

Nineteen Hundred Thirty-One
Supplement

to

Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the
Legislature, both new and amendatory, and notes showing repeals,
together with annotations from the various courts, state
and federal, construing the constitution, statutes,
charters and court rules of Minnesota



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§9657. Action for death by wrongful act.

11. Limitation of actions.

Action for death against city must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

16. Damages.

Where the action is brought to recover for death by wrongful act, and the defense is contributory negligence by one or more of the next of kin or beneficiaries, the proper practice is to require the jury to assess the value of the loss of the life to all the next of kin and by special verdict determine who, if any, of the next of kin was guilty of contributory negligence. Har-

ington v. A., 235NW534. See Dun. Dig. 2616 (7).

\$2,564, held not excessive for death of child. 179M528, 229NW784.

16b. Negligence.

Negligence of defendant held not the proximate cause of death. 171M486, 214NW763.

17. Evidence.

Evidence of financial condition of next of kin, held admissible. 179M528, 229NW784.

§9661. Next of kin—Liability for debts.

32F(2d)665.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

§9677-1. State may take fidelity insurance.

—The comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employes in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commission shall direct, insuring the fidelity of such department employes in the respective amounts so required, upon a form to be prescribed by the comptroller. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the Commission shall require. The surety upon the bonds of all state officers and state employes required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form and generally by the comptroller, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state. (Laws 1929, c. 263, §1; Apr. 20, 1931, c. 233, §1.)

§9677-2. Payment of premium.

—The premiums upon the bonds of all state officers and the premiums on all fidelity insurance placed under the provisions of this act shall be paid out of the appropriation for the maintenance of the department for which such bond or insurance is required, and such fidelity insurance, when placed in lieu of individual bond, shall be deemed full compliance with any provision of law requiring any such official or employe to give bond to the state for the faithful discharge of duty.

If schedule or position insurance is provided covering the personnel of any department or agency all individual fidelity bonds covering such officers or employes theretofore bonded shall be canceled and a proportionate part of the premiums paid therefor refunded. (Laws 1929, c. 263, §2; Apr. 20, 1931, c. 233, §2.)

§9677-3. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Laws 1929, c. 263, §3; Apr. 20, 1931, c. 233, §3.)

§9692. Undertaking in lieu of bond.

174M56, 218NW444.

§9700. Contractors bonds.—No contract with the State, or with any municipal corporation or other public board or body thereof, for the doing of any public work, shall be valid for any purpose, unless the contractor shall give bond to the state or other body contracted with, for the use of the obligee and of all persons doing work or furnishing skill, tools, machinery or materials or insurance premiums or equipment or supplies for any camp maintained for the feeding or keeping of men and animals engaged under, or for the purpose of, such contract, conditioned for the payment, as they become due, of all just claims for such work, tools, machinery, skill, materials, insurance premiums, equipment and supplies, for the completion of the contract in accordance with its terms, for saving the obligee harmless from all costs and charges that may accrue on account of the doing of the work specified, and for the enforcing of the terms of the bond if action is brought on the bond, including reasonable attorney's fees, in any case where such action is successfully maintained and for the compliance with the laws appertaining thereto. The penalty of such bond shall be not less than the contract price, and if after the giving of said bond the contract price should for any reason be increased, the obligee may require an additional bond, the penalty of which shall be not less than the amount of such increase, and if such additional bond be not furnished within ten days after such demand, the work on such contract shall cease until such additional bond shall have been furnished. Provided, that in contracts made by the state board of control or the Minne-

sota Highway Department on behalf of the state the penalty of the bond shall be in such amount as the state board of control or the Commissioner of Highways may fix, but not less than three-quarters of contract price. (As amended Apr. 25, 1929, c. 369, §1; Apr. 20, 1931, c. 229, §1.)

1. In general.

There could not be any recovery from. 172M259, 214NW888.

"Insurance premiums" includes insurance. 174M366, 219NW546.

Purpose to furnish bond under this section being established, it cannot be defeated by omission of one of its provisions, either voluntary or through inadvertence. 174M366, 219NW546.

The charter of Duluth gives the city council power to enact ordinances regulating the letting of contracts for public work and prescribing surety bonds. 174M579, 219NW943.

Particular language of contract controlled over general language in bond as respected work to be done and premium chargeable for bond. 175M14, 220NW543.

Construction of two additional bridges under "work order," held not a change or modification of the original contract, but an independent undertaking, and surety on original bond was not entitled to additional premium. 175M14, 220NW543.

In a suit by a creditor against surety on bond which guarantees payment for material furnished, the doctrine of substantial performance has no application. 175M256, 220NW958.

Contractor discovering mistake in bid for construction of school building three years after the transaction, could not obtain recovery of the deposit which had been forfeited for failure to furnish a bond. 177M329, 225NW149.

2. "Materials."

While under rule of *Miller v. Am. Bonding Co.*, 133M336, 158NW432, there may be recovery for material and labor used in incidental repairs of contractor's machinery, there can be none for major repairs involving replacement of old with new parts in absence of proof that the new parts were consumed in the work. 178M288, 226NW940.

3. Bank advancing money.

Bank held not entitled to recover from surety for advances made to contractor, following *First Nat. Bank v. O'Neil*, 223NW298. *First Nat. Bk. Aitkin v. H.*, 225NW11.

§9702. Approval and filing of bond.—Such bond shall be approved by, and filed with, the treasurer of the obligee named therein unless the contract be for work upon a state trunk highway, or erection, improvement, or repair of buildings for a state institution, in which case it shall be approved and filed with the board or officer having the financial management thereof (OF SUCH INSTITUTION). If such bond be not taken, the corporation or body for which work is done under the contract shall be liable to all persons furnishing labor, skill or material to the contractor thereunder for any loss resulting to them from such failure. No assignment, modification or change of the contract, or change in the work covered thereby, nor any extension of time for completion of the contract, shall release the sureties on said bond. (As amended Apr. 13, 1931, c. 157.)

Construction of two additional bridges under "work order," held not a change or modification of the original contract but an independent undertaking, and surety on original bond was not entitled to additional premium. 175M14, 220NW543.

Construction of a more robust wall under work order, held a mere "change" or "modification" of the original contract. 175M14, 220NW543.

§9703. Action on bond.

175M8, 220NW958; notes under §§9700, 9705.

A bank which advances money to pay checks for labor and material is not subrogated to the rights of the laborers and materialmen. *First Nat. Bk. of Chisholm v. O.*, 223NW298.

Bank held not entitled to recover from surety for advances made to contractor, following *First Nat. Bank v. O'Neil*, 223NW298. *First Nat. Bk. Aitkin v. H.*, 225NW11.

In action by surety against township to recover for completion of abandoned contract, burden of proof was upon plaintiff to show what work it performed and how much was still due. 177M408, 225NW291.

Liability on contractor's bond held properly determined by trial court by whom case was tried without a jury. 178M183, 226NW473.

§9705. Limit of time to bring action.—No action shall be maintained on any such bond unless within ninety days after the completion of the contract and acceptance thereof by the proper public authorities, the claimant shall file a written notice specifying the nature and amount of his claim and the date of furnishing the last item thereof, in the office of the commissioner of insurance in case the contract is for the performance of work for the state or any department thereof, and in case the contract is let by any county, municipal corporation or other public board or body, then such notice shall be filed in the office of the county auditor of the county letting the contract or the county in which such municipal corporation, public board or body is situate, and if situate in two or more counties then such notice shall be filed in the office of the county auditor of each such counties; nor unless the action is begun within one year after the filing of such notice. The county auditor shall enter the time of filing every such notice in a book kept for that purpose which shall be properly indexed. (As amended Apr. 25, 1929, c. 369, §2.)

Notice mailed to the surety at its home office in another state, authorized action on bond. 171M305, 214NW47.

In a suit on a contractor's bond for material furnished in the erection of a school building the notice prescribed by this section is sufficient though not specifying the date on which the last item was furnished; and the evidence held to show a proper service of the notice on the bonding company. 172M424, 215NW675.

Construed as referring to the "completion of the building" and not to the "completion of the contract." 174M366, 219NW546.

The doctrine of *Johnson v. Laurence*, 171M202, is not controlling as between the surety and creditors of a public contractor. 174M366, 219NW546.

As between the surety and creditors there must be strict performance of the contract, and the doctrine of substantial performance has no application. *Id.*

An acceptance of a building by a school board does not require the formal acceptance by motion or resolution passed by the board in session. It does require an act with intent to receive the building as its own as a compliance with the required duty of the contractor. 174M366, 219NW546.

Notice required by this section does not apply to bonds given by those who enter contracts with city of Duluth for public work. 174M579, 219NW943.

Required notices to surety held given within 90 days of completion of contract. 175M256, 220NW958.

Notice on surety held to sufficiently specify the "nature of the claim." Any deficiency in notice was waived by the surety retaining and acting on it without suggesting defect. 176M113, 222NW573.

§9705-1. Notice.—The commissioner of insurance or the county auditor in whose office the written notice above specified is filed shall upon receipt of said written notice mail one copy of the same by registered mail to the principal contractor, at his last known address, and to each of the sureties on his bond, at their last known addresses, and the claimant shall at the time he files said written notice furnish the commissioner of insurance or the county auditor in whose office the notice is filed at least two copies of said notice. The commissioner of insurance or county auditor with whom said notice is filed shall be entitled to charge a fee of \$1.00 for filing said notice and mailing the copies as herein provided; and provided further that the failure of the commissioner of insurance or the county auditor with whom said notice is filed to mail said copies as herein provided, shall in no way affect the validity of the claim or the right of the claimant to maintain an ac-

tion thereon. (Act Apr. 25, 1929, c. 369, §3.)

§9705-2. Not to affect pending actions.—This act shall not affect any action or proceedings now pending in any of the courts of this state. (Act Apr. 25, 1929, c. 369, §4.)

§9705-3. Effective May 1, 1929.—This act shall take effect and be in force from and after May 1, 1929. (Act Apr. 25, 1929, c. 369, §5.)

§9706. Actions for fines, forfeitures, and penalties, etc.

Actions with respect to money found in forfeited gambling devices. Op. Atty. Gen., June 19, 1931.

§9707. Fines, how disposed of.

Amount of forfeited bail bond paid into municipal court must be paid into county treasury. Op. Atty. Gen., Oct. 5, 1923.

CHAPTER 86

Actions to Vacate Charters, Etc., and to Prevent Usurpations

§9709. To annul act of incorporation—Fraud.

179M373, 229NW353.

§9710. To vacate charter, etc.

179M373, 229NW353.

§9711. For Usurpation of office, etc.

Action by quo warranto to test title to office in private corporation may be brought in the district court by other officers and stockholders of the corporation without application to, or action by, the attorney general. 179M373, 229

CHAPTER 87

Special Proceedings

MANDAMUS

§9722. To whom issued.

1. When will lie.

Where commerce commission suspends sale of registered securities pending a hearing to show cause why registration should not be cancelled, and before the hearing the corporation requests a cancellation of the registration, the commission has no right to compel the production of its records and papers, in the absence of some specific allegation of a violation of the Blue Sky Law. 172M328, 215NW186.

A writ will not be granted where, if issued, it would prove unavailing or where lapse of time has rendered the relief sought nugatory. 173M350, 217NW371.

Petitioner must show he is entitled to relief sought but where he seeks to compel public officials to form a governmental duty they are presumed able to perform and the burden is upon them to show the contrary. 173M350, 217NW371.

Where discretion of town supervisors with respect to the opening of a road has been exercised in an arbitrary and capricious manner, the court may exercise control, but it must be made to appear that there are not only available funds but also sufficient available funds to do whatever else may, in the reasonable judgment of the board, be needful on the other town roads. 175M34, 220NW166.

When an executive or administrative body determines a matter involving the exercise of its discretionary power the courts do not interfere. 175M583, 222NW285.

Mandamus is not the proper remedy to correct an error in fixing the time of trial, but if the trial court refuses to proceed with trial, mandamus is the remedy. State ex rel. Collins v. Dist. Ct. of Ramsey County, 222NW931.

Power given by §2609 to town board to determine necessity of cutting down hedges and trees in highway is discretionary and cannot be controlled by mandamus. 177M372, 225NW296.

Mandamus does not issue from this court to review a judgment of the district court entered upon the hearing of a motion to dismiss an action brought by the relator, a resident and citizen of another state, under the Federal Employers' Liability Act to recover damages sustained while in the employ of a railroad engaged in interstate commerce in such other state. State ex rel. Boright v. Dist. Ct. Steele County, 226NW569.

Will not be granted to compel county to publish annual statement in newspaper unlawfully entering into agreement with other papers to obtain contract. 178M484, 227NW499.

The writ will not lie to compel the attorney general to try a civil action brought by the state at the "next term" of court. 178M442, 227NW 891.