

**Sheriff, Right to Require Indemnity Bond—Indian Allotments, Execution Against.**

Sheriff has not the right to require an indemnity bond from judgment creditors for levy of execution against patented Indian allotments.

April 24, 1920.

Mr. W. J. Shannon,  
County Attorney,  
Cut Bank, Montana.

Dear Sir:

I have your letter in which you ask whether or not the Sheriff has the right to require an indemnity bond from judgment creditors who desire to have execution levied against patented Indian allotments.

This proposition is a difficult one to decide. The statutes do not confer upon the Sheriff, the right to require an indemnity bond in levying execution against real estate. The statute by Section 6821 provides what property is liable on execution. It expressly excepts therefrom exempt property. It is undoubtedly true that patented Indian allotments are exempt from execution for an indebtedness of the patentee, where such indebtedness accrued prior to the issuance of patent. The merging of the debt in a judgment would not change this provision of the law. The law attaches to the patent as an express condition. (*First State Bank of Shelby vs. Bottineau County Bank, Mont.*, 185 Pac. 162). Under such circumstances, if the Sheriff attempts to sell real estate on execution, it being exempt by the Federal statutes, no title would be conveyed to the purchaser. (*Johnson vs. Twichell, N. D.* 301 N. W. 318.)

There is considerable diversity of opinion upon the Sheriff's right to demand an indemnity bond in levying on property which is exempt from execution and where the statute does not give him that authority. It is held by some courts that the Sheriff is bound to know his duties with respect to exemptions (*Evans vs. Collar, Mich.*, 42 N. W. 957). Again it is held that the Sheriff proceeds at his own risk, whether in levying or failing to levy upon property. It would seem to me that the practical view under our statutes would be that the Sheriff can not compel a judgment creditor to furnish an indemnity bond particularly in case of real estate. The court has supervisory power over its orders and the judgment debtor may apply to it for an annulment of the writ of execution before it is issued and sale made thereunder. Under the circumstances, and particularly in view of the fact that the statute gives no such authority, I do not believe that the Sheriff may require a judgment creditor to furnish him with indemnity bonds before levying execution on real estate. If the property is exempt I am of the opinion that the statute contemplates an absolute refusal on the part of the Sheriff to levy the same thereon. I take it that the writ relivered to the Sheriff reads that he shall levy the execution upon property not exempt therefrom.

Respectfully,

S. C. FORD,

Attorney General.