82 C.C.A. 65, 82 C.C.A. 472.

The liability of a railroad company for the results of communicated fires is absolute. No question of negligence or due care can arise. If it be established that the fire originated upon the right of way in consequence of the acts of any authorized agent or employee of the railroad company, or that it was communicated by its engines, the company is liable in damages for the subsequent injury. Mellette v. Atlantic Coast Line R. Co. (S.C. 1936) 181 S.C. 62, 186 S.E. 545.

In order to establish the liability of a railroad in a case arising under this statute, it is not necessary that testimony be submitted from some witness to the effect that he actually saw sparks emitted from the locomotive smokestack, observed their trajectory, watched their descent, and saw fire ignite therefrom. Epps v. Atlantic Coast Line R. Co. (S.C. 1935) 177 S.C. 32, 180 S.E. 559.

Liability where company operating over road of another. A company operating over the road of another is liable for fire communicated by its locomotive directly to property outside the right of way, or to the right of way, and thence to the property outside, and in the latter case the owner of the road is also liable; and the complaint against both companies, stating both sets of facts, does not state inconsistent causes of action, but merely covers a joint and several or separate liability for the same wrong. Williams v. Northwestern R. Co. of South Carolina (S.C. 1917) 107 S.C. 523, 93 S.E. 183.

Liability of company for injuries before it conveyed franchises to another. A railroad corporation, which set fire to a lot of cotton placed on a platform on its right of way while it was operating its road and before it conveyed its franchises to another, was liable under this section [Code 1962 Section 58‑1198]. Henry Mercantile Co. v. Georgetown & W.R. Co. (S.C. 1916) 104 S.C. 478, 89 S.E. 480. Railroads 258

Liability of company granting trackage privilege to others. Railroad company operating railroad and granting trackage privilege to others under its train orders is liable for damages caused by fire communicated by engine of such party. Bellamy v. Conway, C. & W.R. Co. (S.C. 1910) 85 S.C. 450, 67 S.E. 545.

Extent of liability. This section [Code 1962 Section 58‑1198] renders a railroad company liable for damages to land by destruction, by fire from its locomotive, of timber, growing trees, and turpentine boxes. Dent v. South‑Bound R. Co. (S.C. 1901) 61 S.C. 329, 39 S.E. 527.

Liability of purchaser of timber to landowner. Purchaser of timber is not liable to landowner for fires set accidentally or without negligence, notwithstanding this section [Code 1962 Section 58‑1198]. Williams v. Atlantic Coast Lumber Corp. (S.C. 1926) 136 S.C. 423, 134 S.E. 390. Logs And Logging 3(7)

Liability of corporation operating logging railroad. An ordinary corporation chartered under general laws, which operates a logging railroad, comes within this section [Code 1962 Section 58‑1198] as a railroad corporation responsible for damages by fires. Crawford v. Mullins Lumber Co. (S.C. 1918) 110 S.C. 318, 96 S.E. 494.

And extends to property beyond right of way. Thompson v. Richmond & Danville R. Co. (S.C. 1886) 24 S.C. 366.

4. Consent to placing property on right of way

Where railroad company permitted the public to use the loading platform at its station for storage, the responsibility of the company under this section [Code 1962 Section 58‑1198] was a question for the jury. Little v. Atlantic Coast Line R. Co. (S.C. 1948) 211 S.C. 492, 46 S.E.2d 59.

Where a carrier accepts cotton intended for shipment at some future time, the cotton will be upon its platform with the carrier’s “consent,” under this section [Code 1962 Section 58‑1198]. Griffin v. Atlantic Coast Line R. Co. (S.C. 1911) 89 S.C. 547, 72 S.E. 463.

Notwithstanding a notice on the depot of defendant railroad company forbidding all persons to place cotton on its right of way, unless tendered for shipment, with full shipping directions, and stating that property so placed there without its consent would be at the owner’s risk, evidence as to the course of dealing for several years between the parties was held, in an action for the burning of plaintiff’s cotton on defendant’s platform, to authorize a finding that it was placed there under an implied consent, so as to make defendant liable for its destruction under this section [Code 1962 Section 58‑1198]. Green‑Brabham Co. v. Atlantic Coast Line R. Co. (S.C. 1910) 87 S.C. 258, 69 S.E. 290. Railroads 453; Railroads 470

In an action against a railway company to recover for cotton placed on the platform at a station and destroyed by fire, evidence was held to show consent on the part of the railway company to the cotton being placed on the platform before ready for shipment. Yarborough v. Southern Ry. (S.C. 1907) 78 S.C. 103, 58 S.E. 936. Carriers 134

Where cotton is deposited on the premises of a railway company under an agreement that it remain on the premises of the company without its consent at the sole risk of the shipper until tendered and accepted for shipment, the carrier is not liable for its loss by fire from its locomotive under this section [Code 1962 Section 58‑1198]. German‑American Ins. Co. v. Southern Ry. Co. (S.C. 1907) 77 S.C. 467, 58 S.E. 337, 12 Am.Ann.Cas. 495. Railroads 469

5. Negligence and proximate cause

Under this section [Code 1962 Section 58‑1198] liability is not dependent upon negligence. Hines v Rittenberg, 262 F 87 (1919). It attaches without regard to negligence. Thompson v Richmond & D. R. Co., 24 SC 366 (1886). Rogers v Florence R. Co., 31 SC 378, 9 SE 1059 (1889). Gregory v Layton, 36 SC 93, 15 SE 352 (1892).

Question as to negligence, proximate cause or remote cause is eliminated, and the only inquiry is whether the case falls within the terms and provisions of the statute. Fraser‑Patterson Lumber Co. v. Southern Ry. Co., 1948, 79 F.Supp. 424.

There can be no defense of contributory negligence or contributory willfullness on the part of the plaintiff in a case brought under this section [Code 1962 Section 58‑1198]. Fraser‑Patterson Lumber Co. v. Southern Ry. Co., 1948, 79 F.Supp. 424.

As question of negligence is immaterial. Green‑Brabham Co. v. Atlantic Coast Line R. Co. (S.C. 1910) 87 S.C. 258, 69 S.E. 290.

That an engine is properly equipped and carefully managed is not conclusive that it did not throw out sparks, setting a fire, so as to make the railroad company liable under this section [Code 1962 Section 58‑1198]. Green‑Brabham Co. v. Atlantic Coast Line R. Co. (S.C. 1910) 87 S.C. 258, 69 S.E. 290. Railroads 454(1)

So that it is not necessary to allege or prove negligence. Brown v. Seaboard Air Line Railway Co. (S.C. 1909) 83 S.C. 557, 65 S.E. 1102.

6. Exemption from liability

Contract for exemption from liability. Notwithstanding this section [Code 1962 Section 58‑1198], a railroad company may lease land and insure itself against liability by lessee’s covenant, that unless due to negligence, railroad company will not be liable for damage by fire. Savannah Fire & Marine Ins. Co. v. Pelzer Mfg. Co., 1894, 60 F. 39.

Effectiveness of agreement against liability of railroad company under this section [Code 1962 Section 58‑1198]. Fraser‑Patterson Lumber Co. v. Southern Ry. Co., 1948, 79 F.Supp. 424.

But proviso in lease of warehouse does not protect against storer of goods. Devlin v. Charleston & W.C. Ry. Co. (S.C. 1908) 79 S.C. 469, 60 S.E. 1123.

7. Insurance

Subrogation of insurance company. Pelzer Mfg. Co. v Sun Fire Office, 36 SC 213, 15 SE 562 (1892). Aetna Ins. Co. v Charleston & W. C. R. Co., 76 SC 101, 56 SE 788 (1907).

In suit by insurance company against railroad to recover amount paid out by it on account of loss of cotton destroyed by fire, plaintiff, in order to have case submitted to jury under this section [Code 1962 Section 58‑1198], must offer testimony showing either that fire was communicated by locomotive or originated within right of way in consequence of act of some authorized agent or employee. Bankers’ & Shippers’ Ins. Co. of New York v. Charleston & W.C. Ry. Co. (S.C. 1927) 138 S.C. 339, 136 S.E. 557.

Suit by insurance companies subrogated to rights of insured. Under this section [Code 1962 Section 58‑1198] allowing insurance, not only the insured may sue to recover for the loss, but also insurance companies which have been subrogated to the rights of insured against the company by paying the several amounts required by their respective policies on the property. Mobile Ins. Co. v. Columbia & G. R. Co. (S.C. 1894) 41 S.C. 408, 19 S.E. 858, 44 Am.St.Rep. 725.

Insurance generally. Thompson v. Richmond & Danville R. Co. (S.C. 1886) 24 S.C. 366.

8. Assignment

Assignment of right of action. As this section [Code 1962 Section 58‑1198] merely extended the common‑law liability of a railroad company, but was not highly penal, the right of action was not necessarily limited to him who was the owner at the time of the fire, so as to preclude assignment. Bultman v. Atlantic Coast Line R. Co. (S.C. 1916) 103 S.C. 512, 88 S.E. 279.

9. Pleadings

Amendment of complaint. Complaint may be amended during trial by striking out allegations of negligence and alleging cause of action under statute. Birt v. Southern Ry. Co. (S.C. 1910) 87 S.C. 239, 69 S.E. 233.

Allegation substantially stated a cause of action. Brown v. Carolina Midland Ry. Co. (S.C. 1903) 67 S.C. 481, 46 S.E. 283, 100 Am.St.Rep. 756.

Nonsuit. Brown v. Carolina Midland Ry. Co. (S.C. 1902) 64 S.C. 365, 42 S.E. 178.

Where an action was brought under this section [Code 1962 Section 58‑1198], plaintiff will not, after an action founded on negligence has been barred by limitation, be allowed to amend his complaint by striking out the allegations therein referring to the statute, and inserting in place thereof an allegation that the injury was caused by defendant’s negligence. Mayo v. Spartanburg, U. & C.R. Co. (S.C. 1895) 43 S.C. 225, 21 S.E. 10.

Sufficiency of allegations in complaint. Under this section [Code 1962 $ 58‑1198] a complaint alleging that defendant, through “its agent,” set fire on its right of way, which communicated to plaintiff’s property, causing the injuries complained of, is good. Mayo v. Spartanburg, U. & C.R. Co. (S.C. 1894) 40 S.C. 517, 19 S.E. 73. Railroads 478(2)

Complaint against railroad to recover damage as result of fire held not demurrable for failure to allege defendant was railroad corporation or common carrier. Law v. J.F. Prettyman & Sons (S.C. 1929) 149 S.C. 178, 146 S.E. 815. Railroads 478(1)

10. Plaintiff’s interest in property

If the plaintiff be in actual possession of the premises, he can maintain the action without title, but if his possession be constructive and not actual he cannot maintain it without proof of title. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936), citing Johnson v McIlwain, Rice (24 SCL) 368.

Under the provisions of this statute, it is only necessary to prove possession where both title and possession are alleged, unless the defendant shows title in himself or license from one proved to be the true owner. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936), citing Beaufort Land & Inv. Co. v New River Lbr. Co., 86 SC 358, 68 SE 637 (1910).

In order for a person to recover under this statute, he must show that he has a property right or interest, which may be either legal or equitable, in the buildings or other property injured or destroyed by the fire. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936), citing Bultman v Atlantic Coast Line R. Co., 103 SC 512, 88 SE 279 (1916).

He must show such ownership by competent testimony; he cannot establish his right to recover under this statute by the mere oral statement that he is the owner of the land. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936), citing Mayo v Spartanburg, U. & C. R. Co., 40 SC 517, 19 SE 73 (1894).

While possession is prima facie evidence of title where plaintiff alleges that the land over which the fire spread belonged to him, he is put to the proof of this title if this allegation is denied by the defendant’s answer. Elliott v Wilson, 181 SC 406, 187 SE 825 (1936), citing Busby v Florida Cent. & P. R. Co., 45 SC 312, 23 SE 50 (1895).

The issue as to title may be raised by the pleadings, and when raised must be determined by competent testimony. Mayo v Spartanburg, U. & C. R. Co., 40 SC 517, 19 SE 73 (1894). Busby v Florida Cent. & P. R. Co., 45 SC 312, 23 SE 50 (1895).

It is necessary that the action be in the nature of trespass, quare clausum fregit, which is an action against possession. Elliott v. Wilson (S.C. 1936) 181 S.C. 406, 187 S.E. 825.

11. Admissibility of evidence

For a holding upon the admissibility of testimony to show possession where possession was not alleged, see Elliott v. Wilson (S.C. 1936) 181 S.C. 406, 187 S.E. 825.

Admissibility of evidence. In an action against a railroad under this section [Code 1962 Section 58‑1198] for damage by fire to woodland, testimony of witnesses, who saw the premises for the first time two years after the fire, as to the number of trees damaged and their estimate of the damage per acre, was admissible. Hall v. Seaboard Air Line Ry. Co. (S.C. 1923) 126 S.C. 330, 119 S.E. 910, 33 A.L.R. 292. Evidence 474(20)

Opinion estimate as to amount of loss. In an action against a railroad company under this section [Code 1962 Section 58‑1198], for damage by fire to woodland, opinion estimate as to the amount of the loss, based on inspection of the premises after the fire, and a count of the damaged trees and their condition, should not be limited to witnesses who had seen the premises before the fire. Hall v. Seaboard Air Line Ry. Co. (S.C. 1923) 126 S.C. 330, 119 S.E. 910, 33 A.L.R. 292. Evidence 474(20)

In an action for damages from fire claimed to have been caused by sparks from a railroad engine, where the testimony, though circumstantial, tended to sustain plaintiff’s allegations, the issues of fact were properly submitted to the jury. Mitchum v. Seaboard Air Line Ry. Co. (S.C. 1921) 115 S.C. 500, 106 S.E. 769. Railroads 484(3)

Evidence of ownership. While to recover under this section [Code 1962 $ 58‑1198] plaintiff must show his ownership, and a mere oral statement that plaintiff is the owner of the land is insufficient, proof that plaintiff held a binding contract for the purchase of the land is sufficient to establish his ownership, such person being the equitable owner, though not holding the legal title. Bultman v. Atlantic Coast Line R. Co. (S.C. 1916) 103 S.C. 512, 88 S.E. 279.

Evidence of other fires communicated by other locomotives under approximately same conditions, and at or near same time, is admissible. McGill Bros. v. Seaboard Air Line Ry. (S.C. 1910) 87 S.C. 178, 69 S.E. 156, rehearing denied 69 S.E. 670.

In an action for injuries caused to land by fire set by a locomotive, one who had not known the land before the fire is incompetent to testify as to the damage. Wilson v. Southern Ry. (S.C. 1903) 65 S.C. 421, 43 S.E. 964.

12. Presumptions and burden of proof

No presumption will arise that a locomotive caused a fire simply because the locomotive was in the vicinity shortly before the fire was discovered. Epps v Atlantic Coast Line R. Co., 177 SC 32, 180 SE 559 (1935). Blakely v Atlantic Coast Line R. Co., 172 SC 343, 174 SE 15 (1934).

Presumption as to ownership of engine. Bush v Southern Ry. Co., 63 SC 96, 40 SE 1029 (1902). Stroud v Columbia, N. & L. R. Co., 79 SC 447, 60 SE 963 (1908).

In actions brought under this section [Code 1962 Section 58‑1198], no presumption will arise that a locomotive caused the fire simply because a locomotive was in the vicinity shortly before the fire was discovered. There must be proof of some act upon which the presumption can be based. Mellette v. Atlantic Coast Line R. Co. (S.C. 1936) 181 S.C. 62, 186 S.E. 545.

Presumption of negligence in common‑law action. Hutto v. Seaboard Air Line Ry. (S.C. 1908) 81 S.C. 567, 62 S.E. 835.

13. Instructions

Failure of the trial judge to instruct the jury not to consider punitive damages was harmless error. Elliott v. Wilson (S.C. 1936) 181 S.C. 406, 187 S.E. 825.

Instructions generally. Wilson v. Southern Ry. (S.C. 1903) 65 S.C. 421, 43 S.E. 964.

14. Questions for jury

Whether a fire was set by a locomotive held for the jury. Rittenberg v. Atlantic Coast Line R. Co. (S.C. 1914) 99 S.C. 488, 83 S.E. 600.

Evidence held sufficient to require submission of case to jury. Brown v. Carolina Midland Ry. Co. (S.C. 1902) 64 S.C. 365, 42 S.E. 178.

15. Sufficiency of evidence

Sufficiency of evidence. Evidence was held insufficient to show fire communicated by locomotive. Ragsdale v. Southern Ry. Co., 1903, 121 F. 924.

Where the court, in an action for injuries caused by a fire set by a locomotive, read Rev.St.1893, Section 1688 (See Code 1942, Section 8362), under which the action was brought to the jury, authorizing recovery of damages from fires set by sparks, and also from fires set on the right of way, but told them that they could find damages only for the fire set by the sparks from the engine, as the complaint only covered injuries from that source, and the testimony was confined to that issue, an exception to the charge, in that it did not limit fires to such as originated in consequence of sparks, must be overruled. Wilson v. Southern Ry. (S.C. 1903) 65 S.C. 421, 43 S.E. 964.

**SECTION 58‑17‑3930.** Penalty for failure to obey orders of Commission.

 Any railroad in this State refusing to obey any order of the Public Service Commission made under this chapter must forfeit not less than the sum of five hundred dollars nor more than two thousand dollars, to be recovered by the suit of the Office of Regulatory Staff in a suit in the court of common pleas. Any sum recovered must go to the general fund of this State.

HISTORY: 1962 Code Section 58‑1251; 1952 Code Section 58‑1251; 1942 Code Section 8406; 1932 Code Section 8406; Civ. C. ‘22 Section 4954; Civ. C. ‘12 Section 3259; Civ. C. ‘02 Section 2164; 1935 (39) 25; 2006 Act No. 318, Section 138, eff May 24, 2006.

Library References

Railroads 254.

Westlaw Topic No. 320.

C.J.S. Railroads Section 796.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑3940.** Penalty for failure to pay recompense for violation of rule or regulation of Commission; action for recovery.

 If any railroad company doing business in this State, by its agents or employees, is guilty of a violation of the rules and regulations provided and prescribed by the commission and if, after due notice of a violation given by the Office of Regulatory Staff to the principal officer thereof, ample and full recompense for the wrong or injury done to any person as may be directed by the Office of Regulatory Staff, is not made within thirty days from the time of the notice, the company shall incur a penalty for each offense of not less than one thousand dollars nor more than five thousand dollars, to be fixed by the presiding judge. An action for recovery of any penalty shall lie in any county in the State in which the violation has occurred or the wrong has been perpetrated and shall be in the name of the State. The Office of Regulatory Staff must institute any action.

HISTORY: 1962 Code Section 58‑1252; 1952 Code Section 58‑1252; 1942 Code Section 8338; 1932 Code Section 8338; Civ. C. ‘22 Section 4885; Civ. C. ‘12 Section 3205; Civ. C. ‘02 Section 2116; R. S. 1666; 1892 (21) 14; 2006 Act No. 318, Section 139, eff May 24, 2006.

Library References

Railroads 254.

Westlaw Topic No. 320.

C.J.S. Railroads Section 796.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑3950.** Actions for injuries to persons through violation of rules or regulations of Commission.

 If any railroad company doing business in this State shall, in violation of any rule or regulation provided by the Commission, inflict wrong or injury on any person, such person shall have a right of action and recovery for such wrong or injury in the county in which such wrong or injury was inflicted in any court having jurisdiction thereof and the damages to be recovered shall be the same as in an action between individuals, except that in cases of wilful violation of law such railroad companies shall be liable to exemplary damages.

HISTORY: 1962 Code Section 58‑1253; 1952 Code Section 58‑1253; 1942 Code Section 8339; 1932 Code Section 8339; Civ. C. ‘22 Section 4886; Civ. C. ‘12 Section 3206; Civ. C. ‘02 Section 2117; R. S. 1667; 1892 (21) 14.

Library References

Railroads 253.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 798, 803 to 804.

RESEARCH REFERENCES

Treatises and Practice Aids

60 Causes of Action 2d 1, Cause of Action for Accident at Railroad Tracks or Crossing.

NOTES OF DECISIONS

Constitutional issues 1

Damages 3

Federal Employers’ Liability Act 2

1. Constitutional issues

This section [Code 1962 Section 58‑1253] is constitutional. Osteen v. Southern Ry., Carolina Division (S.C. 1907) 76 S.C. 368, 57 S.E. 196.

2. Federal Employers’ Liability Act

Federal Employers’ Liability Act (FELA) (45 USCA Sections 51‑60) creates cause of action enforceable in state court against state‑owned railroad, because policies in favor of adhering to 1964 US Supreme Court decision which, in describing class of employers subject to FELA, first interpreted phrase “every common carrier by railroad” in 45 USCA Section 51 to include state‑owned railroads, far outweigh policies suggesting departure from such precedent. Hilton v. South Carolina Public Railways Com’n (U.S.S.C. 1991) 112 S.Ct. 560, 502 U.S. 197, 116 L.Ed.2d 560, on remand 307 S.C. 63, 413 S.E.2d 845.

3. Damages

An award of treble damages under Section 58‑17‑3980 and punitive damages pursuant to Section 58‑17‑3950 for the same wrongful act is prohibited as a double recovery. Foggie v. CSX Transp., Inc. (S.C. 1993) 313 S.C. 98, 315 S.C. 17, 431 S.E.2d 587, rehearing denied.

**SECTION 58‑17‑3960.** Suits under foregoing section shall be brought within twelve months.

 All suits under Section 58‑17‑3950 shall be brought within twelve months of the commission of the alleged wrong or injury.

HISTORY: 1962 Code Section 58‑1253.1; 1955 (49) 262.

Library References

Limitation of Actions 31.

Westlaw Topic No. 241.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

Treatises and Practice Aids

60 Causes of Action 2d 1, Cause of Action for Accident at Railroad Tracks or Crossing.

**SECTION 58‑17‑3970.** Acts declared unlawful shall be prohibited.

 Each and every act, matter or thing in this chapter declared to be unlawful is hereby prohibited.

HISTORY: 1962 Code Section 58‑1253.2; 1952 Code Section 58‑1253.1; 1942 Code Section 8453; 1932 Code Section 8470; Civ. C. ‘22 Section 5006; Civ. C. ‘12 Section 3308; Civ. C. ‘02 Section 2202; G. S. 1539; R. S. 1735; 1882 (17) 18.

**SECTION 58‑17‑3980.** Damages and penalty for unlawful acts where no specific penalty provided.

 If any person commits or allows to be committed any act, matter, or thing in this chapter declared to be unlawful, omits to do any act, matter, or thing in this chapter required to be done, or is guilty of any violation of any of the provisions of this chapter, that person must, when no specific penalty is herein provided for the violation, forfeit and pay to the person who may sustain damage thereby a sum equal to three times the amount of the damages so sustained, to be recovered by the person so damaged by suit in the circuit court of any county in this State in which the person causing the damage can be found or may have an agent, office, or place of business. But in the case of recovery, the damage shall not be assessed at a less sum than two hundred and fifty dollars. And the person so offending shall, for each offense, forfeit and pay a penalty of not less than one thousand dollars, to be recovered by the State by action in any such circuit court to be brought by the Office of Regulatory Staff upon the request of the Public Service Commission.

HISTORY: 1962 Code Section 58‑1254; 1952 Code Section 58‑1254; 1942 Code Section 8453; 1932 Code Section 8470; Civ. C. ‘22 Section 5006; Civ. C. ‘12 Section 3308; Civ. C. ‘02 Section 2202; G. S. 1539; R. S. 1735; 1882 (18) 18; 2006 Act No. 318, Section 140, eff May 24, 2006.

Library References

Railroads 253, 254(2).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 798, 803 to 804.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

Action for obstructing way. The only action allowed for obstructing a way is under this section [Code 1962 Section 58‑1254] for the specific penalty. Ross v Georgia, C. & N. Ry. Co., 33 SC 477, 12 SE 101 (1890). Rountree v Atlantic Coast Line R. Co., 73 SC 268, 53 SE 424 (1906).

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

An award of treble damages under Section 58‑17‑3980 and punitive damages pursuant to Section 58‑17‑3950 for the same wrongful act is prohibited as a double recovery. Foggie v. CSX Transp., Inc. (S.C. 1993) 313 S.C. 98, 315 S.C. 17, 431 S.E.2d 587, rehearing denied.

In action against railroad to recover statutory penalty for charging excessive fare, conflicting evidence took case to jury. Kinsey v. Southern Ry. Co. (S.C. 1934) 174 S.C. 192, 177 S.E. 149. Carriers 20(12)

Overcharging and insulting passenger. A passenger on a railroad is entitled to the highest degree of care, and where there is a willful disregard of that right on the part of a conductor in willfully overcharging a passenger and insulting and abusing him, the passenger may recover punitive damages, notwithstanding this section [Code 1962 Section 58‑1254]. Medlin v. Southern Ry. Co. (S.C. 1928) 143 S.C. 91, 141 S.E. 185, 56 A.L.R. 767.

The receipt of excess fares by a ticket agent is only prima facie evidence of a violation of Code 1962 Section 58‑1079, forbidding a carrier to receive excess fares under penalty fixed by this section [Code 1962 Section 58‑1254]. Brown v. Seaboard Air Line Ry. Co. (S.C. 1923) 122 S.C. 333, 115 S.E. 638. Carriers 20(4)

2. Admissibility of evidence

Admission of evidence before the jury in wrongful death action that railroad failed to repair rail bridge was prejudicial error, in wrongful death action resulting from fatal railroad crossing accident; claim that railroad violation of state law in failing to repair bridge was proximate cause of car passenger’s death was, by statute, an equitable matter to be tried to the court, evidence was used in closing argument, and jury returned advisory interrogatory that violation was proximate cause of passenger’s death. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Appeal And Error 1050.1(7)

**SECTION 58‑17‑3990.** Action under foregoing section shall be subject of equity jurisdiction.

 Any action brought as provided in Section 58‑17‑3980 to recover any penalty or damages shall be regarded as a subject of equity jurisdiction and discovery and affirmative relief may be sought and obtained therein. In any such action so brought as a case of equitable cognizance, preliminary or final injunction may, without allegation or proof of damage to the complainant, be granted upon proper application, restraining, forbidding and prohibiting the commission or continuance of any act, matter or thing by this chapter prohibited or forbidden.

HISTORY: 1962 Code Section 58‑1255; 1952 Code Section 58‑1255; 1942 Code Section 8454; 1932 Code Section 8471; Civ. C. ‘22 Section 5007; Civ. C. ‘12 Section 3309; Civ. C. ‘02 Section 2203; G. S. 1539; R. S. 1736; 1882 (18) 18.

CROSS REFERENCES

Civil remedy of injunction, generally, see SCRCP, Rule 65.

Library References

Action 22, 25(2).

Westlaw Topic No. 13.

C.J.S. Actions Sections 176 to 184.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 2

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

2. Admissibility of evidence

Admission of evidence before the jury in wrongful death action that railroad failed to repair rail bridge was prejudicial error, in wrongful death action resulting from fatal railroad crossing accident; claim that railroad violation of state law in failing to repair bridge was proximate cause of car passenger’s death was, by statute, an equitable matter to be tried to the court, evidence was used in closing argument, and jury returned advisory interrogatory that violation was proximate cause of passenger’s death. Webb v. CSX Transp., Inc. (S.C. 2005) 364 S.C. 639, 615 S.E.2d 440, rehearing denied. Appeal And Error 1050.1(7)

**SECTION 58‑17‑4000.** Limitation of action.

 No action provided for in Sections 58‑17‑3980 and 58‑17‑3990 shall be sustained unless brought within two years after the cause of action shall accrue.

HISTORY: 1962 Code Section 58‑1256; 1952 Code Section 58‑1256; 1942 Code Section 8456; 1932 Code Section 8473; Civ. C. ‘22 Section 5009; Civ. C. ‘12 Section 3311; Civ. C. ‘02 Section 2205; G. S. 1539; R. S. 1738; 1882 (18) 18.

Library References

Limitation of Actions 31.

Westlaw Topic No. 241.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 49, Public Utilities and Transportation.

**SECTION 58‑17‑4010.** Testimony may be compelled; immunity from prosecution; production of books and papers.

 In any action under Section 58‑17‑3980 and upon any application for any injunction under Section 58‑17‑3990 any director, officer, receiver or trustee of any railroad corporation or company or any receiver, trustee or person operating any railroad company or any agent of any such corporation or company, receiver, trustee or person aforesaid, or of any of them alone or with any other person may be compelled to attend, appear and testify and give evidence. No claim that any such testimony or evidence might tend to incriminate the person testifying or giving evidence shall be of any avail; but such evidence shall not be used against such person on the trial of any indictment against him. The attendance and appearance of any such person who may be compelled to appear or testify, and the giving of testimony or evidence by such person and the production of books and papers by him may be compelled as in the case of any other witness and if such deposition or evidence or the production of any books or papers may be desired or required for the purpose of applying for or sustaining any injunction it and the production of books and papers may be had, taken and compelled by or before the clerk of the court in which such action is pending or in any manner provided by the laws of this State as to the taking of other depositions or evidence or the attendance of witnesses or the production of other books or papers.

HISTORY: 1962 Code Section 58‑1257; 1952 Code Section 58‑1257; 1942 Code Section 8455; 1932 Code Section 8472; Civ. C. ‘22 Section 5008; Civ. C. ‘12 Section 3310; Civ. C. ‘02 Section 2204; G. S. 1539; R. S. 1737; 1882 (17) 18.

Library References

Witnesses 297(1), 298.

Westlaw Topic No. 410.

C.J.S. Witnesses Sections 585 to 587, 597, 600, 602, 607, 609.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑4020.** Penalty for violation of chapter by individuals.

 Any director or officer of any railroad corporation or company or any receiver, trustee, lessee or person acting or engaged as a railroad or any agent of any such corporation or company, receiver, trustee, lessee or person, or of one of them alone or with any other corporation, person or party, who shall (a) directly or indirectly do, or cause or willingly suffer or permit to be done, any act, matter or thing in this chapter prohibited or forbidden, (b) directly or indirectly aid or abet therein, (c) directly or indirectly omit or fail to do any act, matter or thing in this chapter required to be done, (d) cause or willingly suffer or permit any act, matter or thing, so directed or required to be done, not to be so done, (e) directly or indirectly aid or abet any such omission or failure, (f) directly or indirectly be guilty of any infraction of this chapter or (g) directly or indirectly aid or abet therein shall, unless otherwise herein specially provided, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars.

HISTORY: 1962 Code Section 58‑1258; 1952 Code Section 58‑1258; 1942 Code Section 8457; 1932 Code Section 8474; Civ. C. ‘22 Section 5010; Civ. C. ‘12 Section 3312; Civ. C. ‘02 Section 2206; G. S. 1540; R. S. 1739; 1882 (17) 18.

Library References

Railroads 255(1).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑4030.** Penalty for injury due to negligence or carelessness.

 When an engineman, fireman or other agent or officer of a railroad corporation is guilty of negligence or carelessness whereby an injury is done to any person he shall be punished by imprisonment not exceeding twelve months or by a fine not exceeding one thousand dollars.

HISTORY: 1962 Code Section 58‑1259; 1952 Code Section 58‑1259; 1942 Code Section 8374‑1; 1932 Code Section 1689; Cr. C. ‘22 Section 635; Cr. C. ‘12 Section 660; Cr. C. ‘02 Section 472; G. S. 1526; R. S. 369; 1881 (17) 834.

Library References

Railroads 255(13).

Westlaw Topic No. 320.

**SECTION 58‑17‑4040.** Penalty for gross carelessness or negligence.

 Whoever, having management of, or control over, a railroad train while being used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the management or control thereof shall forfeit a sum not exceeding five thousand dollars or be imprisoned not more than three years.

HISTORY: 1962 Code Section 58‑1260; 1952 Code Section 58‑1260; 1942 Code Section 8374‑2; 1932 Code Section 1690; Cr. C. ‘22 Section 636; Cr. C. ‘12 Section 661; Cr. C. ‘02 Section 473; G. S. 1527; R. S. 370; 1881 (17) 835.

Library References

Railroads 255(13).

Westlaw Topic No. 320.

**SECTION 58‑17‑4050.** Penalty for injury due to wilful violation.

 Any engineer, conductor or other agent or employee of any railroad company in this State who shall wilfully neglect to observe or shall wilfully violate any rule or regulation of the company to which such engineer or conductor may belong, whereby any person shall sustain or be in danger of sustaining any bodily injury shall be liable to be indicted for every such offense and, upon conviction thereof, be fined two hundred dollars and imprisoned for not exceeding one year, at the discretion of the judge before whom such case may be tried. Nothing therein contained shall be so construed as to relieve such engineer or conductor from responsibility under the law when the life of any person is destroyed.

HISTORY: 1962 Code Section 58‑1261; 1952 Code Section 58‑1261; 1942 Code Sections 1127, 1693; 1932 Code Sections 1127, 1691; Cr. C. ‘22 Sections 24, 637; Cr. C. ‘12 Sections 169, 662; Cr. C. ‘02 Sections 138, 474; G. S. 2478; R. S. 136; R. S. 371; 1857 (12) 634.

Library References

Railroads 255(1), 255(13).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑17‑4060.** Common carriers shall not interfere with contracts of shipment.

 If any person shall have contracted to deliver to any other person within this State certain commodities, no common carrier doing business in this State over whose road such commodities would be transported before delivery to the consignee shall interfere with the fulfillment of such contract between such shipper of freight and the proposed consignee, nor undertake to control or direct, or in any wise interfere with, the shipment of such commodities by the person who has contracted so to ship the same. To this end no common carrier doing business in this State over whose road such commodities would pass in transportation before delivery to the consignee in this State, when furnishing cars to the shippers thereof, may designate to what consignees freight loaded in such cars shall be consigned or in any way interfere with or seek to control the use of such cars by the shipper in making shipment to such consignee as he may desire to ship to or be under contract to ship to.

HISTORY: 1962 Code Section 58‑1262; 1952 Code Section 58‑1262; 1942 Code Section 8317; 1932 Code Section 8317; Civ. C. ‘22 Section 4864; Civ. C. ‘12 Section 3185; 1906 (25) 107.

Library References

Carriers 61.1.

Torts 242.

Westlaw Topic Nos. 70, 379.

C.J.S. Carriers Section 379.

**SECTION 58‑17‑4070.** Liability of common carriers interfering with contracts of shipment.

 Any common carrier violating the provisions of Section 58‑17‑4060 shall be liable to such damages, including special and punitive damages, as may be found in an action maintained in the courts of this State. Any shipper or proposed consignee bringing suit for violation of the terms of Section 58‑17‑4060 may include in the same action actual damages sustained by him through such act of the common carrier as well as any special damages and may also recover in the same action such punitive damages as may be allowed to him.

HISTORY: 1962 Code Section 58‑1263; 1952 Code Section 58‑1263; 1942 Code Section 8318; 1932 Code Section 8318; Civ. C. ‘22 Section 4865; Civ. C. ‘12 Section 3186; 1906 (25) 107.

Library References

Carriers 19.

Westlaw Topic No. 70.

C.J.S. Carriers Section 331.

**SECTION 58‑17‑4080.** Penalty and damages for obstruction of highway by railroad car, locomotive or other object.

 If any person, including any conductor of any train of railroad cars or any other agent or servant of any railroad company, shall obstruct unnecessarily any public road or highway by permitting any railroad car or locomotive to be or remain upon or across any street, public road or highway for a longer period than five minutes, after notice to remove such cars has been given to the conductor, engineer, agent or other such person in charge of such train or shall permit any timber, wood or other obstruction to remain upon or across any such street, road or highway to the hindrance or inconvenience of travelers or any person passing along or upon such street, road or highway, every such person so offending shall forfeit and pay for every such offense any sum not exceeding twenty nor less than five dollars and shall be liable for all damages arising to any highway, to be recovered by an action at the suit of the governing body of the county in which such offense shall have been committed or any person suing therefor, before any magistrate within the county in which such offense shall have been committed or by indictment in the court of general sessions or suit in the court of common pleas. All fines so accruing under the provisions of this section, when collected, shall be paid over by the magistrate to the county treasurer for the district in which such offense was committed. Every twenty‑four hours such person, after being notified, shall suffer such obstructions to the hindrance or inconvenience of travelers or any person going along or upon such road or highway to continue shall be deemed an additional offense against the provisions of this section.

HISTORY: 1962 Code Section 58‑1264; 1952 Code Section 58‑1264; 1942 Code Section 1674; 1932 Code Section 1674; Cr. C. ‘22 Section 621; Cr. C. ‘12 Section 648; 1902 (23) 1007.

Library References

Railroads 246, 253, 255(4).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 787, 798, 803 to 804, 1277.

Attorney General’s Opinions

One or more trains belonging to CSX blocking the State Street crossing in the City of Cayce. SC Op.Atty.Gen. (July 8, 1996) 1996 WL 494720.

**SECTION 58‑17‑4090.** Penalty for obstruction of railroad.

 If any person shall by himself or others place, or cause to be placed, on the track or other part of the passageway of any railroad on which steam engines, diesel engines or any other type engines or handcars are used any timber, stone or other obstruction, with intent to injure or impede the passage of any cars or means of conveyance, or shall in any manner obstruct any engine or car passing upon any railroad on which steam engines, diesel engines or any other type engines or handcars are used or endanger the safety of persons conveyed in or upon such railroads or assist therein, such person shall be guilty of a felony and, on being thereof convicted by due course of law, shall be punished by imprisonment in the Penitentiary for not less than one nor more than thirty years and fined in the discretion of the court, except when the death of some human being results from such impediment and in that case the offender shall be adjudged guilty of murder and shall suffer death.

 Nothing in this section shall in any manner take away any right of action for damages for injuries to the person or property of any person or body corporate caused by any injury, obstruction or damage done to any railroad or its buildings, tracks or constructions.

HISTORY: 1962 Code Section 58‑1265; 1952 Code Section 58‑1265; 1942 Code Sections 1104, 1115, 1116; 1932 Code Sections 1104, 1115, 1116; Cr. C. ‘22 Sections 4, 13, 14; Cr. C. ‘12 Sections 138, 151, 152; Cr. C. ‘02 Sections 111, 123, 124; G. S. 1520, 2456, 2467; R. S. 111, 123, 124; 1879 (18) 101; 1882 (18) 109; 1960 (51) 1602; 1961 (52) 496.

CROSS REFERENCES

Offenses specified in this section as exempt from classification of felonies and misdemeanors, see Section 16‑1‑10.

Post‑conviction DNA procedures, see Section 17‑28‑10 et seq.

Preservation of DNA evidence, see Section 17‑28‑310 et seq.

Violent crimes defined, see Section 16‑1‑60.

Library References

Railroads 255(5).

Westlaw Topic No. 320.

C.J.S. Railroads Sections 1278 to 1279.

**SECTION 58‑17‑4095.** Parking or operating vehicle on railroad right‑of‑way prohibited; exceptions; penalty.

 (A) No person may park or operate a vehicle on a railroad right‑of‑way where there are existing tracks unless the person:

 (1) is an employee of the railroad which owns the right‑of‑way in the performance of his duties;

 (2) has authority from the railroad which owns the right‑of‑way;

 (3) is using a public or private roadway which crosses over the railroad at an established grade crossing;

 (4) is acting in an official capacity with the military, police force, a fire fighting organization, or some similar public authority and must enter onto the railroad right‑of‑way to carry out his or her responsibilities; or

 (5) is an employee of a public utility or telecommunications carrier, or of the forestry industry, and must enter onto the railroad right‑of‑way to carry out his responsibilities.

 (B) For the purposes of this section, the term “vehicle” includes all standard vehicles normally operated on roadways, such as automobiles, trucks, vans, and motorcycles, and all off‑road vehicles. Off‑road vehicles include, but are not limited to, four‑wheel drive or low‑pressure tire vehicles, two or three wheel vehicles, amphibious machines, and ground‑effect or air‑cushioned vehicles.

 (C) A person violating the provisions of this section, upon conviction, shall pay a fine of not more than two hundred dollars or serve a term of imprisonment for not more than thirty days.

HISTORY: 1988 Act No. 542, eff May 17, 1988.

Library References

Automobiles 333.

Railroads 255(1).

Westlaw Topic Nos. 48A, 320.

C.J.S. Motor Vehicles Sections 1749, 1753 to 1754.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑17‑4096.** Trespassing upon railroad tracks.

 (A) It is unlawful, without proper authority, for a person to trespass upon railroad tracks.

 (B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days.

HISTORY: 1996 Act No. 458, Part II, Section 87, eff June 19, 1996.

Library References

Railroads 255(1).

Trespass 78.

Westlaw Topic Nos. 320, 386.

C.J.S. Railroads Sections 805 to 806, 1280.

**SECTION 58‑17‑4100.** Penalty for shooting or throwing at trains.

 A person who wilfully discharges any kind of firearms or throws any kind of missile at or into the engine or any car of a train is guilty of a felony and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years.

HISTORY: 1962 Code Section 58‑1266; 1952 Code Section 58‑1266; 1942 Code Section 1199‑1; 1932 Code Section 1709; Cr. C. ‘22 Section 655; Cr. C. ‘12 Section 680; Cr. C. ‘02 Section 484; R. S. 1734a; 1898 (22) 776; 1993 Act No. 184, Section 86, eff January 1, 1994.

CROSS REFERENCES

Shooting into railroad or electric railway car with intent to commit crime, see Section 58‑15‑850.

Library References

Railroads 255(6).

Westlaw Topic No. 320.

NOTES OF DECISIONS

In general 1

1. In general

Where a passenger on a train has acted disorderly and boisterous, and, after being put off, threw rocks at the conductor and the cars, the conductor has the right, under Gen.St. Section 1718 (See Code 1942, Section 8421), giving him the power of a constable, to arrest him without a warrant, and detain him until he can turn him over to the proper authorities, though at the time of his arrest he was acting in an orderly manner. Loggins v. Southern Ry. (S.C. 1902) 64 S.C. 321, 42 S.E. 163.

**SECTION 58‑17‑4110.** Penalty for loitering in or about station houses.

 Whoever, without right, loiters or remains within any station house of a railroad corporation or upon the platform or grounds adjacent to such station, after being requested to leave the same by any authorized railroad officer or employee, shall be guilty of a misdemeanor and, on conviction thereof, shall pay a fine of not more than fifty dollars or be confined in the county jail or required to work on the chain gang for not more than thirty days.

HISTORY: 1962 Code Section 58‑1267; 1952 Code Section 58‑1267; 1942 Code Section 8413‑1; 1932 Code Section 1704; Cr. C. ‘22 Section 650; Cr. C. ‘12 Section 675; Cr. C. ‘02 Section 481; G. S. 1515; R. S. 1731; 1881 (17) 832; 1898 (22) 776.

**SECTION 58‑17‑4120.** Certain persons shall be deemed agents of railroad corporation.

 Any person occupying an office or room in any railway station and attending to and transacting therein the business of any railroad under the charter of such railroad shall be deemed the agent of such corporation, notwithstanding he may claim to be the agent of some other person or corporation claiming to operate such railroad by virtue of any lease, contract or agreement. A bill of lading, receipt, agreement or contract signed or entered into by any such person as agent of any such person or corporation operating such railroad shall be deemed the contract of the corporation under the charter of which the railroad is authorized.

HISTORY: 1962 Code Section 58‑1268; 1952 Code Section 58‑1268; 1942 Code Section 8256; 1932 Code Section 8201; Civ. C. ‘22 Section 4765; Civ. C. ‘12 Section 3100; Civ. C. ‘02 Section 2026; 1883 (18) 437.

CROSS REFERENCES

Who is deemed agent of railroad for service of process, see Section 15‑9‑220.

**SECTION 58‑17‑4130.** Liabilities of corporation operating road of another and of trustees and receivers.

 When a railroad laid out and constructed by one corporation is lawfully maintained and operated by another corporation, the latter shall be subject to the duties, liabilities, restrictions and other provisions as they are set forth in the General Railroad Law respecting or arising from the maintenance and operation of such railroad in the same manner as if it had been laid out and constructed by the latter corporation. When a railroad is lawfully maintained and operated by trustees or receivers they shall in like manner be subject to the duties, liabilities, restrictions and other provisions respecting or arising from the maintenance and operation of such railroad which are attached in the General Railroad Law to the corporation for whose stockholders or creditors, or either, they are trustees or receivers.

HISTORY: 1962 Code Section 58‑1269; 1952 Code Section 58‑1269; 1942 Code Section 8255; 1932 Code Section 8200; Civ. C. ‘22 Section 4764; Civ. C. ‘12 Section 3099; Civ. C. ‘02 Section 2025; G. S. 1415; R. S. 1598.

NOTES OF DECISIONS

In general 1

1. In general

The lessor is liable for damages arising from the acts of its lessee in the operation of the road. National Bank v Atlanta & C. A. L. Ry. Co., 25 SC 216 (1886). Bouknight v Charlotte, C. & A. R. Co., 41 SC 415, 19 SE 915 (1894). Hart v Railroad Co., 33 SC 427, 12 SE 9 (1890). Harmon v Columbia & G. R. Co., 28 SC 401, 5 SE 835 (1888). Southern Ry. Co. v Bouknight, 70 F 442 (1895).

For additional related cases, see Kirkland v Charleston & W. C. Ry., 79 SC 273, 60 SE 668 (1908). Franklin v Atlanta & C. A. L. R. Co., 74 SC 332, 54 SE 578 (1906), overruling Pennington v Atlanta & C. A. L. Ry. Co., 35 SC 439, 14 SE 852 (1892). Smalley v Atlanta & C. A. L. R. Co., 73 SC 572, 53 SE 1000 (1906). Shores v Southern Ry. Co., 72 SC 244, 51 SE 699 (1905). Logan v Atlanta & C. A. L. R. Co., 82 SC 518, 64 SE 515 (1909). Reed v Southern Ry. Co., 75 SC 162, 55 SE 128 (1906). Harbert v Atlanta & C. A. L. Ry. Co., 74 SC 13, 53 SE 1001 (1906).

Penalty under Code 1962 Section 58‑592 may be collected of receivers of railroad company appointed by Federal court, and suit may be brought without leave of court. Huguelet v. Warfield (S.C. 1909) 84 S.C. 87, 65 S.E. 985.

Under Gen.St. Section 1511 (See Code 1942, Section 8362), making a railroad company liable for damages caused by fire communicated by “its locomotive engines,” it is not liable for fire communicated by the engine of its lessee. Hunter v. Columbia, N. & L.R. Co. (S.C. 1894) 41 S.C. 86, 19 S.E. 197.

**SECTION 58‑17‑4140.** Collection of fines and penalties.

 All fines or forfeitures provided for or prescribed in the General Railroad Law must, unless otherwise expressly provided, be collected by an action to be brought in the name of the State against the offending person or corporation in any court of competent jurisdiction by the Office of Regulatory Staff or the solicitor of the circuit in which the offense is in whole or in part committed.

HISTORY: 1962 Code Section 58‑1270; 1952 Code Section 58‑1270; 1942 Code Section 8458; 1932 Code Section 8475; Civ. C. ‘22 Section 5011; Civ. C. ‘12 Section 3313; Civ. C. ‘02 Section 2207; G. S. 1542; R. S. 1740; 1881 (17) 839; 2006 Act No. 318, Section 141, eff May 24, 2006.

Library References

Railroads 254(0.5).

Westlaw Topic No. 320.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑4150.** Persons against whom judgments shall be rendered.

 Any judgment under the provisions of this chapter shall be rendered against the person violating its provisions and against the corporation in whose service or under whose authority he performed such unlawful acts.

HISTORY: 1962 Code Section 58‑1271; 1952 Code Section 58‑1271; 1942 Code Section 8456; 1932 Code Section 8473; Civ. C. ‘22 Section 5009; Civ. C. ‘12 Section 3311; Civ. C. ‘02 Section 2205; G. S. 1539; R. S. 1738; 1882 (18) 18.

**SECTION 58‑17‑4160.** Procedure for attachment of cars and engines which are in use.

 Whenever railroad cars and engines are in use on railroads and making regular passage thereon, they shall not be attached upon mesne process in any suit within forty‑eight hours previous to their fixed time of departure unless the officer making such attachment shall have first demanded of the owners or managers of such engines or cars, or any of the agents of such railroad, other property equal in value to the ad damnum in the writ upon which to make such attachment and such owners or managers shall have refused or neglected to comply with such demand. And any officer making such attachment shall, on his return upon the process upon which it is made, certify that he has made such demand for such other property and that such demand has been refused or neglected; otherwise such attachment shall be wholly void.

HISTORY: 1962 Code Section 58‑1272; 1952 Code Section 58‑1272; 1942 Code Section 8428; 1932 Code Section 8428; Civ. C. ‘22 Section 4976; Civ. C. ‘12 Section 3278; Civ. C. ‘02 Section 2178; G. S. 1524; R. S. 1722; 1881 (17) 834.

NOTES OF DECISIONS

In general 1

1. In general

Where a car of a foreign carrier is on a side track empty after having come into the state loaded with an interstate shipment, and is there temporarily in the possession of another carrier, under contract with the foreign carrier to promptly return it within a reasonable time and to pay per diem demurrage for delay, and for the purpose of taking back freight, if it is ready for shipment within a reasonable time, it may not be attached, as this would be an interference with interstate commerce. Seibels v. Northern Cent. Ry. Co. (S.C. 1908) 80 S.C. 133, 61 S.E. 435.

Where a car owned by a foreign railroad, and loaded with interstate freight, to be unloaded at its destination within the state, and again loaded with interstate freight and returned in course of interstate commerce, arrives in the state, it cannot be attached at its destination before being unloaded, in a suit by a resident against the foreign railroad company, it being engaged in interstate commerce. George D. Shore & Bro. v. Baltimore & O.R. Co. (S.C. 1907) 76 S.C. 472, 57 S.E. 526, 11 Am.Ann.Cas. 909.

In an affidavit for attachment, a statement that affiant shipped property by defendant railway company as his own, that defendant was a connecting line with the receiving road, and that defendant is a common carrier, makes out a prima facie case that affiant owned the property shipped, and that defendant is liable as a connecting line under Rev.St.1893, Section 1720 (See Code 1942, Section 8423), providing that in the case of loss or damage to freight a connecting line may be severally liable with the receiving line Chitty v. Pennsylvania Ry. Co. (S.C. 1902) 62 S.C. 526, 40 S.E. 944.

**SECTION 58‑17‑4170.** Forfeiture of charter for repeated violations of law.

 Whenever a railroad corporation of this State has repeatedly and wilfully violated any of the provisions of this chapter, and has been found guilty or judgment had against it within this State of the violation more than once or penalties have been recovered in penal actions for the violations more than once, the commission may, if it thinks it consistent with the public interest, instruct the Office of Regulatory Staff to proceed against the corporation, in any court of competent jurisdiction, by an information in the nature of a quo warranto, alleging such convictions or recoveries as cause of forfeiture of its charter of incorporation and upon proof of such facts there shall be judgment of ouster and final execution as in other cases of proceedings by quo warranto.

HISTORY: 1962 Code Section 58‑1273; 1952 Code Section 58‑1273; 1942 Code Section 8460; 1932 Code Section 8477; Civ. C. ‘22 Section 5013; Civ. C. ‘12 Section 3315; Civ. C. ‘02 Section 2209; G. S. 1546; R. S. 1742; 1881 (17) 841; 2006 Act No. 318, Section 142, eff May 24, 2006.

Library References

Railroads 32.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 55 to 61.

NOTES OF DECISIONS

In general 1

1. In general

Restraining order enjoining enforcement of Railroad Commission’s order will be refused, absent immediate danger of irreparable injury. Civ.Code S.C.1922, Sections 4819, 4888, 4885, 4886, 4954, 5006‑5008, 5010, 5011, 5013, 5059. Columbia Ry., Gas & Elec. Co. v. Blease, 1927, 42 F.2d 463.

**SECTION 58‑17‑4180.** Request or advice of Commission shall not impair legal duties of railroad.

 No request or advice of the Commission shall impair, in any manner or degree, the legal duties and obligations of any railroad corporation or its liability for the consequence of its acts or of the neglect or mismanagement of any of its agents or servants.

HISTORY: 1962 Code Section 58‑1274; 1952 Code Section 58‑1274; 1942 Code Section 8292‑18; 1932 Code Section 8277; Civ. C. ‘22 Section 4825; Civ. C. ‘12 Section 3151; Civ. C. ‘02 Section 2073; G. S. 1461; R. S. 1636; 1881 (17) 819; 1935 (39) 25.

Library References

Railroads 253.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 798, 803 to 804.

**SECTION 58‑17‑4190.** Chapter shall not affect rights of persons injured to action for private damages.

 This chapter shall not be so construed as to affect the right of any person injured by the violation of any law in regard to railroad corporations from prosecuting or proceeding for his private damages in any manner allowed by law.

HISTORY: 1962 Code Section 58‑1275; 1952 Code Section 58‑1275; 1942 Code Section 8459; 1932 Code Section 8476; Civ. C. ‘22 Section 5012; Civ. C. ‘12 Section 3314; Civ. C. ‘02 Section 2208; G. S. 1543; R. S. 1741; 1881 (17) 839.

Library References

Railroads 253, 341.1.

Westlaw Topic No. 320.

C.J.S. Railroads Sections 798, 803 to 804, 1053 to 1054, 1057.

RESEARCH REFERENCES

Treatises and Practice Aids

60 Causes of Action 2d 1, Cause of Action for Accident at Railroad Tracks or Crossing.