

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

36

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ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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CHAPTER 77.

ACTIONS BY OR AGAINST EXECUTORS, ADMINISTRATORS, AND HEIRS.

See *McKeen v. Waldron*, 25 Minn. 466, 468.

§ 1. Survival of causes of action.

Action for pure personal tort does not survive the death of the tort-feasor. *Green v. Thompson*, 26 Minn. 500, 5 N. W. Rep. 376.

Under a statute providing for the survival of all causes of action other than those arising out of an injury to the person, held, that a cause of action against a telegraph company for a statutory penalty survives to the personal representatives of him in whom the right of the action originally existed. *Western Union Tel. Co. v. Scircle*, (Ind.) 2 N. E. Rep. 604.

See *Jordan v. Secombe*, cited in note to c. 57, § 50, *supra*; *Heyerich v. Keddie*, cited *post*, § 2; *Brackett v. Griswold*, (N. Y.) 9 N. E. Rep. 438; *Randall v. Telegraph Co.*, (Wis.) 11 N. W. Rep. 419; *Scheffler v. Minneapolis & St. L. Ry. Co.*, 32 Minn. 125, 19 N. W. Rep. 656; *United States v. Spiel*, 8 Fed. Rep. 143.

§ 2. Action for injury causing death.

The wrongful act or omission referred to is not necessarily a willful or malicious one, but one for which the intestate might, had the injuries not resulted in death, have maintained an action. *McLean v. Burbank*, 12 Minn. 530, (Gil. 438.)

This section does not confer upon the United States district court jurisdiction of a libel *in rem* filed for a marine tort by the administrator of the injured person, as in case of death from such tort the action does not survive in admiralty. *Oleson v. The Ida Campbell*, 34 Fed. Rep. 432.

A similar statute held to apply to statutory liabilities imposed after its passage. *Merkle v. Township of Bennington*, (Mich.) 24 N. W. Rep. 776.

If the cause of action does not survive by the law of the state where the injury occurred, an action cannot be maintained thereon in a state by a statute of which such a cause of action does survive. *Davis v. Railroad Co.*, (Mass.) 9 N. E. Rep. 815.

Statutes authorizing personal representatives to maintain an action, as provided in this section, are held not to provide merely for the devolution of an existing cause of action, but to create a new one. *Hegerich v. Keddie*, (N. Y.) 1 N. E. Rep. 787, and cases cited. And the action provided for by the statute abates with the death of the wrongdoer. *Id.*; *Green v. Thompson*, 26 Minn. 500, 5 N. W. Rep. 376.

A father cannot maintain an action for the negligent killing of his infant child. It must be brought under the statute by the executor or administrator. *Scheffler v. Minneapolis & St. L. Ry. Co.*, 32 Minn. 125, 19 N. W. Rep. 656.

An action for damages, under this section, on account of the death of a person caused by the wrongful act or omission of another, must be brought by the executor or administrator of the decedent. *Nash v. Tousley*, 28 Minn. 5, 8 N. W. Rep. 875.

An action must be commenced within two years after the act or omission by which the death was caused. *Rugland v. Anderson*, 30 Minn. 386, 15 N. W. Rep. 676.

This right of action is given for the benefit of the widow and next of kin, upon the theory that they have a pecuniary interest in the life of the deceased, and the object of the statute is to compensate them for their loss caused by his death; and, if there are neither widow nor next of kin, there can be no recovery, because there are no persons entitled to compensation under the statute. Therefore it is necessary, in such an action, that the complaint allege that deceased left surviving him a widow or next of kin. *Schwarz v. Judd*, 28 Minn. 371, 10 N. W. Rep. 208; *Stewart v. Railroad Co.*, (Ind.) 2 N. E. Rep. 208; *Burlington & M. R. R. Co. v. Crockett*, (Neb.) 24 N. W. Rep. 219.

An action may, under the statute, be maintained against a steam-boat by name, for wrongfully causing the death of a person. *Boutiller v. Steam-Boat Milwaukee*, 8 Minn. 97, (Gil. 72.) The administrator or executor is the proper plaintiff in such an action. *Id.*

The complaint, where it states the names of the next of kin, and how they were related to the deceased, with an allegation of damage to them, is sufficient, so far as pleading the damages is concerned. *Barnum v. Chicago, M. & St. P. Ry. Co.*, 30 Minn. 461, 16 N. W. Rep. 364.

Damages are to be computed with reference to the reasonable expectation of pecuniary benefit from the continuance of the life of the deceased. *Scheffler v. Minneapolis & St. L. Ry. Co.*, 32 Minn. 518, 21 N. W. Rep. 711. The probable duration of life is a proper element to be considered in estimating damages in an action under the statute before cited. *Id.* In an action under this section evidence of the amount of property deceased

had acquired, his habits of industry, his ability to make money, and his success in business, is proper as a basis for the damages. *Shaber v. St. Paul, M. & M. Ry. Co.*, 28 Minn. 103, 9 N. W. Rep. 575.

Measure of damages, see *Morris v. Railroad Co.*, 26 Fed. Rep. 22; *Collins v. Davidson*, 19 Fed. Rep. 83, (action under the Minnesota statute.)

See *In re Hardy*, 35 Minn. 193, 28 N. W. Rep. 219; *Meese v. City of Fond du Lac*, (Wis.) 4 N. W. Rep. 406; *James v. Emmet Min. Co.*, (Mich.) 21 N. W. Rep. 361; *Phillips v. Railroad Co.*, (Wis.) 25 N. W. Rep. 544; *Blakeley v. Le Duc*, 22 Minn. 476.

§ 5. Liability of executor de son tort.

An administrator cannot maintain an action for trespass upon real property, committed after the death of an intestate, unless he has first asserted his right under the statute by taking possession of such real property. But if he takes possession, he may then maintain an action for a trespass committed thereon before he took possession, and after the death of his decedent. In such case his possession, as well as his letters of administration, relate back to the death of his intestate. *Noon v. Finnegan*, 29 Minn. 419, 13 N. W. Rep. 197. And see same case, 32 Minn. 81, 83, 19 N. W. Rep. 391.

§ 6. Action by foreign executor, etc.

His failure to file his appointment before the commencement of an action cannot be cured (if proper objection is taken) by a filing after such commencement. *Fogle v. Schaeffer*, 23 Minn. 304.

See *Pott v. Pennington*, 16 Minn. 509, (Gil. 460, 461;); *Brown v. Brown*, 35 Minn. 191, 28 N. W. Rep. 238.

§ 13. Heirs and devisees—Liability for debts.

The debts upon which actions are allowed by c. 53, Gen. St., are the same as those, actions upon which are the subject of c. 77. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.)

Where commissioners to audit claims against an estate are appointed and a claim proper to be passed on by them is presented to and disallowed by them, and no appeal taken, such claim cannot be enforced by action against real estate descended to the heirs, whatever irregularities there may have been in the appointment of, and in the action of, the commissioners, or subsequent to their report, and though the claimant was ignorant of the report till more than two years thereafter, and after the administrator was discharged. *Bryant v. Livermore*, 20 Minn. 313, (Gil. 271.)

CHAPTER 78.

ACTIONS ON OFFICIAL SECURITIES AND TO RECOVER FINES AND FORFEITURES.

§§ 1-3. Official bonds—Action—Leave.

Sections 1, 2, and 3 apply to constables' bonds. *Litchfield v. McDonald*, 35 Minn. 167, 28 N. W. Rep. 191. The leave required is no part of the cause of action, and the statute of limitations commences to run from the same time that it would if no such leave were required. *Id.*

See *Board of Co. Com'rs v. Smith*, 22 Minn. 97, 110.

§ 10. Prosecutions for fines, etc.

A prosecution before a justice of the peace for obstructing a public highway is a criminal action. *State v. Cotton*, 29 Minn. 187, 12 N. W. Rep. 529. In such case, where the defendant is owner of the soil, and disputes the legal existence of the public easement, the question of title to real estate is involved. The plea of "not guilty" in such case does not show the question of title to be involved, but it must be made to appear by the evidence given or offered. *Id.*