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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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.