

1938 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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Where defendants did not ask for a reduction of death verdict or apportionment because of negligence of one beneficiary, no complaint could be made after a general verdict had been found favorable to administratrix. *Luck v. M.*, 191M503, 254NW609. See Dun. Dig. 2617.

Contributory negligence on part of mother of a child seven years old, which was killed by an automobile on a public highway, held question of fact for jury. *Dickey v. H.*, 195M292, 262NW869. See Dun. Dig. 2616.

In action for death of wife in a collision at highway intersection, contributory negligence of plaintiff held for jury. *Duncanson v. J.*, 195M347, 263NW92. See Dun. Dig. 2616.

Where in action for wrongful death, representative of estate of deceased would be sole beneficiary of any recovery, his contributory negligence bars recovery against defendant whose negligence caused death. *Jenson v. G.*, 195M556, 263NW624. See Dun. Dig. 2616(6).

Contributory negligence of deceased driver of car in nighttime in colliding with truck which had just pulled car out of ditch, blocking highway, held for jury. *Szyperski v. S.*, 198M154, 269NW401. See Dun. Dig. 2620.

16d. Presumptions.

Circumstantial evidence is sufficient to rebut presumption of due care on part of a deceased. *Faber v. H.*, 194M321, 260NW500. See Dun. Dig. 2616, 7032.

Driver killed in automobile collision is presumed to have exercised due care. *Vogel v. N.*, 196M509, 265NW350. See Dun. Dig. 2616(12).

It is incorrect to say that presumption of due care on part of decedent does not apply where there are eye witnesses to accident, and although the presumption is only an inference which law permits from appropriate facts, and since burden of proof upon issue of contributory negligence is upon defendants, the effect of the presumption or inference is governed by the state of the record at the time of submitting case to jury. *Anderson v. K.*, 196M578, 265NW821. See Dun. Dig. 2616, 3431, 7032.

A very strong presumption arises that deceased exercised due care to save himself from personal injury or death, and the question is always one of fact for jury unless undisputed evidence so conclusively and unmistakably rebuts presumption that honest and fair-minded men could not reasonably draw different conclusions therefrom. *Szyperski v. S.*, 198M154, 269NW401. See Dun. Dig. 2616.

Driver of car killed in accident is presumed to have exercised due care. *Laiti v. M.*, 199M167, 271NW481. See Dun. Dig. 2616.

Where driver of automobile was killed in a collision at a street intersection, with a street-car, presumption of due care of plaintiff's decedent is conclusively overcome by evidence which discloses that as a matter of law his negligence contributed to cause his death. *Geldert v. B.*, 274NW245. See Dun. Dig. 2616(12).

Elements of compensation for the death of a minor child. 16MinnLawRev409.

17. Evidence.

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

Person killed in an accident in the absence of eyewitnesses is presumed to have exercised due care. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 2616(12).

It was not error to refuse to receive in evidence the general inventory filed in probate court in decedent's estate, as bearing upon the amount of damages resulting from his death. *Quinn v. Z.*, 184M589, 239NW902. See Dun. Dig. 2619.

In action to recover for death by wrongful act, directed verdict for defendant is proper, where evidence of causal connection between defendant's wrongful act and death is merely conjectural and speculative. *Peterson v. L.*, 186M101, 242NW549. See Dun. Dig. 2620.

In an action for wrongful death of wife, evidence of plaintiff's use of intoxicants, coupled with testimony indicating that wife, because thereof, was contemplating a separation and possible divorce, is relevant. *Peterson v. P.*, 186M583, 244NW68. See Dun. Dig. 2617.

Evidence held to sustain finding that death from lobar pneumonia 52 days after automobile accident was caused by it. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 2620, 6999.

In a death action wherein it appeared mother of decedent was sole beneficiary, mortality tables were admissible to show life expectancy of the mother, even if not admissible to show life expectancy of decedent, who was in ill health. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 3353.

Mortality tables were admissible in evidence in action for death though evidence indicated that decedent had a weak heart. *Id.*

Evidence that plaintiff collected money on insurance carried on life of decedent and that she received at his death personal and real property from his estate, although not to be considered in arriving at amount of damages for his wrongful death, was admissible in refutation of testimony of plaintiff that she had no money with which to redeem certain real property of her husband sold under foreclosure. *Wright v. E.*, 193M509, 259NW75. See Dun. Dig. 2570b, 7193, 7202.

Presumption that a deceased person exercised due care for his own safety yields to credible undisputed testimony, and does not remain to create an issue of fact against such evidence. *Faber v. H.*, 194M321, 260NW500. See Dun. Dig. 2616, 7032.

In action against druggist evidence held to sustain finding that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused death of his child. *Berry v. D.*, 195M366, 263NW115. See Dun. Dig. 2620.

In action for death of one caught upon door handle of moving automobile, evidence held not to support a verdict for plaintiff. *Markgraf v. M.*, 197M571, 267NW515. See Dun. Dig. 2620.

Evidence held not to support a finding that lobar pneumonia, from which plaintiff's intestate died, was caused by collision, occurring over five weeks prior to pneumonia, connection as proximate cause lacking as a matter of law. *Honer v. N.*, 198M55, 268NW852. See Dun. Dig. 2620.

In action by husband for wrongful death of wife, testimony as to second marriage and services of second wife is inadmissible and incompetent for any purpose whatsoever, especially where there are small children. *Lorberbaum v. C.*, 198M289, 269NW646. See Dun. Dig. 2619.

9601. Next of kin—Liability for debts.

Gilbertson v. M., (CCA8), 32F(2d)665.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. *Op. Atty. Gen.* (614f), Jan. 7, 1935.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

9677. Bonds, etc.

City officials should furnish new bond at beginning of each term of office, and a renewal certificate of bonding company is insufficient. *Op. Atty. Gen.*, Jan. 24, 1933.

Reelected township officials are required to furnish new bonds instead of renewal certificates. *Op. Atty. Gen.*, June 5, 1933.

A rider to a bond should be executed and properly acknowledged as provided by this section. *Op. Atty. Gen.* (645b-2), Aug. 20, 1934.

Provision in bond covering state employees that renewal thereof may be by certification or endorsement thereon is not renewed by instrument purporting to be a schedule continuous list. *Op. Atty. Gen.* (45g), Nov. 1, 1934.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. *Op. Atty. Gen.* (469b-5), Feb. 21, 1936.

Where one of joint sureties on bond of city treasurer dies, claim for full amount of defalcation should be filed against his estate, and city may not compromise claim or divide it as between sureties, estate of decedent being financially able to pay in full. *Op. Atty. Gen.* (59a-12), July 22, 1936.

Bonds should cover entire term of official, and annual continuation certificates should not be approved. *Op. Atty. Gen.* (59a-8), July 8, 1937.

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 employees 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.)

Legislature intended by §5327 to fix amount of fidelity assurance of deputy and twelve examiners, leaving amount of bond for assistant and second assistant examiners to determination of administration. Op. Atty. Gen. (980a-8), May 5, 1937.

Banking division of department of commerce created pursuant to Laws 1909, c. 201, as amended by Laws 1925, c. 426, art. 8, is a department of state government within meaning of §9677-1, and legislature contemplated administration of amount of fidelity bond for those for whom legislature has not fixed amount. Id.

Official bonds of secretary of department of health should be referred to commission of administration and finance for approval, and continuation certificates should not be approved, such bonds should be cumulative. Op. Atty. Gen. (45a), May 7, 1937.

Law does not permit commission of administration and finance to write a blanket fidelity insurance policy to cover employes in more than one department, but each department head shall procure and keep in effect such a policy, and commissioner of banks, commissioner of insurance and commissioner of securities are each directing heads of a department within such rule. Op. Atty. Gen. (980a-8), May 10, 1937.

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.)

9679. Liberty loan bonds security.
Liberty bonds may be accepted in lieu of statutory bonds. Op. Atty. Gen. (707c), Sept. 20, 1935.

9687. State and county officers—Uniform bond.
Village treasurer and surety on official bond were not relieved from liability for money of village deposited in a bank that failed, where there was no compliance with statute. Village of Hallock v. P., 189M469, 250NW4. See Dun. Dig. 8022.

Interest cannot be recovered of the surety until notice of breach and demand to make good default of treasurer. Id. See Dun. Dig. 4884.

A city treasurer is guilty of malfeasance by depositing city funds in an undesignated bank of which he is stockholder, director, and assistant cashier, and a surety on his bond is liable for money lost through failure of the bank, notwithstanding stipulation in bond relieving surety from liability for loss caused by failure of any bank or other depository, and there is liability under a bond for funds wrongfully deposited during its term, though bank does not fail until afterwards. City of Marshall v. G., 193M188, 259NW377. See Dun. Dig. 6712, 8000, 8004, 8022.

Sureties on bond of school district treasurer cannot withdraw therefrom until the expiration of the term or by consent of all parties concerned. Op. Atty. Gen., Nov. 5, 1931.

9689. Surety companies.

Surety company held to have breached bond by failing to establish and maintain mortgage as lien prior to mechanic's liens. Danielski v. P., 186M24, 242NW342. See Dun. Dig. 9107c.

In action on lien priority bond, evidence held to sustain finding that plaintiff suffered damages through failure of surety to establish and maintain mortgage as lien prior to mechanic's liens. Danielski v. P., 186M24, 242NW342.

9692. Undertaking in lieu of bond.

174M56, 218NW444.

State is not required to furnish a bond in order to procure a temporary writ of injunction. State v. Nelson, 189M87, 248NW751. See Dun. Dig. 4499.

This section authorizes an appellant from probate court to post an undertaking in lieu of a bond. Devenney's Estate, 192M265, 256NW104. See Dun. Dig. 7791.

Where county issued auditor's warrant to Minnesota State Sanitarium and it was lost in the mail, the county auditor could issue a duplicate without a bond of the estate. Op. Atty. Gen., Aug. 20, 1931.

9693. Cost of surety bonds to be expense of receivers.—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 actual 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 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. (R. L. '05, §4528; G. S. '13, §8238; Apr. 17, 1933, c. 311.)

Laws 1935, c. 180. Counties having area of 5,000 square miles and population in excess of 200,000, may pay annual premium of officers surety bond.

Probate judge must keep record of proceedings in insanity and juvenile matters. Op. Atty. Gen., Mar. 27, 1935.

A village may not properly pay bond premium for officers of village, except the treasurer alone. Op. Atty. Gen. (469b), Oct. 16, 1934.

County board cannot require county attorney or judge of probate to furnish corporate surety bonds and cannot refuse to accept, arbitrarily, a proper personal bond when tendered, but such officers must pay their own premium. Op. Atty. Gen. (121a-3), Mar. 2, 1935.

9694. Bonds, by whom approved.

(3).

A supersedeas bond may be approved and filed in the Supreme Court after an appeal has been perfected and jurisdiction acquired. Barrett v. S., 184M107, 237NW881. See Dun. Dig. 325(74).

9695. Place of filing bonds.

Village treasurer's bond need not be filed or recorded with register of deeds, and county is under no obligation to pay expense of recording. Op. Atty. Gen., May 1, 1933.

9695-1. Bonds and oaths of probate court officials to be filed with Secretary of State.—Within 60 days after the passage of this act, all bonds and oaths of the judges, clerks, employees, and referees of the probate courts filed subsequent to June 30, 1935 in the offices of the county auditors shall be transmitted to the secretary of state to be filed and retained by him according to law. (Apr. 21, 1937, c. 321, §1.)

9698. Official bonds, security to whom—Actions.

Recourse cannot be had against surety on a bond of a public officer, conditioned for faithful performance of his official duties, because of negligence in acts done not within scope of his statutory duties, and furnishing of an abstract of chattel mortgages on hogs was not official duty of a register of deeds. Federal Intermediate

Credit Bank v. M., 194M150, 259NW793. See Dun. Dig. 8022.

Bond of city officer held sufficient to require its acceptance by city council though it contained no provision "for the use of all persons interested" and was executed for surety by "attorney" instead of "attorney-in-fact." State v. City of Eveleth, 196M307, 265NW30. See Dun. Dig. 8018.

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 Minnesota 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. (R. L. '05, §4535; '09, c. 429, §1; G. S. '13, §8245; '23, c. 373, §1; Apr. 25, 1929, c. 369, §1; Apr. 20, 1931, c. 229, §1.)

1. In general.

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

"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, 225 NW149.

Premiums for public liability, collision, and property damage insurance are not within the protection of the bond required of a public contractor. Kunz Ins. Agency v. P., 191M626, 255NW90. See Dun. Dig. 9107c.

By accepting order to pay another, contractor waived his right to retain money coming to subcontractor until he furnished evidence of full payment of claims for labor and material. Farmers State Bank v. A., 195M475, 263NW443. See Dun. Dig. 1847a.

Where road contractor hired equipment for \$1,200 per month, \$600 per month additional to be paid if equipment be used on double shift, second party guarantying rental for 60 days, and equipment was used on double shift for only part of 60 days and earned only \$2,180 for period used, contractor was only liable for \$2,400, and not for

an additional amount by reason of double shift. Mead v. S., 198M476, 270NW563. See Dun. Dig. 731.

Commercial fisherman's license bond held intended to be limited to provisions of §9700 to 9705 and governed by such sections rather than §9191 with respect to service of notice within 90 days and suit within one year. Op. Atty. Gen., Aug. 23, 1933.

Liberty bonds may be accepted in lieu of statutory bonds. Op. Atty. Gen. (707c), Sept. 20, 1935.

Owners of truck employed by county to haul gravel at a yardage rate need not furnish bonds to protect county against claims for gas and oil. Op. Atty. Gen. (125a-12), Dec. 18, 1935.

Respective equities and rights under building contractor's bond. 19MinnLawRev454.

Insurance premiums as an indebtedness for labor or material. 20MinnLawRev439.

Liability for loss of extras caused by defects in plans and specifications. 21MinnLawRev 70.

1½. Persons protected.

A mechanic, employed by a contractor to repair and keep in working condition a fleet of trucks used by such contractor in building a state highway, under contract with highway department, is employee on job protected by statutory bond. General Motors Truck Co. v. P., 191 M467, 254NW580. See Dun. Dig. 6093, 6719a.

2. "Materials."

While under rule of Miller v. Am. Bonding Co., 133 M336, 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. 178M 288, 226NW940.

Repair parts, which are minor, comparatively inexpensive items of current repairs, such as frequently wear out or break and have to be replaced in operation of a fleet of trucks in road work are covered by bond. General Motors Truck Co. v. P., 191M467, 254NW580. See Dun. Dig. 6093.

Finding that two main items of repair of trucks, each exceeding in value \$400, are minor and not major replacements or repairs is not sustained. Mack International Motor Truck Corp. v. W., 194M484, 260NW869. See Dun. Dig. 9107c.

Under rule stated in Clifton v. Norden, 178Minn288, 226NW940, 67ALR1227, and applied in General Motors Truck Co. v. Phillips, 191Minn467, 254NW580, differential and transmission assemblies in motor trucks used in highway construction jobs are not covered by bonds given pursuant to section. Id. See Dun. Dig. 9107c.

Liability of surety on public contractor's bond to materialmen. 16MinnLawRev312.

3. Bank advancing money.

Bank held not entitled to recover from surety for advances made to contractor, following First Nat. Bank v. O'Neil, 176M258, 223NW298. First Nat. Bk. Aitkin v. H., 177M194, 225NW11.

Condition in bond, that surety would be liable for payment of claims for labor and material on job, did not make surety liable to bank on assignment of particular fund, where surety had not consented or been a party to assignment and is not shown to have received any part of fund so assigned. Farmers State Bank v. A., 195M475, 263NW443. See Dun. Dig. 6719b.

Where bank, by agreement with subcontractor, had furnished him money for payment of claims for labor and material in performance of contract and had paid such claims, rights and equities of bank in fund assigned to it by order of subcontractor to contractor were superior to those of contractor and of surety on his bond. Id.

7. Attorney fees.

Attorney's fees are not allowable where defendants pay plaintiff's full claim with taxable costs prior to trial. Schutz v. I., 196M426, 265NW296. See Dun. Dig. 9107c.

9701. Bidders to have right of action in certain cases.

Commission of Administration and Finance may return a bidder's check where he has made an honest mistake in his estimates without gross negligence on his part, provided the next lowest bidder accepts the job and the state suffers no loss. Op. Atty. Gen., July 31, 1931.

County should refuse to return deposit made with bid until liabilities under the contract partially performed have been determined, the contractor having attempted to perform the work without giving the bond required by statute. Op. Atty. Gen., Sept. 5, 1931.

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. (R. L. '05, §4536; '07, c. 379; G. S. '13, §8246; 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., 176M258, 223NW298.

Bank held not entitled to recover from surety for advances made to contractor, following First Nat. Bank v. O'Neil, 176M258, 223NW298. First Nat. Bk. of Aitkin v. H., 177M194, 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. (R. L. '05, §4539; '09, c. 413, §1; G. S. '13, §8249; Apr. 25, 1929, c. 369, §2.)

Op. Atty. Gen., Aug. 28, 1933; note under §9700.

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.

The amendment by Laws 1929, c. 369, §2, does not apply to St. Paul, which has a home-rule charter. Guaranteed Concrete Co. v. G., 185M454, 241NW588.

Garnishees being liable on their bonds or not at all, there can be no recovery as against them where record fails to disclose compliance with this section. Shandorf v. S., 198M92, 268NW841. See Dun. Dig. 9107c.

Action on bonds of contractors in state highway project held barred because not brought within one year after filing of notice with commissioner of insurance. Shandorf v. S., 198M96, 268NW843. See Dun. Dig. 9107c.

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 action 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, 1929.

Fine of one under complaint of inspector in department of agriculture, dairy and food, was properly remitted to county of conviction. Op. Atty. Gen., July 9, 1932.

Fines provided for in Laws 1933, c. 170 (§5015-40), are "not specially granted or appropriated by law," and in absence of any agreement, by charter or otherwise, between city of South St. Paul and County of Dakota, they shall be paid into the treasury of the county. Op. Atty. Gen., Dec. 18, 1933.

Fines and costs in state cases in municipal courts, such as misdemeanors, are to be paid to county treasurer. Op. Atty. Gen. (306b-6), Apr. 6, 1934.

Fines collected under §8335-3 should be paid into the county treasury and not into the state treasury. Op. Atty. Gen. (135a-4), Aug. 3, 1934.

Justice of the peace is personally responsible for check taken in payment of fine. Op. Atty. Gen. (266b-9), Sept. 5, 1934.

Fines collected under §5015-40 are to be paid to county treasurer and not credited to railroad and warehouse commission fund. Op. Atty. Gen. (306h-6), Dec. 15, 1936.

9708½. * * * * *

DECISIONS RELATING TO CHAPTER IN GENERAL

1. Liability in general.

Official bond covering term of officer and "until successor is elected and qualified" extends only for a reasonable time after expiration of term. American Surety Co. v. Independent School Dist. (CCA8), 53F(2d)178. Cert. den., 284US683, 52SCR200. See Dun. Dig. 8021.