

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.2923 Action on official or other bond; assignment of specific breaches; pendency of suit; notice by surety; damages paid equal or less than liability of surety; execution; levy; judgments in excess of liability; unsatisfied executions.

Sec. 2923. (1) When an action is prosecuted in any court upon any bond of any public officer, or upon any bond for the breach of any condition, other than the payment of money, or for any penal sum for the nonperformance of any covenant or written agreement, the plaintiff shall assign the specific breaches for which the action is brought, and upon the trial of such action, the verdict and judgment shall be for such damages as are found arising from the specific breaches assigned; and such judgment shall not be a bar to any further action by the same, or any other plaintiff, for any subsequent breaches of the condition of said bond; but said bond shall stand as security for any further or subsequent breaches to the amount of the remainder of the penalty thereof.

(2) During the pendency of any suit upon such official bond, or after judgment rendered in such suit, any other party aggrieved by the default or delinquency of such officer, may, in like manner prosecute an action upon such official bond; and the pendency of any other suit on the same bond, or a judgment recovered by or against any other person on such bond shall not abate or in any manner affect such suit, or the proceedings therein, except as hereinafter provided.

(3) No such suit shall be barred, nor shall the amount which the plaintiff may be entitled to recover therein, be affected by any notice given by any surety in such bond, of a judgment recovered thereon, unless it is accompanied by an allegation that the sureties in such bond, some or 1 of them, have been obliged to pay the damages assessed by such judgment, or some part thereof, for want of sufficient property of such officer whereon to levy the same, or that they will be obliged to pay the same, or some part thereof for the same reason; nor unless such notice is verified by the oath of the defendant giving the same.

(4) If it appears that the amount of any damages so recovered, which such surety has been obliged to pay, or will be obliged to pay, as specified in (3), is equal to the amount for which such defendant shall be liable, by virtue of the bond, he shall be acquitted and discharged of all further liability, and judgment shall be rendered in his favor.

(5) If it appears that the amount of any damages so recovered, which such surety has been obliged to pay, or which he will be obliged to pay, is not equal to the liability of such surety, the amount thereof shall be allowed to such defendant, in estimating the extent of his liability in any such action.

(6) Whenever a judgment is obtained against an officer and his sureties, a direction shall be endorsed on the execution issued thereon, by the attorney issuing the same, to levy the amount of such execution, in the first place, of the property of such officer, and if sufficient property of such officer cannot be found to satisfy such execution, then to levy the deficiency of the property of the sureties.

(7) Whenever several judgments are obtained at the same term, upon any official bond of any officer, for damages, amounting in the whole to more than the sums for which the sureties therein shall be liable, the court shall order the moneys levied upon such judgments from the property of the sureties, to be distributed to the persons for whose use such judgments were recovered respectively, in proportion to the amount of their respective recoveries.

(8) If executions are issued upon several judgments obtained at the same term, upon any such official bond, and sufficient money is not raised to satisfy all of the said executions, the court shall distribute the money collected on such executions to the plaintiffs in proportion to the amount of their respective recoveries.

History: 1961, Act 236, Eff. Jan. 1, 1963.