

1940 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1940)  
(Superseding Mason's 1931, 1934, 1936 and 1938  
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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weeks prior to the date to which said sale shall be postponed. (Act Mar. 2, 1933, c. 44, §1; Mar. 16, 1933, c. 90, §1.)

Laws 1933, c. 44, is constitutional. *State v. Moeller*, 189M412, 249NW330. See Dun. Dig. 207 to 209, 1628.

Duties of register of deeds as prescribed by Mason's Minn. St., sec. 2217, are in no way affected by this law. Op. Atty. Gen., Apr. 3, 1933.

Governor's executive order to officers to desist from foreclosing mortgages expired by limitation on Apr. 30, 1933. Op. Atty. Gen., May 2, 1933.

**9655-2. Posting of notices.**—In all cases where any sheriff has heretofore and subsequent to February 23, 1923, postponed any such mortgage foreclosure sale, the said sheriff may again postpone the sale, provided, however, that the date to which said sale is finally postponed shall be subsequent to April 30, 1933, and shall not be more than ninety days from the date upon which said sale was originally advertised to be held, and provided further, that the said sheriff shall post a notice of such final postponement at one of the entrance doors of the court house or county jail of the county where the sale was originally advertised to be held, at least three weeks prior to the date to which the said sale shall be finally postponed. (Act Mar. 2, 1933, c. 44, §2; Mar. 16, 1933, c. 90, §2.)

**9655-3. Acts legalized.**—Any postponement heretofore made by any sheriff of any such mortgage foreclosure sale, without the publication of a notice of postponement in a newspaper, is hereby validated and is hereby declared to be legal and binding in all respects. (Act Mar. 2, 1933, c. 44, §3; Mar. 16, 1933, c. 90, §3.)

Adjournment of mortgage foreclosure sale by sheriff on Feb. 27, 1933, was validated by curative provision of act of Mar. 2, 1933. Laws 1933, c. 44. *State v. Moeller*, 189M412, 249NW330.

**9655-4. Provisions separable.**—If any section or part of this act shall be declared unconstitutional or invalid for any reason, the remainder of this act shall not be affected thereby. (Act Mar. 2, 1933, c. 44, §4; Mar. 16, 1933, c. 90, §4.)

**9655-5. Powers and duties of trustees in certain cases.**—Whenever a mortgage made or assigned to a trustee or trust deed on any real property or any real and personal property located in this State has been heretofore or shall hereafter be foreclosed and bid in on such foreclosure by a trustee for the holders of the bonds or notes secured by such mortgage or trust deed, or for the holders of certificates or other evidences of equitable interest, in such mortgage or trust deed, or whenever a mortgagor after the mortgage has been executed and delivered, but not before nor as a part of the mortgage transaction, conveys directly to the mortgage trustee, thereby eliminating his title, the said trustee may at any time petition the district court of the county in which such property or any portion thereof is situated for instructions in the administration of the trust. Upon the filing of such petition the court shall make an order fixing

a time and place for hearing thereof, unless hearing has been waived in writing by the beneficiaries of such trust. Notice of such hearing shall be given by publishing a copy of such order one time in a legal newspaper of such county at least twenty days before the date of such hearing, and by mailing a copy thereof to each known party in interest then in being whose address is known, at his last known address, at least ten days before the date of such hearing or in such other manner as the court shall order, and if such court shall deem further notice necessary it shall be given in such manner as may be specified in such order. Upon such hearing the court shall make such order as it deems appropriate, including an order to sell, mortgage, or lease such property or any part thereof in such manner and upon such terms as the court may prescribe. In the case of a sale, the court in its discretion may authorize the trustee to sell at private sale or may direct the sheriff of said county to offer such property for sale at public auction and sell the same to the highest bidder therefor for cash. Any sale of such property made at public auction shall be reported to the court for confirmation and confirmed by the court before the same shall become effective and valid. Notice of hearing on such confirmation shall be given to all parties in interest who have appeared in said proceedings. Upon such confirmation, the sheriff shall make, execute and deliver, subject to such terms and conditions as the court in its order of confirmation may impose, a good and sufficient instrument or instruments of conveyance, assignment and transfer. No confirmation of a private sale, mortgage or lease shall be required. The order of confirmation in the case of a sale at public auction, and the order authorizing a private sale, mortgage or lease, shall be final and conclusive as to all matters thereby determined, and shall be binding in rem upon the trust estate and upon the interests of all beneficiaries, vested or contingent, except that appeal to the Supreme Court may be taken from such order by any party in interest within thirty days from the entry thereof, by filing notice of appeal with the clerk of district court, who shall mail a copy of such notice to each adverse party who has appeared of record. (Mar. 25, 1937, c. 108, §1.)

**9655-6. Limitation of Act.**—Nothing in this act contained shall be deemed to limit or abridge the power or jurisdiction of the district court over trusts and trustees, or to limit the authority conferred upon any trustee by any mortgage, trust deed, or other instrument. (Mar. 25, 1937, c. 108, §2.)

**9655-7. Proceedings legalized.**—All actions and proceedings heretofore brought or commenced in which the procedure prescribed by this act has been followed are hereby legalized and validated and any orders made therein shall have the same force and effect as if made hereunder. (Mar. 25, 1937, c. 108, §3.)

## CHAPTER 84

### Actions by or against Personal Representatives and Heirs

#### 9656. What causes of action survive.

##### 1. Held to survive.

Rights under Wisconsin Statutes 1927, §287.01 may be enforced in Minnesota. *Chubbuck v. H.*, 182M225, 234NW314. See Dun. Dig. 14, 1530.

A right of action accruing to a party under a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of this state. *Chubbuck v. H.*, 182M225, 234NW314. See Dun. Dig. 14, 1530.

Action under Wisconsin Survival Statute, *Chubbuck v. M.*, 182M225, 234NW868.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the

wife and the death of the wrongdoer. *Fowle v. F.*, 184M82, 237NW846. See Dun. Dig. 14.

##### 2. Held not to survive.

Rights of parent to support under deed to child are personal and do not survive. *Gamble v. M.*, 187M640, 246NW368; *Mallick v. M.*, 189M121, 248NW723. See Dun. Dig. 2677.

Action and cause of action for malicious prosecution and false arrest ended as to a certain defendant with his death. *Hoffer v. F.*, 204M612, 244NW873. See Dun. Dig. 14.

##### 3. Cause of action arising in another state.

Jurisdiction of estate of deceased tort-feasor may be acquired by service on personal representative as in case of surviving liability for torts committed here. *Kertson v. J.*, 185M591, 242NW329. See Dun. Dig. 3669.

**9657. Action for death by wrongful act.**—When death is caused by the wrongful act or omission of any person or corporation, the personal representative of the decedent may maintain an action therefor if he might have maintained an action, had he lived, for an injury caused by the same act or omission. The action may be commenced within two years after the act or omission. The damages therein cannot exceed \$10,000.00, and shall be for the exclusive benefit of the surviving spouse and next of kin, to be distributed to them in the same proportion as personal property of persons dying intestate; but funeral expenses, and any demand for the support of the decedent, duly allowed by the probate court, shall first be deducted and paid. Provided, that if an action for such injury shall have been commenced by such decedent, and not finally determined during his life, it may be continued by his personal representative for the benefit of the same persons and for recovery of the same damages as herein provided, and the court on motion may make an order, allowing such continuance, and directing pleadings to be made and issues framed conformably to the practice in action begun under this section. (R. L. '05, §4503; '11, c. 281, §1; G. S. '13, §8175; Apr. 29, 1935, c. 325, §1.) Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall be in force from and after July 1, 1935.

**2. Construction and application of statute.**

The next of kin of a deceased person are persons interested in the outcome of an action to recover damages for causing the death of such deceased person. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 10316.

It is doubtful that an implied warranty that food sold is fit for purpose intended would constitute a basis for an action for wrongful death. *Doherty v. S.*, 227Wis661, 278 NW437.

Mason's Minn. St. 1927, §3789, creates a tort liability in favor of a person injured by eating of unwholesome, poisonous, or deleterious food sold to him, independently of any showing of culpability or negligence, and recovery may be had for death of one from unwholesome food without proof of negligence. *Id.*

Inasmuch as a personal representative, in conduct of an action for wrongful death, acts for district court and not at all for probate court or estate of deceased, he is not acting in his capacity as executor or administrator, and therefore is not relieved by §9692, from necessity of furnishing an appeal bond or undertaking, of depositing cash in lieu thereof imposed by §9499. *Sworski v. C.*, 203M545, 282NW276. See Dun. Dig. 325a.

In order to recover it is necessary that cause be such that deceased, had he lived, might have pursued such an action. *Sworski v. C.*, 204M474, 283NW778. See Dun. Dig. 2600.

Right to recover for death arising out of prenatal injury. 20MinnLawRev321.

Recovery for wrongful deaths for breach of implied warranty. 23MinnLawRev92.

**3. Who may sue.**

Though wife cannot maintain an action against her husband for a tort committed by him against person of wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2608, 4288.

Action for wrongful death under Federal Employers' Liability Act must be brought by personal representatives, and none of beneficiaries may maintain an action. *Noesen v. M.*, 204M233, 283NW246. See Dun. Dig. 2602b.

Where tavern keeper unlawfully sold intoxicating liquors to a minor, resulting in his intoxication and death, cause of action, if any, accrued to parents of minor, and not to special administrator of minor under death act. *Sworski v. C.*, 204M474, 283NW778. See Dun. Dig. 2607.

County furnishing burial pursuant to §3176 may not sue to recover burial expenses under §9657, nor file petition for appointment of a special administrator for that purpose. *Op. Atty. Gen.* (339c-1), June 22, 1929.

Status of adopted children under wrongful death statutes. 23MinnLawRev33.

**5. Who is next of kin.**

An adopted child has rights of a natural child as next of kin for whose benefit an action for wrongful death may be brought. *McKeown v. A.*, 202M595, 279NW402. See Dun. Dig. 2608.

**9. Defences.**

That one defendant in action for death of guest in automobile was son of decedent and would benefit by recovery did not prevent recovery by personal representative for benefit of other beneficiaries, though representation or apportionment because of negligence might be made. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 2616.

**11. Limitation of actions.**

Action for death against city must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

**14. Funeral expenses.**

Representative of decedent's estate may recover from the wrongdoer the necessary funeral, hospital and medical expenses incurred in that behalf, provided same be reasonable, even if decedent left an adequate estate to pay such items. *Prescott v. S.*, 197M325, 267NW251. See Dun. Dig. 2612.

**16. Damages.**

\$2,564. held not excessive for death of child. 179M528, 229NW784.

Where the action is brought to recover for death by wrongful act, and the defense is contributory negligence by one or more of the next of kin or beneficiaries, the proper practice is to require the jury to assess the value of the loss of the life to all the next of kin and by special verdict determine who, if any, of the next of kin was guilty of contributory negligence. *Harrington v. A.*, 183M74, 235NW534. See Dun. Dig. 2616(7).

Measure of damages for wrongful death is money value to surviving spouse, if any, and next of kin, of continuance of decedent's life, measured by money value of what evidence shows decedent probably, or with reasonable certainty, would have contributed to them in money, property, or services, during remainder of his life. *Wiester v. K.*, 183M341, 247NW237. See Dun. Dig. 2617.

Verdict for \$7,500 was not excessive for death of woman 52 years of age leaving 10 children. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 2617.

Verdict for \$5,057.86 held not excessive for death of child. *Christensen v. P.*, 189M548, 250NW363. See Dun. Dig. 2597, 2617.

Verdict for \$7,500 reduced to \$6,750 for death of blacksmith, held not excessive. *Harris v. R.*, 189M599, 250NW 577. See Dun. Dig. 2597.

Verdict for \$2,800 to a woman 58 years of age for death of a daughter earning \$95 a month who contributed substantial sum to her mother for family expenses, held not excessive. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2617.

Verdict for \$7,500 for death of roofing contractor regularly contributing \$250 each month for maintaining household held not excessive. *Gross v. G.*, 194M23, 253 NW557. See Dun. Dig. 2617.

A verdict for \$3,500 for death of seven year old child held not excessive. *Dickey v. H.*, 195M292, 262NW869. See Dun. Dig. 2617.

\$6,000 not excessive for death of 49-year-old daughter. *Hartel v. W.*, 196M465, 265NW282. See Dun. Dig. 2617.

In determining damages for death of a parent, consideration should be given to elements of loss which arise from deprivation of counsel, guidance and aid given to family. *Hoppe v. P.*, 196M538, 265NW338. See Dun. Dig. 2617.

Verdict for \$7,500 was not excessive for death of man 48 years old receiving public relief and leaving a wife and three children. *Id.*

Argument rejected that, because earnings of an able-bodied man have been much reduced by adverse general economic conditions, there must be a corresponding reduction of recovery by his dependents for his wrongful death. *Id.*

Verdicts for \$5,000 and \$2,500 respectively for death of elderly retired wealthy parents held excessive. *Prescott v. S.*, 197M325, 267NW251. See Dun. Dig. 2617, 2618 (40).

In action by husband for wrongful death of wife, testimony as to second marriage and services of second wife is inadmissible and incompetent for any purpose whatsoever, especially where there are small children. *Lorberbaum v. C.*, 198M289, 269NW646. See Dun. Dig. 2619.

Evidence held to sustain a verdict of \$7,500 for wrongful death of man, 27 years of age, earning \$80 a month, who turned practically his entire income over to his parents, with whom he lived and for whose benefit action is brought. *Koski v. M.*, 201M549, 277NW229. See Dun. Dig. 2617.

Fact that maximum amount was allowed in a death action was not of itself important in determining whether verdict was excessive. *Paine v. G.*, 202M462, 279NW257. See Dun. Dig. 2617.

Loss of wages earned for support of family is not only matter to be considered in determining pecuniary loss for death. *Id.* See Dun. Dig. 2617.

Verdict for \$10,000 for death of manager of a creamery with expectancy of 15 years held not excessive. *Id.* See Dun. Dig. 2617.

Damages in wrongful death action are measured by pecuniary interest of beneficiaries in continuance of life of deceased, and calling of deceased, his income therefrom, his health, age, probable duration of life, amount of aid in money or services which he was accustomed to furnish beneficiaries are factors to be considered. *McKeown v. A.*, 202M595, 279NW402. See Dun. Dig. 2617.

A verdict for \$10,000 for the wrongful death of a physician and surgeon with an expectancy of over 17 years and a well-established practice from which he earned between \$5,000 and \$6,000 per year, from which he contributed between \$40 and \$60 a month to each of his

two dependents, held not excessive. *Id.* See Dun, Dig. 2617.

Verdict for \$7,500, reduced to \$6,250 was not excessive for death of a 15 year old boy. *Ekdahl v. M.*, 203M374, 281NW517. See Dun, Dig. 2617.

Verdict of \$6,000 was not excessive for death of man 39 years of age leaving wife and six children. *Farwell v. S.*, 203M392, 281NW526. See Dun, Dig. 2617.

Damages for wrongful death under Federal Employers' Liability Act are limited to probable amount of pecuniary aid each dependent would have received from employee had he continued in life. *Noesen v. M.*, 204M233, 283NW246. See Dun, Dig. 2617a.

Recovery for conscious pain and suffering under Federal Employers' Liability Act is not measured by dependency of widow of child upon employee for support. *Id.* See Dun, Dig. 2617a.

Verdict of \$7,500 for death of wife and mother was not excessive. *Doherty v. S.*, 227Wis661, 278NW437.

**16a. Disposition of proceeds.**

It cannot be said that children of parent not engaged in any gainful occupation, but who has means or income by which he contributes to them, will suffer no pecuniary loss by his death, though they will inherit his property. *Wiestler v. K.*, 188M341, 247NW237. See Dun, Dig. 2617.

The recovery in an action for death by wrongful act is not for benefit of estate but for benefit of surviving spouse and next of kin. *Luck v. M.*, 191M503, 254NW609. See Dun, Dig. 2608, 2609.

Trial judge has plenary power in respect to distribution of damages for death and may not permit negligent father to share. *Id.* See Dun, Dig. 2610.

Where father individually and as special administrator brought action for death of infant son, and a settlement was made, mother is entitled to half, after deducting medical, funeral expenses and attorney's fees and other disbursements, though she suffered no pecuniary loss by reason of death, having deserted the family years before. *Murphy v. D.*, 200M345, 274NW515. See Dun, Dig. 2617.

**16b. Negligence of defendant or beneficiary.**

Negligence of defendant held not the proximate cause of death. 171M486, 214NW763.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the wife and the death of the wrongdoer. *Fowle v. F.*, 184M82, 237NW846. See Dun, Dig. 14.

Where defendants did not ask for a reduction of death verdict or apportionment because of negligence of one beneficiary, no complaint could be made after a general verdict had been found favorable to administratrix. *Luck v. M.*, 191M503, 254NW609. See Dun, Dig. 2617.

Contributory negligence on part of mother of a child seven years old, which was killed by an automobile on a public highway, held question of fact for jury. *Dickey v. H.*, 195M292, 262NW369. See Dun, Dig. 2616.

In action for death of wife in a collision at highway intersection, contributory negligence of plaintiff held for jury. *Duncanson v. J.*, 195M347, 263NW92. See Dun, Dig. 2616.

Where in action for wrongful death, representative of estate of deceased would be sole beneficiary of any recovery, his contributory negligence bars recovery against defendant whose negligence caused death. *Jenson v. G.*, 195M556, 263NW624. See Dun, Dig. 2616(6).

Contributory negligence of deceased driver of car in nighttime in colliding with truck which had just pulled car out of ditch, blocking highway, held for jury. *Szyperski v. S.*, 198M154, 269NW401. See Dun, Dig. 2620.

**16d. Presumptions.**

Circumstantial evidence is sufficient to rebut presumption of due care on part of a deceased. *Faber v. H.*, 194M321, 260NW500. See Dun, Dig. 2616, 7032.

Driver killed in automobile collision is presumed to have exercised due care. *Vogel v. N.*, 196M509, 265NW350. See Dun, Dig. 2616(12).

It is incorrect to say that presumption of due care on part of decedent does not apply where there are eye witnesses to accident, and although the presumption is only an inference which law permits from appropriate facts, and since burden of proof upon issue of contributory negligence is upon defendants, the effect of the presumption or inference is governed by the state of the record at the time of submitting case to jury. *Anderson v. K.*, 196M578, 265NW321. See Dun, Dig. 2616, 3431, 7032.

A very strong presumption arises that deceased exercised due care to save himself from personal injury or death, and the question is always one of fact for jury unless undisputed evidence so conclusively and unmistakably rebuts presumption that honest and fair-minded men could not reasonably draw different conclusions therefrom. *Szyperski v. S.*, 198M154, 269NW401. See Dun, Dig. 2616.

Driver of car killed in accident is presumed to have exercised due care. *Laiti v. M.*, 199M167, 271NW481. See Dun, Dig. 2616.

Where driver of automobile was killed in a collision at a street intersection, with a street-car, presumption of due care of plaintiff's decedent is conclusively overcome by evidence which discloses that as a matter of law his negligence contributed to cause his death. *Geldert v. B.*, 200M332, 274NW245. See Dun, Dig. 2616(12).

Presumption that deceased was in exercise of due care, being disputable, may be overcome by any adequate evidence. *Hack v. J.*, 201M9, 275NW381. See Dun, Dig. 7032(99).

Where deceased truck driver stopped truck ten feet from curb and at an angle with timbers extending out of the back towards center of highway and was on pavement near to or in front of cab at time defendant's car struck timbers, without any explanation of stoppage, contributory negligence of truck driver was question for jury. *Id.*

In action for death of person falling into basement stairway in absence of eye witnesses plaintiff was entitled to presumption of due care on part of deceased. *Paine v. G.*, 202M462, 279NW257. See Dun, Dig. 2616.

There is a presumption that a person killed was in exercise of ordinary care at time of accident, but this presumption must yield to proof that due care was not exercised. *Ekdahl v. M.*, 203M374, 281NW517. See Dun, Dig. 2616.

Presumption that deceased was in exercise of due care did not exist where established facts annul it. *Luce v. G.*, 203M470, 281NW812. See Dun, Dig. 2616(12).

Elements of compensation for the death of a minor child. 16MinnLawRev409.

**17. Evidence.**

Evidence of financial condition of next of kin, held admissible. 179M528, 229NW784.

Person killed in an accident in the absence of eyewitnesses is presumed to have exercised due care. *Dougherty v. G.*, 184M436, 239NW153. See Dun, Dig. 2616(12).

It was not error to refuse to receive in evidence the general inventory filed in probate court in decedent's estate, as bearing upon the amount of damages resulting from his death. *Quinn v. Z.*, 184M589, 239NW902. See Dun, Dig. 2619.

In action to recover for death by wrongful act, directed verdict for defendant is proper, where evidence of causal connection between defendant's wrongful act and death is merely conjectural and speculative. *Peterson v. L.*, 186M101, 242NW549. See Dun, Dig. 2620.

In an action for wrongful death of wife, evidence of plaintiff's use of intoxicants, coupled with testimony indicating that wife, because thereof, was contemplating a separation and possible divorce, is relevant. *Peterson v. P.*, 186M583, 244NW68. See Dun, Dig. 2617.

Evidence held to sustain finding that death from lobar pneumonia 52 days after automobile accident was caused by it. *Anderson v. A.*, 188M602, 248NW35. See Dun, Dig. 2620, 6999.

In a death action wherein it appeared mother of decedent was sole beneficiary, mortality tables were admissible to show life expectancy of the mother, even if not admissible to show life expectancy of decedent, who was in ill health. *Albrecht v. P.*, 192M557, 257NW377. See Dun, Dig. 3353.

Mortality tables were admissible in evidence in action for death though evidence indicated that decedent had a weak heart. *Id.*

Evidence that plaintiff collected money on insurance carried on life of decedent and that she received at his death personal and real property from his estate, although not to be considered in arriving at amount of damages for his wrongful death, was admissible in refutation of testimony of plaintiff that she had no money with which to redeem certain real property of her husband sold under foreclosure. *Wright v. E.*, 193M509, 259NW75. See Dun, Dig. 2570b, 7193, 7202.

Presumption that a deceased person exercised due care for his own safety yields to credible undisputed testimony, and does not remain to create an issue of fact against such evidence. *Faber v. H.*, 194M321, 260NW500. See Dun, Dig. 2616, 7032.

In action against druggist evidence held to sustain finding that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused death of his child. *Berry v. D.*, 195M366, 263NW115. See Dun, Dig. 2620.

In action for death of one caught upon door handle of moving automobile, evidence held not to support a verdict for plaintiff. *Markgraf v. M.*, 197M571, 267NW515. See Dun, Dig. 2620.

Evidence held not to support a finding that lobar pneumonia, from which plaintiff's intestate died, was caused by collision, occurring over five weeks prior to pneumonia, connection as proximate cause lacking as a matter of law. *Honer v. N.*, 198M55, 268NW852. See Dun, Dig. 2620.

In action by husband for wrongful death of wife, testimony as to second marriage and services of second wife is inadmissible and incompetent for any purpose whatsoever, especially where there are small children. *Lorberbaum v. C.*, 198M289, 269NW646. See Dun, Dig. 2619.

In action for death, it must be presumed, until evidence shows otherwise, that deceased exercised due care for his own safety. *Theisen v. M.*, 200M515, 274NW617. See Dun, Dig. 2616(12).

In action against village for death of one installing sign on pole constituting part of village distribution system, contributory negligence held for jury in that deceased was not experienced in working with electricity and there was no showing that he knew of possibility of a disruptive or "brush" discharge from nearby high tension line. *Id.*

Plaintiff had affirmative on issue of proximate cause, and burden of proof rested upon him. *Paine v. G.*, 202M 462, 279NW257. See Dun. Dig. 2616.

Admission of mortality tables in evidence was not error, although deceased was not in normal health at time he was killed. *Id.* See Dun. Dig. 3353.

Circumstantial evidence was sufficient to sustain finding that missing rail was proximate cause of death of person using sidewalk and falling into pit. *Id.* See Dun. Dig. 2620.

Showing cash value of deceased's life, based upon his capacity, earnings, and life expectancy, in connection with argument as to pecuniary damage which beneficiaries of action sustained by his death, was proper. *McKeown v. A.*, 202M595, 279NW402. See Dun. Dig. 2619.

#### 17a. Instructions.

Electric company was not harmed by charge on presumption of due care by a deceased. *Ekdahl v. M.*, 203M 374, 281NW517. See Dun. Dig. 424.

#### 9660. Actions by foreign executor, etc.

A foreign executor or administrator is not authorized to maintain an action based upon possessory rights in real estate of decedent. *Bowen v. W.*, 203M289, 281NW 256. See Dun. Dig. 3678.

Effect of statutory right to sue on right to possession of realty by foreign administrator. 23MinnLawRev373.

#### 9661. Next of kin—Liability for debts.

*Gilbertson v. M.*, (CCA8), 32F(2d)665.

Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. *Op. Atty. Gen.* (614f), Jan. 7, 1935.

## CHAPTER 85

### Official and Other Bonds—Fines and Forfeitures

#### 9677. Bonds, etc.

In counties having 55,000 to 70,000 population and 35 to 45 townships premiums on bonds of officers and deputies shall be paid by the county. *Laws 1939, c. 205.*

City officials should furnish new bond at beginning of each term of office, and a renewal certificate of bonding company is insufficient. *Op. Atty. Gen.*, Jan. 24, 1933.

Reelected township officials are required to furnish new bonds instead of renewal certificates. *Op. Atty. Gen.*, June 5, 1933.

A rider to a bond should be executed and properly acknowledged as provided by this section. *Op. Atty. Gen.* (645b-2), Aug. 20, 1934.

Provision in bond covering state employees that renewal thereof may be by certification or endorsement thereon is not renewed by instrument purporting to be a schedule continuous list. *Op. Atty. Gen.* (45G), Nov. 1, 1934.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. *Op. Atty. Gen.* (469b-5), Feb. 21, 1936.

Where one of joint sureties on bond of city treasurer dies, claim for full amount of defalcation should be filed against his estate, and city may not compromise claim or divide it as between sureties, estate of decedent being financially able to pay in full. *Op. Atty. Gen.* (59a-12), July 22, 1936.

Bonds should cover entire term of official, and annual continuation certificates should not be approved. *Op. Atty. Gen.* (59a-8), July 8, 1937.

Executive secretary of county welfare may not be required to execute a fidelity bond, but it would not be unlawful for board of control to pass a resolution providing that it is desirable that such secretary give a fidelity bond to be filed as other bonds and paid for by county, and a bond so voluntarily given would be enforceable. *Op. Atty. Gen.* (104a-2), Aug. 25, 1937.

There is no authority for the execution by secretary of state or any other state officer of a certificate of cancellation and release of a corporate surety on an official bond. *Op. Atty. Gen.* (45G), March 4, 1939.

Duty of approving generally fidelity and surety bond of state officers is upon commissioner of administration, but state officers need not be bonded except in cases where law so provides. *Op. Atty. Gen.* (640), June 24, 1939.

Commissioner of administration has authority to determine what employees are to be bonded and amount thereof. *Id.*

**9677-1. State may take fidelity insurance.**—The comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employees in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required,

the directing head of any such department or agency shall procure and keep in effect a schedule or position insurance policy, in such aggregate amount as the commission shall direct, insuring the fidelity of such department employes in the respective amounts so required, upon a form to be prescribed by the comptroller. Such policy may cover also the subordinate officers of such department required by law to give bond to the state, and in the amount which the Commission shall require. The surety upon the bonds of all state officers and state employees required under any law of the state shall be a corporation authorized to act as sole surety upon such official bonds, and all such bonds shall be approved by the attorney general as to form and generally by the comptroller, who shall keep an appropriate record of such approval and cause such bond or policy to be filed in the office of the secretary of state. (*Laws 1929, c. 263, §1; Apr. 20, 1931, c. 233, §1.*)

Legislature intended by §5327 to fix amount of fidelity assurance of deputy and twelve examiners, leaving amount of bond for assistant and second assistant examiners to determination of administration. *Op. Atty. Gen.* (980a-8), May 5, 1937.

Banking division of department of commerce created pursuant to *Laws 1909, c. 201*, as amended by *Laws 1925, c. 426, art. 8*, is a department of state government within meaning of §9677-1, and legislature contemplated administration of amount of fidelity bond for those for whom legislature has not fixed amount. *Id.*

Official bonds of secretary of department of health should be referred to commission of administration and finance for approval, and continuation certificates should not be approved, such bonds should be cumulative. *Op. Atty. Gen.* (45a), May 7, 1937.

Law does not permit commission of administration and finance to write a blanket fidelity insurance policy to cover employees in more than one department, but each department head shall procure and keep in effect such a policy, and commissioner of banks, commissioner of insurance and commissioner of securities are each directing heads of a department within such rule. *Op. Atty. Gen.* (980a-8), May 10, 1937.

Attorney-in-fact who executed insurance policy need not acknowledge his signature before a notary. *Op. Atty. Gen.* (45G), March 10, 1939.

Commission of administration and finance has same duty to perform with reference to bonds given by employees of unemployment compensation division it has with reference to bonds given by employees of other departments, except that penalties and positions to be bonded are not designated by it, such bonds to be filed with secretary of state as in other cases, but unemployment commission is to designate employees to be bonded, and amount thereof. *Op. Atty. Gen.* (885), April 13, 1939.

Commissioner of administration may provide by rule or regulation that two or more companies may join in writing of a single bond, be jointly and severally liable thereon. *Op. Atty. Gen.* (640), July 6, 1939.

Authority and responsibility of commissioner of administration with reference to requiring and procuring fidelity bonds or insurance for elective officers of state or appointive principal officers thereof, subordinate officers of the state, employees of the state, and directors of department of social security, determined and stated. *Id.*