



Select Cases on the Law of Torts (Volume 1); With Notes, and a Summary of Principles

John Henry Wigmore

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This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1912. Excerpt: ... the statute, and the personal representatives are entitled to recover damages for the wrongful taking away of the life itself; and therefore it makes no difference whether the injured party was killed instantly or not. Nor does it matter that the damages recovered become assets of the estate, to be administered upon as other personal property of the deceased, and do not go to certain designated persons as provided in Lord Campbell's Act, and in many States of this country. This is but a statutory direction as to the disposition to be made of the damages to be recovered, and does not determine the question as to whether the statute creates a new right of action or is only a survival statute. In the absence of the statute, no right of action for the death exists in favor of any person, and it was clearly competent for the Legislature, in creating this new right, to make such provision as to the disposition of the damages recovered thereunder as it might see proper. The statutes of the various States which have in substance adopted Lord Campbell's Act differ widely in this respect, and it has never been suggested, so far as we are aware, that for this reason they do not give a cause of action for the death.... The statutes of Kansas and Indiana are identical with ours, except that damages are allowed to the extent of 810,000, and must inure to the exclusive benefit of the widow and children, if any, or next of kin. Mr. Justice Brewer, in *Hulbert v. City of Topeka*, 34 Fed. 510, referring to the Kansas statute, says it "gives a new right of action; one not existing before; an action which is not founded on survivorship; an action which takes no account of the wrong done to the decedent, hut one which gives to the widow or next of kin damages which have been su...

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