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TITLE II.

SUPREME COURT.



S.C. SUPREME COURT

SEC.

- 11. Its jurisdiction.
- 12. Power of Court.
- 13. Terms. Preference of causes.

SEC.

- 14. Judgment; rehearing. Opinions.
- 15. Sheriffs to provide rooms, &c.
- 16. Courts, where held. Adjournment.

Jurisdiction of the Supreme Court.

1896, XXII., § 1.

Section 11. (A) The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other remedial and original writs: each of the Justices of the Supreme Court shall have the same power at chambers to administer oaths, issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and interlocutory writs or orders of injunction as when in open Court: *Provided*, An appeal shall be allowed from his decision to the Supreme Court.

Where issues of fact arise.

Ib.

(B) Whenever in the course of any such action or proceeding in the Supreme Court, arising in the exercise of the original jurisdiction conferred upon the Court by the Constitution and laws of the State, an issue of fact shall arise upon the pleadings, or when an issue of fact shall arise upon a traverse to return in mandamus, prohibition, certiorari, or whenever the determination of any question of fact shall be necessary to the exercise of the jurisdiction conferred upon the Supreme Court, the said Court shall have power to frame an issue therein and certify the same to the Circuit Court for the County wherein the cause shall have originated, or in case of original jurisdiction to the Circuit Court of the County in which the cause of Action shall have arisen. The Supreme Court shall also have the same powers as are now possessed by the Circuit Court of the State for the appointment of Referees to take testimony and report thereon, under such instructions as may be prescribed by said Court, in any cases arising in the Supreme Court wherein issues of fact shall arise.

Appellant jurisdiction in chancery.

Ib.

(C) The Supreme Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases when the facts are settled by a jury and the verdict not set aside.

In law cases.

Ib.

(D) The Supreme Court shall have appellate jurisdiction in cases of law, and shall review

1. Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the Court of Common Pleas and General Sessions, brought there by original process, or removed there from any inferior Court or jurisdiction, and final judgments in such actions: *Provided*, If no appeal be taken until final judgment is entered, the Court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

An order to involve the merits must finally determine some substantial right in the case.—*Henderson v. Hyatt*, 8 S. C., 112; *Blakely v. Frazier*, 11 S. C., 122.

The terms "Involving the merits" and "necessarily affecting the judgment" are equivalent.—*Blakely v. Frazier*, 11 S. C., 122.

What orders involve the merits and are so reviewable before judgment:—

An order setting aside verdict for plaintiff without notice to him.—*Williams v. Charleston*, 7 S. C., 71.

An order refusing to change place of trial to County where defendant resides.—*Blakely v. Frazier*, 11 S. C., 122.

An order refusing an oral demurrer.—*Elliott v. Pullitzer*, 24 S. C., 86; *McCown v. McSween*, 29 S. C., 131; 7 S. E., 140.

An order refusing to allow amendment, upon legal grounds.—*Sibley v. Young*, 26 S. C., 415; 2 S. E., 314.

An appeal from an order of reference on jurisdictional grounds.—*Simms v. Phillips*, 46 S. C., 149; 24 S. E., 99.

An order of reference that deprives party of mode of trial which the law allows him.—*Ferguson v. Harrison*, 34 S. C., 169; 13 S. E., 332; *McLaurin v. Hodges*, 43 S. C., 187; 20 S. E., 991; *Alston v. Limehouse*, 61 S. C., 1; 39 S. E., 192.

Orders that are based upon error in law and will prejudice trial.—*Bank v. Stelling*, 32 S. C., 102; 10 S. E., 766; *Sease v. Dobson*, 34 S. C., 345; 13 S. E., 530; *Capell v. Moses*, 36 S. C., 559; 15 S. E., 711.

An appeal from an intermediate order, leaving unaffected a former order, is conclusive of appeal from former order.—*Pringle v. Sizer*, 7 S. C., 131.

What orders do not involve the merits and are not so reviewable before judgment:

Orders refusing motions to make pleadings more definite and certain.—*Fladger v. Beckman*, 42 S. C., 547; 20 S. E., 790; *Hawkins v. Wood*, 60 S. C., 521; 38 S. E., 9.

An order requiring security for costs or nonsuit, and an order discharging Clerk on rule for refusing to enter judgment, and reinstating the case.—*McMillan v. McCall*, 2 S. C., 390.

Orders on motions to dissolve attachment.—*Allen v. Patton*, 3 S. C., 418; *Clausen v. Easterling*, 19 S. C., 519.

An order of Circuit Court allowing appeal, which had been denied by Probate Court, as it merely affects form of procedure.—*Henderson v. Hyatt*, 8 S. C., 112.

An order refusing nonsuit.—*Agnew v. Adams*, 24 S. C., 86.

Orders as to recommitting case to referee being discretionary.—*Westfield v. Westfield*, 13 S. C., 482; *Watkins v. Lang*, 17 S. C., 13; *Symmes v. Symmes*, 18 S. C., 601; *Lowndes v. Miller*, 25 S. C., 119; *Smith v. Thomason*, 26 S. C., 607; 12 S. E., 96; *Hubbard v. Camperdown*, 26 S. C., 581; 2 S. E., 576.

An interlocutory order of injunction, "without prejudice."—*Garlington v. Copeland*, 25 S. C., 41.

Orders on motions for continuance.—*State v. Dodson*, 16 S. C., 459; *Crawford v. Schmidt*, 16 S. C., 634; *Symmes v. Symmes*, 18 S. C., 601; *Garvin v. Garvin*, 21 S. C., 92; *Douthit v. Westfield*, 22 S. C., 588; *Sawyer v. Senn*, 27 S. C., 251; 3 S. E., 298; *State v. Atkinson*, 33 S. C., 100; 11 S. E., 693. *State v. Wise*, 33 S. C., 582; 12 S. E., 556; *Latimer v. Latimer*, 42 S. C., 205; 20 S. C., 159.

An order referring it to Master to take testimony as to claims in case.—*Palmetto Co. v. Risley*, 25 S. C., 309; *Jones v. Trumbo*, 29 S. C., 26; 6 S. E., 887.

An order refusing a reference to take testimony in a chancery case.—*Farmers'*