

1936 Supplement
To
Mason's Minnesota Statutes
1927

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

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 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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bank could be appropriated to payment of unpaid delinquent taxes after defendant bid in mortgaged premises for full amount of debt. *Business Women's Holding Co. v. F.*, 194M171, 259NW812. See Dun. Dig. 6368.

A covenant in a real estate mortgage to pay taxes levied during life of mortgage does not survive foreclosure of mortgage where mortgaged premises are bid in for full amount of debt and expenses and there is no redemption, and purchaser takes subject to unpaid taxes, and remedy, if he pays same during year of redemption, is to file an affidavit, whereby amount paid is added to amount required to redeem. *Id.* See Dun. Dig. 6368.

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Provision requiring filing of affidavit as to insurance and taxes 10 days before expiration of period of redemption is mandatory. *Op. Atty. Gen.*, Sept. 21, 1929.

9649. Homestead included in mortgage—Separate sale.

Upon a mortgage foreclosure sale of the West Hotel in Minneapolis, the owner claimed a portion of the building as a homestead and demanded that the remainder of the mortgaged premises be first sold to satisfy the mortgage debt. Held, that the owner having the burden of proof failed to show that the property selected was compact in form and so chosen as not unreasonably to affect the value of the remaining part or that he was prejudiced. 181M392, 232NW740. See Dun. Dig. 4213.

Compliance by the mortgagor requires a separate sale of the homestead upon foreclosure, even though the non-exempt property included in the mortgage brings no bid when first separately offered. *Madson v. N.*, 182M450, 234NW636. See Dun. Dig. 6344a.

9650. Court to appoint receiver of rents.

Appointment of receiver and his powers respecting payment of taxes and interest on prior incumbrances before and after foreclosure sale. 172M193, 214NW886.

Mortgagee who purchased at foreclosure sale was not entitled to appointment of receiver to collect and apply rent on unpaid taxes which were taken into consideration in bidding in the property. 171M350, 214NW52.

A receiver should not be appointed to collect rents and profits and apply them on delinquent taxes or interest, if the mortgagor is entitled to such rents, unless there is waste. 173M18, 216NW329.

Complaint against trustee foreclosing mortgage alleging that mortgage had been superseded by trust agreement and asking for receivership, held not to state cause of action. *Monnens v. H.*, 187M100, 244NW410. See Dun. Dig. 6459.

Evidence held to show such conduct on part of an insolvent mortgagor and its general receiver as to warrant an order requiring such receiver to segregate and hold separate all rents collected from mortgaged premises during foreclosure and period of redemption and to apply same to making of necessary repairs and to payment of taxes and insurance in order to save waste to mortgaged premises. Failure to pay taxes is a species of waste. *Brodala v. S.*, 191M97, 253NW113. See Dun. Dig. 6459.

Proof of inadequacy of security caused by nonpayment of taxes accruing after execution of mortgage and insolvency of mortgagors, justified appointment of a receiver to collect rents for application upon unpaid taxes. *Minneapolis Sav. & Loan Ass'n v. Y.*, 193M632, 259NW382. See Dun. Dig. 6459.

In refusing to continue to later date hearing on order to show cause why a receiver should not be appointed to collect rents on mortgaged property, and in allowing an amendment to complaint, court did not abuse its discretion. *Id.* See Dun. Dig. 6459.

9651. Default to be shown.

Without proof of insolvency or inadequacy of security, nonpayment of taxes, not shown to jeopardize title or security during year of redemption, does not warrant appointment of receiver in action to foreclose mortgage. 176M71, 222NW516.

9655-1. Postponement of mortgage foreclosure sales.—Any sale upon the foreclosure of a mortgage upon real estate, either by action or by advertisement, which has heretofore been advertised or which may hereafter be advertised to be held at any date subsequent to the passage and approval of this act and prior to May 1, 1933, may be postponed for a period of not to exceed ninety days to a date subsequent to April 30, 1933, by the sheriff of the county in which such sale is advertised to be held, without the publication of a notice of such postponement in any newspaper; provided, however, such sheriff shall post a notice of such 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 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.)

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. *Fowlie 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; *Mallecki v. M.*, 248NW723. See Dun. Dig. 2677.

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.

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.

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 reduction 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.

16. Damages.

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).

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

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.*, 188M341, 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. 7157.

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 \$7500 for death of roofing contractor regularly contributing \$250 each month for maintaining household held not excessive. *Gross v. G.*, 194M23, 259 NW557. See Dun. Dig. 2617.

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. *Wiester 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.

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.*, 184 M82, 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.

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.

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.

9661. Next of kin—Liability for debts.

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.