CHAPTER 17

Liabilities of Sheriffs and Deputy Sheriffs

**SECTION 23‑17‑10.** Default in returning warrants or other process of magistrate.

If the sheriff shall neglect or delay to return any warrant or other process pertaining to the court of general sessions, issued by a magistrate ten days before the meeting of the court, he shall forfeit his fees and be subject to a fine of five dollars for every such default if, upon a rule to show cause, he shall fail to excuse himself to the satisfaction of the court.

HISTORY: 1962 Code Section 53‑211; 1952 Code Section 53‑211; 1942 Code Section 1537; 1932 Code Section 1537; Cr. C. ‘22 Section 484; Cr. C. ‘12 Section 557; Cr. C. ‘02 Section 400; G. S. 693; R. S. 317; 1836 (6) 552.

Library References

Sheriffs and Constables 72, 101.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 120 to 124, 127 to 136, 140 to 143, 479.

**SECTION 23‑17‑20.** Open contempt or breach of duty.

Any sheriff shall be liable to be proceeded against in any court of record in this State for an open contempt or for a breach of official duty. For an open contempt he shall be liable to be attached forthwith. For a breach of official duty he may be required, by rule, to answer to the complaint of any suitor of the court and upon failing to answer or comply with the order of the court, made on the hearing of such rule, he shall be liable to be attached as for a contempt and committed to close custody until he shall have complied with the requisition of the court. In all cases, interrogatories may be propounded to him, which he shall answer on oath, either orally or in writing, as the court may order.

HISTORY: 1962 Code Section 53‑212; 1952 Code Section 53‑212; 1942 Code Section 3530; 1932 Code Section 3530; Civ. C. ‘22 Section 2073; Civ. C. ‘12 Section 1180; Civ. C. ‘02 Section 855; G. S. 672; R. S. 735; 1839 (11) 44.

Library References

Sheriffs and Constables 99 to 152.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 107 to 258, 272, 278 to 385, 461 to 468.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Mongie v Cheney (1833) 19 SCL 145. James v Smith (1870) 2 SC 183. Emory v Davis (1872) 4 SC 23. Kirby v Woods (1873) 5 SC 1. Prince v Sutherland (1879) 12 SC 109. Charles v Charles (1880) 13 SC 385. Warren Wallace & Co. v Simon (1882) 16 SC 362.

**SECTION 23‑17‑30.** Failure to execute or return final process or pay over money.

If any sheriff shall fail to execute or return final process in any civil suit or to pay over to the person entitled thereto, when demanded, money that has come into his hands as sheriff and shall be unable, on the return of a rule that may be issued against him, to show sufficient cause, he shall be liable to be attached for a contempt and committed to custody until he shall comply with the order of court.

HISTORY: 1962 Code Section 53‑213; 1952 Code Section 53‑213; 1942 Code Section 3531; 1932 Code Section 3531; Civ. C. ‘22 Section 2074; Civ. C. ‘12 Section 1181; Civ. C. ‘02 Section 856; G. S. 673; R. S. 736; 1839 (11) 44.

Library References

Sheriffs and Constables 101, 122.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 120 to 124, 127 to 136, 140 to 143, 216 to 235.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see State v Sheriff of Charleston Dist. (1817) 8 SCL 145. Summers v Caldwell (1820) 11 SCL 341. Ex parte Ex’Ors of Stephens (1821) 12 SCL 87. Levy v Roberts (1821) 12 SCL 395. Chiles v Holloway (1827) 15 SCL 164. Noonan v Executors of Gray (1830) 17 SCL 437. Ex parte Thurmond (1830) 17 SCL 605. M’Lean v Du Bose (1830) 17 SCL 646. Dawkins v Pearson (1832) 18 SCL 619. Bank of Pennsylvania v Condy (1833) 19 SCL 209. Johnston v Shubert (1834) 20 SCL 502. Thomas v Aitken (1838) 23 SCL 292. Rice v McClintock (1838) 23 SCL 354. Pitman & Day v Clarke (1841) 26 SCL 316. Cooper v Scott (1842) 27 SCL 150; Connor v Archer (1842) 28 SCL 89; J. Kirkpatrick & Co. v Ford (1843) 29 SCL 110. Cannady v Odum & Matheny (1846) 31 SCL 527. Brown v Furze (1846) 31 SCL 530. Treasurers v Cleary (1831) 37 SCL 372 (ovrld on other grounds by McCall v Batson, 285 SC 243, 329 SE2d 741). Maddox v Williamson (1846) 32 SCL 23. Starnes v Prince (1853) 40 SCL 319. Hooks v Byrd (1856) 44 SCL 120. Dawson v Dewan (1860) 46 SCL 499. Wallace v Graham (1866) 47 SCL 322. Kuhne v Law (1866) 48 SCL 18. Caskey v McMullen (1871) 3 SC 196. Emory v Davis (1872) 4 SC 23. Gibson v Gibson (1876) 7 SC 356. State ex rel. Detheridge v Gilreath (1881) 16 SC 100. Bragg v Thompson (1883) 19 SC 572.

**SECTION 23‑17‑40.** Official misconduct for remaining in contempt after attachment.

If any sheriff shall be attached for contempt for failing to execute or return final process in any civil suit or for not paying over to the party entitled thereto money which has come into his hands as sheriff and shall remain in contempt for the space of thirty days after such attachment is ordered, he shall be guilty of official misconduct and shall be liable to be proceeded against by indictment and, on conviction, be liable to a fine of not exceeding one thousand dollars and imprisonment not exceeding one year and be removed from office. But nothing herein contained shall be construed to deprive any such sheriff of his right to appeal from any order against him for a contempt, nor shall the provisions of this section be taken to apply during the pendency of such appeal, nor until such an appeal has been finally dismissed.

HISTORY: 1962 Code Section 53‑214; 1952 Code Section 53‑214; 1942 Code Section 1531; 1932 Code Section 1531; Cr. C. ‘22 Section 478; Cr. C. ‘12 Section 552; Cr. C. ‘02 Section 395; G. S. 674; R. S. 312; 1844 (11) 296.

Library References

Sheriffs and Constables 99.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 107 to 113.

**SECTION 23‑17‑50.** Additional penalty for failure of sheriff to pay over money after demand.

If any sheriff, upon the demand of any plaintiff or his attorney, shall wilfully refuse to pay over any sum of money collected for such plaintiff within twenty‑four hours, the sheriff so in default, besides being liable to rule and attachment, shall be liable also to pay to such plaintiff or his legal representative the sum withheld and interest thereon for the time he may withhold such sum after demand at the rate of five per cent per month. And if any regular deputy sheriff (in the absence of such sheriff), having such fund, shall refuse one day after demand to pay it over, the sheriff shall, for such default, be liable to the same penalties as are herein provided. But nothing herein contained shall apply to the detention of money on account of bona fide conflicting claims.

HISTORY: 1962 Code Section 53‑215; 1952 Code Section 53‑215; 1942 Code Section 3532; 1932 Code Section 3532; Civ. C. ‘22 Section 2075; Civ. C. ‘12 Section 1182; Civ. C. ‘02 Section 857; G. S. 675; R. S. 737; 1839 (11) 55; 1846 (11) 358.

Library References

Sheriffs and Constables 122.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 216 to 235.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Commissioners of Treasury v Allen (1818) 9 SCL 88. Kilpatrick v Vandiver (1818) 9 SCL 341. Kelly v Payne (1821) 12 SCL 138. Daniel v Capers (1827) 15 SCL 237. Wilks & Co. v Hasket (1824) 16 SCL 490. Wright v Hamilton (1830) 18 SCL 51. Treasurers of State on behalf of Jones v Sureties of Oswald (1831) 18 SCL 214. Graham v Durant (1834) 20 SCL 517. Thomas v Aitken (1838) 23 SCL 292. Thomas v Yates (1841) 26 SCL 179. Williamson v King (1840) 16 SC Eq 41. State use of Taylor v Easterling (1844) 30 SCL 310. Walker v Kennerly (1845) 37 SCL 64. State v Wylie (1847) 33 SCL 113. Posey v Ramey (1849) 35 SCL 20.

**SECTION 23‑17‑60.** Penalty for sheriff or deputy permitting prisoners committed by civil process to go at large.

If any sheriff, or his deputy, shall permit any prisoner committed to his custody on mesne or final process in any civil action to go or be without the prison walls without lawful authority or if any sheriff or his deputy suffer such prisoner to go or be at large out of the rules of the prison (except by some writ of habeas corpus, or rule of court), any such going and being out of the prison walls or prison rules, as the case may be, shall be adjudged and deemed an escape. If any sheriff, or his deputy, shall, after one day’s notice in writing given for that purpose, refuse to show any prisoner committed to his charge to the plaintiff at whose suit such prisoner was committed or to his attorney, such refusal shall be adjudged to be an escape. But the sheriff shall discharge a defendant in custody on mesne process in a civil case when the plaintiff is nonsuited.

HISTORY: 1962 Code Section 53‑216; 1952 Code Section 53‑216; 1942 Code Section 3535; 1932 Code Section 3535; Civ. C. ‘22 Section 2078; Civ. C. ‘12 Section 1185; Civ. C. ‘02 Section 860; G. S. 678; R. S. 740; 1712 (2) 554, 555; 1788 (5) 80; 1839 (11) 45; 1972 (57) 2612.

CROSS REFERENCES

Aiding or permitting escape or taking of prisoners, see Sections 16‑9‑410 et seq.

Library References

Sheriffs and Constables 104.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 256 to 258.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Baker v Deliesseline (1827) 15 SCL 372. Burns v Brian (1842) 28 SCL 131. Cook v Irving (1850) 35 SCL 204. State v Halford (1852) 40 SCL 58. Conyers v Rhame (1957) 45 SCL 60.

**SECTION 23‑17‑70.** Negligent escape of prisoner on mesne or final process.

The sheriff shall be liable for the negligent escape of any prisoner on mesne or final process to such damages as the plaintiff may have sustained. The insolvency of the prisoner shall not mitigate the damages below the amount sufficient to carry costs.

HISTORY: 1962 Code Section 53‑217; 1952 Code Section 53‑217; 1942 Code Section 3537; 1932 Code Section 3537; Civ. C. ‘22 Section 2080; Civ. C. ‘12 Section 1187; Civ. C. ‘02 Section 862; G. S. 681; R. S. 742; 1839 (11) 46.

CROSS REFERENCES

Aiding or permitting escape or taking of prisoners, see Sections 16‑9‑410 et seq.

Library References

Sheriffs and Constables 104.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 256 to 258.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Smith v Hart (1802) 2 SCL 395. Yates v Yeaden (1826) 15 SCL 18. Boyce v Barksdale (1827) 15 SCL 141. Baker v Deliesseline (1827) 15 SCL 372. Harvey v Huggins (1831) 18 SCL 252. Akin v Moore (1833) 19 SCL 432. Hall v Taggart (1838) 23 SCL 368. State for Kelsey & Halstead v Rosborough (1845) 31 SCL 241. Conyers v Rhame (1957) 45 SCL 60.

State and county did not owe special duty to homeowner to prevent escaped inmate from breaking into homeowner’s home, despite statute providing that sheriff is liable for negligent escape of inmate who causes damages; recovery under that statute is authorized for damages suffered when prisoner escapes sheriff’s custody after prisoner has been committed to custody of sheriff in civil action, and not in criminal action. Washington v. Lexington County Jail (S.C.App. 1999) 337 S.C. 400, 523 S.E.2d 204. Counties 148; States 112.2(4)

**SECTION 23‑17‑80.** Punishment for permitting escape of convicted criminal.

If any sheriff, deputy sheriff, jailer or other officer wilfully suffer a prisoner in his custody under conviction or under any criminal charge not capital to escape, he shall suffer the like punishment and penalties as the prisoner suffered to escape was sentenced to, or would be liable to suffer, upon conviction of the crime or offense wherewith he stood charged.

HISTORY: 1962 Code Section 53‑218; 1952 Code Section 53‑218; 1942 Code Section 3538; 1932 Code Sections 1533, 3538; Civ. C. ‘22 Section 2081; Cr. C. ‘22 Section 480; Civ. C. ‘12 Section 1188; Civ. C. ‘02 Section 863; G. S. 682; R. S. 742; 1839 (11) 46; 1869 (14) 309.

CROSS REFERENCES

Aiding or permitting escape or taking of prisoners, see Sections 16‑9‑410 et seq.

Library References

Sheriffs and Constables 104.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 256 to 258.

**SECTION 23‑17‑90.** Illegal arrest.

If any sheriff or deputy sheriff, without writ, warrant or process, shall summon anyone by arresting the person or attaching the goods to appear in any of the courts of this State, not having at that time any process to justify such summons, upon complaint thereof, on oath, such sheriff or deputy shall be liable to be punished for a contempt by either the court of common pleas or general sessions for his county. But nothing herein contained shall prevent the sheriff or his deputy from arresting any person for treason, felony or breach of the peace committed in his presence or from arresting any person for treason or felony upon probable and reasonable grounds.

HISTORY: 1962 Code Section 53‑219; 1952 Code Section 53‑219; 1942 Code Section 3521; 1932 Code Section 3521; Civ. C. ‘22 Section 2064; Civ. C. ‘12 Section 1171; Civ. C. ‘02 Section 846; G. S. 661; R. S. 726; 1839 (11) 41.

Library References

Arrest 60.

Westlaw Topic No. 35.

C.J.S. Arrest Sections 4 to 5.

**SECTION 23‑17‑100.** Penalty for purchasing judgments, decrees or executions by sheriff or deputy.

If any sheriff or his deputy shall contract for, buy or purchase any judgment or decree of any court which it may become his duty to enforce or any execution lodged in his office or cause the same to be done, directly or indirectly, such sheriff or his deputy shall forfeit and pay for every such offense treble the amount of such judgment, decree or execution, one half of which forfeiture shall be paid to the State and the other half to the informer. Such forfeiture shall be recoverable with full costs by action or by indictment in any court of competent jurisdiction. And by any such purchase such judgment, decree or execution shall be ipso facto satisfied.

HISTORY: 1962 Code Section 53‑220; 1952 Code Section 53‑220; 1942 Code Section 3534; 1932 Code Sections 1535, 3534; Civ. C. ‘22 Section 2077; Cr. C. ‘22 Section 480; Civ. C. ‘12 Section 1184; Civ. C. ‘02 Section 859; G. S. 677; R. S. 739; 1823 (6) 213; 1839 (11) 47.

Library References

Sheriffs and Constables 99 to 152.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 107 to 258, 272, 278 to 385, 461 to 468.

**SECTION 23‑17‑110.** Penalties for purchase by sheriff or deputy at sheriff’s sale.

It is unlawful for a sheriff or deputy sheriff to be concerned or interested, directly or indirectly, in the purchase of any property sold by him in his official capacity. If a sheriff or deputy sheriff has a concern or interest in the purchase at a sale made by him, he is guilty of a misdemeanor and, upon conviction, must be deprived of his office and fined in the discretion of the court or imprisoned not more than two years. A purchase made is null and void.

HISTORY: 1962 Code Section 53‑221; 1952 Code Section 53‑221; 1942 Code Section 3539; 1932 Code Sections 1534, 3529; Civ. C. ‘22 Section 2082; Cr. C. ‘22 Section 481; Civ. C. ‘12 Section 1189; Cr. C. ‘12 Section 555; Civ. C. ‘02 Section 864; Cr. C. ‘02 Section 398; G. S. 684; R. S. 743; 1791 (7) 263; 1823 (6) 213; 1839 (11) 55; 1993 Act No. 184, Section 197.

Library References

Sheriffs and Constables 99 to 152.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 107 to 258, 272, 278 to 385, 461 to 468.

NOTES OF DECISIONS

In general 1

1. In general

For related cases, see Singletary v Carter (1830) 17 SCL 467. Lewis v Brown (1850) 35 SCL 293. Matheney v M’Donald (1850) 36 SCL 77. Leger v Doyel (1957) 45 SCL 109. Barrineau v Stevens (1906) 75 SC 252, 55 SE 309.

**SECTION 23‑17‑120.** Rule to show cause or attachment barred two years after expiration of term.

No sheriff shall be liable to be served with any rule to show cause or attachment at any time after two years from the expiration of his office.

HISTORY: 1962 Code Section 53‑222; 1952 Code Section 53‑222; 1942 Code Section 3529; 1932 Code Section 3529; Civ. C. ‘22 Section 2072; Civ. C. ‘12 Section 1179; Civ. C. ‘02 Section 854; G. S. 671; R. S. 734; 1801 (5) 412; 1839 (11) 44.

CROSS REFERENCES

Civil remedies and procedures generally, see Title 15.

**SECTION 23‑17‑130.** Liability of sureties of sheriff.

The return of nulla bona on any execution against the sheriff shall not be necessary before legal resort may be had against his sureties or any of them. There shall be liability to contribution among the sureties aforesaid in case of joint suretyship.

HISTORY: 1962 Code Section 53‑223; 1952 Code Section 53‑223; 1942 Code Section 3480; 1932 Code Section 3480; Civ. C. ‘22 Section 2029; Civ. C. ‘12 Section 1143; Civ. C. ‘02 Section 827; 1839 (11) 391.

Library References

Sheriffs and Constables 144.

Westlaw Topic No. 353.

C.J.S. Sheriffs and Constables Sections 272, 278 to 288, 461 to 468.

NOTES OF DECISIONS

In general 1

1. In general

For related cases on sheriff’s bond, see Commissioners of Treasury v Executors of Moore (1806) 4 SCL 51. Commissioners of Treasury v Mayrant (1807) 4 SCL 228. Blanding v Rogers (1810) 4 SCL 394. Commissioners of Treasury v Muse (1814) 5 SCL 150. Dunlap v Bynum (1817) 4 SC Eq 646. Clifton v Executors of Haig (1812) 4 SC Eq 330. Executors of Hawkins v Sumter (1814) 4 SC Eq 446. Kelly v Payne (1821) 12 SCL 138. Commissioners of Treasury v Securities of Neuby (1821) 12 SCL 184. Stevens v Treasurers (1822) 13 SCL 107. Treasurer of State v M’Guire (1824) 16 SCL 474. Futch v Walker (1828) 17 SCL 98. Treasurers of State v Bates (1831) 18 SCL 362. Harris v Ferguson (1831) 18 SCL 397. Treasurers of State v Burch (1834) 20 SCL 519. Treasurers v Munday (1836) 21 SCL 167. State ex rel. Atty. Gen. v Yates (1837) 21 SCL 230. State v Irby (1836) 26 SCL 485. Williamson v King (1840) 16 SC Eq 41. Treasurers v Executors of McPherson (1841) 27 SCL 69. Leslie & Calhoun v Taggart (1841) 27 SCL 71. Treasurers v Oswald (1842) 27 SCL 145. Treasurers v Buckner (1842) 27 SCL 323. State v Wylie (1847) 33 SCL 113. Rowell v Mulligan (1847) 33 SCL 379. Posey v Ramey (1849) 35 SCL 20. Allen v Ramey (1849) 35 SCL 30. Black v Ramey (1849) 35 SCL 79. Bowie v Ramey (1849) 35 SCL 84. Norton v Mulligan (1850) 35 SCL 355. State use of Taylor v Easterling (1844) 30 SCL 310. Williams & Clinton v Sims (1843) 18 SC Eq 53. McKenna v Secrest (1850) 23 SC Eq 160. State for Lumpkin v Yongue (1853) 40 SCL 323. Treasurers of South Carolina for State v Sureties of Hilliard (1832) 42 SCL 412 (ovrld on other grounds by McCall v Batson, 285 SC 243, 329 SE2d 741). State use of Persons v Staggers (1859) 46 SCL 286. McElwee v Jeffreys (1875) 7 SC 228. Lyles v Bolles (1876) 8 SC 258. State ex rel. Coleman v Cason (1879) 11 SC 392. State ex rel. Jones v Boles (1880) 13 SC 283. State ex rel. Detheridge v Gilreath (1881) 16 SC 100. Oliver v White (1882) 18 SC 235. State ex rel. Slay v Williams (1883) 19 SC 62.