CHAPTER 574

BONDS, FINES, AND FORFEITURES

574.01 BONDS, REQUISITES AND EXECUTION.

HISTORY. 1893 c. 42 s. 1; G.S. 1894 s. 5947; R.L. 1905 s. 4523; G.S. 1913 s. 8231; G.S. 1923 s. 9677; M.S. 1927 s. 9677.

Sections 574.01 and 514.12, prescribing the requirements of official bonds, have no application to bonds other than statutory official bonds. Blied v Barnard, 120 M 399, 139 NW 714.

Work in dismantling a dredging ditch and putting it in condition to perform a drainage contract, performed by an employee of a drainage contractor, is a necessary part of the work incident to the performance of the contract and a proper liability against the surety on the contractor's bond. Rosman v Bankers Surety, 126 M 435, 148 NW 454.

The trial court properly relieved defendants from their default permitting the judgment to remain of record awaiting the outcome of the action. U. S. F. & G. v Johnson, 133 M 462, 157 NW 1069.

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. The facts involved in writing such bonds are inherently incompatible with mutual insurance. State ex rel v Wells, 167 M 199, 208 NW 659.

As to city officials a renewal certificate is insufficient. A new bond must be furnished at the beginning of each term. OAG Jan. 24, 1933; OAG June 5, 1933; OAG July 8, 1937 (59a-8).

Where the surety on an official bond desires to cancel during the official's term of office he must have the consent of all parties, and before the governing body cancel the old bond a new one must be furnished. 1936 OAG 50, Feb. 21, 1936 (469b-5).

The statute does not require the executive secretary of the county welfare board to furnish a bond, but, the state agency having jurisdiction may by resolution require it, and the board may pay the premium; and a bond so voluntarily furnished is enforceable. 1938 OAG 136, Aug. 25, 1937 (104a-2).

The commissioner of administration determines what state employees are to be bonded; and it is his duty to approve the bonds of such state officers as are required by statute to give bond. OAG June 24, 1939 (640).

574.02 STATE MAY TAKE FIDELITY INSURANCE.

HISTORY. 1929 c. 263 s. 1; 1931 c. 233 s. 1; M. Supp. s. 8677-1; 1943 c. 588 s. 1.

Where the legislature does not by statute fix the amount of fidelity bond to be furnished it devolves on the commissioner of administration to determine the necessity for and the amount of the bond. OAG May 5, 1937 (980a-8).

Unemployment commissioner designates the employees in his department to be bonded and the amount of bond. OAG April 13, 1939 (885).

Duties and responsibility of commissioner of administration relating to bonds of state officials and appointees fully outlined. OAG July 6, 1939 (640).

574.03 PAYMENT OF PREMIUM.

HISTORY. 1929 c. 263 s. 2; 1931 c. 233 s. 2; M. Supp. s. 9677-2.

Governmental responsibility for torts. 26 MLR 322.

574.04 SURETY BONDS TO FEDERAL GOVERNMENT.

HISTORY. 1919 c. 98 s. 1; G.S. 1923 s. 9678; M.S. 1927 s. 9678.

574.05 LIBERTY LOAN BONDS SECURITY.

HISTORY. 1919 c. 346 s. 1; G.S. 1923 s. 9679; M.S. 1927 s. 9679.

574.06 HOW DEPOSITED.

HISTORY. 1919 c. 346 s. 2; G.S. 1923 s. 9680; M.S. 1927 s. 9680.

574.07 MARKET VALUE.

HISTORY. 1919 c. 346 s. 3; G.S. 1923 s. 9681; M.S. 1927 s. 9681.

574.08 PROTECTION OF PLEDGE ON COMMENCING ACTION.

HISTORY. 1919 c. 346 s. 4; G.S. 1923 s. 9682; M.S. 1927 s. 9682.

574.09 ADDITIONAL SECURITY.

HISTORY. 1919 c. 346 s. 5; G.S. 1923 s. 9683; M.S. 1927 s. 9683.

574.10 NOTICE OF CLAIM.

HISTORY. 1919 c. 346 s. 6; G.S. 1923 s. 9684; M.S. 1927 s. 9684.

574.11 RECEIVERS' BONDS TO RUN TO STATE.

HISTORY. 1921 c. 17 s. 1; G.S. 1923 s. 9685; M.S. 1927 s. 9685.

574.12 MODES OF JUSTIFICATION.

HISTORY. R.S. 1851 c. 70 ss. 110 to 112; P.S. 1858 c. 60 ss. 114 to 116; G.S. 1866 c. 66 ss. 122 to 124; G.S. 1878 c. 66 ss. 139 to 141; G.S. 1894 ss. 5281 to 5283; R.L. 1905 s. 4524; 1907 c. 311 s. 1; G.S. 1913 s. 8232; G.S. 1923 s. 9686; M.S. 1927 s. 9686.

574.13 STATE AND COUNTY OFFICERS; UNIFORM BOND.

HISTORY. 1909 c. 107 s. 1; G.S. 1913 s. 8233; G.S. 1923 s. 9687; M.S. 1927 s. 9687.

A statutory bond containing the statutory condition and also other conditions will, unless the language of the bond precludes it, be so construed as to give effect to the statutory condition. Fairmont Co. v Davison, 122 M 504, 142 NW 899.

The village treasurer and his surety were not relieved from liability for the money of the village deposited in a bank that failed, for there was no compliance with section 427.01. The claim of the municipality against defendants bears interest from and after a demand is made on the sheriff and surety. Village of Hallock v Pederson, 189 M 470, 250 NW 4.

A stipulation in a bond of a city treasurer, in terms relieving the surety from liability for loss caused by the failure of any bank or other depository, mut be limited by construction so that the exemption will apply only where the loss results from failure of a depository properly designated pursuant to statute. City of Marshall v Gregoire, 193 M 191, 259 NW 377.

Liability for funds wrongfully deposited during the term is not avoided because the bank did not fail until afterwards. The wrongful deposit was the proximate cause of the loss. City of Marshall v Gregoire, 193 M 193, 259 NW 377.

574.14 BONDS EXECUTED UNDER OTHER PROVISIONS.

HISTORY. 1909 c. 107 s. 2; G.S. 1913 s. 8234; G.S. 1923 s. 9688; M.S. 1927 s. 9688.

574.15 SURETY COMPANIES.

HISTORY. 1893 c. 42 s. 1; G.S. 1894 s. 5947; 1895 c. 175 s. 56; R.L. 1905 s. 4525; G.S. 1913 s. 8235; G.S. 1923 s. 9689; M.S. 1927 s. 9689.

That plaintiff is a corporation and receives a premium for writing bonds of contractors doing state work does not defeat its right of subrogation; and in the instant case, having paid the contractor's creditor, the surety is entitled to equitable rights of subrogation to the money withheld by the state under the terms of the building contract. National Surety v Berggren, 126 M 188, 148 NW 55.

A surety company is not subject to the provision that no person already on a liquor license bond shall be accepted as a surety on another; nor is it incumbent on the plaintiff to allege that the surety company had duly obtained authority to do business in the state. State ex rel v Reiter, 140 M 491, 168 NW 714.

The evidence is sufficient to sustain a finding that the surety company breached the bond in that it did not establish and maintain the mortgage as a lien superior to mechanics liens upon the property mortgaged. Danielski v Pioneer Building Co. 186 M 24, 242 NW 342.

Requirements of the bond of the executive secretary of a county welfare board. 1938 OAG 136, Aug. 25, 1937 (104a-2).

574.16 WHEN SURETY TO BE SUBROGATED.

HISTORY. 1917 c. 492 s. 1; G.S. 1923 s. 9690; M.S. 1927 s. 9690.

574.17 SURETIES FOR PART OF PENALTY.

HISTORY. 1895 c. 354 s. 2; R.L. 1905 s. 4526; G.S. 1913 s. 8236; G.S. 1923 s. 9691; M.S. 1927 s. 9691.

574.18 UNDERTAKING IN LIEU OF BOND.

HISTORY. 1868 c. 80 s. 1; G.S. 1878 c. 124 s. 3; G.S. 1894 s. 7989; R.L. 1905 s. 4527; G.S. 1913 s. 8237; G.S. 1923 s. 9692; M.S. 1927 s. 9692.

Where an attorney for foreign clients, plaintiffs in execution, executed a bond in their name indemnifying the sheriff against a third party claimant, he did not transcend the limits of his implied authority in the premises. Schoregge v Gordon, 29 M 367, 13 NW 194.

An action on the bond is the sole remedy of the party against whom an injunction is wrongfully ordered. In the instant case it was held that the injunction was sued out without probable cause. The defendant's damages may be assessed in the same action, or in a suit on the bond. Hayden v Keith, 32 M 277, 20 NW 195.

The word "bond" is used as a general term, and includes recognizances; and on appeal from probate to district court an undertaking may be filed in lieu of a recognizance. Brown's Estate, 35 M 307, 29 NW 131.

In an action on an undertaking it is no defense that at the time the undertaking was given the defendant was insolvent, and had a judgment been taken at the time only a small percentage would have been recoverable. Estes v Roberts, 63 M 265, 65 NW 445.

An undertaking may be given in lieu of an attachment bond. The fact that undertaking did not contain the words of the statute "if the writ shall be set aside or vacated" is not a jurisdictional defect and does not render the judgment void. Schweigel v Shakman, 78 M 143, 80 NW 871.

Neither a municipal corporation nor its administrative officers are liable in damages suffered by a third person in consequence of judicial proceedings conducted in behalf of the municipality in the exercise of its governmental functions. Roerig v Houghton, 144 M 231, 175 NW 542.

Where a statute requires a bond to secure a deposit of public money, an undertaking given will be enforced as a common-law bond. The renewals from time to time of the certificates of deposit do not release the liability on the bond. Village of Farmington v Reisinger, 174 M 58, 218 NW 444.

The state is not required to furnish a bond in order to procure a temporary writ of injunction. State v Nelson, 189 M 89, 248 NW 751.

An undertaking (posted in lieu of bond) is in all respects sufficient on appeal from probate to district court. Devenney's Estate, 192 M 265, 256 NW 104.

A personal representative, plaintiff in an action for damages for wrongful death, is not relieved from furnishing a bond, or other security in case of appeal. Sworski v Colman, 203 M 545, 282 NW 276.

574.19 COST OF SURETY BONDS; PROPER EXPENSE ITEMS.

HISTORY. 1893 c. 42 s. 2; G.S. 1894 s. 5948; 1895 c. 175 s. 57; 1901 c. 145; 1903 s. 239; R.L. 1905 s. 4528; G.S. 1913 s. 8238; G.S. 1923 s. 9693; M.S. 1927 s. 9693; 1933 c. 311.

A village may pay the premium on the bond of the village treasurer, but not on that of other officials. 1934 OAG 117, Oct. 16, 1934 (469b); 1942 OAG 137, June 16, 1941 (476 B-4).

County board must accept a proper personal bond of judge of probate or county attorney when tendered. If a corporate bond be furnished, the officers must pay their own premium. OAG March 2, 1935 (121a-3).

The county board has the right to designate the corporate surety on the county treasurer's bond. 1942 OAG 198, Dec. 18, 1942 (450B).

Town board may not pay the premium on the bond of any town officer except that of town treasurer. OAG Sept. 22, 1944 (455c).

574.20 BONDS, BY WHOM APPROVED.

HISTORY. R.L. 1905 s. 4529; G.S. 1913 s. 8239; G.S. 1923 s. 9694; M.S. 1927 s. 9694; 1945 c. 317 s. 1.

The justice failed to procure and file a bond as required by law; but he was nevertheless a justice de facto, and acts done in his official capacity were valid. State v Van Vleet, 139 M 144, 165 NW 962.

After an appeal has been perfected and jurisdiction acquired by the supreme court a supersedeas bond may be approved and filed by that court. Barrett v Smith, 184 M 109, 237 NW 881.

Treasurer of a common school district when he filed his acceptance was told by the clerk that she would apply for a bond for him. It was his duty to furnish the bond and not having done so, a vacancy existed. OAG Aug. 10, 1939 (451a-23).

574.21 PLACE OF FILING BONDS.

HISTORY. R.L. 1905 s. 4530; G.S. 1913 s. 8240; G.S. 1923 s. 9695; M.S. 1927 s. 9695.

See section 125.29.

In the absence of statute the bond of a village treasurer need not be filed with the register of deeds, and the county need not pay the expense of rcording. 1934 OAG 866, May 1, 1933 (45a-4).

Generally, filing of official bonds. 1938 OAG 136, Aug. 25, 1937 (104a-2).

The bond of a village justice should be approved by the village council, and with his oath filed with the clerk of the district court. OAG Dec. 19, 1938 (260a-2).

Bonds of village clerk and village treasurer should be filed with the village clerk. OAG Jan. 26, 1944 (45b).

574.22 IN COURT PROCEEDINGS.

HISTORY. R.L. 1905 s. 4531; G.S. 1913 s. 8241; G.S. 1923 s. 9696; M.S. 1927 s. 9696.

574.23 EXAMINATION OF ACCOUNTS OF PUBLIC OFFICERS.

HISTORY. 1895 c. 126; R.L. 1905 s. 4532; G.S. 1913 s. 8242; G.S. 1923 s. 9697; M.S. 1927 s. 9697.

574.24 OFFICIAL BONDS, SECURITY TO WHOM; ACTIONS.

HISTORY. R.S. 1851 c. 79 ss. 1, 2, 4; P.S. 1858 c. 69 ss. 1, 2, 4; G.S. 1866 c. 78 ss. 1, 2, 4; G.S. 1878 c. 78 ss. 1, 2, 4; G.S. 1894 ss. 5951, 5952, 5954; R.L. 1905 s. 4533; G.S. 1913 s. 8243; G.S. 1923 s. 9698; M.S. 1927 s. 9698.

The board of county commissioners may sue the county treasurer, either on the bond or independent of it, for the conversion of funds belonging to the county treasury, and in such suit may recover for all funds converted: state, county, town, school, or other funds. Board v Smith, 22 M 97.

The statute requiring leave to be obtained from a judge of the district court before bringing action on an official bond, applies to constable's bonds. The matter of obtaining leave in no way reduces the period of limitation within which to sue. Litchfield v McDonald, 35 M 167, 28 NW 191.

Two provisions relating to time within which bond of assessor be filed construed and the filing according to the state law as incorporated in the city charter deemed sufficient. State ex rel v Wadhams, 64 M 319; 67 NW 64.

The sureties upon a county auditor's bond are liable for the acts of his deputy who fraudulently issues fictitious redemption and refundment orders for the purpose of obtaining money from the county treasury. Board v Sullivan, 89 M 68, 93 NW 1056.

The terms of the county auditor's bond define and determine the extent of the auditor's liability, which is no greater nor less than that of his sureties; the liability of both being measured by the terms of the bond, reasonably, but strictly construed. Foster v Malberg, 119 M 168, 137 NW 816.

Where moneys are received by the county auditor which rightfully should have been paid to the treasurer, the act being outside the scope of his official duties, his sureties are not liable for his misappropriation. County of Mower v American Bonding, 133 M 274, 158 NW 394.

Suit may be brought on a liquor dealer's bond without obtaining leave of court. Wunsewich v Olson, 137 M 98, 162 NW 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. Johnson v Amer. Surety, 163 M 410, 204 NW 158.

The furnishing of an abstract of chattel mortgages on hogs, being no part of the official duties of a register of deeds, his sureties are not liable on his bond because of negligent acts relating to the abstract. Federal Bank v Maryland Casualty, 194 M 150, 259 NW 793.

The city council was bound to accept the bond tendered by the relator, it being a legally enforceable bond. State ex rel v City of Eveleth, 196 M 307, 265 NW 30.

Although the state is named as obligee it gives a right of action on a bond to a person injured by defective work of a master electrician licensed under a bond written by defendant. Graybar v St. Paul Mercury, 208 M 478, 294 NW 654.

In an action on official bond for loss sustained by plaintiff purchaser of county warrants wrongfully issued and negotiated, judgment was properly entered against the county auditor and his sureties. State Bank v Billstrom, 210 M 497, 299 NW 199; Nat'l Surety v State Svgs. Bank, 156 F 21; Nat'l Surety v Arosin, 198 F 605.

Comity; action on sheriff's bond given in one state cannot be maintained in another. 7 MLR 239.

574.25 LEAVE TO BRING ACTION; ENDORSEMENT ON EXECUTION.

HISTORY. R.S. 1851 c. 79 ss. 3, 6; P.S. 1858 c. 69 ss. 3, 6; G.S. 1866 c. 78 ss. 3, 5; G.S. 1878 c. 78 ss. 3, 5; G.S. 1894 ss. 5953, 5955; R.L. 1905 s. 4534; G.S. 1913 s. 8244; G.S. 1923 s. 9699; M.S. 1927 s. 9699.

In order to sue on the bond of a constable leave must be obtained. Litchfield v McDonald, 35 M 167, 28 NW 191.

A county may prosecute an action against its treasurer and his sureties without first obtaining leave of court. County of Waseca v Sheehan, 42 M 57, 43 NW 690; Board v Sullivan, 89 M 68, 93 NW 1056.

The statute of limitations on this claim for refundment of money paid at a void tax sale commenced to run against plaintiff's claim upon the county on the day judgment was entered against him, and the date of the demand upon the auditor is immaterial. Easton v Sorenson, 53 M 314, 55 NW 128.

Conceding that General Statutes 1913, Section 8244 (section 574.25) applies, and that it was necessary to obtain leave of court before bringing action, the defendants waived the point by not raising it by demurrer or answer. Dawson v Northwestern, 137 M 353, 163 NW 772.

While the common law rule that a plea in abatement is waived by answering to the merits does not obtain in this state, in this case 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. Corey v Paine, 167 M 32, 208 NW 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. Mpls. St. Ry. v Hare, 168 M 423, 210 NW 161.

574.26 CONTRACTORS' BONDS.

HISTORY. 1895 c. 354 s. 1; 1897 c. 307; 1901 c. 321; R.L. 1905 s. 4535; 1909 c. 429 s. 1; G.S. 1913 s. 8245; 1923 c. 373 s. 1; G.S. 1923 s. 9700; M.S. 1927 s. 9700; 1929 c. 369 s. 1; 1931 c. 229 s. 1.

1. **Generally**
2. **Coverage**
3. **Subcontractors**
4. **Financing**
5. **Penalty**
6. **Actions**

1. Generally

Where in a contract between a city and a contractor, a bond is given in accordance with Laws 1895, Chapter 354, Section 1, the city cannot rightfully withhold payments agreed upon because the contractor is in default to laborers and materialmen, and the city is under no necessity of notifying the surety of such default. Amer. Surety v Board, 77 M 92, 79 NW 649.

Rules for the construction of contracts and other written instruments apply to official bonds, the application being guided by the further rule that sureties are not liable beyond the strict letter of their contract. Union Sewer v Olson, 82 M 187, 84 NW 956.

Failure of the village treasurer to approve a bond required under Laws 1895, Chapter 354, cannot in this case, affect a partially executed contract which became valid only by virtue of a subsequent adoption or renewal. Swenson v Village of Bird Island, 93 M 336, 101 NW 495.

Effect of Laws 1903, Chapter 382, a curative act, to validate municipal warrants for labor. Mchts. Nat'l v City of E. Grand Fks. 94 M 246, 102 NW 703; Kettle River v E. Grand Fks. 96 M 290, 104 NW 1077.

In an action to recover from a school district loss alleged to have been suffered by failure to require a bond of the contractor under Laws 1901, Chapter 321, there was insufficient proof to show insolvency of the contractor and therefore no recovery. Wilcox v School District, 106 M 208, 118 NW 794.

A public contractor's bond in which the penalty is less than amount required by statute is valid; and the execution of such bond, unless damage to claimant is shown, is a defense to an action against the municipality. Waterous Engine v Clinton, 110 M 267, 125 NW 269.

That the plaintiff was a corporation engaged in the business of executing bonds as a surety for a premium payment does not defeat its right to subrogation. Nat'l Surety v Berggren, 126 M 188, 148 NW 55.

In the instant case the meaning of trade expressions used in the contract were properly for the jury. Paine v U. S. F. & G. 135 M 10, 159 NW 1075.

So far as defendant surety is concerned, the case is within the rule of Bell v Kirkland, 102 M 213, 113 NW 271, for the bond sued upon recited the existence of the contract and prevents the surety from asserting its invalidity because of defect in its execution. City of Mpls. v Republic Co. 161 M 178, 201 NW 414.

There being nothing in the contract excusing defendants performance for that reason, a general car shortage did not excuse performance by defendant. City of Mpls. v Republic Co. 161 M 178, 201 NW 414.

As to venue in an action relating to proceedings involving a county drainage project, and the distinction between local and transitory actions, see County v Bisballe Co. 166 M 499, 207 NW 648.

The trial court properly found that a certain payment should be applied in accordance with the debtor's specific instead of his general directions. Standard Salt v Commercial Casualty, 171 M 40, 213 NW 543.

The purpose of the parties to furnish a public contractor's contract and bond under this section being established, the contract is made in reference to the law which imputes its provisions to the contract whether written therein or not. Guaranteed Gravel v Aetna Cas. 174 M 366, 219 NW 546.

The charter of the city of Duluth gives the city council power to enact ordinances regulating the letting of contracts for public work and prescribing surety bonds. Section 574.31 does not apply. Rand Kardex v Forrestal, 174 M 579, 219 NW 943.

The contract bonds in question referred to the contracts as being for designated highway "projects" as a whole, but the contracts themselves designated by particular language the precise work to be done. The particular language controls. Nat'l Surety v Erles, 175 M 14, 220 NW 543.

The required notices to surety were given within 90 days of the completion of the contract. The doctrine of substantial compliance has no application. Moose Lake v Amer. Surety, 175 M 256, 220 NW 958.

A contract for construction by the plaintiff of the exterior superstructure of a new court-house cannot be construed as requiring defendant to secure a bond for plaintiff's protection from a third party who was to furnish the stone for said superstructure. Zimmerman v Co. of Rice, 202 M 54, 277 NW 360.

Liberty bonds acceptable in lieu of statutory bonds. OAG Sept. 20, 1935 (707c).

Liability of surety on public contractor's bonds to materialmen. 16 MLR 313.

Respective equities and rights under building contractor's bond. 19 MLR 454.

Insurance premiums as an indebtedness within the bond for labor or material. 20 MLR 439.

Liability for loss of extras caused by defect in plans and specifications. 21 MLR 70.

2. Coverage

The liability of a public corporation for failure of its officers to require the contractor engaged in public improvement to execute and file a bond, extends to such losses as are suffered by those dealing with the contractor by reason of his insolvency or inability to pay the debts incurred by him. Wilcox Lbr. v School Dist. 103 M 43, 114 NW 262.

One who furnishes materials and labor in performance of a contract for public works as a subcontractor, pursuant to contract with original contractor, is entitled to benefit of bond. Horton v Crowley Elec. Co. 108 M 508, 122 NW 312.

One unpaid for materials furnished contractor held entitled to sue, though bond does not recite that it is for the benefit of such persons. Waterous Engine Works v Village of Clinton, 110 M 267, 125 NW 269.

Axes, hack-saw blades, horsefeed, and provisions are not "materials" within the meaning of a contractor's bond. Fay v Bankers Surety, 125 M 211, 146 NW 359.

While a road contractor's bond covers repairs on tools and equipment and certain parts furnished, it does not secure payment of the purchase price of tools or machinery which become a part of his equipment, although sold for the particular contract and are necessary and appropriate for that purpose. Miller v Amer. Bonding, 133 M 336, 158 NW 432.

Provisions, groceries, and meats are not included in the word "materials" as relating to public contractor's bonds. Westling v Rep. Cas. Co. 157 M 198, 195 NW 796; Standard Oil v Remer, 170 M 298, 212 NW 460.

When the surety under terms of the agreement has taken over the outfit of the defaulting contractor, under the special facts in the instant case, said surety may be held liable for rental value of horses hired, and their feed, and the wages of their caretakers. Also for camp supplies, goods furnished to men or supplied to "wanigans". Hansen v Remer, 160 M 453, 200 NW 839.

The contract as drawn covers lubricating oil used by the engine used in excavation, and oil and gasoline in transportation of gravel for the purposes of the contract. Bartles v Western Surety, 161 M 169, 200 NW 937.

Under the contract the contractor and surety are liable to plaintiff for construction of shoulders on each side of the roadway. Lucas v Ganley, 166 M 9, 206 NW 934.

The relator sought to have the industrial commission declare that the statute requires the contractor to carry compensation insurance. The commission properly declined jurisdiction. Erickson v Kircher, 168 M 67, 209 NW 644.

The original surety having withdrawn the new surety was not to be responsible for claims existing prior to the date of the bond. The tile was to be paid for, 85 per cent when material laid along line of ditch and 15 per cent upon completion and acceptance of the contract. The measure of plaintiff's claim under the bond is 15 per cent of the unpaid portion of the purchase price of tile delivered prior to date of the new bond, plus the unpaid portion of the total price of tile furnished thereafter. Radichel v Fed. Surety, 170 M 95, 212 NW 171.

The contract was invalid and no bond was furnished. Plaintiff cannot recover the reasonable value of labor and material, for he furnished no evidence that the town received any benefit, or had appropriated any part of the project to its beneficial use, the bridge having collapsed. Lundin v Township, 172 M 259, 214 NW 888.

This section was enlarged by Laws 1923, Chapter 373, to include "insurance premiums" which is constructed to include insurance. Guaranteed Gravel v Aetna Cas. 174 M 366, 219 NW 546.

While under the rule of Miller v American Bonding Co. 133 M 336, 158 NW 432, there may be recovery on a public contractor's bond for material and labor used in incidental and current repairs of contractor's machinery, there can be none for major repairs involving replacements of old parts with new in the absence of proof that the new parts were consumed in the work covered by the bond. Clifton v Norden, 178 M 288, 226 NW 940.

A mechanic, employed by a contractor to repair and keep in working order a fleet of trucks, used in building a state highway, under a contract with the highway, together with the supply house which furnished the repair parts is covered by the contractor's bond. General Motors v Phillips, 191 M 467, 254 NW 580.

Premiums for public liability, collision, and property damage insurance are not within the protection of the bond required of a public contractor. Kunz Ins. v Phillips, 191 M 626, 255 NW 90.

Under the rule stated in Clifton v Norden, 178 M 288, 226 NW 940, and applied in General Motors v Phillips, 191 M 467, 254 NW 580, differential and transmission assemblies in motor trucks used in highway transportation jobs are not covered by bonds, pursuant to section 574.26, as amended by Laws 1931, Chapter 229. Mack v Western Surety, 194 M 484, 260 NW 869.

As against the contention that Johnson was a contractor, and decedent his employee, the determination that decedent was an employee of the township, and petitioner was entitled to compensation for his death, has ample support in the evidence. Dolnert v Township, 196 M 478, 265 NW 291.

3. Subcontractors

Anderson was a "subcontractor", and as such, furnished the stone in execution of the contract between Jackson and the city. Combs v Jackson, 69 M 336, 72 NW 565.

The contract of a superintendent hired by the subcontractor to supervise installation of a ventilating system and to furnish tools and equipment at his own expense was "entire" and not "severable", although his compensation was pay-

able weekly, as respects the superintendent's right to recover on the general contractor's bond. United States v Shea, 21 F Supp. 831.

4. Financing

The bank advanced money to the contractor building a school. The contractor gave the bank a note for $5,000 and an order on the school board for $4,500, which order was paid. Held: (1) The right of the bank to retain the money received from the school district is superior to the right of the surety to be subrogated to the interest of laborers and materialmen; (2) Under the agreement between the bank and the contractor the bank was not a volunteer, distinguishing National Surety v Bergren, 126 M 188, 148 NW 55; (3) The school district was bound to make payment of the contract price, and it neglected no duty it owed to the surety in honoring the bank's order, even though the surety had notified it not to pay orders given by the contractor. New Amsterdam v Wurtz, 145 M 438, 177 NW 664; Gandey v City of Pipestone, 154 M 194, 191 NW 738.

When the subcontractor began work on this job it was owing money to plaintiff, and after crediting all payments at the end of the contract it still owed plaintiff $1,600, which this suit is to recover. Moneys unconditionally paid by contractor to subcontractor become its money which it could use as its own, and the surety cannot direct application of payments. Laws 1925, Chapter 105, does not modify the statute in that regard. Following Jefferson v Church, 41 M 392, 43 NW 75, plaintiff may recover the balance of its account from the contractor and the surety. Standard Oil v Day, 161 M 281, 201 NW 410.

The right of a building contractor's surety to subrogation takes effect as of the date of the suretyship. As such right of subrogation dates back it has precedence over an assignment by the contractor of his earnings to one having no equity in support of his assignment. It follows that surety's right of subrogation attaches to the entire earnings of the principal, and not alone to the "reserved balance". Barrett Bros. v Co. of St. Louis, 165 M 158, 206 NW 49.

The equity of a bank which finances a contractor under an agreement whereby it is to make advances and the contractor is to pay to it moneys received from the contract, is superior in respect to a balance in the hands of the county upon the completion of the contract, to that of the surety on the bond of the contractor, notwithstanding agreement between surety and contractor assigning said residue to the surety. Standard Oil v Remer, 167 M 353, 209 NW 315.

The court found that the money loaned by the bank was used by the contractor in his general contracting business and the equity of the surety in the unpaid portion of the contract price was superior to that of the bank. Hartford v Fed. Construction, 168 M 202, 209 NW 911.

In an action by a bank to recover of contractor's surety for money advanced for payment of labor and material used on the job, the complaint was insufficient and demurrer was properly sustained. First Nat'l v Hagquist, 177 M 194, 225 NW 11.

The contractor accepted an order from the subcontractor to pay to plaintiff's bank money coming to the subcontractor. By accepting this order the contractor waived the right to retain the money coming to the subcontractor pending payment of claims for labor and material. Farmers Bank v Anderson, 195 M 476, 263 NW 443.

The condition in the contractor's bond that the surety would be liable for the payment by Anderson of claims for labor and material, did not make the surety liable to the bank who had furnished money to a subcontractor to pay labor and for materials. Farmers Bank v Anderson, 195 M 476, 263 NW 443.

The bank furnished the contractor money to finance his contract, and the contractor with notice to the city assigned his earnings to the bank. Subsequently the city, over the protests of the bank, but with the contractors consent, used the funds due the contractor to pay other labor and material claims. Under the statute and the contract, such a diversion by the city of the contractor's earnings and such an enforcement of the contractor's duty toward other laborers and materialmen was unauthorized in the absence of the bank's consent. Farmers Bank v Burns, 212 M 455, 4 NW(2d) 330, 5 NW(2d) 589.

5. Penalty

The liability imposed by section 574.28, on a municipality which lets a public contract without taking a bond, does not attach unless the contractor is proved to be insolvent. Fargo Cornice v School Dist. 152 M 342, 188 NW 733.

6. Actions

Anderson having performed labor on this material at the request of a subcontractor, had a right of action on the bond, though when he performed the work, he had no knowledge of the contract between Jackson and the city. Combs v Jackson, 69 M 336, 72 NW 565.

There is a broad distinction between laws impairing the obligation of contracts and those which simply undertake to give a more efficient remedy to enforce a contract already made. Under this rule, Laws 1909, Chapter 413, held valid. Water Works Co. v Oshkosh, 187 US 437; Bernheimer v Converse, 206 US 516; Nat'l Surety v Architectural Dec. 226 US 276.

Conceding the contract was invalid for failure to require a bond from the public contractor, the work as performed was approved and accepted by the town board, and the contractor has a valid claim against the town for the reasonable value of his services. State ex rel v Clark, 116 M 500, 134 NW 130.

Section 600 of the charter of the City of St. Paul, substantially with the state statute, requiring notice, does not require such notice as a condition precedent to the right of an employee of the city to sue for injuries caused by the city's failure to provide such employee with a safe place in which to work, or by the city's violation of any of the absolute duties of a master to a servant. Gaughan v City of St. Paul, 119 M 60, 137 NW 192.

Where the ditch contractor abandons the contract, his bondsman who has undertaken to complete the contract, cannot in a suit for material brought by the contractor set up as defense or abatement that the ditch has not been completed and accepted. Amer. Brick v Equit. Surety, 133 M 55, 157 NW 901.

Suit may be brought on a liquor dealer's bond without obtaining leave of court. Wunsewich v Olson, 137 M 98, 162 NW 1054.

Actions upon the bonds of public contractors are not made local under the provisions of General Statutes 1913, Sections 8245 to 8249 (sections 574.26 to 574.31). State ex rel v Tryholm, 139 M 389, 166 NW 533.

Where the school district contracts for an improvement, and the contract is declared void, the district is obliged to pay the reasonable value of any benefits it receives through part performance. Williams v Nat'l Constr. Co. 160 M 293, 199 NW 919.

A provision in a contract and bond given pursuant to section 574.26, limiting the time to bring suit to a less period than fixed by section 574.31, is unreasonable and void. Smith v Carlsted, 165 M 313, 206 NW 450.

Plaintiff in submitting bid made a mistake of approximately $18,000 by omitting to include one sheet of specifications. The bid was accepted but he was unable to secure a bond, and his $4,500 bid deposit was forfeited. Three years later he discovered the error. Promptness being a suggested condition of relief, his application for relief was properly denied. Fed. Constr. Co. v City of St. Paul, 177 M 329, 225 NW 149.

The amendment made by Laws 1929, Chapter 369, Section 2, fixing the limit of time for bringing actions on bonds of public contractors and requiring the filing of a notice with the county auditor where the contract is with a municipal corporation, does not apply to St. Paul, which has a home rule charter. Guar. Concrete v Garrick, 185 M 454, 241 NW 588.

Attorney's fees are not allowable in an action of an bond given under section 574.26 as amended by Laws 1931, Chapter 229, where defendants pay plaintiff's full claim with taxable costs prior to trial. Schutz v Interstate, 196 M 426, 265 NW 296.

There can be no recovery on the bond because the record fails to disclose the filing or notice with the insurance commissioner, a condition precedent to an

action on such bonds, and provides a one-year limitation. Shandorf v Sampson, 198 M 94, 268 NW 841.

Nothing in the contract evidences an intention to guarantee double shifts during the whole period, and the surety is not liable as claimed by plaintiff. Mead v Seaboard, 198 M 476, 270 NW 563.

Plaintiff's causes of action were given them by virtue of section 574.26; and hence the manner and means of enforcement must be in accordance with section 574.31. The rights of the claimant and the liability of the surety on such bond are conditioned upon the use of the statutory remedy. Ceco v Tapager, 208 M 367, 294 NW 210.

The statute gives a right of action on the bond to a person injured by the defective work of a master electrician licensed under bond written by defendant. Although the state is named as obligee, it is so named for itself and those entitled by statute to maintain an action on the bond. Graybar v St. P. Mercury, 208 M 478, 294 NW 654.

Where one materialman brings action under the Heard act on contractor's bond to recover for materials furnished under government contract, all other creditors must intervene within one year from the date of final settlement. United States v Shea, 21 F. Supp. 831.

574.27 BIDDERS TO HAVE RIGHT OF ACTION IN CERTAIN CASES.

HISTORY. 1923 c. 348 s. 1; G.S. 1923 s. 9701; M.S. 1927 s. 9701.

Where the contractor fails to execute the contract because of clerical errors in compilation of the bid, the proposal deposit may be returned even if by the strict terms of the bid there might be a forfeiture. OAG April 26, 1938 (229d-4).

574.28 APPROVAL AND FILING OF BOND.

HISTORY. 1895 c. 354 s. 1; 1897 c. 307; 1901 c. 321; R.L. 1905 s. 4536; 1907 c. 379; G.S. 1913 s. 8246; G.S. 1923 s. 9702; M.S. 1927 s. 9702; 1931 c. 157.

In the instant case the contractors being insolvent and their bond lacking in coverage, the county under Laws 1901, Chapter 321, is liable in damages to the plaintiff for labor and material. Black v Board, 97 M 487, 107 NW 560.

Where the contractor fails and neglects to pay his obligations, the liability on the bond becomes absolute and an action may be maintained against the surety without first resorting to legal means to make the contractor pay; but in the instant case there was a lack of coverage in the bond, making the school district liable in case the contractor is insolvent and cannot pay. The liability of the school district is not absolute, but only when the contractor is insolvent and unable to pay. Wilcox v School District, 103 M 43, 114 NW 262; Fargo Cornice v School Dist. 152 M 342, 188 NW 733.

The bond furnished no coverage of labor and material, and if the materialman is unable to collect from the contractor, he has a right of action against the school district. Scott v Ind. School, 112 M 474, 128 NW 672.

Particular language designating the exact work to be done controls the more general term "projects". There would have been no liability on the two additional bridges erected in connection with the main contract, and consequently plaintiff bonding company cannot collect additional premiums. Nat'l Surety v Erler, 175 M 14, 220 NW 543.

The statute requiring certain contracts to be let to the lowest bidder after advertising for bids has no application to personal services such as architects, engineers, or a superintendent of construction, so that an injunction to prevent defendants from carrying out an agreement to pay for plans and specifications on a school project that was authorized but later the authority to issue bonds was rescinded, was properly denied. Krohnberg v Pass, 187 M 75, 244 NW 329.

There is a broad distinction between laws impairing the obligation of contracts, and those which simply undertake to give a more efficient remedy to enforce a contract already made. Laws 1909, Chapter 413, extending the time within which third parties intending to avail of the benefit of a building bond must

serve notice of intention effected a change of remedy only, is valid, and 115 M 382, 132 NW 289, is affirmed. Nat'l Surety v Architectural Dec. Co. 226 US 276.

574.29 ACTION ON BOND.

HISTORY. 1895 c. 354 s. 4; 1897 c. 307; R.L. 1905 s. 4537; G.S. 1913 s. 8247; G.S. 1923 s. 9703; M.S. 1927 s. 9703.

See, Krohnberg v Pass, 187 M 75, 244 NW 329; Architectural Dec. Co. v Nat'l Surety Co. 115 M 382, 132 NW 289, 226 US 276.

The surety on a statutory bond may be sued alone, without joining the principal. Bartles v Western Surety, 161 M 169, 200 NW 937.

In a suit by a creditor of a public contractor against the surety on a statutory bond which guarantees payment of material, the doctrine of substantial compliance has no application. Guar. G. & S. Co. v Aetna, 174 M 366, 219 NW 546; Moose Lake v American Surety, 175 M 256, 220 NW 958.

In this case the county board could allow bills for costs and expenses in a county ditch proceeding and compel the petitioners to pay same after a dismissal of the proceedings. County of Rice v La Croix, 175 M 8, 220 NW 157, 958.

The doctrine of subrogation does not apply in cases where the bank advances money to pay checks issued to laborers and materialmen, nor for money advanced to the contractor. First Nat'l v O'Neil, 176 M 258, 223 NW 298; First Nat'l v Hagquist, 177 M 194, 225 NW 11.

The rule that credit once given toward discharge of a particular claim cannot afterwards be applied to another to the prejudice of third persons, has no application here. Radichel v Fed. Surety, 178 M 183, 226 NW 473.

A mechanic, employed by a contractor to repair equipment used on a highway construction contract, is an employee, and so protected by the statutory bond. General Motors v Phillips, 191 M 471, 254 NW 580.

A creditor who obtained a judgment against a subcontractor cannot recover against the surety having failed to file notice of claim with the insurance commissioner, and having permitted the one-year limitation period to expire. Shandorf v Sampson, 198 M 94, 268 NW 841.

A judgment recovered against a principal in a bond for a breach of its conditions in an action in which the surety is not a party, is not evidence against the surety of any fact except its rendition. Gilloley v Sampson, 203 M 235, 281 NW 3.

A materialman's purported release of lien on government building was not a bar to recovery on general contractor's bond for materials furnished to a subcontractor, where materials involved in claim had not been furnished or ordered when purported release was signed, and there was no consideration for release. United States v Shea, 21 F. Supp. 831.

Since the statutes requiring postmasters to furnish bonds are intended for government coverage alone, the finance company could not sue on the bond without the consent of the United States. United States v Nat'l Surety, 23 F. Supp. 411.

574.30 INSOLVENT OR INSUFFICIENT SURETIES.

HISTORY. 1895 c. 354 s. 5; R.L. 1905 s. 4538; G.S. 1913 s. 8248; G.S. 1923 s. 9704; M.S. 1927 s. 9704.

See, Krohnberg v Pass, 187 M 75, 244 NW 329; Architectural Co. v Nat'l Surety Co. 226 US 276.

574.31 LIMIT OF TIME TO BRING ACTION.

HISTORY. 1895 c. 354 s. 7; 1897 c. 307; R.L. 1905 s. 4539; 1909 c. 413 s. 1; G.S. 1913 s. 8249; G.S. 1923 s. 9705; M.S. 1927 s. 9705; 1929 c. 369 s. 2.

The provision of Laws 1897, Chapter 307, as to notice has no application to contractor's bonds given pursuant to the citizens' charter of St. Paul. Grant v Berrisford, 94 M 46, 101 NW 940, 1113.

Laws 1909, Chapter 413, changing the requirement as to notice of claims on bonds of public contractors, affects the remedy provided for the enforcement of

such bonds and not the obligation thereof, and is applicable to claims arising subsequent to its enactment upon bonds given prior to its enactment. Architectural Co. v Nat'l Surety, 115 M 382, 132 NW 289; 226 US 276.

General Statutes, 1913, Section 8249 (section 574.31), requiring notice to be served prior to the commencement of an action on a building contractor's bond has no application to the bond of a ditch contractor. Rosman v Bankers' Surety, 126 M 435, 148 NW 454; Wold v Bankers' Surety, 133 M 90, 157 NW 998.

After the performance of the contract the contractor gave the creditor a note for six months, without consent of surety company. The strictissimi juris rule of construction applicable to gratuitous sureties does not apply to paid sureties, and in this case the surety was not released as it made no showing of harm resulting from the extension. Standard Salt v Nat'l Surety, 134 M 122, 158 NW 802.

Not being plaintiffs in the action, but being brought in as defendants by order of court, it was not necessary for each claimant before he could have benefit of the bond, to give the surety notice under General Statutes 1913, Section 8249 (section 574.31). Dawson v Northwestern, 137 M 353, 163 NW 772.

An itemized and verified statement of the account of a subcontractor against a general contractor indicating the job out of which the charges arose and stating the date of the last item is sufficient notice to surety, when served upon its agent, of a claim against the general contractor. Clow v Scott, 162 M 501, 203 NW 410.

A provision in a contract and bond given pursuant to section 574.26, limiting the time to bring suit to a less period than fixed in section 574.31, is unreasonable and void. Smith & Wyman v Carlsted, 165 M 313, 206 NW 450.

Notice of default of a public contractor mailed to the surety at its home office in Milwaukee held to authorize maintenance of action on the bond. Benson v Barrett, 171 M 305, 214 NW 47.

Notice complied in substance with the statutory requirements though not specifying date of last item furnished. Ilg Electric v Conner, 172 M 424, 215 NW 675.

As between the surety and the creditors of a public contractor, the doctrine of substantial performance (Johnson v Laurence, 171 M 202, 214 NW 24), has no application; there must be a strict performance of the contract. To constitute an acceptance requires intent to receive the building as its own as a compliance with the required duty of the contractor. Guaranteed Co. v Aetna, 174 M 367, 219 NW 546; Moose Lake v American Surety, 175 M 256, 220 NW 958.

The charter of the city of Duluth gives the city council power to enact ordinances regulating the letting of contracts for public work, and, as incident thereto, prescribing surety bonds. Rand Kardex v Forrestal, 174 M 579, 219 NW 943.

If there was any deficiency of the notice it was waived by the surety's retaining and acting on it without suggesting any defect. Standard Oil v Enebok, 176 M 113, 222 NW 573.

Laws 1929, Chapter 369, Section 2, does not apply to St. Paul, which has a home rule charter. Guaranteed Concrete v Garrick, 185 M 454, 241 NW 588.

After garnishment of subcontractor, sureties, and others, and procurement of judgment against the defendant, this is a proceeding supplementary against subcontractor's surety, and also against the surety of the general contractor. The garnishees are liable on their bonds or not at all, and there can be no recovery against them as record fails to disclose compliance with section 574.31. Shandorf v Sampson, 198 M 92, 268 NW 841.

Action barred because not brought within one year after filing notice with insurance commissioner. Shandorf v Standard Co. 198 M 96, 268 NW 843.

A garnishment action is begun by the service of summons of the date thereof, and a supplemental complaint in the garnishment is a continuation of the garnishment so begun and not the commencement of a separate action. See clarification of holding in Shandorf v Standard Surety Co. 198 M 96, 268 NW 843.

Plaintiff's causes of action were given them by virtue of section 574.26; hence the manner and means of enforcement must be in accordance with section 574.31. The rights of the claimant and liability of the surety on such bond are conditioned upon the use of the statutory remedy, which means that no action may be main-

tained on the bond unless the claimant shall file the notice in the manner and within the time therein directed and limited. Ceco Steel v Tapager, 208 M 367, 294 NW 210.

Since the language of section 161.03, subd. 17, is plain, the court will not read into it a proviso from section 574.31 which is not at all germane to the matter here involved. State ex rel v O'Neill, 209 M 219, 296 NW 7.

Section 574.31 deals with the remedy rather than with basic rights, and, being remedial, should be construed to give effect to the legislative purpose. In an action upon a highway contractor's bond, where it was a question of the date of acceptance of the work "by the proper authorities", the controlling date was the final approval of the work by the commissioner of highways. Wheeler v Seabord, 218 M 443, 16 NW(2d) 519.

Public contractors' statutory bonds; right of materialman to sue surety; effect of failure to file notice of claim. 16 MLR 202.

574.32 NOTICE.

HISTORY. 1929 c. 369 s. 3; M. Supp. s. 9705-1.

574.33 ACTIONS FOR FINES, FORFEITURES, AND PENALTIES; COLLUSION.

HISTORY. R.S. 1851 c. 79 ss. 8 to 10; P.S. 1858 c. 69 ss. 8 to 10; G.S. 1866 c. 78 ss. 6 to 8; G.S. 1878 c. 78 ss. 6 to 8; G.S. 1894 ss. 5956 to 5958; R.L. 1905 s. 4540; G.S. 1913 s. 8250; G.S. 1923 s. 9706; M.S. 1927 s. 9706.

The attorney general, as the chief law officer of the state, possesses and may exercise, in addition to the authority expressly conferred upon him by statute, all common-law powers incident to and inherent in the office. The forfeiture of office and the penalty for failure of the mayor or other officer to make complaint of known violations of the statutes may be enforced by the attorney general through appropriate proceedings. He has in this case concurrent jurisdiction with the county attorney, and with the city council of the city of St. Cloud based on its charter. State ex rel v Robinson, 101 M 277, 112 NW 269.

574.34 FINES, HOW DISPOSED OF.

HISTORY. R.S. 1851 c. 79 s. 11; P.S. 1858 c. 69 s. 11; G.S. 1866 c. 78 s. 9; 1870 c. 73 s. 1; G.S. 1878 c. 78 s. 9; G.S. 1894 s. 5959; R.L. 1905 s. 4541; G.S. 1913 s. 8251; G.S. 1923 s. 9707; M.S. 1927 s. 9707.

Under Laws 1887, Chapter 6, the bonds required of liquor dealers run to the state, and penalties recovered in prosecutions thereon to the county treasury. Prosecutions are in the name of the state by the county attorney in his official capacity. Village of St. James v Hingtgen, 47 M 521, 50 NW 700.

The trial court properly vacated the forfeiture of the bail. It is doubtful if the clerk had the right to turn the bail money over to the county treasurer except on court orders. However, as no service was had on the county treasurer, the court while it had jurisdiction of the subject matter did not have jurisdiction of the person, and no jurisdiction over Hennepin county, and while it is clear that the money should be turned over to the petitioner, the court has no jurisdiction to so order. Edwards v County of Hennepin, 116 M 101, 133 NW 469.

Fines collected under section 509.09 should be paid into the county treasury and not into the state treasury. 1934 OAG 11, Aug. 3, 1934 (135a-4).

Fines and costs in state cases, such as misdemeanors, are to be paid to the county treasurer. 1934 OAG 287, April 6, 1934 (306b-6).

In the absence of agreement by charter or otherwise between city of South St. Paul and the county of Dakota, fines imposed by section 221.37 are "not specially granted or appropriated by law", and should be paid into the county treasury. 1934 OAG 723, Dec. 18, 1933 (306b-6).

If a justice of the peace accepts a check he is personally responsible for its face value in money. OAG Sept. 5, 1934 (266h-9).

Fines collected under section 221.37 are to be paid to the county treasurer. OAG Dec. 15, 1936 (306h-6).

Fines collected for violation of ordinances of a town regulating traffic on town roads are paid to county treasurer. OAG May 20, 1939 (989B-4).

Fines collected under highway traffic violations should be paid into state treasury where arrests are by the highway patrol. When arrested by the sheriff, the fines go to the county treasury. 1942 OAG 20, Jan. 9, 1942 (199B-4).

When arrests for violation of motor vehicle laws are made by the highway patrol and are prosecuted in the municipal court, the prosecutions are conducted by the county attorney, and fines go to the state, even though the arrests are made within the city limits. If the prosecution is under a city ordinance, the city attorney must prosecute, and the fines go into the city treasury. OAG Aug. 4, 1944 (989a-6).

574.35 PROSECUTION FOR FINES; COURT; COMMITMENT.

HISTORY. R.S. 1851 c. 79 s. 12; P.S. 1858 c. 69 s. 12; G.S. 1866 c. 78 s. 10; G.S. 1878 c. 78 s. 10; G.S. 1894 s. 5960; R.L. 1905 s. 4542; G.S. 1913 s. 8252; G.S. 1923 s. 9708; M.S. 1927 s. 9708.

A prosecution before a justice of the peace for obstructing a public highway is a criminal action. Neither a justice of the peace, nor the municipal court of Minneapolis, has jurisdiction if the title to real estate is involved. State v Cotton, 29 M 187, 12 NW 529.

Upon conviction of party for violation of Laws 1887, Chapter 81, Section 1, defendant was sentenced to imprisonment in the county jail for 30 days and to pay a fine of $75.00 and costs, and to stand committed to the county jail until the fine and costs are paid, not exceeding 30 days additional to the 30 days imprisonment. This was a legal and valid judgment. State v Peterson, 38 M 144, 36 NW 443.

The provision of Laws 1891, Chapter 11, the sale of imitation butter act, are valid as a legitimate exercise of police power, and the penalty is recoverable as for any misdemeanor. State ex rel v Horgan, 55 M 183, 56 NW 688.

Acts which are punishable under general laws of the state may also be punishable by municipal ordinance, and the latter is valid though the punishment prescribed in each be not the same. City of Jordan v Nicolin, 84 M 367, 87 NW 916.

In a habeas corpus proceeding, where a qualified judge of municipal court engaged in a preliminary examination of a prisoner, he has jurisdiction to punish for contempt of court committed in open court, although proceedings are pending to oust him of jurisdiction. State ex rel v McDonough, 117 M 174, 134 NW 509.

574.36 SALE OF REPOSSESSED MOTOR VEHICLES.

HISTORY. 1941 c. 452.