

TITLE 12
COSTS AND MISCELLANEOUS MATTERS IN CIVIL ACTIONS

CHAPTER 6
GENERAL PROVISIONS

12-612. ACTIONS AGAINST SHERIFFS -- NOTICE TO INDEMNITORS. If an action is brought against a sheriff for an act done by virtue of his office, and he gives written notice thereof to the sureties on any bond of indemnity received by him, the judgment recovered therein is conclusive evidence of his right to recover against such sureties; and the court, or judge in vacation, may, on motion, upon notice of five (5) days, order judgment to be entered up against them for the amount so recovered, including costs.

[(12-612) C.C.P. 1881, sec. 720; R.S., R.C., & C.L., sec. 4933; C.S., sec. 7235; I.C.A., sec. 12-612.]

12-613. GENERAL FORM OF UNDERTAKING. Whenever a party to an action or proceeding desires to give an undertaking provided to be given by law, it shall be sufficient if the sureties sign an undertaking indicating that they are thereby bound to the obligations of the statute requiring the undertaking to be given. Such undertaking may be in form as follows:

(Title of court. Title of cause.)

Whereas, the desires to give an undertaking for (state what), now, therefore, we the undersigned sureties, do hereby obligate ourselves jointly and severally, to (name who) under said statutory obligations in the sum of dollars.

The sureties so signing such undertaking are bound to the full statutory obligations of the statute requiring the undertaking.

[(12-613) 1895, p. 18, secs. 1-3; reen. 1899, p. 235, secs. 1-3; reen. R.C. & C.L., sec. 4933a; C.S., sec. 7236; I.C.A., sec. 12-613.]

12-614. JUSTIFICATION OF SURETIES. In all cases where an undertaking, with sureties, is required by the provisions of this code, the officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders or freeholders within the state, and each are worth the sum specified in the undertaking, over and above all their just debts and liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking exceeds \$2000.00, and there are more than two (2) sureties thereon, they may state in their affidavits that they are severally worth amounts less than that expressed in the undertaking, if the whole amount be equivalent to that of two sufficient sureties.

[(12-614) C.C.P. 1881, sec. 721; R.S., R.C., & C.L., sec. 4934; C.S., sec. 7237; I.C.A., sec. 12-614.]

12-615. PARTIES NOT REQUIRED TO GIVE BOND. In any civil action or proceeding wherein the state or the people of the state is a party plaintiff, or any state officer, in his official capacity, or on behalf of the state, or any county or city, is a party plaintiff or defendant, no bond, written undertaking or security can be required of the state, or the people thereof, or any officer thereof, or any county or city; but on complying with the other provisions of this code the state, or the people thereof, or any state officer acting in his official capacity, or any county or city, have the same rights, remedies and benefits as if the bond, undertaking or security were given and approved as required by this code.

[(12-615) C.C.P. 1881, sec. 722; R.S., R.C., & C.L., sec. 4935; C.S., sec. 7238; I.C.A., sec. 12-615.]

12-616. SUBROGATION OF SURETIES. Whenever any surety on an undertaking on appeal, executed to stay proceedings upon a money judgment, pays the judgment, either with or without action, after its affirmation by the appellate court, he is substituted to the rights of the judgment creditor and is entitled to control, enforce and satisfy such judgments in all respects as if he had recovered the same.

[(12-616) C.C.P. 1881, sec. 723; R.S., R.C., & C.L., sec. 4936; C.S., sec. 8239; I.C.A., sec. 12-616.]