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To

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(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session 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 Law Review Articles and digest of all common law decisions.

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CHAPTER 84

Actions by or against Personal Representatives and Heirs

9656. What causes of actions survive.—A cause of action arising out of an injury to the person dies with the person of the party in whose favor it exists, except as provided in Section 9657. It also dies with the person against whom it exists, except a cause of action arising out of bodily injuries or death caused by the negligence of a decedent survives against his personal representatives. All other causes of action by one against another, whether arising on contract or not, survive to the personal representatives of the former and against those of the latter. (As amended Act Apr. 25, 1941, c. 440, §1.)

1. Held to survive.

Cause of action against partnership having accrued, it did not abate with death of partner negligently driving partnership truck. *Kangas v. W.*, 291NW292. See Dun. Dig. 14.

3. Cause of action arising in another state.

Survivability of a cause of action relates to right and is governed by law of place where act occurred upon which right or liability rests, and law of Iowa that a cause of action for death against deceased tort-feasor survives governs in an action for death in the state of Minnesota, and the right of action based on the Iowa survival statute may be enforced in Minnesota as a matter of comity, although such state does not have a similar statute. *Daniel's Estate*, 294NW465. See Dun. Dig. 1643.

9657. Action for death by wrongful act.**1. Right statutory.**

No action for wrongful death existed at common law. *Joel v. P.*, 289NW524. See Dun. Dig. 2600.

3. Who may sue.

Special administrator held entitled to maintain action for wrongful death under statute authorizing administrator to maintain such action. *Wilson v. P.*, 10SE(2d) (Ga)407.

5. Who is next of kin.

Section 9657 is not amended or supplemented by §4272-5(2) so as to affect rights of next of kin, who are not dependents. *Joel v. P.*, 289NW524. See Dun. Dig. 2608.

6. Jurisdiction—Actions under foreign statute.

Suit for death of a seaman under Jones Act, Mason's U.S.C.A., 46:688, cannot be removed to federal court. *Fiolat v. M.*, (DC-Minn.), 31FSupp219.

Survivability of a cause of action relates to right and is governed by law of place where act occurred upon which right or liability rests, and law of Iowa that a cause of action for death against deceased tort-feasor survives governs in an action for death in the state of Minnesota, and the right of action based on the Iowa survival statute may be enforced in Minnesota as a matter of comity, although such state does not have a similar statute. *Daniel's Estate*, 294NW465. See Dun. Dig. 14.

Where an action is brought by a legal representative who has sole right to sue, his citizenship as a party is determined by his citizenship as an individual and not by that of beneficiaries of the action. *Id.* See Dun. Dig. 2614.

16. Damages.

Verdict for \$6575 for death of a 48 year old owner of a pool hall who supported his family of wife and 6 children well was not excessive. *Ost v. U.*, 292NW207. See Dun. Dig. 2617.

Verdict for \$7500 held not excessive for death of clerk 67 years of age. *Symons v. G.*, 293NW303. See Dun. Dig. 2617.

16b. Negligence.

In case involving electrocution of employee by defendant's uninsulated electric wire, where recovery is

sought by employer's insurer, as subrogee, for payments made to employee's dependents, questions of negligence, assumption of risk, and contributory negligence of both employee and employer were for jury. *Standard Acc. Ins. Co. v. M.*, 289NW782. See Dun. Dig. 2620.

In action for death, a workman putting out flares was guilty of contributory negligence as a matter of law in attempting after dark to pass across a pavement open for traffic in front of approaching car traveling with lights turned on, at a speed of not to exceed 30 miles an hour. *Hoelmer v. S.*, 290NW225. See Dun. Dig. 4171.

16d. Presumptions.

In death action against power company involving electrocution and wherein defendant had burden of proof on issue of contributory negligence, it is difficult to understand how presumption of due care in favor of a decedent would operate in favor of plaintiff. *Peterson v. M.*, 288NW588. See Dun. Dig. 2616.

Presumption of due care by a decedent cannot aid plaintiff on issue of contributory negligence, since burden of proof on that issue is upon defendant irrespective of any "presumption" of due care. *Ralston v. T.*, 292NW24. See Dun. Dig. 2616.

17. Evidence.

In action for wrongful death, whether deceased died as a result of the accident or from excessive use of hard liquor held for jury. *Ost v. U.*, 292NW207. See Dun. Dig. 2620.

Whether deceased employee was acting within scope of his authority in cleaning floor of oil room or was merely cleaning his coat with carbon tetrachloride, when fumes caused his death, held for jury. *Symons v. G.*, 293NW303. See Dun. Dig. 5858.

Whether employee was guilty of contributory negligence in using carbon tetrachloride to clean floors, resulting in his death, held for jury. *Symons v. G.*, 293NW303. See Dun. Dig. 2616.

In action for death of passenger in defendant's car based upon excessive speed, failure to keep a proper lookout, negligently driving upon shoulder of road, and failure to reduce speed on return to pavement, evidence held to support verdict for defendant. *Dahlstrom v. H.*, 295NW508. See Dun. Dig. 2620.

17a. Instructions.

An instruction that presumption of due care on part of a deceased is comparable to that of right conduct, every person is presumed to do what is right, but this presumption of due care on part of deceased may be overcome by ordinary proof by the greater weight of the evidence that due care was not exercised by deceased, was technically incorrect in that jury might understand that presumption is equivalent of evidence which defendant must meet and overcome, instead of charging that presumption vanishes when there is evidence of care deceased did take or omitted to take to avoid death. *Lang v. C.*, 295NW57. See Dun. Dig. 2616.

18. Jurisdiction over fund for distribution.

Amount recovered for one's death is no part of his estate, and probate court has no jurisdiction to control action in which recovery is had or to direct the distribution of fund after it is recovered. *Daniel's Estate*, 294NW465. See Dun. Dig. 2603.

9664. Heirs and devisees—When liable.

An action may now be maintained in district court against representatives and heirs of a deceased person to enforce a lien or charge for work and materials furnished for improvement of homestead at request of deceased, without presenting claim therefor to probate court for allowance, it appearing that deceased left no property other than homestead. *Anderson v. J.*, 293NW131. See Dun. Dig. 3592a.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

9677. Bonds, etc.—Sureties, qualifications.

Statutory bonds must be construed in light of the statute creating obligations intended to be secured. *Graybar Electric Co. v. S.*, 294NW654. See Dun. Dig. 1056.

9677-1. State may take fidelity insurance.

Bonds must be approved as to form and execution by attorney general and generally by commissioner of administration, and need not be approved by department head, unless required by statute under which particular bond is given. *Op. Atty. Gen.*, (640), Oct. 5, 1939.

Surety companies need not file deviations from regular rates which they intend to charge on bonds covering state employees. *Op. Atty. Gen.*, (640), Oct. 30, 1949.

A state appraiser is a subordinate officer of the state department, which may require fidelity insurance in place of an official bond, but a fidelity policy must be conditioned as is a statutory bond. *Op. Atty. Gen.*, (640), Nov. 1, 1939.

Employees of state treasurer do not come within general rule laid down for writing of blanket bond, since state treasurer is personally accountable for all funds