

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 85

OFFICIAL AND OTHER BONDS—FINES AND FORFEITURES

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9677. Bonds, etc.—Sureties, qualifications—Save 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 § 9686. Every bond or recognizance shall also be signed by the principal, and every bond shall be acknowledged by the principal and sureties. (4523) [8231]

Not applicable to bonds other than statutory official bonds (120-399, 139+714).

126-435, 148+454; 133-461, 157+998.

The fundamental essential of mutual insurance, that the insured and insurer are identical, will not permit a mutual company to write surety bonds for public officials 167-198, 208+659.

9678. Surety bonds to federal government—Whenever the laws of the United States, or the regulations or orders of any department of the federal government, require the delivery of a properly executed surety bond, conditioned in a specified manner, as a condition precedent to receiving military property, or equipment, or property of the federal government, from the federal government, or as a prerequisite to doing any specified act, then and in such case the chief executive officer of any institution under the financial control of the state board of control may execute and deliver such bond, and if corporate sureties join in the execution of the same, then the cost thereof may be paid by such executive officer out of the funds at his disposal. ('19 c. 98 § 1)

9679. Liberty loan bonds security—Any person or corporation who may make a contract with the state,

or with any municipal corporation, or any public board or department thereof, for the doing of any public work, including construction of any drainage ditch, may, in lieu of giving the usual bond or undertaking, pledge United States liberty or victory loan bonds, now or hereafter issued, as security for the protection of the state, or such corporation, board or department with which such contract is made, and of all persons doing work or furnishing skill, tools, machinery, or materials under or for the purpose of executing such contract. Such bonds so pledged shall be security for the payment, as they become due, of all just claims for work, tools, machinery, skill and materials, and for the performance and completion of the contract in accordance with its terms, and as security for all costs and charges that may accrue on account of the doing of the work specified and compliance with the laws relating thereto. ('19 c. 346 § 1)

9680. How deposited—Said bonds so pledged shall be delivered to the officer or department required by law to receive the bonds of public contractors, or who may be designated by the state or other municipal corporation or department with which the contract may be made. The deposit of said securities shall be in lieu of and substitution for the bonds required by law to be given by such contractors. ('19 c. 346 § 2)

9681. Market value—The market value of the bonds so pledged shall not be less than the contract price. ('19 c. 346 § 3)

9682. Protection of pledge on commencing action—Any person entitled to the protection of such pledge, wishing to avail himself of its benefits at the time of commencing any action against either the contractor or any subcontractor engaged in said work, shall notify in writing the state or corporation or department with which such pledge is made, of the commencement of such suit, giving the names of the parties and the amount and nature of his claim. No judgment shall be entered within 30 days after the giving of such notice and the state or other corporation or department with which such bonds are pledged and any other person entitled to the protection of such pledge may be admitted on its or his motion as a party to said action, and the court shall determine the rights of all parties in the premises. In such suit or other appropriate action in which the corporation or department holding said bonds is a party, the court may order the bonds, or a part of them sufficient to pay the unpaid claims, sold at public auction or private sale or on the New York Stock Exchange and from the proceeds, after deducting the costs of sale, make payments among the parties to the suit entitled thereto; if the proceeds are insufficient to pay said claims in full, they may be paid pro-rata. If the state or other corporation or department does not appear and defend, it may after entry of judgment in favor of such claimants, enforce said pledge and sell the securities at public or private sale or upon the New York Stock Exchange, and it shall have in addition any and all rights and remedies given pledgees by law for the enforcement of their securities, but it shall not be required to sell such security until 90 days after com-

pletion of contract and acceptance of the work done as provided in the succeeding section, or until the work is completed at the instance of the corporation if abandoned by the contractor. ('19 c. 346 § 4)

9683. Additional security—Whenever in its judgment other or further security is required, the state or such other corporation or department may require the contractor to furnish other or further security of the same nature within ten days, and thereupon if so ordered, the work on such contract shall cease until such other or further security is furnished. If such other or further security is not furnished within such time, the pledgee may at its option terminate the contract and complete the same as the agent and at the expense of such contractor. ('19 c. 346 § 5)

9684. Notice of claim—No action shall be maintained by any person seeking to avail himself of the benefit of such pledge, unless within 90 days after the completion of the contract and acceptance by the proper public authorities of the work done; the plaintiff shall serve upon the contractor and upon the state or such corporation or department 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 service of such notice. ('19 c. 346 § 6)

9685. Receivers bonds to run to state—Bonds given by receivers and trustees appointed by the district court in any action or proceeding shall run to the State of Minnesota for the benefit of all persons in interest. Any person interested may maintain an action in his own name upon any such bond. ('21 c. 17 § 1)

9686. Modes of justification—The justification of sureties mentioned in § 9677 shall be by affidavit, annexed to the bond or other security, wherein each surety shall state under oath that he is worth a certain definite amount above his debts and liabilities and exclusive of his property exempt from execution, but the aggregate of the amount sworn to as aforesaid by all the sureties shall be not less than double the amount of the penalty of such bond or other security. 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 endorse his approval upon the instrument, and return the same to the proper custodian thereof. (R. L. § 4524, amended '07 c. 311 § 1) [8232]

9687. State and county officers—Uniform bond—Whenever by law an official bond is required of any state or county officer, it shall be sufficient for all purposes if the same be substantially in the following form:

Know all men by these presents that as principal, and as suret...., are jointly and severally held and firmly bound to the state of Minnesota in the sum of dollars, lawful money of the United States, to the payment of which, well and truly to be made, we hereby bind ourselves, and each of us, our, and each of our heirs, executors, administrators, successors and assigns, firmly by these presents.

Sealed with our seals and dated this day of A. D. 19....

The condition of the above obligation is such, that whereas, the above bounden was heretofore duly elected (or appointed) to the office of

Now therefore, if the said shall faithfully and impartially, in all things, during his continuance in office, perform the duties thereof without fraud, deceit or oppression, and pay over without delay to the officer entitled by law thereto all moneys which shall come into his hands by virtue thereof, then this obligation shall be void; otherwise to remain in full force and effect.

.....(Seal)
Signed, sealed and delivered in presence of

.....
.....
('09 c. 107 § 1) [8233]
*122-504, 142+899.

9688. Bonds executed under other provisions—All those rights and obligations which would be created were the bond of any such officer executed under any other law are hereby declared to exist and be of the same force where such bond is executed in the foregoing form. ('09 c. 107 § 2) [8234]

9689. 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. (4525) [8235]

126-188. 148+55; 140-494, 168+714.

9690. When surety is to be subrogated—Whenever the surety upon the bond of any state officer shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of such officer, such surety shall be subrogated to all the rights of the state and if there shall be any property, evidence of indebtedness, or other obligation, or evidence thereof, in the possession of any official of the state and which shall have been received in connection with the transaction wherein such loss shall have occurred, the governor upon satisfactory proof that such loss has been so paid and the obligation of such bond fulfilled by said surety, shall thereupon by sufficient instruments of transfer, assign, transfer or convey to such surety any such property, evidence of indebtedness or obligation. ('17 c. 492 § 1)

9691. 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. (4526) [8236]

9692. 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 sus-

tain 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. (4527) [8237]

29-367, 13-194; 32-277, 20+195; 35-307, 29+131; 63-265, 65+445; 78-142, 80+871, 81+529; 144-236, 175+542.

9693. 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. (4528) [8238]

9694. 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. (4529) [8239]

139-146, 165+692.

9695. 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 safekeeping;

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. (4530) [8240]

9696. 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. (4531) [8241]

9697. 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. (4532) [8242]

9698. 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. (4533) [8243]

22-97; 35-167, 28-191; 64-313, 67+64; 89-68, 93+1056; 119-168, 137+816; 156 Fed. 21, 84 C. C. A. 187; 198 Fed. 606; 133-274, 158+394; 137-100, 162+1054.

In this action by a sheriff on the bond of his deputy, a judgment was properly ordered for defendant surety on the pleadings, where the complaint failed to show any loss to plaintiff by reason of the deputy's wrongdoing. 163-410, 204+158.

9699. 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. (4534) [8244]

35-167, 28+191; 42-57, 43+690; 53-309, 55+123; 89-68, 93+1056; 137-353, 163+533.

In proceeding to decide the case on the merits, without entering an order granting leave to sue as of the date of the commencement of the action, none of the surety's substantial rights were prejudiced, and there was no error in the denial of its motion for a new trial based solely on the failure to obtain leave to sue on the bond before the action was commenced. 167-32, 208+526.

In view of section 9255, G. S. 1923, permitting a defendant to plead all the defenses he may have, the common-law rule that a plea in abatement is waived by answering to the merits does not obtain in this state. 167-32, 208+526.

That no leave of court to sue on an official bond has been obtained cannot be raised, where the answer consists only of a general denial. 210+161.

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 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 Minnesota Highway Departments 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 the contract price. (R. L. § 4535, amended '09 c. 429 § 1; '23 c. 373 § 1) [8245]

1. In general.

69-336, 72+565; 77-92, 79+649; 82-187, 84+956; 93-336, 101+495; 94-45, 101+940; 94-246, 102+703; 96-290, 104+1077; 103-43, 114+262; 106-208, 118+794. Cited (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

One who furnishes materials and labor in performance of contract for public works as subcontractor, pursuant to contract with original contractor, entitled to benefit of bond (108-508, 122+312). One unpaid for materials furnished contractor held entitled to sue, though bond does not recite that it was for benefit of such persons (110-267, 125+269). Bond not invalid because penalty less than amount required by statute (110-267, 125+269). Right of contractor performing work which is accepted without giving bond (116-500, 134+129). See 119-60, 137+192; 125-211, 146+359; 126-188, 148+55; 133-54, 157+901; 133-336, 153+432; 135-10, 159+1075; 137-100, 162+1054; 139-389, 166+533; 145-438, 177+664; 152-343, 183+733, 191+733; 195+796.

165-158, 206+49; 209+911; 213+543.

Effect of failure to require bond. 160-293, 199+919.

The bond was conditioned for the payment by the contractor of claims for camp supplies and equipment furnished to him. This provision made the surety liable for the value of such supplies when furnished to a subcontractor at his request, in which the contractor joined. 160-433, 200+839.

The surety is liable for the value of goods furnished to laborers employed by the contractor and the subcontractor, when furnished on orders they had given to

their men, the amount thereof being deducted from the wages due to the men. The indorsement and delivery of such orders to the merchants furnishing the goods operated as an assignment of the amount of the labor claims represented by the orders. 160-453, 200+839.

As a general rule a public contractor's bond is not to be interpreted so as to subject the surety to liability for labor claims arising after the work is abandoned, but special facts and circumstances may give rise to liability. When the surety has taken an assignment of the contractor's interest in his equipment, to become effective if the contractor defaults in the performance of the contract, it is liable for the rental value of horses hired by the contractor and retained in his possession, with the knowledge of the surety, after work has ceased. 160-453, 200+839.

The surety is also liable for the value of feed for the horses during the period mentioned above. 160-453, 200+839.

It is also liable for the wages of men employed at the contractor's camp in caring for the horses and other property after work has ceased; the surety having knowledge of the situation. 160-453, 200+839.

There being nothing in the contract excusing defendant's performance for that reason, a general car shortage did not excuse performance by defendant. 161-178, 201-414.

Upon defendant's default plaintiff procured paying blocks from other sources, paying no more than the fair market value thereof. It is entitled to recover damages accordingly, notwithstanding the fact that, if it had waited some time, it might have procured the blocks from defendant under the contract at the contract price. Plaintiff was not compelled to await defendant's convenience. 161-178, 201+414.

So far as surety is concerned, the case is within the rule of *Bell v. Kirkland*, 102 Minn. 213, 113 N. W. 271, 13 L. R. A. (N. S.) 793, 120 Am. St. Rep. 621, for the bond sued upon recited the existence of the contract, and therefore prevents the surety from asserting its invalidity on account of any defect in its execution. 161-178, 201+414.

That the moneys so unconditionally paid to the subcontractor became its money, and it could use it as its own, and the surety cannot direct application of payments, and that the plaintiff may recover the balance of its account from the original contractor and the surety. *Jefferson v. Church of St. Matthew*, 41 Minn. 392, 43 N. W. 74, followed. Chapter 105, Laws 1915, does not modify this rule of law, nor reflect any intent of the Legislature to adopt as the public policy of the state any contrary rule. 161-231, 200+410.

The contract for the construction of the road obligated the contractor to place "shoulders" on each side of the roadway, and the surety on its bond is liable to plaintiff for the amount due him under an agreement with the contractor which covered "shoulder work." 166-7, 206+934.

Extent of liability of surety. 212+171.

2. "Materials."

Provisions, groceries, and meats are not included in the word "materials." 157-198, 195+796.

The contractor's bond conditioned for the payment, among other things, for "materials under or for the purpose of the contract," covers lubricating oil used by the engine furnishing power for the excavation of gravel, and lubricating oils and gasoline used by the motor trucks in transporting the gravel from the pit to the embankment. 161-169, 200+937.

Provisions and commissary supplies are not material, though because of the remoteness of the construction it is necessary for the contractor to provide boarding camps, following *Westling v. Republic Cas. Co.*, 157 Minn. 198, 195 N. W. 796. 212+460.

3. Bank advancing money.

Equity of bank advancing money to contractor. 167-352, 209+315.

4. Workmen's Compensation Act.

209+644.

5. Time to bring suit.

A provision in a contract and bond given pursuant to section 9700, Gen. St. 1923, limiting the time to bring suit to a less period than fixed in section 9705, is held unreasonable and void. 165-313, 206+450.

6. Venue. 166-499, 207+648.

Venue. 166-499, 207+648.

9701. Bidders to have right of action in certain cases—From and after the passage of this act any bidder upon any public work or public improvement of any kind in the state of Minnesota where bids therefor

are received and where in connection with such bids a deposit of money, or a certified check, or bond or other security is required to be given for the performance of said bid if accepted, the political subdivision of the state causing said public work or other public improvement to be made or done shall be liable to such bidder for a return to him of the money, certified check or other thing of value so deposited by him in the event of the non-acceptance of his bid on such public work or improvement, or in the event of the acceptance of his bid, during the interval between such acceptance and the entering into of a contract for such work and the giving of security in connection therewith by him and this liability shall exist even though the failure to return such money, certified check or other thing of value be occasioned by the defalcation or unlawful conversion thereof by the officer of such political subdivision clothed with the custody thereof. ('23 c. 348 § 1)

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 the 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 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. (R. L. § 4536, amended '07 c. 379) [8246]

Liability imposed on corporation, when it neglects to take bond, is incurred when contract is valid and is for construction of public improvements made by corporation in exercise of its public governmental, as well as its private corporate powers (97-487, 107+560). Where contract was entered into and acted on by both parties, municipality could not urge irregularities in formation, to defeat recovery for failure to require bond (103-43, 114+262). Liability for failure to require bond, extends to losses suffered by those dealing with contractor by his insolvency. No liability attaches where he is solvent (103-43, 114+262). See 112-474, 128+672; 226 U. S. 276, 33 Sup. Ct. 17, 57 L. Ed.—; 152-343, 188+733.

9703. 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. (4537) [8247]

Cited (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

The surety on the statutory bond may be sued alone, without joining his principal. 161-169, 200+937.

9704. 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. (4538) [8248]

Cited (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

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 of the building by the proper public authorities, 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 service of such notice. (R. L. § 4539, amended '09 c. 413 § 1) [8249]

94-45 101+940. Effect of amendment of 1909 as to notice (115-382, 132+259).

A change in the remedy without substantial modification of the obligation of the contract is all that is effected by applying to an action on the bond of a contractor the provision of 1909 c. 413 changing the requirements in force when the bond was executed (33 Sup. Ct. 17, 226 U. S. 276, 57 L. Ed. —).

126-435, 148+454; 133-90, 157+998; 134-124, 158+803; 137-353; 163+776.

An itemized and verified statement of the account of a subcontractor against the general contractor, indicating the job out of which the charges arose and stating the date of the last item, is sufficient notice to the surety of a claim against the general contractor. The verdict establishes that the agent of the surety, served with such notice had apparent authority to receive it. 162-501, 203+410.

A provision in a contract and bond given pursuant to section 9700, Gen. St. 1923, limiting the time to bring suit to a less period than fixed in section 9705, is held unreasonable and void. 165-313, 206+450.

9706. 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 between 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. (4540) [8250]

Section permissive, and does not exclude attorney general (101-277, 112+269).

9707. 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. (4541) [8251]

47-521, 50+700; 116-101, 133+469.

9708. 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. (4542) [8252]

29-187, 12+529; 38-143, 36+443; 55-183, 56+688; 84-367, 87+916; 117-173, 134+509.