CHAPTER 19

Attachment

Article 1

Issue of Attachments

**SECTION 15-19-10. Grounds for attachment generally.**

 In any action:

 (1) For the recovery of money;

 (2) For the recovery of property, whether real or personal, or damages for the wrongful conversion and detention of personal property;

 (3) For the recovery of damages for injury done to either person or property;

 (4) Against a corporation created by or under the laws of any other state, government or country;

 (5) Against a defendant who is not a resident of this State;

 (6) Against the master, captain or agent of any sailing vessel entering any of the ports of this State for pilotage services rendered such vessel;

 (7) Against a defendant who has absconded or concealed himself; or

 (8) When any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors as mentioned in this chapter;

 The plaintiff at the time of issuing the summons or any time afterwards may have the property of such defendant or corporation attached, in the manner prescribed in this chapter, as a security for the satisfaction of such judgment as the plaintiff may recover.

 For the purposes of this section an action shall be deemed commenced when the summons is issued, provided that personal service of such summons shall be made or publication thereof commenced within thirty days.

HISTORY: 1962 Code § 10-901; 1952 Code § 10-901; 1942 Code § 527; 1932 Code § 527; Civ. P. '22 § 500; Civ. P. '12 § 279; Civ. P. '02 § 248; 1870 (14) 475 § 250; 1879 (17) 23; 1897 (22) 450.

**SECTION 15-19-20. Attachment in libel and slander actions against nonresidents or foreign corporations.**

 Any and all attachments issued, made or levied in any of the courts of this State of the property, goods or credits of any nonresident of this State or of any foreign corporation in actions for libel and slander, if otherwise good and valid, shall stand as if the suit had been brought upon any other cause of action mentioned in § 15-19-10 or otherwise provided by the law.

HISTORY: 1962 Code § 10-902; 1952 Code § 10-902; 1942 Code § 527-1; 1932 Code (37) 1116.

**SECTION 15-19-30. Attachment when debt is not due.**

 Whenever a debt is not yet due and it appears to the satisfaction of a circuit judge, clerk of the court of common pleas or magistrate, by affidavit, that the debtor has departed from the State with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with a like intent or that such person has removed or is about to remove any of his property from this State with intent to defraud his creditors or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his property with like intent, the plaintiff forthwith may institute suit upon such debt or cause of action, and the circuit judge, clerk or magistrate may issue his warrant of attachment as if such debt were then due and payable. But no judgment shall be had thereon until after the maturity of the debt. The plaintiff shall pay the costs in case the debtor pays the debt on or before its maturity.

HISTORY: 1962 Code § 10-903; 1952 Code § 10-903; 1942 Code § 536; 1932 Code § 536; Civ. P. '22 § 509; Civ. P. '12 § 288; Civ. P. '02 § 255b; 1883 (18) 491.

**SECTION 15-19-40. Persons authorized to grant attachment.**

 A warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought or from a circuit judge.

HISTORY: 1962 Code § 10-904; 1952 Code § 10-904; 1942 Code § 528; 1932 Code § 528; Civ. P. '22 § 501; Civ. P. '12 § 280; Civ. P. '02 § 249; 1870 (14) 475 § 251.

**SECTION 15-19-50. Affidavit required.**

 The warrant may be issued whenever it shall appear by affidavit that a cause of action exists against the defendant, specifying the amount of the claim and the grounds thereof, and that the defendant is:

 (1) A foreign corporation or not a resident of this State;

 (2) The master, captain or agent of any sailing vessel entering any of the ports of this State and is about to take such vessel out of any port of this State without paying the pilotage fees provided by law; or

 (3) (a) Has departed from the State with intent to defraud his creditors or to avoid service of a summons or keeps himself concealed therein with the like intent, (b) has removed or is about to remove any of his property from this State with intent to defraud his creditors or (c) has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his property with the like intent, whether such defendant be a resident of this State or not.

 But in cases in which the defendant is the master, captain or agent of any vessel entering any of the ports of this State it shall only be necessary that the affidavit show that a cause of action exists against such defendant for pilotage services, specifying the amount of the claim and the grounds thereof, and that the defendant is about to take such vessel out of any port of this State and refuses to pay or has not paid the fees provided by law for such pilotage services.

HISTORY: 1962 Code § 10-905; 1952 Code § 10-905; 1942 Code § 529; 1932 Code § 529; Civ. P. '22 § 502; Civ. P. '12 § 281; Civ. P. '02 § 250; 1870 (14) 475 § 252; 1897 (22) 451; 1899 (23) 31.

**SECTION 15-19-60. Form of affidavit.**

 In all cases of attachment in this State the following form of affidavit shall be sufficient, to wit:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| State of South Carolina | ) |   |
|   | ) | Court of |
|   | ) |   |
|   | ) |   |
| Plaintiff, | ) |   |
| Against | ) | Affidavit. |
|   | ) |   |
| Defendant. | ) |   |

 Personally appeared before me \_\_\_\_\_\_\_\_\_\_ who on oath says:

 That \_\_\_\_\_\_\_\_\_\_ is justly and truly indebted to \_\_\_\_\_\_\_\_\_\_ in the sum of \_\_\_ dollars ($\_\_\_), and that \_\_\_\_\_\_\_\_\_\_ is entitled to an attachment against \_\_\_\_\_\_\_\_\_\_ upon the grounds: \_\_\_\_\_\_\_\_\_\_

 \_

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sworn to before me this the \_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
| day of \_\_\_\_\_\_\_\_\_\_ 19\_\_ | ) |   |
|   | ) |   |
|   |

HISTORY: 1962 Code § 10-906; 1952 Code § 10-906; 1942 Code § 551; 1932 Code § 551; 1929 (36) 201; 1931 (37) 205.

**SECTION 15-19-70. Filing of affidavit and serving copies thereof.**

 The plaintiff procuring such warrant at the time of the issuing thereof shall cause the affidavit on which it was granted to be filed in the office of the clerk of the court of common pleas or with the magistrate in which or before whom the action is to be tried, within forty-eight hours after the issuance of the attachment. He shall also cause copies thereof to be served on the defendant with the summons, if he can be found within the county.

HISTORY: 1962 Code § 10-907; 1952 Code § 10-907; 1942 Code § 529; 1932 Code § 529; Civ. P. '22 § 502; Civ. P. '12 § 281; Civ. P. '02 § 250; 1870 (14) 475 § 252; 1897 (22) 451; 1899 (23) 31.

**SECTION 15-19-80. Bond required before obtaining attachment.**

 Before issuing the warrant, the judge, clerk or magistrate shall require a written undertaking on the part of the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment or the attachment be set aside by order of the court the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a magistrate when it shall be at least twenty-five dollars.

HISTORY: 1962 Code § 10-908; 1952 Code § 10-908; 1942 Code § 530; 1932 Code § 530; Civ. P. '22 § 503; Civ. P. '12 § 282; Civ. P. '02 § 251; 1870 (14) 475 § 253.

**SECTION 15-19-90. Form of bond.**

 In all cases of attachment in this State the following form of bond shall be sufficient, to wit:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| State of South Carolina | ) |   |
|   | ) | Court of |
| County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
|   | ) |   |
| Plaintiff, | ) |   |
| Against | ) | Bond |
|   | ) |   |
| Defendant | ) |   |

 We, \_\_\_\_\_\_\_\_\_\_, principal, and \_\_\_\_\_\_\_\_\_\_, surety, acknowledge ourselves bound unto the defendant in the sum of \_\_\_\_\_\_\_\_\_\_ dollars, subject to the following conditions: That the plaintiff is seeking an attachment against the defendant, which is now about to be sued out, returnable to the court above named; now, if the plaintiff shall pay all damages that the defendant may sustain and also all costs that may be incurred by him in consequence of the suing out such attachment, in the event that the plaintiff shall fail to recover in said case, then this bond to be void.

 Done this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signed, sealed and delivered | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal) |
| in the presence of: | ) |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) |   |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Seal) |

|  |
| --- |
|  |
| State of South Carolina, |
| County of \_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_ being first duly sworn says: |

That he saw the above named \_\_\_\_\_\_\_\_\_\_, plaintiff, and \_\_\_\_\_\_\_\_\_\_, surety, sign, seal and as their act and deed deliver the foregoing instrument for the uses and purposes therein expressed and that he with \_\_\_\_\_\_\_\_\_\_ witnessed the execution thereof.

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Sworn to before me this the  | ) |   |
|   | ) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| day of \_\_\_\_\_\_\_\_\_\_ 19\_\_ | ) |   |

\_\_\_\_\_\_\_\_\_\_(Seal) The foregoing bond filed and approved this

\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |  |
| --- | --- |
|  |  |
|   |   |
|   |   |

HISTORY: 1962 Code § 10-910; 1952 Code § 10-910; 1942 Code § 551; 1932 Code § 551; 1929 (36) 201; 1931 (37) 205.

**SECTION 15-19-100. Persons to whom attachment shall be directed.**

 The warrant shall be directed to any sheriff or constable of any county in which property of the defendant may be and shall require him to attach and safely keep all the property of such defendant within his county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, together with costs and expenses. Several warrants may be issued at the same time to the sheriffs or constables of different counties.

HISTORY: 1962 Code § 10-911; 1952 Code § 10-911; 1942 Code § 531; 1932 Code § 531; Civ. P. '22 § 504; Civ. P. '12 § 283; Civ. P. '02 § 252; 1870 (14) § 254.

**SECTION 15-19-110. Issuance and form of attachment.**

 When the affidavit and bond are filed with the clerk of court of any county of this State or with a magistrate, when the amount involved is within his jurisdiction, he shall issue his warrant of attachment in the following form: State of South Carolina \_\_\_\_\_\_\_\_\_\_ County.

 Attachment.

To all and singular the sheriffs and constables of said State and county:

 You are hereby commanded to attach and seize \_\_\_\_\_\_\_\_\_\_ or so much of the property of \_\_\_\_\_\_\_\_\_\_ as will make the sum of \_\_\_\_\_\_\_\_\_\_ dollars and all costs, to serve such summons as may be placed in your hands and to make return of this attachment, with your actings and doings entered thereon, to this court. Hereof fail not.

 Witness my hand and seal this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 19\_\_\_

|  |
| --- |
|  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S.) |

HISTORY: 1962 Code § 10-912; 1952 Code § 10-912; 1942 Code § 551; 1932 Code § 551; 1929 (36) 201; 1931 (37) 205.

Article 3

Service and Subsequent Proceedings

**SECTION 15-19-210. Service and answer upon execution of warrant.**

 Immediately upon the issuance of the warrant of attachment as provided for in § 15-19-110 the sheriff or constable shall execute such warrant and the plaintiff, if the defendant shall not have been served with a copy of the complaint with the summons, shall within ten days after being required so to do by the defendant serve a copy of the complaint in the action on the defendant or his attorney at the address given in the notice requiring the complaint. The defendant shall have twenty days thereafter to answer the complaint, if in the court of common pleas, or to appear, if before a magistrate.

HISTORY: 1962 Code § 10-921; 1952 Code § 10-921; 1942 Code § 551; 1932 Code § 551; 1929 (36) 201; 1931 (37) 205.

**SECTION 15-19-220. Property which is subject to attachment.**

 The rights or shares which any defendant may have in any vessel or in the stock of any association or corporation, together with the interest and profits thereon, and all other property of such defendant in this State, except that exempt from attachment by the Constitution, shall be liable to be attached and levied upon and sold to satisfy the judgment and execution.

HISTORY: 1962 Code § 10-922; 1952 Code § 10-922; 1942 Code § 537; 1932 Code § 537; Civ. P. '22 § 510; Civ. P. '12 § 289; Civ. P. '02 § 256; 1870 (14) 476 § 258; 1883 (18) 491.

**SECTION 15-19-230. Duty of officer to whom warrant is delivered.**

 The sheriff or constable to whom such warrant is directed and delivered shall immediately attach all the real estate of the debtor and all his personal estate, including money and bank notes, except such real and personal estate as is exempt from attachment, levy or sale by the Constitution, and shall take into his custody all books of account, vouchers and papers relating to the property, debts, credits and effects of the debtor, together with all evidences of his title to real estate, all of which he shall safely keep, to be disposed of as directed in this article.

HISTORY: 1962 Code § 10-923; 1952 Code § 10-923; 1942 Code § 532; 1932 Code § 532; Civ. P. '22 § 505; Civ. P. '12 § 284; Civ. P. '02 § 253; 1870 (14) 475 § 255.

**SECTION 15-19-240. Attachment of real estate.**

 When real estate is attached a true and attested copy of the attachment, together with a description of the real estate attached, shall be, by the officer serving the warrant of attachment, delivered to the party whose real estate is attached or left at his last and usual place of abode. And the officer making such service shall also leave a true and attested copy of such attachment, together with a description of the real estate so attached, in the office in which by law a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent, or attorney if any be known, and, if no such agent, tenant or attorney be known, then a copy of such warrant of attachment with the officer's return thereon lodged in the office in which by law a deed of such real estate ought to be recorded shall be deemed sufficient service. The clerk or register of the office wherein any such warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer's return thereon. Such attachment shall be a lien subject to all prior liens and bind the real estate attached from the date of lodgment. All attachments lodged upon the same day shall take rank together.

HISTORY: 1962 Code § 10-924; 1952 Code § 10-924; 1942 Code § 532; 1932 Code § 532; Civ. P. '22 § 505; Civ. P. '12 § 284; Civ. P. '02 § 253; 1870 (14) 475 § 255.

**SECTION 15-19-250. Effecting execution on property incapable of manual delivery.**

 The execution of the attachment upon any rights or shares or any debts or other property incapable of manual delivery to the sheriff or constable shall be made by leaving a certified copy of the warrant of attachment with the president or other head of the association or corporation or the secretary, cashier or managing agent thereof or with the debtor or individual holding such property, with a notice showing the property levied on.

HISTORY: 1962 Code § 10-925; 1952 Code § 10-925; 1942 Code § 538; 1932 Code § 538; Civ. P. '22 § 511; Civ. P. '12 § 290; Civ. P. '02 § 257; 1870 (14) 477 § 259.

**SECTION 15-19-260. Certificate of defendant's interest.**

 Whenever the sheriff or constable shall with a warrant of attachment or execution against the defendant apply to such officer, debtor or individual for the purpose of attaching or levying upon such property, such officer, debtor or individual shall furnish him with a certificate, under his hand, designating the number of rights or shares of the defendant in the stock of such association or corporation, with any dividend or encumbrance thereon, or the amount and description of the property held by such association, corporation or individual for the benefit of or debt owing to the defendant. If such officer, debtor or individual refuses to do so he may be required by the court or judge to attend before him and be examined on oath concerning such rights, shares, property or debt, and obedience to such order may be enforced by attachment.

HISTORY: 1962 Code § 10-926; 1952 Code § 10-926; 1942 Code § 539; 1932 Code § 539; Civ. P. '22 § 512; Civ. P. '12 § 291; Civ. P. '02 § 258; 1870 (14) 477 § 260.

**SECTION 15-19-270. Duties of officer upon seizure of property.**

 The sheriff or constable shall, immediately on making seizure under the provisions of § 15-19-230, with the assistance of two disinterested freeholders, make a just and true inventory of all the property so seized and of the books, vouchers and papers taken into custody, stating therein the estimated value of the several articles of personal property and enumerating such of them as are perishable. Such inventory, after being signed by the sheriff or constable and appraisers, shall within ten days after such seizure be returned to the officer who issued the warrant, and the sheriff or constable shall, under the direction of such officer, collect, receive and take into his possession all debts, credits and effects of such debtor and commence such suits and take such legal proceedings, either in his own name or in the name of such debtor, as may be necessary for that purpose and prosecute and discontinue such suits and proceedings at such times and on such terms as the court may direct. The property so seized or the proceeds of such as shall have been sold and debts collected shall be kept to answer any judgment which may be obtained in such action.

HISTORY: 1962 Code § 10-927; 1952 Code § 10-927; 1942 Code § 533; 1932 Code § 533; Civ. P. '22 § 506; Civ. P. '12 § 285; Civ. P. '02 § 254; 1870 (14) 476 § 256.

**SECTION 15-19-280. Sale of personal property likely to deteriorate or expensive to keep.**

 Whenever (a) any officer of this State shall have taken possession of any personal property under process of attachment and the defendant or other intervening party claiming the property fails to replevy such property within sixty days after such property has been attached or seized by such officer, (b) such property remains in the hands of such officer and (c) either such property is of a perishable nature, liable to deteriorate in value, or the keeping of it is attended with considerable expense as compared to the value of the property, such property may be sold by such officer under the direction of the court after giving not less than ten days' advertisement of the manner, time and place of sale in three public places in the county, one of which shall be on the courthouse door. The court in its discretion may cause such additional notice or manner of advertisement as in its judgment the circumstances demand. The proceeds of any such sale after the payment of the legal expenses shall be turned over to the clerk of court to await the judgment of court.

HISTORY: 1962 Code § 10-928; 1952 Code § 10-928; 1942 Code § 534; 1932 Code § 534; Civ. P. '22 § 507; Civ. P. '12 § 286; Civ. P. '02 § 255; 1870 (14) 476 § 257; 1883 (18) 491; 1933 (38) 63, 445.

**SECTION 15-19-290. Proceedings on claim of third person.**

 If the person in whose possession property shall be attached shall appear at the return of the writ and file his answer thereto and deny the possession or control of any property belonging to the defendant or claim the money, lands, goods and chattels, debts and books of account as creditor in possession, or in his own right or in the right of some third person, or if any of the property be claimed by any other person than such defendant, then, if the plaintiff be satisfied therewith, the party in possession shall be dismissed and the plaintiff may pay the cost of his action. But if the plaintiff shall contest the return or the claim of such third person an issue shall be made up under the direction of the judge to try the question, and the party that shall prevail in the issue shall recover the cost of such proceeding of the opposite party, and judgment shall be given accordingly. If the party in possession or the third person claiming the property, as the case may be, resides in a different county from that in which the action is brought and an issue be made up between him and the plaintiff the action shall be tried in the county in which the party in possession resides. In case the property is claimed by a third person the plaintiff shall execute to such person the same undertaking that he is now required to give under § 15-19-80. Such undertaking shall be executed within ten days after notice of such claim.

HISTORY: 1962 Code § 10-929; 1952 Code § 10-929; 1942 Code § 535; 1932 Code § 535; Civ. P. '22 § 508; Civ. P. '12 § 287; Civ. P. '02 § 255a; 1883 (18) 491.

**SECTION 15-19-300. Discharge or return of property on defendant's appearance.**

 Whenever the defendant shall have appeared in such action he may apply to the officer who issued the attachment or to the court for an order to discharge the attachment, and, if such order be granted, all the proceeds of sales and moneys collected by such officer and all property attached remaining in his hands shall be delivered or paid by him to the defendant or his agent and released from the attachment. And when there is more than one defendant and the several property of either of the defendants has been seized by virtue of the order of attachment any defendant whose several property has been seized may apply to the officer who issued the attachment for relief under this section.

HISTORY: 1962 Code § 10-930; 1952 Code § 10-930; 1942 Code § 543; 1932 Code § 543; Civ. P. '22 § 516; Civ. P. '12 § 295; Civ. P. '02 § 262; 1870 (14) 478 § 264.

**SECTION 15-19-310. Undertaking on part of defendant.**

 Upon application for an order to discharge the attachment, the defendant shall deliver to the court or officer an undertaking executed by at least two sureties who are residents and freeholders or householders in the State, approved by such court or officer, to the effect that such sureties will, on demand, pay to the plaintiff the amount of judgment that may be recovered against the defendant in the action, not exceeding the sum specified in the undertaking which shall be at least double the amount claimed by the plaintiff in his complaint. If it shall appear by affidavit that the property attached be less than the amount claimed by the plaintiff the court or officer issuing the attachment may order the property to be appraised and the amount of the undertaking shall then be double the amount so appraised.

HISTORY: 1962 Code § 10-931; 1952 Code § 10-931; 1942 Code § 544; 1932 Code § 544; Civ. P. '22 § 517; Civ. P. '12 § 296; Civ. P. '02 § 263; 1870 (14) 478 § 265.

**SECTION 15-19-320. Maximum undertaking in certain actions.**

 In actions when the purpose is to collect a debt for the purchase price of any property when such property, or any part thereof, is attached and in all actions when property is permitted to be attached to secure the payment of a debt claimed to be due, the undertaking required of the defendant shall in no case be in excess of double the amount of the debt claimed by the plaintiff to be due in the action. But if there is an appeal the court from which any appeal is taken may increase the bond.

HISTORY: 1962 Code § 10-931.1; 1952 Code § 10-909; 1942 Code § 551-1; 1932 Code § 557; 1930 (36) 1347.

**SECTION 15-19-330. Undertaking when property of one of several defendants is attached.**

 When there is more than one defendant and the several property of any defendant has been seized by virtue of the order of attachment the defendant whose several property has been seized may deliver to the court or officer an undertaking, in accordance with the provisions of § 15-19-310, to the effect that he will, on demand, pay to the plaintiff the amount of judgment that may be recovered against such defendant. And all the provisions of § 15-19-310 applicable to such undertaking shall be applicable thereto.

HISTORY: 1962 Code § 10-932; 1952 Code § 10-932; 1942 Code § 544; 1932 Code § 544; Civ. P. '22 § 517; Civ. P. '12 § 296; Civ. P. '02 § 263; 1870 (14) 478 § 265.

**SECTION 15-19-340. Motion by owner to discharge attachment.**

 In all cases the defendant or any person who establishes a right to the property attached may move to discharge the attachment.

HISTORY: 1962 Code § 10-932.1; 1952 Code § 10-932.1; 1942 Code § 544; 1932 Code § 544; Civ. P. '22 § 517; Civ. P. '12 § 296; Civ. P. '02 § 263; 1870 (14) 478 § 265; 1960 (51) 1750.

**SECTION 15-19-350. Satisfying judgment for plaintiff.**

 In case judgment be entered for the plaintiff in any such action the sheriff or constable shall satisfy it out of the property attached by him, if it shall be sufficient for that purpose:

 (1) By paying over to such plaintiff the proceeds of all sales of perishable property and of any vessel or share or interest in any vessel sold by him or of any debts or credits collected by him, or so much as shall be necessary to satisfy such judgment;

 (2) If any balance remain due and an execution shall have been issued on such judgment he shall proceed to sell, under such execution, so much of the attached property, real or personal, except as provided in item (4) of this section, as may be necessary to satisfy the balance, if enough for that purpose shall remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or association the sheriff or constable shall execute to the purchaser a certificate of sale thereof, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by the defendant;

 (3) If any of the attached property belonging to the defendant shall have passed out of the hands of the sheriff or constable without having been sold or converted into money the sheriff or constable shall repossess himself of such property and for that purpose shall have all the authority which he had to seize such property under the attachment; and any person who shall wilfully conceal or withhold such property from the sheriff or constable shall be liable to double damages at the suit of the party injured; and

 (4) Until the judgment against the defendant shall be paid the sheriff or constable may proceed to collect the notes and other evidences of debt and the debts that may have been seized or attached under the warrant of attachment and to prosecute any bond he may have taken in the course of such proceedings and apply the proceeds thereof to the payment of the judgment.

HISTORY: 1962 Code § 10-933; 1952 Code § 10-933; 1942 Code § 540; 1932 Code § 540; Civ. P. '22 § 513; Civ. P. '12 § 292; Civ. P. '02 § 259; 1870 (14) 477 § 261; 1935 (39) 151.

**SECTION 15-19-360. Satisfying judgment for plaintiff; proceedings after six months or when automobile has been attached.**

 At the expiration of six months from the docketing of the judgment or forthwith upon the docketing of the judgment in cases in which an automobile has been attached under § 29-15-20, the court may, upon the petition of the plaintiff accompanied by an affidavit setting forth fully all the proceedings which have been had by the sheriff or constable since the service of the attachment, the property attached and the disposition thereof and also the affidavit of the sheriff or constable that he has used diligence and endeavored to collect the evidences of debt in his hands so attached and that there remains uncollected of the same any part or portion thereof, order the sheriff or constable to sell the property attached upon such terms and in such manner as shall be deemed proper. Notice of such application shall be given to the defendant or his attorney, if the defendant shall have appeared in the action. In case the summons has not been personally served on the defendant the court shall make such rule or order as to the service of notice and the time of service as shall be deemed just.

HISTORY: 1962 Code § 10-934; 1952 Code § 10-934; 1942 Code § 540; 1932 Code § 540; Civ. P. '22 § 513; Civ. P. '12 § 292; Civ. P. '02 § 259; 1870 (14) 477 § 261; 1935 (39) 151.

**SECTION 15-19-370. Disposition of residue when judgment is paid.**

 When the judgment and all costs of the proceedings shall have been paid the sheriff or constable, upon reasonable demand, shall deliver over to the defendant the residue of the attached property or the proceeds thereof.

HISTORY: 1962 Code § 10-935; 1952 Code § 10-935; 1942 Code § 540; 1932 Code § 540; Civ. P. '22 § 513; Civ. P. '12 § 292; Civ. P. '02 § 259; 1870 (14) 477 § 261; 1935 (39) 151.

**SECTION 15-19-380. Proceedings by plaintiff instead of sheriff or constable.**

 The actions authorized in this article to be brought by the sheriff or constable may be prosecuted by the plaintiff or under his direction, upon the delivery by him to the sheriff or constable of an undertaking executed by two sufficient sureties, to the effect that the plaintiff will indemnify the sheriff or constable from all damages, costs and expenses on account thereof not exceeding two hundred and fifty dollars in any one action. Such sureties shall, in all cases when required by the sheriff or constable, justify by making an affidavit that each is a householder and worth double the amount of the penalty of the bond, over and above all demands and liabilities.

HISTORY: 1962 Code § 10-936; 1952 Code § 10-936; 1942 Code § 541; 1932 Code § 541; Civ. P. '22 § 514; Civ. P. '12 § 293; Civ. P. '02 § 260; 1870 (14) 478 § 262.

**SECTION 15-19-390. Proceedings on judgment for defendant.**

 If the foreign corporation or absent, absconding or concealed defendant recover judgment against the plaintiff in any such action any bond taken by the sheriff or constable, except such as are mentioned in § 15-19-380, all the proceeds of sales and moneys collected by him and all the property attached remaining in his hands shall be delivered by him to the defendant or his agent, on request, and the warrant shall be discharged and the property released therefrom.

HISTORY: 1962 Code § 10-937; 1952 Code § 10-937; 1942 Code § 542; 1932 Code § 542; Civ. P. '22 § 515; Civ. P. '12 § 294; Civ. P. '02 § 261; 1870 (14) 478 § 263.

**SECTION 15-19-400. Time when sheriff or constable shall return attachment.**

 When the warrant shall be fully executed or discharged the sheriff or constable shall return it, with his proceedings thereon, to the court in which the action was brought.

HISTORY: 1962 Code § 10-938; 1952 Code § 10-938; 1942 Code § 545; 1932 Code § 545; Civ. P. '22 § 518; Civ. P. '12 § 297; Civ. P. '02 § 264; 1870 (14) 479 § 266.

Article 5

Attachments in Actions for Purchase Money

**SECTION 15-19-510. Authorization and issuance.**

 In an action arising for the recovery of purchase money which is past due for any real or personal property, the plaintiff, at the time of the issuing of the summons or any time afterwards, may cause the property of the defendant for which the purchase money is payable to be attached in the manner prescribed in this article as a security for the satisfaction of such judgment as the plaintiff may recover. For the purposes of this section an action shall be deemed commenced when the summons is issued. The warrant of attachment must be obtained from a judge, clerk of the court or magistrate in which or before whom the action is brought, or from a circuit judge. The warrant of attachment may be issued whenever it shall appear by affidavit that a cause of action exists against such defendant, specifying the amount of the claims and the grounds thereof, that the amount is due and that the action is brought for the purchase money of real estate or personal property which has been sold to the defendant and which he has refused or failed to pay. The plaintiff at the time of procuring such warrant of attachment shall file the affidavit upon which it is granted in the office of the clerk of court of common pleas or with the magistrate in which or before whom the action is to be tried.

HISTORY: 1962 Code § 10-951; 1952 Code § 10-951; 1942 Code § 546; 1932 Code § 546; Civ. P. '22 § 519; Civ. P. '12 § 298; 1904 (24) 452.

**SECTION 15-19-520. Plaintiff's undertaking; contents of warrant.**

 Before issuing the warrant of attachment the judge, clerk or magistrate shall require a written undertaking on the part of the plaintiff with sufficient surety to the effect that if the plaintiff shall fail to prove that the action is brought to recover the purchase money for the property which is about to be attached or if the defendant recovers judgment or the attachment be set aside by the order of the court the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, which shall be at least two hundred and fifty dollars, except in case of a warrant issued by a magistrate when it shall be at least twenty-five dollars. The warrant shall be directed to any sheriff or constable of any county in which the property of such defendant may be, shall plainly describe the property and shall require such officer to attach and safely keep such property of the defendant or so much thereof as may be sufficient to satisfy plaintiff's demand, together with costs and expenses.

HISTORY: 1962 Code § 10-952; 1952 Code § 10-952; 1942 Code § 547; 1932 Code § 547; Civ. P. '22 § 520; Civ. P. '12 § 299; 1904 (24) 452.

**SECTION 15-19-530. Effecting attachment.**

 The sheriff or constable to whom such warrant is directed and delivered shall immediately attach the real estate or personal property of the defendant which is described in the warrant and hold it until further order of the court. When real estate is attached a true and attested copy of such warrant shall be, by the officer serving it, delivered to the defendant or left at his last or usual place of residence, and the officer making such service shall also leave a true and attested copy of such warrant of attachment in the office in which, by law, a deed of such estate is required to be recorded. If the party whose estate is attached does not reside in this State then such copy shall be delivered to his tenant, agent or attorney, if any be known, and if no such agent, tenant or attorney be known then a copy of such warrant of attachment, with the officer's return thereon, lodged in the office in which, by law, a deed of such real estate ought to be recorded, shall be deemed sufficient service. The clerk or register of the office wherein the warrant of attachment is required to be lodged shall receive such warrant and enter in a book kept for that purpose the names of the parties, the date of the warrant of attachment, the sum demanded and the officer's return thereon.

HISTORY: 1962 Code § 10-953; 1952 Code § 10-953; 1942 Code § 548; 1932 Code § 548; Civ. P. '22 § 521; Civ. P. '12 § 300; 1904 (24) 452.

**SECTION 15-19-540. Lien of attachment.**

 The attachment shall be a lien subject to all prior liens and bind the real estate attached from the date of lodgment. It shall be a lien upon the personal property attached from the date of the levy thereon.

HISTORY: 1962 Code § 10-954; 1952 Code § 10-954; 1942 Code § 548; 1932 Code § 548; Civ. P. '22 § 521; Civ. P. '12 § 300; 1904 (24) 452.

**SECTION 15-19-550. Further proceedings.**

 Further proceedings on the part of the sheriff or constable in reference to the appraisement of the personal property attached or the sale of such personal property as may be perishable shall be such as are required by §§ 15-19-270 and 15-19-280. Further proceedings in reference to the disposition of the bond given by the plaintiff in case of judgment for defendant, the discharge of the attachment and return of property or its proceeds to defendant and the undertaking on the defendant's part shall be such as are required by §§ 15-19-300 to 15-19-340 and 15-19-390.

HISTORY: 1962 Code § 10-955; 1952 Code § 10-955; 1942 Code § 549; 1932 Code § 549; Civ. P. '22 § 522; Civ. P. '12 § 301; 1904 (24) 452.

**SECTION 15-19-560. Verdict or decision shall state whether amount found is for purchase money; order of sale.**

 In all actions tried by a jury when the plaintiff claims that the action is brought for the recovery of the purchase money for the property attached if the jury find for the plaintiff they shall also state in their verdict whether or not the amount found is for the purchase money of the property attached. And in all cases tried by a judge, he shall, if he decides in favor of the plaintiff, certify whether or not the debt so found by him is for the purchase money of the property seized under the warrant of attachment. In such cases the judge shall direct that the attached property shall be sold by the sheriff or constable and the proceeds arising from such sale be applied in payment of the plaintiff's debt and costs and the surplus, if any, paid over to the defendant.

HISTORY: 1962 Code § 10-956; 1952 Code § 10-956; 1942 Code § 550; 1932 Code § 550; Civ. P. '22 § 523; Civ. P. '12 § 302; 1904 (24) 452.