

Sec. 36, An action does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest, if the cause of action survives or continues. In case of the death, marriage, or other disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be added or substituted in the action.

Action not abated.

After a verdict of a jury, decision or finding of a court, or report of a referee, in any action for a wrong, such action shall not abate by the death of any party.

When act to take effect.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved February 25, 1876.

## CHAPTER XLVII.

### AN ACT TO REGULATE PROCEEDINGS IN CIVIL ACTIONS IN CASE OF DEATH OF PARTY PENDING APPEALS THEREON.

*Be it enacted by the Legislature of the State of Minnesota :*

SECTION 1. In all cases where an appeal has been taken to the supreme court, and before such appeal has been perfected, or argued and submitted, the respondent to such appeal dies, it shall be and is the duty of the appellant to apply to the supreme court, if in session, to any judge thereof when not in session, to have the legal representative or successor in interest of such deceased respondent substituted as the party respondent in such appeal. In case such appellant fails or neglects to cause such substitution to be made within sixty days from the death of such respondent, or in case any such appeal has heretofore been taken and remains unperfected, and no substitution made as herein provided, within sixty days from the passage of this act, upon the filing of an affidavit, by the legal representative or successor in interest of such deceased respondent, with the clerk of the supreme court, showing that such appeal has been taken, and the death of the respondent therein, and that the appellant has failed to make, or caused to be made, such substitution, such appeal shall be deemed abandoned, and it shall be the duty of the clerk of the supreme court to enter an order dismissing said appeal; and upon the filing of a certified copy of such order in the office of clerk of the court from which such appeal was taken,

Duty of appellant.

Appeal abandoned.

will be restored to and have full jurisdiction over the action in which such appeal was taken, in the same manner, and to all intents and purposes, and shall proceed thereon as if no appeal had been taken.

SEC. 2. In all cases where an appeal has been taken to the supreme court, and after the case [has] been submitted to the supreme court, but before the entry of judgment thereon in such court, either party to such appeal dies, and the surviving parties to such action, or the legal representative or successor in interest of said deceased party or either of them, shows by affidavit filed therein that such death has occurred, it shall be the duty of the clerk of the supreme court to substitute the name of the person so shown to be the legal representative or successor in interest of such deceased party; and the action shall thereupon proceed, and all subsequent proceedings had and judgment be entered therein for or against such legal representative or successor in interest, or such jointly or alone, as the case may be.

Clerk of supreme court to substitute name.

SEC. 3. This act shall take effect and be in force from and after its passage.

When act to take effect.

Approved February 25, 1876.

### CHAPTER XLVIII.

AN ACT TO AMEND SECTION 40, OF CHAPTER 66, OF THE GENERAL STATUTES, (BEING SECTION 44, OF CHAPTER 32, OF STATUTES AT LARGE,) RELATING TO CIVIL ACTIONS.

*Be it enacted by the Legislature of the State of Minnesota:*

SECTION 1. That section 40, of chapter 66, of the general statutes, (being section 44, of chapter 32, of the statutes at large,) be and the same is hereby amended so as to read as follows:

Sec. 40. In all other cases the action shall be tried in the county in which the defendants, or any of them shall reside at the commencement of the action; or if none of the parties shall reside, or be found in the state, or the defendant be a foreign corporation, the same may be tried in any country which the plaintiff shall designate in his complaint, subject, however, to the power of the court to change the place of trial, in the cases provided by law. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expires, demand in writing that the trial be

Place of trial—change of.