

CHAPTER 321.

BONDS IN COUNTY COURTS.

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321.01 County court bonds. (1) All bonds required by law to be taken in or by order of the county court shall be for such sum and with such sureties as the court shall direct, except when otherwise provided by law. Such bonds shall be for the security and benefit of all persons interested and shall be taken to the judge of the county court, and in any county court having more than one judge, shall run to all of the judges of said court, except where they are required by law to be taken to the adverse party. No such bond shall be deemed sufficient unless it shall have been examined and approved by the judge and his approval indorsed thereon in writing and signed by him; but his failure so to do shall not render the bond void.

(2) Each of the sureties must be a resident of this state, and shall justify as to his responsibility, and, when required, shall do so before the judge, or some other officer designated by him. [*Court Rule VII; Supreme Court Order, effective Jan. 1, 1934*]

321.015 Additional bond; sureties discharged; reducing bond. The county court may, at any time, require additional bonds to be given by any guardian, administrator, executor or trustee, whenever it shall deem it necessary, and may, upon application, enter an order, with or without notice, reducing the amount of any bond, when it shall satisfactorily appear that no injury can result therefrom to those interested in the estate. Any guardian, administrator, executor or trustee may take the proceeding for the discharge of surety as to future liability, provided for in section 331.38. [*Stats. 1931 s. 319.06; Supreme Court Order, effective Jan. 1, 1934*]

321.02 Actions on bonds. (1) **WHO MAY BRING.** Actions may be brought on the bonds of executors, administrators, guardians and testamentary trustees, with permission of the county court,

(a) By any creditor when the amount due him has been ascertained and ordered paid by such court, if the executor, administrator, guardian or trustee shall neglect to pay the same when demanded;

(b) By any legatee or distributee to recover his share of the personal estate, after the court has declared the amount due to him, and ordered it paid or delivered if the executor, administrator or trustee shall fail to pay or deliver the same when demanded; and

(c) By any creditor, heir, legatee or other person aggrieved by any maladministration, when it shall appear that the executor, administrator, guardian or trustee has failed to perform his duty in any other particular.

(2) **WHEN ORDERED.** Whenever an executor, administrator, guardian or trustee shall refuse or neglect to perform any order or judgment for rendering an account, or upon a final settlement, or for the payment of debts, legacies or distributive shares, the judge of such court shall cause the bond of such executor, administrator, guardian or trustee to be prosecuted for the benefit of all concerned, and the money collected thereon shall be applied in satisfaction of such order or judgment in the same manner as such money ought to have been applied by such executor, administrator, guardian or trustee.

(3) **LIMITATION AS TO LIABILITY OF SURETY ON FIDUCIARY'S BOND.** No action shall be maintained against the sureties on any bond given by a guardian, administrator, executor or trustee unless it be commenced within four years from the time when he was discharged; provided, that in case an accounting is had, the time within which said action may be commenced shall not terminate until one year after the final determination of such accounting proceedings. But if, at the time of such discharge, the person entitled to bring such action shall be under any legal disability to sue, the action may be commenced at any time within four years after such disability shall be removed.

(4) **ACTION BY WARD; ACCOUNTING, WHEN UNNECESSARY.** Any action upon such bond by or in behalf of one ward shall not bar or in any way affect the right of any other ward interested to maintain an action thereon, but separate actions or a joint action may be maintained thereon by or in behalf of any or all persons interested. Nor shall any such action impair any other remedy of the ward. No accounting shall be necessary before bring-

ing an action against sureties when the guardian, administrator, executor or trustee shall die or remove out of the state or shall become incompetent.

(5) APPLICATION TO SUE. An application for permission to bring an action on the bond of an executor, administrator, guardian or testamentary trustee shall state the grounds of the proposed action, and be accompanied with the certificate of some reputable attorney that he has examined the facts of the case, and, in his opinion, a valid and meritorious cause of action exists in favor of the applicant. [*County Court Rule XXIII; Stats. 1931 s. 319.07; 1933 c. 190 s. 79, 80, 81; 1939 c. 513 s. 55*]

Note: Where a will gave a life estate in both real and personal property to the wife of the testator, and a remainder to his son upon the condition that the son pay certain legacies, and the county court required the wife to give a trustee's bond for the personal property, an assignee of the legacies, which had not been paid, was not entitled to maintain an action against the surety on the bond, when there was no proof that the real property was insufficient to pay the legacies. *Otto v. United States F. & G. Co., 213 W 340, 251 NW 217.*

Where assets of an estate have been withheld from the inventory because of a conspiracy between the administrator and an heir, the surety of the administrator is entitled to recover from the administrator and the heir the amount it may be compelled to pay to the estate for the default of the administrator. *Martineau v. Mehlberg, 221 W 347, 267 NW 9.*

An action brought under (2) on an administrator's bond must be prosecuted for the benefit of all concerned, and not for the sole benefit of an individual creditor. *Rasmussen v. Jensen, 240 W 242, 3 NW (2d) 335.*

Subsection (3) limits the time within which an action on the guardian's bond may be begun to 4 years after the ward reaches the age of 21 years, except that in cases where an accounting is pending when that time arrives, the time is extended until one year after the termination of the accounting. *Rew v. Marshek, 240 W 273, 3 NW (2d) 378.*

Under provisions in 321.02 (1) (c), (4), 321.07, 296.08 (3), the circuit court has jurisdiction of an action brought, with the permission of the county court, by the successor guardian of the person and estate of an incompetent against the sureties on the bond of a deceased guardian for the latter's breach of duty and maladministration in the conduct of the guardianship, and against the same sureties on a special bond of the deceased guardian given in connection with an application in the county court to sell the ward's real estate, and against persons claiming rights under deeds sought to be set aside, although there has been no accounting and determination in the county court. *Cannon v. Berens, 244 W 271, 12 NW (2d) 53.*

321.03 Actions on bonds in name of judge. All actions upon bonds taken to the judge or judges of the county court shall be brought in the name of such judge or judges at the time the action is commenced, when the same are brought under subsection (2) of section 321.02. When the action shall be brought under subsection (1) of said section it may be brought in the name of said judge or judges or of the party in interest. In either case, if judgment is rendered for the plaintiff, it shall be for the amount found due and costs of suit; and if the action is in the name of the judge or judges the judgment shall specify the amount found due to each particular person for whose benefit it is brought.

Note: The action on the administrator's bond being in the name of the county judge, each heir for whose benefit it was brought, the judgment should specify the amount due. *Cook v. Nelson, 209 W 224, 244 NW 615.*

321.04 Court to permit action and furnish copy of bond. On the application of any person authorized by this chapter to commence an action on such bond the county court may grant permission to such person to prosecute the same, and shall thereupon furnish to the applicant a certified copy of such bond, together with a certificate that permission has been granted to such person to prosecute, stating his name and residence.

321.05 Judgment. If judgment shall be rendered for the plaintiff in any action upon such bond, brought by the judge of the county court for any breach thereof in not performing any order or judgment of the county court, as mentioned in subsection (2) of section 321.02, such judgment shall be rendered for the full value of all the estate that shall have come to the hands of such executor, administrator or trustee and for which he shall not have satisfactorily accounted, and for all such damages as shall have been occasioned by his neglect or maladministration, with costs of suit. But no judgment or execution against the sureties in any bond shall exceed the amount of the penalty thereof, exclusive of costs. When the action is brought by any person mentioned in section 321.02 (1), the plaintiff shall recover his share of the damages which would be recoverable in an action brought by the county judge. [*Supreme Court Order, effective July 1, 1945*]

321.06 Money, to whom paid. All moneys recovered on any judgment in favor of the judge of the county court, as mentioned in section 321.05, shall be paid over to such person, other than the defendant therein, who shall then be the rightful executor, administrator or trustee, and such moneys shall be assets in his hands to be administered according to law; but if there be no executor, administrator or trustee; other than the defendant, such moneys shall be paid to the persons entitled thereto upon their giving receipts therefor, which receipts shall be filed with the county court.

321.07 Executor, etc., may sue. Claims for damages on account of the breach of the conditions of any bond may be prosecuted by any executor, administrator, testamentary trustee or guardian in behalf of those he may represent in the same manner as by persons

living and of full age; and such claims may be prosecuted against the representatives of deceased persons in the same manner as other claims against such deceased persons.

321.08 Action not barred; partial defense; stay of execution. No action brought upon the bond of any executor, administrator or testamentary trustee shall be barred or dismissed by reason merely that any former action shall have been prosecuted on such bond, but any payment of damages made or collected from the sureties or any of them on any judgment in an action previously begun by any party on such bond shall be applied as a total or partial discharge of the liability thereon; and such partial defense may be pleaded by answer or supplemental answer as may be proper. The court may, when it shall be necessary for the protection of such sureties, stay execution on any judgment rendered in such action until the final determination of any action so previously commenced and until the final determination of any other action commenced before judgment entered in any such action.