



Supreme Court of Texas.

**BROWN**

v.

**SNEED et al.**

May 27, 1890.

Commissioners' decision. Appeal from district court, Travis county.

West Headnotes

**Limitation of Actions** ⚔️11(1)

[241k11\(1\) Most Cited Cases](#)

In the absence of an express statutory provision, the statute of limitations does not run against the state; and the fact that the state is expressly excepted from the limitation of suits for land raises no presumption that it is subject to the limitations as to other suits.

**Officers and Public Employees** ⚔️37

[283k37 Most Cited Cases](#)

A bond of a public officer for faithful performance of his duties or "according to law" includes all duties prescribed by law germane to the matter and usually incident to the office.

**States** ⚔️79

[360k79 Most Cited Cases](#)

Where the chief clerk of the state comptroller's office is guilty of embezzlement, it is proper to render judgments in favor of the state against both the comptroller and the chief clerk, but only one of these judgments can be satisfied.

**States** ⚔️80(1)

[360k80\(1\) Most Cited Cases](#)

The official bond of the chief clerk of the state comptroller's office was conditional that he should "faithfully perform the duties of his office." His duties, as prescribed by Rev.St. art. 2759, were "to keep the books of said office, and discharge the duties of the comptroller whenever said office may become vacant by death, resignation, or otherwise"; but by an express agreement between him and the comptroller made before his appointment, he was assigned to the charge of the "tax department," which had been established by a long-standing custom of the office, and which involved the custody of large sums of money. Held, this charge was not naturally incident to the duties of chief clerk as prescribed by the statute, and was not contemplated by his bond, and therefore the sureties were not liable for money embezzled by him while in charge of this department.

**States** ⚔️80(1)

[360k80\(1\) Most Cited Cases](#)

The chief clerk himself, however, having voluntarily undertaken the charge, was liable on the bond.

**States** ⚔️80(1)

[360k80\(1\) Most Cited Cases](#)

The bond was executed to the state, and therefore the clerk's liability was directly to the state, and not to the comptroller,

though the state had already obtained a judgment against the comptroller for the moneys embezzled.

**\*472 \*\*248** *Goodrich & Clarkson*, for appellant.

*D. W. Doom, J. S. Hogg, and J. H. Robertson*, for appellees.

**\*473** *HOBBY, J.*

W. M. Brown brought this suit against S. G. Sneed, Frank Hamilton, and James R. Johnson, by petition filed January 14, 1887, to fix the liability of the said Sneed, and the sureties on his official bond, as chief clerk of the comptroller's office during Brown's term of office as comptroller for an alleged deficit in the tax department in said office, which it is alleged Sneed, as chief clerk, had charge of, and that the said alleged deficit occurred through the fault and misfeasance of the said Sneed. The petition alleged that Brown was comptroller from January 19, 1881, to January 16, 1883; that, among other duties, he was by law authorized and required to receive certain taxes, to issue tax receipts for the same, and to cover said money so receipted into the treasury; and that in conducting said business there has been created by long-established custom in said comptroller's office a 'tax department;' that, immediately upon assuming the duties of comptroller, plaintiff appointed defendant Sneed to be chief clerk, and the defendants Hamilton and Johnson became his sureties on his official bond; that at and before the date of Sneed's appointment as chief clerk, and at and before making said bond, it was understood and agreed between plaintiff and defendant Sneed that the duties pertaining to said tax department should be specially assigned to said Sneed, and performed by him or under his direction. It is also averred that plaintiff, as comptroller, did assign the duties of said tax department to said Sneed, and did require him to receive into his care and custody all of the funds accruing in said department; to prepare proper receipts for the signature of plaintiff; to prepare proper deposit warrants; also for plaintiff's signature; to deposit the said funds in the state treasury; and to keep in proper form upon the books of the comptroller's office a clear and accurate record of the entire business relating to said tax department, so that it might certainly and clearly appear from a transcript of said account how much had been received, from what sources received, when received, and how much had been deposited in the treasury, and when and what balance remained in his hands, if any; and to be prepared to pay over such balance when demanded. It is also averred that Sneed's official bond bound him and his sureties for the faithful performance of said duties, as well as all other duties which the said Brown, as comptroller, being present, could lawfully require of him, or, the said Brown being absent, devolved upon him by law. It is also alleged that said Sneed did enter upon his duties on January 19, 1881, and thence continuously to the close of Brown's term, January 16, 1883, assumed and undertook to perform said duties, and did receive the emoluments of said office. It is also alleged that said Sneed, as chief clerk, failed, neglected, and refused to faithfully perform all the duties of his office; that, by virtue of his office, he received into his hands the gross sum of \$457,839.47, in discharge of claims owing the state; and that he wholly failed to either account for or to pay over any part of said sum except the sum of \$452,160.98, and the further sum of \$1,320.74, but still retains in his hands, and refuses to pay over, the sum of \$4,356.86, which sum, with interest, is justly due and owing by him; and that this said deficit occurred in the tax department of said comptroller's office, and by and through the neglect, failure, and refusal of the said Sneed to discharge faithfully all of his duties. It is also alleged that plaintiff, Brown, being primarily liable for said deficit, suit was brought against him by the state on his official bond, which resulted in a judgment against him and his sureties for the amount of said alleged deficit, May 24, 1884, which, on appeal, was affirmed, and is now final, subsisting, and unpaid; that execution was issued on said judgment on the --- day of April, 1887, to Travis county, and returned unsatisfied; that by said judgment the liability for said deficit is primarily fixed upon Brown and his sureties; but that, by reason of the facts alleged, the said Sneed and his sureties are also liable, because the said deficit accrued solely by and through the official misfeasance and neglect of said Sneed, who is ultimately liable for the same; that Sneed is also bound by said judgment; that he had notice of said suit; that it was alleged therein that said deficit occurred in said tax department; that he had opportunity to make defense; that he was present on the **\*\*249** trial and testified therein; that said judgment was obtained mainly upon his testimony and disclosures and confessions of official neglect by him made known on said trial; and

that he, in writing, admitted the that the true state of the accounts of Ex-Comptroller promised to make it good, and save plaintiff from pecuniary loss; which writing is attached as an exhibit. It is also alleged that the true state of the accounts of ExComptroller Brown relating to the said tax department was unknown to intervenor and to its officers charged with the duty of settling the accounts of the state, until on or about the 28th of August, 1883; nor did the state have any means of determining the true state of said accounts; that said Sneed, although in duty bound to keep accounts relating to said tax department, as hereinbefore alleged, wholly failed and neglected so to do; that no statement of the accounts of receipts and deposits made existed in said office at the close of Brown's term, and no balance stood stated on the books of said office against said Brown; that afterwards, to-wit, on the --- day of April, 1883, a legislative committee examined, as best they could, the mass of books, papers, and vouchers in said office, and reported a balance due by Brown of \$1,320.54, and the said Sneed, admitting then and afterwards his duty to pay same, did advance that amount to pay the alleged deficit; and afterwards the accounting officers of the state attempted from the mass of books, papers, memoranda, and vouchers in said office to state the said Brown's account, which required great length of time and care, and, finding discrepancies therein, they called upon said Sneed to explain; and at last, on the --- day of August, 1883, an account was stated, a copy of which is attached, and which said Sneed admitted to be correct; but it is averred that said account could not be stated from the books of said office, but depended in a great part upon the personal recollections of said Sneed, aided by private memoranda kept by him during his official career, which he then disclosed partially; and, upon the trial before mentioned, he explained that the deficit for which Brown had been sued was made up of the said sum of \$1,320.64, a mistake of \$1,800, credited to Brown's account, which should have been credited to his predecessor Darden, and one other mistake, the peculiar nature of which he did not explain. It is averred that the state's accounting officers did have, and could have, no knowledge of said facts except upon the admissions of said Sneed; that it is possible that by painful and tedious investigation it might have been determined from disconnected *data* in said comptroller's office that, beginning with the time during Darden's term when, under the constitution of 1876, taxes were collected at the comptroller's office, and continuously to the close of Brown's term, a deficit existed; but, even in that event, the line dividing said Darden's responsibility from Brown's could not be struck from any *data* existing in said office, but depended wholly upon the personal recollection and private memoranda of said Sneed; that said Sneed was tax clerk during Darden's administration of said office, which position he continued to hold until the close of Darden's term, and immediately became chief clerk under Brown; that Sneed had in his hands upon Darden's retirement various sums of money theretofore accruing in the tax department aggregating a large sum; that, upon assuming the duties of chief clerk under Brown, said Sneed did not disclose this fact to said Brown, or make any appropriate entry upon the books separating Darden's liability from Brown's and continued to make deposits out of said funds for the credit of Darden as well as for Brown; that through mistake, official neglect, or misfeasance of Sneed the true state of said account was not, and could not be, known until within less than four years.

After the petition of the intervenor was filed, the plaintiff, Brown, amended, not contesting the demand of the state, and declaring his interest to be with the intervenor, and adopting the allegations of intervenor. He also alleged that, reposing full confidence in the ability and integrity of said Sneed, plaintiff did, as comptroller, place in his charge and under his supervision the duties pertaining to the tax department, and Sneed did take charge of and supervise said business, and did each day take into his custody the funds of all kinds received in said tax department, and did indorse his receipt for the same on the book kept for that purpose, and said funds remained in his custody and control until deposited by him in the treasury upon warrants prepared by him and signed by Brown. And plaintiff avers that he did not at any time have in his custody any part of said funds, or interfere with the care and custody exercised by Sneed, or handle in any way any of said funds. Plaintiff also alleges that said deficit is and was the direct result of Sneed's official neglect, and not through any agency of plaintiff, and that the burden of making good the said deficit should ultimately fall on the said Sneed and his sureties. Plaintiff joins in the prayer of intervenor that judgment be rendered against them in favor of intervenor for the amount of said deficit, and that it be also adjudged that, if plaintiff, or any one for him, shall pay to the state the amount to be adjudged herein, then plaintiff

have execution against said Sneed and his sureties. Defendants Hamilton and Johnson demurred to plaintiff's first amended original petition: (1) Because the same was insufficient in law. (2) Because it appeared therefrom that this suit was based solely as against defendants on a bond made payable unto the governor of the state of Texas and his successors in office for the use of the state; and that the said plaintiff neither represented the state of Texas nor the governor of the state of Texas in this suit, and had no interest in said bond, and no right to maintain suit on said bond, or to recover anything against said defendants on said bond or otherwise. (3) Because it appeared therefrom that the said plaintiff was seeking to recover against defendants for a breach of certain duties imposed by the said plaintiff, while acting as comptroller \*\*250 of public accounts of the state of Texas, upon the said S. G. Sneed, as chief clerk in said comptroller's office, after the execution and delivery of said bond, which duties were not required by law to be performed by the said S. G. Sneed as chief clerk in said comptroller's office, and for a breach of which his sureties were in no way liable upon said bond or otherwise. (4) Because it did not appear therefrom that the plaintiff, or any one for him, had paid off the said judgment, or any part thereof, recovered by the state against plaintiff and his sureties as late comptroller of public accounts. The defendant S. G. Sneed adopted the general and special demurrers of the other defendants.

The exceptions of the sureties, Hamilton and Johnson, to the intervenor's petition were: Because it appeared that said intervenor had already brought suit against the plaintiff, W. M. Brown, and the sureties on his official bond as comptroller of public accounts of the state of Texas, and prosecuted the same to judgment, which had been affirmed by the supreme court, for the same deficit alleged in the said first amended original petition; which judgment was conclusive, both upon the said intervenor and the said plaintiff and his said sureties upon his official bond, as to the liability for said deficit, and the said intervenor could not maintain suit against the said S. G. Sneed as chief clerk in the comptroller's office and his said sureties, for alleged breach of official duty occurring at the time the said of plaintiff, W. M. Brown, was comptroller of public accounts, and for which said plaintiff had already been held liable on his official bond: (1) Because it did not appear therefrom that the said plaintiff and the said sureties on his official bond, against whom the said judgment had been rendered as aforesaid, were insolvent, nor that proper efforts had been made to collect said judgment without success. (2) Because it appeared therefrom that the said intervenor was seeking to hold said defendants bound by the said judgment, when they were neither parties to said judgment, nor to the suit in which the same was rendered. (3) Because it appeared therefrom that any breach of official duty on the part of S. G. Sneed, as chief clerk in the comptroller's office, for which said defendants could be held liable as sureties on his said official bond, must have occurred on or before the 1st day of January, A. D. 1883, and before the time the said W. M. Brown and S. G. Sneed went out of office, to-wit, the 16th day of January, A. D. 1883, more than four years before the filing of the original plea of intervention in this case, on, to-wit, the 13th day of May, 1887; and therefore this suit by the intervenor was, at the time of the filing of the said original plea of intervention, barred by the statute of limitation of four years, which said defendants by this special demurrer specially pleaded and relied upon. (4) Because no sufficient reason was therein shown for the failure of the intervenor to bring this suit within four years next after the 16th day of January, A. D. 1883, the time when the said W. M. Brown and S. G. Sneed went out of office, nor to avoid the statute of limitation of four years pleaded and relied upon by said defendants. (5) Because it appeared therefrom that the said intervenor was relying upon a letter dated September 29, 1883, written by the said S. G. Sneed to the said plaintiff, W. M. Brown, both as to securing the liability of the said S. G. Sneed and his sureties, and also to avoid the statute of limitation of four years pleaded and relied upon by said defendants, when said letter contained no recognition of liability or promise to pay to the said intervenor; nor could the said letter nor anything contained therein be binding upon said defendants, either as to fixing liability on their part to intervenor, or as avoiding the statute of limitation of four years, which they pleaded and relied upon. (6) Because it appeared therefrom that the said intervenor was relying and seeking to recover against defendants upon statements made by the said S. G. Sneed since his term of office expired; and his sureties say that the statements made by the said S. G. Sneed since his term of office expired, or at any other time, were not binding on said defendants as sureties for any purpose. The defendant S. G. Sneed also adopted the general and special demurrers of the other defendants to intervenor's

petition. On June 4, 1887, the general and special demurrers of the defendants to the plaintiff's first amended original petition, and to the intervenor's first amended original petition were sustained, and, plaintiff and intervenor both declining to amend, judgment was rendered for defendants.

The following errors are assigned: (1) The court erred in sustaining the defendants' general and special demurrers to plaintiff's first original petition. (2) The court erred in holding that the defendants were protected by the statute of limitation, because the said moneys, for which recovery is sought, were received upon special trust; and because, through the misfeasance and wrong of said Sneed, the principal defendant, the cause of action was not discovered until within less than four years; and because within less than four years said Sneed did, by an instrument in writing signed by him, acknowledge the justice of the claim sued on, and promised to pay it.

Any person who, by virtue of his office or employment, receives into his custody the money of his principal must account for the same, and his failure to do so constitutes a breach of trust; and if such person has given bond for the faithful performance of his duties, both he and his sureties are liable, and may be sued. Limitation cannot be pleaded against the state. This suit became by the intervention of the state in form and substance a suit by the state, and, under the facts alleged, the plaintiff was entitled to have determined, as between him and the defendants, the question of ultimate liability for said deficit.

The questions most material in this case are--*First*. Does the statute of limitation of four years run against the state under our laws in a suit on the official bond of the chief clerk of the comptroller's office? *Second*. Can additional duties be assumed by, or devolved on, said clerk, other than \*\*251 those named in the statute, or not incidental thereto, so as to extend the liability of the sureties? And this involves the question whether the pleadings in this case show that such additional duties were assumed by or imposed on him. *Third*. If said sureties are \*474 released from liability under the bond, is said clerk liable? If so, to whom,--the state or the comptroller in this suit? There is nothing in our statutes of limitation, nor is there anything in the cases of [State v. Purcell, 16 Tex. 305](#), and [Governor v. Allbright, 21 Tex. 753](#), and [Governor v. Burnett, 27 Tex. 32](#), which, in our opinion, conclusively authorizes the inference that a change was intended to be effected in the well-established and long-recognized rule that unless the statute so expressly provides it cannot be set up as a bar to any right or claim of the state. Wood, Lim. § 52. At all events, we do not think the authorities referred to justify holding in this action that the state is barred in four years. In the cases of *State v. Purcell*, and *Governor v. Burnett*, 10 years had elapsed from the accrual of the cause of action. In the latter case 10 years had elapsed before the filing of the amended petition. Reviewing the former case, the court, in [Governor v. Allbright, 21 Tex. 753](#), where the question now under consideration was directly before it, held that the statute of four years' limitation would not run against the state in a suit on a tax collector's bond; and took occasion there to declare the general rule to be that the state is not bound by statutes of limitation unless provision be made in the statutes to that effect. In the cases cited, where the state was held to be barred, it was upon the ground of the lapse of time, 10 years. It is not clear, however, why, if the statute of four years did not apply to the state in the cases of *State v. Purcell* and *Governor v. Burnett*, for the reasons therein given, the lapse of 10 years' time should apply and preclude a recovery. The doctrine that laches is not imputable to the government was a controlling reason for the rule that limitation did not apply to the state, unless it was included. The considerations of wise public policy which were supposed to uphold this doctrine rested upon the theory that the head of the government was engrossed with the cares and duties of state, and that the public should not therefore suffer by reason of the negligence of his servants. Discussing this question, the supreme court of the United States use this language: 'In a representative government, where the people do not and cannot act in a body, where their power is delegated to others, and must of necessity be exercised by them, if exercised at all, the reasons for applying these principles is equally cogent.' [U. S. v. Thompson, 98 U. S. 489](#). The principles referred to were embodied in the maxim to the effect that no time runs against the government. It is upon this principle, applicable alike to all governments necessarily acting through numerous agents, and essential to the preservation of the interests and property of the public, that the statute of a state prescribing periods of time within which rights must be asserted are held \*475 not to embrace the state itself unless expressly

designated. [Gibson v. Chouteau, 13 Wall 99](#). It is argued that as the statute in express terms makes an exception in favor of the state in suits for land the presumption is that this exception was not intended to apply to other suits. In the case of *State v. Purcell* the same reason was urged in the opinion in support of the doctrine that the statute did apply to the state in suits other than for land. And it is now contended that the absence of any exception in the statute in favor of the state in personal actions is tantamount to a legislative acquiescence in the doctrine announced in the case last cited. This argument, we think, applies with equal vigor and reason to the doctrine in case of *Governor v. Allbright*, because in that case the question involved and directly under consideration was, as in this case, whether the four-years statute applied to the state. And the rule declared in reviewing the case of *State v. Purcell* was that unless it is so expressly provided the statute does not apply to the state; and in that case the necessity for the adherence to this rule was rather deprecated, and the advantage of a statute applicable to the state in actions other than for land was, as well as its necessity, urged upon grounds of 'sound public policy.' But there has been no material change in the statute in this respect, although our present law was enacted since that decision, and presumably with the knowledge of the construction therein contained. We would not, therefore, feel authorized to interpret the statutory silence upon this point in the chapter regulating limitation in personal actions as an indication that the state was included in that chapter. We conclude, then, that the statute of limitation of four years does not in this case apply to the state, and it is not well pleaded.

The duties which the chief clerk of the comptroller's office was required to perform by article 2759 of the Revised Statutes were 'to keep the books of said office and discharge the duties of the comptroller whenever said office may become vacant by death, resignation, or otherwise, or when the comptroller may be unavoidably absent, or incapable from sickness to discharge said duties.' Such only were specifically devolved on Sneed by the statute at the time of the execution of the bond by him and his sureties. That it was not the purpose to include the duties pertaining to the 'tax department' of the comptroller's office among those required of the chief clerk by article 2759, but rather the legislative intention to devolve them upon another, and separate the duties of the tax department from those of the chief clerk, is indicated by the act of April 1, 1881, passed a few months after the execution of the bond, making appropriation for the support of the state government covering the term of the comptroller. This act provided and appropriated for 'one tax clerk, \*476 one tax-sale clerk, one back-tax clerk' in the comptroller's office, in addition to the 'chief clerk.' Laws 1881, p. 86. Article 2759 required the chief clerk's bond to be conditioned 'for the faithful performance of his duties.' The \*\*252 condition of the bond sued on is that 'the said Sebron G. Sneed shall faithfully discharge the duties of his office.' It is alleged that, among other duties required by law of Brown, he was required to receive, as comptroller, certain taxes and issue tax-receipts therefor, and to cover the same, so receipted, into the treasury; that for the conduct of this branch of the business of the office a 'tax department' had been established for many years; that at and before the date of Sneed's appointment as chief clerk, and prior to the execution of the bond, it was agreed and understood between Brown and Sneed that the duties pertaining to this tax department should be assigned to and performed by Sneed, under the direction of Brown. The deficit is alleged to have occurred in this department under Sneed's administration, and through his neglect and misfeasance, etc., amounting to \$4,356.86, with interest, etc.

Many authorities have firmly settled the doctrine that the liability of sureties upon official bonds cannot legitimately be extended beyond 'the reasonably necessary import of the language' of the bond, or by inference be made to exceed their express undertaking; their liability being *strictissimi juris*. How far the language of a bond conditioned (as in this case) for the faithful performance of the officer's duties may be construed as an obligation including other duties than those mentioned in the statute at the time of its execution has been frequently discussed. Even the legislature, it has been held, has no power to increase the risk of the surety by the imposition of additional duties involving the receipt and disbursement of money upon a clerk of a court whose duties, under the statute, were to 'keep the records.' *Murfree, Off. Bonds, § 710*. The test of the liability of the sureties for the discharge by the principal of other duties than those named in the statute is made to depend on whether the subsequently imposed duties are similar in their nature to those named in the statute or usually incident to the office. *Id.*

The sureties on an official bond, however, do not stand altogether on the same footing as sureties on a private contract or obligation. In the latter the familiar rule is that any change in the contract without their consent releases them; but a bond for the faithful performance of his duties, or 'according to law,' under the rule above stated, includes all duties prescribed by laws germane to the matter, and usually incident to the office. So the sureties on the bond of a clerk of a court were held not to be liable for money paid into his hands by executors, etc., because it was not in the line of his official duties as clerk of the court to receive \*477 such money; and they were liable only for the performance of his official duties. Id. §§ 710, 711, et seq. And where a bond was executed by sureties for the book-keeper of a bank, conditioned that he should discharge the duties and trusts assigned to him as book-keeper, and also the duties of any other office relating to the business of the bank which he 'shall undertake to perform,' he was made teller of the bank, and in that capacity the default occurred, but none as book-keeper. Suit was brought on the bond, and it was held that the sureties were responsible only for his good conduct as a book-keeper. Id. § 80. While we believe the above rule in its application to the sureties to be sound, we do not doubt the power of the legislature by subsequent acts to prescribe additional duties germane or incident to the office; and that these duties would be embraced within the 'reasonably necessary import' of the language of the bond, conditioned for the 'faithful discharge of his duties,' and that in such a case the sureties could not claim that their liability had been extended beyond their undertaking. The additional duties, however, in this case devolved on Sneed, and not fairly contemplated, it is claimed, by the bond, were not imposed by the legislature, but assumed by him, as alleged, under an agreement made with the comptroller at and before the making of the bond that he should take control of the 'tax department' of said office which had been created by a long-established custom. There cannot, we think, be a recovery by the plaintiff or the intervenor under the allegations against the sureties on Sneed's bond, because it appears that the alleged deficit occurred while Sneed was in the performance of duties not prescribed or devolved on him by article 2759 of the Revised Statutes, and under the rule which forbids the extension of their liability to the performance of duties not fairly contemplated by their contract. Sneed's duties assumed by him under the agreement and understanding with Brown were different from those imposed by the statute. Hence the sureties are not liable. The appropriation act of April, 1881, for this service would seem to imply that these duties were not to be performed by the chief clerk. The question then is as to the liability of Sneed himself, and, if he be liable, to whom is he so liable under the pleadings in this case? Although the law did not require Sneed to perform the duties in the tax department of the comptroller's office, we do not think he would be relieved from liability upon this ground, as would his sureties. He having assumed the discharge of these duties cannot now claim exemption from liability on the ground that they were not devolved on him by law. We do not understand that Sneed is liable to the state by reason of any relation existing between the comptroller and the state. But we think he is primarily liable to the state by reason of the assumption of duties by him in the discharge of which it is alleged the deficit occurred. \*478 Both Brown and Sneed are liable to the state for the same trespass. Both or either may be sued, and a judgment against both or either may be obtained for the same trespass; but there can be but one satisfaction. The state in this case is entitled to a judgment against Sneed upon the allegations, and the fact that a judgment has been recovered against Brown cannot be a defense to Sneed.

On the whole case our opinion is: (1) That under our statutes of limitation \*\*253 there being no express provision including the state in the chapter regulating limitation in personal actions, the statute of four years pleaded in this cause does not apply to the state. (2) That the petition shows that the deficit occurred in the performance by Sneed of duties not devolved on him at the time of the execution of the bond by the statute, (article 2759, Rev. St.) and not fairly or usually incident to the office of chief clerk, and which extended the liability of the sureties beyond their express contract. They are not liable in this suit. (3) That Sneed having executed the bond to the state, and having undertaken and assumed the performance of the duties in the performance of which the deficit is alleged to have occurred, he is liable in this suit directly to the state, and not to Brown. (4) That Brown and Sneed both being liable to the state for the same trespass, a judgment may be obtained against both, but there can be but one satisfaction.

For the reasons mentioned in the opinion, we think the judgment should be reversed, and the cause remanded.

STAYTON, C. J.

Report of commission of appeals examined, their opinion adopted, and the judgment reversed, and cause remanded.

77 Tex. 471, 14 S.W. 248

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