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Parties to Proceedings for Review

Marcellus S. Whaley

Whether or not such courts have the power to issue other common law writs or the statutory writ of quo warranto, under Section 10-251 will probably depend on what a liberal construction of such a Section as 15-766, relative to the Richland County Court, would bring forth. That Section, like similar Sections pertaining to some of the other county courts, reads in part as follows:

> All general laws and statutory provisions applicable generally to the circuit courts of this State and trial of cases therein shall apply to said county court and to the conduct and trial of cases therein when not inconsistent with this article....

Why the Treatment of Writs Herein: Attention is called to the fact that some of the writs treated herein do not strictly fall within "appellate procedure," but since they have to do with "procedure" and since some of them are used either directly or indirectly by way of review, the writer thought it best to include all of them in this handbook. In doing so he has followed several of the outstanding authors of the latest textbooks and casebooks on Trial and Appellate Practice, one of them being Professor Edson R. Sunderland of the University of Michigan.

PARTIES TO PROCEEDINGS FOR REVIEW

Aggrieved Party May Appeal: Section 7-2 provides that "any party aggrieved may appeal." When is one a party who has been aggrieved, however, sometimes is difficult to ascertain and annotated cases under above section are few; so, when new situations arise, those handling cases in South Carolina are forced to seek a solution from decisions in other jurisdictions, where the word "aggrieved" has been defined. As said in *White Brass Castings Co. v. Union Metal Co.* (1908), (Ill.) 83 N. E. 540:

> No person is entitled to sue out a writ of error who is not a party or privy to the record, or who is not shown by the record to be prejudiced by the judgment. . . . The prejudice which will authorize the suing out of a writ of error must be such that the person suing out the writ takes or loses something directly by the judgment or decree.

The same rule applies to review by appeal, and also to the writs heretofore discussed.

The Court further stated that indirect interest due to the increasing or diminishing of stock of a corporation by a judgment against the corporation doesn't give any or all of the stockholders the right of review; just like a creditor of a person against whom a judgment has been obtained has no right of appeal.

Also, in the Colorado case of *Wilson v. Board of Regents* (1909), (Colo.) 102 Pac. 1088, one is told that "aggrieved" refers to a "substantial grievance; the denial to the party of some claim of right, either of property or of person, or the imposition upon him of some burden or obligation."

Can One Appeal From a Favorable Decision? The answer appears to be, No, in this State. As said in *Wilson v. So. Ry.* (1922), 123 S. C. 399, 115 S. E. 764, at page 406:

> The remaining exceptions are directed to the assignment of alleged errors in the admission of testimony and in the Judge's charge to the jury. The appellant's position in this Court, in that the objective of her appeal is to set aside a verdict in her own favor, is a somewhat anomalous one. By the terms of our Statute law (Section 376, Code Civ. Proc. 1912), the right of appeal is accorded only to a "party aggrieved."
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> Although there are exceptional cases, the general rule is that a plaintiff or defendant cannot appeal or prosecute a writ of error from or to a judgment, order, or decree in his own favor, since he is not aggrieved thereby," etc., 3 C. J., p. 635, §495.
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> See *Brock v. Kirkpatrick,* 72 S. C., 491; 52 S. E., 592.
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> If it be conceded that an exceptional case is presented where a finding or verdict is favorable in form to a party, but does not give him all he is entitled to, or is otherwise prejudicial to his legal rights, the aggrieved party should present that question to the trial Court in the first instance, and the appeal should be taken from the refusal to set aside or correct the verdict. See *Gunter v. Fallow,* 78 S. C., 457; 59 S. E., 79 . . . .

Appeal in Criminal Cases: The defendant may appeal; the state may not. The main reason for the latter rule is that the defendant will be twice put in jeopardy. South Carolina joins the great majority in giving that as the reason. Some use broader grounds as where there has been only a decision

of an issue of law, as on a demurrer to an indictment, motion to quash or special verdict.

South Carolina allows an appeal by the State to settle some question of law, or from quashing an indictment. *State v. Rogers* (1941), 198 S. C. 273, 17 S. E. 2d 563, gives the rule as follows:

> But, as was held in the case of *State v. Ivey,* 73 S. C., 282, 53 S. E., 428, 430, wherein the State was appellant — "The state has no right to appeal" from a judgment of acquittal in a criminal case. The State may take an appeal from an order quashing an indictment, *State v. Young,* 30 S. C. 399, 9 S. E. 355; *State v. Bouknight,* 55 S. C. 353, 33 S. E., 451, 74 Am. St. Rep., 751; or from a judgment which substantially amounts to a quashing of an indictment. *State v. Long,* 66 S. C., 398, 44 S. E. 960.
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> That the State has no right of appeal from judgment upon verdict of acquittal in a criminal case, seems to have been recognized and accepted as the law in this jurisdiction from the beginning of our judicial history. *State v. Wright,* 3 Brev., 421, 2 Tread. Const., 517; *State v. Bowen,* 4 McCord Law, 254; *State v. Edwards,* 2 Nott & McC., 13, 10 Am. Dec., 557; *State v. Gathers,* 15 S. C., 370; *State v. Ivey,* 73 S. C., 282, 53 S. E., 428; *State v. Lynn,* 120 S. C. 258, 113 S. E., 74; *State v. Ludlam,* 189 S. C. 69, 200 S. E., 361.
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> The principle is well stated in 24 C. J. S., Criminal Law § 1663, page 262: "In those jurisdictions where the common-law rule permitting a former acquittal to be pleaded as an absolute bar to a subsequent prosecution prevails, and in those jurisdictions where the constitution provides that no one shall be twice put in jeopardy for the same offense, it is well settled that no writ of error, appeal, or other proceeding lies on behalf of the state to review or to set aside a verdict or a judgment of acquittal in a criminal case, although there may have been error committed by the Court, or a perverse finding by the jury * * *."

No appeal is allowed where there is an acquittal or final determination of the criminal charge. However, in *State v. Ludlow* (1938), 189 S. C. 69, 200 S. E. 361, one is told by way