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1905

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4520. Heirs and devisees—Limit of recovery—In actions brought against several heirs or several devisees jointly, the amount of plaintiff's recovery shall be apportioned among all the heirs of the ancestor, or all the devisees of the testator, in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each. (5940)

4521. Devisees, when liable—Limitations—Devisees made liable to creditors of their testator by the provisions of this chapter shall not be held liable unless it shall appear that his personal assets and the real property descended to his heirs were insufficient to discharge the debt, or that after due proceedings before the probate court the creditor has been unable to recover the debt or any part thereof from the personal representative of the testator, or his next of kin, legatees, or heirs. In either of said cases the amount of the deficiency of the personal assets, and of the real property descended to satisfy the debt of the plaintiff, and the amount which he may have failed to recover from the personal representative, next of kin, legatees, and heirs of the testator, may be recovered of the devisees, to the extent of the real property devised to them respectively. But nothing in this section shall affect the liability of the devisees for a debt of their testator which was charged by will exclusively upon the real property devised, or made payable exclusively by such devisees, or out of the real property devised before resorting to the personal property or to any other real property descended or devised. (5491-5493)

4522. Devisees—Application of chapter—The provisions of this chapter with regard to heirs, and to proceedings by and against them, and to judgments and executions against them, are applicable to actions and proceedings against devisees, and they must in like manner be jointly sued. (5944)

CHAPTER 85

OFFICIAL AND OTHER BONDS—FINES AND FORFEITURES

4523. Bonds, etc.—Sureties, qualifications—Same when otherwise specially provided by statute, every bond, recognizance, or undertaking required or permitted to be made, given, tendered, or filed for the security or protection of the state, or of any person, corporation, municipality, or department thereof, or any other organization whatever, and conditioned for the doing or not doing of anything in such instrument of security specified, shall be signed by two or more sureties, who shall be residents and freeholders of the state, and shall justify as provided in § 4524. Every bond or recognizance shall also be signed by the principal, and every bond shall be acknowledged by the principal and sureties. (5947)

4524. Modes of justification—The justification of sureties, mentioned in § 4523, shall be by affidavit, annexed to the bond or other security, wherein each surety shall state under oath that he is worth double the amount for which he justifies above his debts and other liabilities and exclusive of his property exempt from execution. Where in the cases provided by law exception is taken to sureties, they shall be examined by the judge or officer before whom they are required to attend for purposes of justification, in such manner as he shall deem proper. The examination shall be reduced to writing and filed in the cause, and, if the judge or officer deems the sureties sufficient, he shall indorse his approval upon the instrument, and return the same to the proper custodian thereof. (5281-5283)

4525. Surety companies—Whenever the bond or other instrument is required to be made with one surety, or with two or more sureties, it shall be sufficient if the same be executed, or the conditions thereof be guaranteed, solely by a corporation authorized by law so to do. But no such corporation shall be accepted or approved as a surety or guarantor unless it holds the

certificate of the insurance commissioner, showing that it is authorized to contract as such. (5947; '95 c. 175 s. 56)

4526. Sureties for part of penalty—Sureties may be accepted, in the discretion of the approving officer or body, for a part only of the penalty, and may justify in separate and different sums; but the aggregate liability of the sureties shall in all cases be not less than that required by law if each surety had justified in the full amount. ('95 c. 354 s. 2)

4527. Undertaking in lieu of bond—In all cases of appeal from a county board to the district court upon the allowance or disallowance of claims, in all actions brought before justices of the peace, in all appeals from a justice or probate court to the district court, in all actions begun in the district court, in all cases of appeal or writ of error to remove a cause or proceeding therein to the supreme court, and in all cases of special or equitable proceedings in the district or supreme courts, the filing or service or both, as may be required, of an undertaking, signed by a surety or sureties as the law may require, containing a condition substantially the same as required for bonds, with like sureties, qualifications, and justifications, and without acknowledgment or signature of the principal, shall be deemed a sufficient compliance with the law to sustain any such action, appeal, or proceeding. Every such undertaking shall save and secure all rights and liabilities to the same extent as a bond, and the damages presumed to accrue to the party against whom such proceeding is taken shall be deemed a sufficient consideration for such undertaking, though no consideration be mentioned therein; but no undertaking or bond need be given upon any appeal or other proceeding instituted in favor of the state, or any county, city, town, or school district therein, or of any executor or administrator as such. ('989)

29-367, 13+194; 32-277, 20+195; 35-307, 29+131; 63-265, 65+445; 78-142, 80+871, 81+529.

4528. Cost of surety bond—Any receiver, assignee, trustee, committee, guardian, executor, administrator, or other fiduciary, required by law to give bond as such, may include as a part of his lawful expenses such reasonable sum paid for such suretyship, not exceeding ten dollars per annum when the amount of the bond is not more than one thousand dollars, and not more than one-half of one per cent. per annum on the excess when over one thousand dollars, as the head of the department, court, judge, or officer by whom or the court or body by which he is appointed allows; and in all actions or proceedings the party entitled to recover costs may include therein the reasonable fees of such company for executing or guaranteeing any bond or undertaking therein. The several county and town boards, and the governing body of any city, village, or school district, may allow the treasurer of the municipality such reasonable sum, not exceeding the amount herein specified, as may have been paid by him for such suretyship, to be paid out of the general revenue fund of the municipality: Provided, that the officers required by law to approve such bill may first designate the surety company to be employed, if its charges be as low as those offered by any other responsible company. (5948; '95 c. 175 s. 57; '01 c. 145; '03 c. 239)

4529. Bonds, by whom approved—Except as otherwise provided by law in particular cases, bonds shall be approved as follows:

1. The official bonds of all state officers, including those of the treasurers, superintendents, and other officials, and employees of the several public educational, charitable, penal, and reformatory institutions belonging to the state, shall be approved, as to form, by the attorney general, and in all other respects by the governor and the public examiner, or one of them;

2. The official bonds of county, town, city, village, and school district officers and employees by the governing body of the municipality for whose security they are respectively given;

3. Those required or permitted by law to be given in any court, by the judge or justice of the court in which the proceeding is begun or pending.

No officer, official, or employee required to give bond shall enter upon his duties until his bond is duly approved and filed.

4530. Place of filing bonds—Except when otherwise especially provided by law, the bonds of public officials shall be filed as follows:

1. Those of all state officers, including the officials and employees of the several departments and institutions thereof, with the secretary of state, who shall record and retain the same;

2. Those of all county officers, and of all other officials or persons, given to the county, with the register of deeds; and after the same have been recorded by the register, he shall file them with the secretary of state for safe-keeping;

3. Those of all city, village, and borough officers, with the clerk of such municipality;

4. Those of school district officers, with the clerk of the district.

4531. Same—In court proceedings—All bonds required or permitted by law to be given in actions or proceedings in any court shall be filed in said court, unless especially required by law to be filed, delivered, or deposited elsewhere, or unless the judge or justice of such court shall by written order direct some other disposition thereof.

4532. Examination of accounts of public officers—In case of the filing of a new official bond or other security, the expiration of the term of office, or the death, resignation, or removal of the officer, the officer, board, committee, or body required or permitted to accept or approve such bond or other security, having jurisdiction or being authorized or required to examine the accounts of such officer, shall make or cause to be made a thorough examination of his accounts, and, if any shortage or irregularity is discovered, shall at once notify such officer and his sureties of the amount claimed to be due, or the nature of the irregularity. Such statement shall be in writing, and be served upon such officer and his sureties, or their agents or attorneys, by mail, addressed to their residences, if known; but failure to make the examination or give such notice shall not discharge the sureties. ('95 c. 126)

4533. Official bonds, security to whom—Actions—The official bond or other security of a public officer, whether with or without sureties, shall be security to all persons severally for the official delinquencies against which it is intended to provide, as well as to the obligee designated therein, and when no other provision is made by law it shall run to the state. When a public officer, by official misconduct or neglect, forfeits his bond or renders his sureties liable thereon, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he is entitled by reason of the delinquency; and a judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency. (5951, 5952, 5954)

22-97; 35-167, 28+191; 64-318, 67+64; 89-68, 93+1056.

4534. Leave to bring action—Indorsement on execution—Before an action shall be brought by a plaintiff other than the state or body politic named in the bond, leave shall be obtained of the district court of the county in which the action is triable, or a judge thereof, by the production of a copy of the bond and an affidavit showing the delinquency; and if the delinquency be such that, if established on the trial, it would entitle the applicant to recover, leave shall be granted. Upon the execution issued on a judgment recovered upon the official security of a public officer, against him and a surety, there shall be indorsed a direction to the officer to whom the same is delivered to collect the same out of the property of the principal, if sufficient can be found, and, if not, out of the property of the surety. (5953, 5955)

35-167, 28+191; 53-309, 55+128; 42-57, 43+690; 89-68, 93+1056.

4535. Bonds of public contractors—Penalty—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

4533-4534
103-M - 221

09 4535
- - 429

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103-M - 43
114-NW 262

use of the obligee and of all persons doing work or furnishing skill, tools, machinery, or materials 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, and materials, 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 compliance with the laws appertaining thereto. The penalty of such bond shall be not less than the contract price. ('95 c. 354 s. 1; '97 c. 307; '01 c. 321)

69-336, 72+565; 77-92, 79+649; 82-187, 84+956; 93-336, 101+495; 94-45, 101+940; 94-246, 102+703; 104+1077.

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4536. Same—Approval and filing—Liability for failure—Changes—Such bond shall be approved by, and filed with, the treasurer of the obligee named therein unless the contract be for the erection, improvement, or repair of buildings for a state institution, in which case it shall be approved by and filed with the board or officer having the financial management 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 of the contract, nor any modification of the building or work covered thereby, nor any extension of time for its completion, shall release the sureties on said bond. ('95 c. 354 s. 1; '97 c. 307; '01 c. 321)

4537. Same—Action on bond—Any person entitled to the protection of such bond may maintain an action thereon for the amount due him. He shall notify the obligee named in the bond of the beginning of such action, giving the names of the parties, describing the bond sued upon, and stating the amount and nature of his claim. No judgment shall be entered in such action within thirty days after the giving of such notice. The obligee, or any other person having a cause of action on such bond, may be admitted, on his motion, as a party to such action, and the court shall determine the rights of all parties thereto. If the amount realized on said bond be insufficient to discharge all such claims in full, such amount shall be distributed among the parties pro rata. ('95 c. 354 s. 4; '97 c. 307)

4538. Insolvent or insufficient sureties—Whenever in its judgment any of the sureties on such bond have become insolvent, or for any cause are no longer proper or sufficient sureties, the obligee may require the contractor to furnish a new or additional bond within ten days; and thereupon, if so ordered by such obligee, all work on such contract shall cease until such new or additional bond is furnished. If such bond be not furnished within such time, the obligee may at its option determine the contract, and complete the same as the agent and at the expense of such contractor and his sureties. ('95 c. 354 s. 5)

4539
09 - - 413
4539. Limit of time to bring action—No action shall be maintained on any such bond unless within ninety days after performing the last item of work, or furnishing the last item of skill, tools, machinery, or material, the plaintiff shall serve upon the principal and his sureties a written notice specifying the nature and amount of his claim and the date of furnishing the last item thereof, nor unless the action is begun within one year after the cause of action accrues. ('95 c. 354 s. 7; '97 c. 307)

94-45, 101+940.

4540
101-M - 289
4540. Actions for fines, forfeitures, and penalties—Collusion—Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or who by special provisions of law are authorized to recover them; and, whether prosecuted by public officers or by private persons, shall be governed by the same rules as other civil actions, except as herein otherwise prescribed. When an action is brought for a penalty, the amount of which is limited by law, it may be brought for the amount so limited, and upon trial the amount recovered shall be in proportion to the offence. Recovery of a judgment for a penalty or forfeiture, by collusion be-

tween the parties and with intent to save the defendant from the consequences contemplated by law, where the same is given wholly or partly to the prosecutor, shall not prevent a recovery of the same by another person. (5956-5958)

4541. Fines, how disposed of—Fines and forfeitures not specially granted or appropriated by law shall be paid into the treasury of the county where the same are incurred. (5959)

47-521, 50+700.

4542. Prosecution for fines, etc.—Court—Commitment—All fines and forfeitures imposed as a punishment for any offence or for the violation of any duty imposed by statute may be prosecuted for and recovered by indictment in the district court, or, when the amount or value thereof does not exceed one hundred dollars, before a justice of the peace, who shall have jurisdiction therefor concurrently with the district court; and in all cases of the imposition of a fine pursuant to statute, as punishment for any offence, the offender may be committed until the same is paid or he is otherwise discharged according to law. (5960)

29-187, 12+529; 38-143, 36+443; 55-183, 56+688; 84-367, 87+916.

CHAPTER 86

ACTIONS TO VACATE CHARTERS, ETC., AND TO PREVENT USURPATIONS

4543. To annul act of incorporation—Fraud—The attorney general may bring an action in the name of the state against a corporation to annul the act of incorporation, or of renewal thereof, on the ground that such act was procured upon some fraudulent suggestion, or concealment of a material fact, by some or all of the incorporators, or with their knowledge and consent. (5961)

88-329, 92+1112; 104+948, 953.

4544. To vacate charter, etc.—An action may be brought by the attorney general in the name of the state to vacate the charter or annul the existence of a corporation, other than municipal, whenever such corporation:

1. Offends against any act creating, altering, or renewing it;
2. Violates any provision of law whereby it forfeits its charter by abuse of its powers;
3. Forfeits its privileges or franchises by failure to exercise its powers;
4. Does or omits any act amounting to a surrender of its corporate rights, privileges and franchise; or
5. Exercises a franchise or privilege not conferred upon it by law.

The attorney general shall bring action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved, and in every other case in which satisfactory security shall be given to indemnify the state against costs and expenses. (5962)

36-246, 258, 30+816. See 35-222, 28+245; 40-213, 224, 40+1020; 104+948, 953.

4545. For usurpation of office, etc.—Whenever the attorney general has reason to believe that a cause of action can be proved, he may bring an action in the name of the state, upon his own information or upon the complaint of a private person, against the person offending, in the following cases:

1. When any person usurps, intrudes into, or unlawfully holds or exercises any public office or any franchise, or any office in a corporation created by authority of the state;
2. When any public officer does or suffers an act which by law causes a forfeiture of his office; or

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101-M - 281
112-NW 269