

MINNESOTA STATUTES 1947 ANNOTATIONS

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ACTIONS; PERSONAL REPRESENTATIVES AND HEIRS 573.01

CHAPTER 573

ACTIONS BY OR AGAINST PERSONAL REPRESENTATIVES AND HEIRS

573.01 SURVIVAL OF CAUSES.

NOTE: Laws 1941, c. 440, relates to the survival of causes of action by providing that a cause of action arising out of bodily injuries or death, caused by the negligence of a deceased tortfeasor, survives against his personal representative. Formerly, under section 573.01, no cause of action arising out of an injury to the person survived as to either party, except after the manner of Lord Campbell's act as provided by section 573.02, which exception still is expressly retained. The rule where the injured party dies remains unchanged.

Rights of action which survive to a personal representative are assignable. *Jandera v Lakefield Union*, 150 M 476, 479, 185 NW 656, 658; *Leuthold v County of Redwood*, 206 M 299, 288 NW 165.

In an action to recover against the surviving partner for personal injuries suffered by plaintiffs who were passengers in the truck owned by the partnership and negligently driven by one of the partners on a personal mission, the surviving partner is liable since he consented to the personal use of the vehicle, and the cause of action having accrued it did not abate with the death of the driver-partner. *Kangas v Winquist*, 207 M 315, 291 NW 292.

The statute of limitations of Minnesota for actions founded on injuries to the person, section 541.05 (5), as the law of the forum governs as to the time within which an action for damages for death may be brought in Minnesota under the Iowa code which provides that a cause of action shall survive in favor of the party injured and against the personal representative of such parties respectively, there being no limitation of time for bringing such action under the law of Iowa other than the general statute of limitations of that state. The survivability of a cause of action relates to the right and is governed by the law of the place where the act occurred on which the right or liability rests. *Whitney v Daniel*, 208 M 420, 294 NW 465.

An action to recover loss of earnings and medical, hospital, and nursing expenses resulting from personal injuries caused by the negligence of a wrongdoer who was instantly killed by the act of negligence is based on a cause of action for "injury to the person", which under section 573.01 dies with the person of the tortfeasor. *Eklund v Evans*, 211 M 164, 300 NW 617.

Under section 573.01, as amended by L. 1941, c. 440, if an injured party dies as a result of injuries negligently inflicted and the person who negligently inflicts said injuries also dies, a cause of action under the death by wrongful act statute in favor of the surviving spouse and next of kin survives against the estate of the negligent wrongdoer. *Kuhnle v Swedlund*, 220 M 573, 20 NW(2d) 396.

Wrongful death and survival act; two causes of action or one. 2 MLR 295.

Abatement of an action under Sherman anti-trust act by death of defendant, 10 MLR 160.

Implied assumpsit as an alternative remedy in certain classes of torts. 11 MLR 533.

Wrongful death, abatement of cause of action on death of wrongdoer. 13 MLR 632.

Enforcement in one state of right of action under statute of another state against administrator of deceased tortfeasor. 15 MLR 706.

Testamentary libel, right to recover damages for libel contained in will. 16 MLR 93.

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Assignability of a cause of action for damages for fraud in the sale of property. 18 MLR 586.

Enforcement in one state of right of action under statute of another state against administrator of deceased tortfeasor, conflict of laws. 19 MLR 117.

Survival of cause of action on death of wrongdoer. 30 MLR 128.

Tort and implied contract liability of the federal government. 30 MLR 133.

Injury occurring after tortfeasor's death. 30 MLR 214.

Creditors' remedies relating to choses in action and corporate stock. 30 MLR 616.

573.02 ACTION FOR DEATH BY WRONGFUL ACT.

In an action for the death of a mother of a three-year-old son, the trial court properly permitted the mother's father to testify from his observation of the care given by the deceased mother to her son, that the work bestowed by the mother on the son was worth \$30 a month. *Olstead v Fahse*, 204 M 118, 282 NW 694.

Originally in most cases of death by wrongful act the wrongdoer was executed, his property confiscated, leaving nothing to compensate the next of kin of the decedent. Minnesota adopted and as yet follows the common law rule that right of recovery in tort abates upon the death of the tortfeasor. In many states, however, tort causes of action and liabilities are as much a part of the estate of either plaintiff or defendant as contract debts. The original act, R.S. 1851, c. 8, s. 3, patterned after Lord Campbell's act 1846, set the limit of recovery in case of death at \$5,000. This was increased by L. 1911, c. 281, to \$7,500; and by L. 1935, c. 325, to \$10,000. The national conference of commissioners on uniform state laws, after several years' survey, at their conference in 1943, decided to proceed no further with consideration of the uniform act relating to death by wrongful act or of uniform act relating to survival of actions. Section 573.02 is in derogation of the common law and establishes and creates a new right of action. *Joel v Dale*, 206 M 580, 289 NW 524; *Cashman v Hedberg*, 215 M 463, 10 NW(2d) 388.

A person who voluntarily attempts to rescue one whose life is imperiled by the negligence of another, if injured in the attempt may recover therefor from the negligent person if the act of attempted rescue be not one of extreme recklessness. *Arnold v Northern States Power*, 209 M 551, 297 NW 182.

By the common law, funeral expenses are a charge against the representative, and under our statute, "they are a direct charge against the estate and may be presented and allowed as such." The creditor has alternative remedies. The claimant has a good claim against the money in that estate. *Estate of Kirschstein*, 213 M 4, 4 NW(2d) 633.

In comparing present verdicts with verdicts in former days, the purchasing power of the dollar now and then must be considered as well as the difference in the income or interest of money then and now invested. *Bergstrom v Frank*, 213 M 9, 4 NW(2d) 620.

The enforcement of section 573.02 lies with the district court exclusively and not the probate court. *Fehland v City of St. Paul*, 215 M 94, 9 NW(2d) 349.

Defendant company as the operator of an "on sale" liquor establishment was required to use reasonable care to protect its patrons and guests from injury at the hands of vicious or lawless persons whom it knowingly permitted to be in and about the premises. *Windorski v Doyle*, 219 M 402, 18 NW(2d) 142.

Where an employee, as a result of his employer's statutory duty, contracted silicosis more than three years prior to the effective date of L. 1943, c. 633, and died as a result thereof after said date, employee's personal representative may maintain an action for the wrongful death of the employee. *Foley v Western Steel*, 219 M 571, 18 NW(2d) 541.

Under the 1941 amendment (L. 1941, c. 440) to section 573.01, a cause of action arising out of bodily injuries caused by the negligence of decedent survives against decedent's personal representative. *Kuhnle v Swedlund*, 220 M 573, 20 NW(2d) 396.

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In an action for wrongful death, premised on North Dakota statutes and instituted by surviving husband in his individual capacity and as special administrator of his wife's estate, the appearance of plaintiff in such dual capacity will not be held on appeal to have been improper where the intervenor (appellant) had entered into a stipulation with plaintiff in both capacities to effect settlement. Plaintiff had authority to retain attorneys, the charge being reasonable. *Fyfe v Gt. Northern*, 223 M 339, 27-NW(2d) 147.

In an action for death resulting from a crossing collision in Minnesota, if, under the law of Minnesota, there was evidence which would justify a recovery by plaintiff upon any of the grounds of negligence alleged, trial court did not err in denying defendant's motion for a directed verdict notwithstanding the verdict. *Roth v Swanson*, 145 F(2d) 262.

Absence of conflict was not conclusive. The court must determine whether there was substantial evidence upon which the verdict could properly be based; and the reviewing court is required to assume as established all facts supporting plaintiff's claims which reasonably tended to prove his case. *C.N.W. v Grauel*, 160 F(2d) 820.

Even under the limitations of the North Dakota statute, a verdict of \$42,000 covering loss to widow and child of a 27-year-old head of the family, who was earning approximately \$100 per week is not excessive. *Peters v Great Northern*, 66 F. Supp. 385.

Wrongful death and survival acts, two causes of action or one. 2 MLR 292.

Action for wrongful death; statute of limitations. 3 MLR 430.

Remarriage of surviving spouse cannot be considered in mitigation of damages. 4 MLR 335.

Right of mother to recover for the death of an illegitimate child. 6 MLR 172.

Advisability of removing disparities from Minnesota's wrongful death statutes. Limitation of action for wrongful death. 6 MLR 584.

Distribution under wrongful death statutes of judgment obtained under federal employers liability act. 7 MLR 416.

Contributory negligence of beneficiary as bar to action for wrongful death. 8 MLR 446.

Abatement and revival; abatement of an action under Sherman anti-trust act by death of defendant. 10 MLR 160.

Recovery upon either general statute or railway statute under one complaint. 10 MLR 418, 435.

Agreement to arbitrate future disputes; validity when award is made final. 10 MLR 615.

Implied assumpsit as an alternative remedy in certain classes of torts. 11 MLR 533.

Measure of damages for wrongful death of a minor, value of services after majority as an element of recoverable damages. 11 MLR 563.

Effect of recovery of judgment or release by decedent before death. 13 MLR 47.

Consent of woman to illegal operation as defense to action for wrongful death. 13 MLR 382.

Admissibility of evidence of beneficiaries' pecuniary condition in an action for wrongful death. 13 MLR 611.

Jurisdiction of a court of equity over persons to compel the doing of acts outside the territorial limits of the state. 14 MLR 494.

Statute of limitations, amendment in action for personal injuries to include damages for death as stating a new cause of action. 14 MLR 804.

Elements of compensation for the death of a minor child. 16 MLR 409.

Workmen's compensation. 17 MLR 162.

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Lord Campbell's act. 17 MLR 363.

Recovery where the sole beneficiary is the wife of the tortfeasor. 19 MLR 595.

Statements of decedent in wrongful death action. 22 MLR 735.

Adopted children under wrongful death act. 23 MLR 83.

Effect of workmen's compensation upon wrongful death act; splitting causes of action. 24 MLR 719.

Parent's recovery for death caused by parent's servant. 27 MLR 579.

Interpretation of "children," "next of kin," and "parents" under wrongful death statute. Status of illegitimate child. 27 MLR 315.

Survival of cause of action on death of wrongdoer. 30 MLR 127.

Injury occurring after tortfeasor's death, survival of actions. 30 MLR 214.

573.04 EXECUTOR DE SON TORT, TO WHOM LIABLE.

The finding of the court that all of the heirs of a decedent who died in 1911, of whose estate the plaintiff was appointed administratrix, in 1919, consented to the possession and use of the estate, which consisted of 200 acres of farm land, by defendant who was an heir, and to the payment of rent therefor to the widow of the decedent, is sustained; and under the findings and the evidence the plaintiff is not entitled to an accounting from the defendant nor can she charge him as an executor de son tort. *McHugo v Norton*, 159 M 90, 198 NW 411.

Liability of an administrator in his representative capacity for wrongful detention of chattels belonging to a third person. 25 MLR 648.

573.05 ACTION BY FOREIGN EXECUTOR.

Right of foreign administrator to sue on negotiable paper. 8 MLR 544.

Statutory right of foreign executors and administrators to sue; effect on right to possession of realty. 23 MLR 373.

573.06 NEXT OF KIN; LIABILITY FOR DEBTS; CONTRIBUTION.

Contractual obligations affecting wills. 19 MLR 105.

Summary probate proceedings. 20 MLR 105.

573.07 LEGATEES; WHEN LIABLE.

Limitations, deduction of outlawed debt from legacy or distributive share. 15 MLR 590.

573.09 HEIRS AND DEVISEES; WHEN LIABLE.

By virtue of this section one who performed work and furnished materials in the improvement of a homestead at the request of decedent and whose claim was allowed in the administration of decedent's estate may maintain an action in the district court against the representatives and heirs of the decedent to have the claim adjudged and enforced against the homestead. *Ramstedt v Thunem*, 136 M 222, 161 NW 413; *Peterson's Estate*, 198 M 45, 268 NW 707; *Anderson v Johnson*, 208 M 152, 293 NW 131.

573.13 CONTRIBUTION AMONG HEIRS.

One of several co-obligors who has paid under compulsion all, or more than his share of a common liability is entitled to contribution from the other co-obligors; and where, under the terms of a lease, legal obligation to pay taxes arose prior to the termination of the lease, contribution may be had by one of several co-obligors under the lease who paid the taxes for the termination of the lease. *Merrimac Mining Co. v Gross*, 216 M 244, 12 NW(2d) 506.