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Evidence - Presumptions - Statutory Presumption of Due Care in Wrongful Death Action

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EVIDENCE — PRESUMPTIONS — STATUTORY PRESUMPTION OF DUE CARE IN WRONGFUL DEATH ACTION — Consolidation of two actions arising from a multi-vehicle highway accident resulted in verdicts in both causes against appellants. One action was brought against appellants by the administratrix of a deceased driver under a wrongful death statute, and resulted in a verdict for the administratrix because of a statutory presumption of deceased's due care.¹ The other action was a personal injury suit by a third party against appellants and the administratrix as co-defendants, and resulted in a verdict exonerating the deceased driver, despite circumstances raising an inference of his negligence. Appellants' motions for judgment notwithstanding the verdict and new trial were denied. On appeal, *held*, reversed and remanded for separate trials of the previously consolidated actions. In light of statutory provisions requiring jury instructions on a presumption of decedent's due care in wrongful death actions, and factual circumstances indicating prima facie negligence on the part of the decedent, consolidation of these actions was improper and created a situation of conflicting presumptions in which the giving of meaningful jury instructions was a practical impossibility. *Lambach v. Northwestern Refining Co.*, 111 N.W.2d 345 (Minn. 1961).

Few areas of law have been as productive of confusion and discord as the subject of presumptions.² Embodying elements of both substantive and procedural law, and caught in a conflict between modern doctrinal development and judicial inertia, presumptions have been defined, classified, explained and criticized in numerous court opinions and in volumes of legal commentary.³ Celebrated disputes have raged as to the nature and function of presumptions. A basic conflict concerns the determination of their precise procedural effect. Closely related to this are varying theories

¹ MINN. STAT. § 602.04 (1957), which provides: "In any action to recover damages for negligently causing the death of a person, it shall be presumed that any person whose death resulted from the occurrence giving rise to the action was, at the time of the commission of the alleged negligent act or acts, in the exercise of due care for his own safety. The jury shall be instructed of the existence of such presumption, and shall determine whether the presumption is rebutted by the evidence in the action."

² "Every writer of sufficient intelligence to appreciate the difficulties of the subject-matter has approached the topic of presumptions with a sense of hopelessness and left it with a feeling of despair." Morgan, *Presumptions*, 12 WASH. L. REV. 255 (1937).

³ See, e.g., McCORMICK, *EVIDENCE* 635-686 (1954); THAYER, *A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW* 313-352 (1898); 9 WIGMORE, *EVIDENCE* §§ 2483-2550 (3d ed. 1940); Bohlen, *The Effect of Rebuttable Presumptions of Law Upon the Burden of Proof*, 68 U. PA. L. REV. 307 (1920); Gausewitz, *Presumptions in a One-Rule World*, 5 VAND. L. REV. 324 (1952); Laughlin, *In Support of the Thayer Theory of Presumptions*, 52 MICH. L. REV. 195 (1953); McCormick, *Charges on Presumptions and Burden of Proof*, 5 N.C.L. REV. 291 (1927); Morgan, *Some Observations Concerning Presumptions*, 44 HARV. L. REV. 906 (1931); Morgan, *Techniques in the Use of Presumptions*, 24 IOWA L. REV. 413 (1939); Reaugh, *Presumptions and the Burden of Proof* (pts. 1-2), 36 ILL. L. REV. 703, 819 (1942). The tremendous amount of pertinent legal literature necessitates selective and representative, not exhaustive, reference thereto.

as to the quantity and quality of evidence required to rebut a presumption. Jurists and scholars alike differ regarding the propriety of giving jury instructions on presumptions. Assiduous efforts at classification have been made, with careful articulation of the bases on which various presumptions rest. Contributing to the overall confusion is the anomalous presumption of due care in negligence cases.

A presumption, generally defined, is a rule of law involving the assumption of a certain factual situation, at least temporarily, upon proof of other, usually logically related, facts, developed for reasons of convenience, policy, probability or necessity.⁴ By the weight of authority, genuine presumptions are not evidence, or substitutes for evidence, but are merely procedural devices, shifting the burden of proceeding, or, more accurately, the risk of not proceeding, on a particular issue to the party against whom they operate. They are rebuttable and not conclusive, but are more than mere permissible inferences. Although there is nothing sacrosanct about the term "presumption," and theoretically many species could exist, only those devices which operate as burden-shifters are properly labelled presumptions.⁵ Inaccurate use of the term to include other concepts results in confusing and incongruous attempts to apply presumption doctrines in inappropriate situations. Since presumptions are functionally burden-shifters, a presumption which purports to operate against the party having both the burden of persuasion and the burden of going forward with the evidence is anomalous and redundant, restating the already existing burden of proof on a given issue. Specifically, a so-called presumption of decedent's due care for his own safety in wrongful death actions is a phantom and non-genuine presumption in those jurisdictions (a significant majority) where the burden of proof of the decedent's contributory negligence is already on the defendant. Continued reference to a "presumption of due care" concept in this context is unwarranted and unwise.

The presumption of due care in wrongful death cases⁶ probably originated in jurisdictions where the burden of proving due care, or freedom from contributory negligence, was allocated to the plaintiff.⁷ In such

⁴ This definition is a simplified composite of those stated in various sources.

⁵ See Falknor, *Notes on Presumptions*, 15 WASH. L. REV. 71, 74-75 (1940). Certain "special" kinds of presumptions, of which the so-called presumption of innocence in criminal cases is a prime example, have long been recognized, and generally perceived to be such. See McCORMICK, *EVIDENCE* 647-649 (1954); MORGAN, *BASIC PROBLEMS OF EVIDENCE* 40 (1954).

⁶ Two distinct considerations are typically postulated as the basis of such a presumption: the natural instinct of self-preservation and inherent love of life common to all humanity, and the avoidance of any unfairness which might otherwise result because of the decedent's inability to testify regarding his actions.

⁷ See Falknor, *supra* note 5, at 76; 41 CALIF. L. REV. 748, 749-750 (1953). Loose language in early opinions regarding presumptions makes a categorical statement of this conjecture impossible.

jurisdictions, when there is no direct evidence concerning the fatal incident, use of a presumption to shift the burden of going forward with evidence of contributory negligence to the defendant is eminently sensible.⁸ But hazy logic abounds in the application of such a presumption in jurisdictions where the burden of proof of contributory negligence is already on the defendant. A few legal writers and scholars have perceived the anomaly of such a presumptive concept, and exposed judicial use of inappropriate terminology and the confusing characterization of such devices as genuine presumptions.⁹ Nor has this anomaly completely escaped the attention of all courts.¹⁰ A few tribunals appreciative of the problems presented by such a presumption have nevertheless, for policy reasons, upheld its function as conferring an inferential benefit or as imposing a separate and added burden of rebuttal.¹¹ The vast majority of courts, however, fail to

⁸ See *Mast v. Illinois Cent. R.R.*, 79 F. Supp. 149 (N.D. Iowa 1948), for an example of the operation of the presumption of due care in such a jurisdiction. See also, Note, 38 IOWA L. REV. 155 (1952), regarding this so-called "no-eyewitness" rule in Iowa.

⁹ Especially illuminating is Falknor, *supra* note 5, at 76. Reflection of Falknor's attitude is indicated by the decision in *Hutton v. Martin*, 41 Wash. 2d 780, 252 P.2d 581 (1953), discussed in Faler, *Presumption of Due Care by Decedent: An Anomaly Destroyed*, 29 WASH. L. REV. 79 (1954). Morgan recognized the anomaly, but did little more than pose it as a question. See MORGAN, PRESUMPTIONS: THEIR NATURE, PURPOSE AND REASON 15 (1949); Morgan, *The Law of Evidence, 1941-1945*, 59 HARV. L. REV. 481, 503 (1946); Morgan, *supra* note 2, at 271. See also LADD, CASES ON EVIDENCE 831-832 (2d ed. 1959); Falknor, *Evidence*, 1952 ANN. SURVEY AM. L. 723; Comment, 18 WASH. & LEE L. REV. 57, 61 (1961); 14 B.U.L. REV. 440 (1934); 41 CALIF. L. REV. 748 (1953). For an interesting though not too perceptive running discussion of the presumption of due care in Pennsylvania, see 20 PA. B.A.Q. 24 (1948); 30 PA. B.A.Q. 208 (1959); 31 PA. B.A.Q. 21 (1959).

¹⁰ Such a presumptive concept has aptly been characterized as "like a handkerchief thrown over something covered by a blanket," and wholly overshadowed by the burden of proof so as to be without practical effect. *Brown v. Henderson*, 285 Mass. 192, 196-97, 189 N.E. 41, 43-44 (1934) (concurring opinion). It has been labelled as superfluous and non-genuine, with only theoretical or verbal existence, *Brown v. Henderson, supra*, and as "a double and unjust use of one and the same thing," *Lisbon v. Lyman*, 49 N.H. 553, 563 (1870). See also *People v. Miller*, 288 N.Y. 31, 33, 41 N.E.2d 445, 446 (1942). It has been judicially asserted that this concept serves only to complicate the charge and confuse the jury. *Perry v. Boston Elevated Ry.*, 322 Mass. 206, 210, 76 N.E.2d 653, 656 (1948). Imposing an additional or enlarged burden on a defendant to rebut such a presumption, while also requiring establishment of contributory negligence by a preponderance of the evidence, has likewise been severely criticized. See *City of Indianapolis v. Keeley*, 167 Ind. 516, 79 N.E. 499 (1906); *Ross v. Pendergast*, 353 Mo. 300, 182 S.W.2d 307 (1944); *Susser v. Wiley*, 350 Pa. 427, 39 A.2d 616 (1944); *Scott v. Burke*, 39 Cal. 2d 388, 402, 247 P.2d 313, 321 (1952) (dissenting opinion). It has been characterized as a mere reiteration of the burden of proof, *Board of Water Comm'rs v. Robbins*, 82 Conn. 623, 640, 74 Atl. 938, 945 (1910); as a locative, inactive device, a "dry" presumption, *Sheldon v. Wright*, 80 Vt. 298, 320, 67 Atl. 807, 815 (1907); "meaningless," *Speck v. Sarver*, 20 Cal. 2d 585, 593, 128 P.2d 16, 20 (1942) (dissenting opinion), with only fictitious or technical existence, and a vice without utility. As aptly stated, ". . . unguarded and inexact expression about presumptions should here be scrupulously avoided." *Sheldon v. Wright, supra* at 319, 67 Atl. at 815.

¹¹ See *Worth v. Worth*, 48 Wyo. 441, 49 P.2d 649 (1935); *Hartford Fire Ins. Co. v. Horne*, 65 N.M. 440, 338 P.2d 1067 (1959).

perceive the anomaly of such a presumption. Without making a careful distinction between it and operative, burden-shifting presumptions, these courts unquestioningly endeavor to apply the same rules as to effect, rebuttal, and instructions to both true and non-genuine, or dry, presumptions. Justifications for the continued existence of the so-called "presumption of due care" in negligence cases, in a jurisdiction such as Minnesota, are all signally ineffective in demonstrating any plausibility in characterizing and handling it as a true presumption.¹²

Although in Minnesota the burden of proof on the issue of contributory negligence has always been upon the defendant, a so-called "presumption of due care" in wrongful death cases is deeply ingrained in Minnesota jurisprudence. Little perception of any distinction between burden-shifting and dry presumptions appears in early Minnesota judicial history, with the presumption of due care concept regarded mainly as a restatement of and correlative to the burden of proof.¹³ As a body of law

¹² In summary, these suggested justifications, and their lack of substantiality, are as follows:

1. As a permissible inference from ordinary experience, based on a universal human instinct of self-preservation; analogous is the concept that instructions on such a so-called presumption are permissible forms of judicial comment on evidence, as a cautionary device for juries. See Levin, *Pennsylvania and the Uniform Rules of Evidence: Presumptions and Dead Man Statutes*, 103 U. PA. L. REV. 1, 27-28 (1954); Note, 32 NEB. L. REV. 613, 616 (1953); 26 NOTRE DAME LAW. 547, 549 (1951). The logic of such an inference appears dubious, as careful men are sometimes careless, and it seems that persons surviving an accident had at least as much of an instinct of self-preservation as those killed. Regardless, such a concept should not be labelled a presumption, but accepted and utilized, if deemed valid and necessary, for what it is, without confusing juries and litigants by referring to it as a presumption.

2. As evidence. See McBaine, *Presumptions; Are They Evidence?*, 26 CALIF. L. REV. 519 (1938); Weinstock and Chase, *The "Presumption of Due Care" in California*, 4 HASTINGS L.J. 124 (1953); Comment, 2 STAN. L. REV. 559 (1950); 51 MICH. L. REV. 295 (1952), concerning particularly the situation in California, where presumptions are regarded as evidence. The probability on which such an evidentiary conception is based is somewhat doubtful, and the majority of jurisdictions have rejected the idea of presumptions as evidence, refusing to give any artificial probative force thereto.

3. As a principle of substantive law requiring more proof than a preponderance of the evidence on the contributory negligence issue in wrongful death cases. See Holt, *Presumptions in Utah: A Search for Certainty*, 5 UTAH L. REV. 196, 214-15 (1956). Strong policy considerations of solicitude for bereaved survivors of a decedent, circumvention of the total recovery bar of contributory negligence, and avoidance of any unfairness because of decedent's absence from trial are operative. Yet, most jurisdictions have definitively stated that no enlarged burden is being placed on the defendant when the presumption is invoked. Admitting the propriety of doing so, nevertheless a forthright statement of such an increased burden, rather than recourse to the confusion and inappropriateness of presumption terminology, is advisable.

4. As another way of stating where the burden of proof (in both senses) rests. See Laughlin, *supra* note 3, at 199; Roberts, *An Introduction to the Study of Presumptions*, 4 VILL. L. REV. 475, 487 (1959); 37 MINN. L. REV. 629, 631 (1953). If this is its justification, then such a presumption is redundant and unnecessary, merely a source of confusion and basis for reversal, a crude and superfluous jury control device.

¹³ See, e.g., *Searfoss v. Chicago, M. & St. P.R.R.*, 106 Minn. 490, 119 N.W. 66

developed from repeated recital of presumptive language,¹⁴ an evidentiary conception of this so-called presumption was generally adopted,¹⁵ although hints of recognition of the anomaly of this device appeared.¹⁶ In 1939 Minnesota adopted the Thayer-Wigmore theory of presumptions in *Ryan v. Metropolitan Life Ins. Co.*,¹⁷ the Supreme Court definitively holding that presumptions are not evidence or substitutes for evidence, but are merely procedural devices to shift the burden of going forward with the evidence, and that jury instructions regarding presumptions are generally improper. In relation to the so-called "presumption of due care," this doctrine received varying interpretation and application¹⁸ until, in *TePoel v. Larson*,¹⁹ the Minnesota Supreme Court held that it was reversible error to instruct the jury that there is such a presumption.²⁰ Although falling

(1909); *Hendrickson v. Great No. Ry.*, 49 Minn. 245, 51 N.W. 1044 (1892). The term "presumption" was certainly not being used as a precise and technical word of legal art in the early Minnesota decisions.

¹⁴ The due care device was characterized as "a very strong presumption." *Gilbert v. City of Tracy*, 115 Minn. 443, 444, 132 N.W. 752 (1911). Jury instruction regarding its application was held proper. See *Carson v. Turrish*, 140 Minn. 445, 168 N.W. 349 (1918). The due care presumption was never regarded as applicable to any but death actions in Minnesota, although other jurisdictions sometimes recognized such a concept when direct evidence concerning the incident was for some reason lacking. In Minnesota, the due care presumption was consistently held not to enlarge or increase defendant's burden of proof on the contributory negligence issue. *E.g.*, *Aubin v. Duluth St. Ry.*, 169 Minn. 342, 348, 211 N.W. 580, 583 (1926).

¹⁵ See, *e.g.*, *Oxborough v. Murphy Transfer & Storage Co.*, 194 Minn. 335, 259 N.W. 305 (1935); *Jasinuk v. Lombard*, 189 Minn. 594, 250 N.W. 568 (1933).

¹⁶ See *Gross v. General Inv. Co.*, 194 Minn. 23, 30, 259 N.W. 557, 560 (1935); *Peterson v. Minnesota Power & Light Co.*, 206 Minn. 268, 274, 288 N.W. 588, 590-91 (1939), stating that "it is perhaps difficult to understand precisely how this presumption operates"; *Ralston v. Tomlinson*, 207 Minn. 485, 488, 292 N.W. 24, 26 (1940), perceiving that it was not in "the nature of a true presumption."

¹⁷ 206 Minn. 562, 289 N.W. 557 (1939), 24 MINN. L. REV. 651 (1940), a case not involving the so-called "presumption of due care."

¹⁸ See *Moeller v. St. Paul City Ry.*, 218 Minn. 353, 16 N.W.2d 289 (1944); *Bimberg v. Northern Pac. Ry.*, 217 Minn. 187, 14 N.W.2d 410 (1944); *Duff v. Bemidji Motor Serv. Co.*, 210 Minn. 456, 299 N.W. 196 (1941); *Lang v. Chicago & N.W. Ry.*, 208 Minn. 487, 295 N.W. 57 (1940).

¹⁹ 236 Minn. 482, 53 N.W.2d 468 (1952), 37 MINN. L. REV. 629 (1953), followed by *Knuth v. Murphy*, 237 Minn. 225, 54 N.W.2d 771 (1952). See DeParcq, *The Uniform Rules of Evidence: A Plaintiff's View*, 40 MINN. L. REV. 301, 309-13 (1956); Gausewitz, *Presumptions*, 40 MINN. L. REV. 391, 401-02 (1956).

²⁰ "[T]he burden rests on defendant to prove contributory negligence on the part of the decedent by a fair preponderance of the evidence. If defendant sustains the required burden of proof, he should prevail irrespective of any presumption. If he fails to do so or the evidence is in equilibrium, he should lose on this issue irrespective of any presumption. Under these circumstances, the aid of the presumption is not necessary Where, as here, the burden of proving a fact already rests on the party against whom the presumption operates, instructing the jury that there is such a presumption of due care could be justified only on the theory that the presumption is evidence, a view . . . which we have rejected . . . , or on the theory that more than a preponderance of the evidence is required to overcome the presumption We now hold that, where the burden of proving contributory negligence rests on

short of completely discarding the concept, the court, consistent with the view adopted in the *Ryan* case, did recognize the anomaly of a presumption purporting to operate against the party having the burden of proof. The *TePoel* decision was a step toward total abolition of any remnants of the confusing due care presumption. Further development in this regard, however, was thwarted by the Minnesota legislature's enactment in 1957 of a statute²¹ stating the existence of such a presumption in wrongful death cases, and requiring jury instruction thereon and jury determination as to its rebuttal. Perhaps the intent of the legislature was to restore the evidentiary conception of the presumption of due care as it existed prior to the *Ryan* and *TePoel* cases.²² Framing such an intent in the form of a statutory presumption requiring jury instruction created an intolerable situation for a court which only so recently had arrived at a perceptive comprehension of the anomaly of such a concept in relation to the nature and function of true presumptions. Such legislative shortsightedness demands a strong judicial elucidation of the undesirability of embodying such a concept in the form of a presumption.²³

the party against whom a presumption of due care operates, it is error to instruct the jury that there is such a presumption." *TePoel v. Larson*, *supra* note 19, at 491, 493, 53 N.W.2d at 473. It is significant and interesting that the court cited Falknor's leading article, *Notes on Presumptions*, *supra* note 5, in its opinion.

²¹ MINN. STAT. § 602.04 (1957).

²² This view has been suggested. *Roeck v. Halvorson*, 254 Minn. 394, 399, 95 N.W.2d 172, 176 (1959), 44 MINN. L. REV. 352, 356, where refusal to instruct the jury because of a court determination that the statutory presumption had been rebutted as a matter of law was upheld, and wherein its constitutionality was discussed. Referring to "strong policy considerations" involved, this law review note alludes to the additional burden therewith placed upon the defendant, applauding the statute as obviating a mechanistic approach to the presumption "demanded by the 'Wigmore-Thayer' doctrine," for reasons of logic and fairness. 44 MINN. L. REV. at 357. Such an analysis fails to appreciate that the same policy considerations could be implemented and effectuated without resulting in ambiguity and confusion through use of presumption terminology.

²³ Indications of judicial objection to this statutory presumption are not lacking in the instant opinion. Knutson, J., who wrote the court's opinion in the *TePoel* case, states in concurring that ". . . the burden already rests on defendant to prove contributory negligence . . . by a fair preponderance of the evidence." Principal case at 351. But the main thrust of his statements is directed against the consolidation of these actions, as stated, "As long as § 602.04 remains as part of our statutory law, cases in which a trustee of a decedent sues to recover for his death should not be consolidated with cases in which the representative of the estate of the same decedent is sued as a defendant." Principal case at 351-52. The concurring opinion of Dell, Ch. J., places sole blame for the confused situation on "the consolidation of cases which should not have been tried together," not "because of the instruction relating to the presumption of due care as provided by Minn. St. 602.04." Principal case at 352. Some understanding is evinced, though, as stated, "While from a practical standpoint it is entirely proper to instruct a jury as to the presumption of due care except in those cases where the presumption has been rebutted as a matter of law, from a theoretical standpoint it may be wrong to do so." Principal case at 353. Lack of discrimination between true and dry presumptions characterizes this second concurring opinion, however, with its extended discussion of the rebuttal of this "presumption."

Admittedly, the Minnesota court is here faced, as always, with making a decision in a particular case situation. Seemingly little is accomplished by requiring new separate trials, since the perceived presumptive conflict will still be presented for resolution. Arguably, it would be more palatable to hold the decedent negligent and also not negligent in separate trials rather than in a consolidated action.²⁴ Although recognizing the impossibility of intelligible jury instructions because of this statutory presumption,²⁵ the court's attack on consolidation and its reference to the question of conflicting presumptions are peripheral and somewhat misplaced. The problem presented does not result primarily from the consolidation of actions, nor is it really one of conflicting or inconsistent presumptions.²⁶ Rather, it is essentially a problem arising from legislative interference in a field of judicial cognizance, by the creation of an anomalous statutory presumption that cannot function as a true presumption. At the heart of the difficulty, in all probability, is the accepted doctrine that contributory negligence provides a complete and total defense to recovery in negligence-based actions. The effect of this much-assailed principle is especially acute in wrongful death cases. The statutorily-revived presumption of due care approximates a somewhat inarticulate legislative method of avoiding some of the harshness of the contributory negligence doctrine, and of assisting in recoveries by decedent's estates in death actions. It is trite to comment that two wrongs do not make a right. The area of presumptions is already too confused to confuse it further by calling something a presumption which is the embodiment of an inherent redundancy, and can never operate as such. If the contributory negligence doctrine barring any recovery is so objectionable, recourse to some type of comparative negligence concept, at least in this limited context, might be feasible. Alternatively, a frank legislative dictate requiring a greater burden of proof on the contributory negligence issue in wrongful death actions would also be

²⁴ Serious practical difficulties arising from *res judicata* doctrines, especially collateral estoppel concepts in some jurisdictions, as alluded to by the court in its opinion, may result from separate trial of actions in these circumstances, and make recovery somewhat dependent on which trial happens to reach judgment first. See Comment, 65 HARV. L. REV. 818, 861-65 (1952).

²⁵ This difficulty will probably still be presented in the separate trial of the wrongful death action.

²⁶ The bases of this assertion are that the so-called presumption of due care is an inactive and dry (though now statutory) presumption in a jurisdiction such as Minnesota, and that the inference of negligence from driving on the wrong side of a road is not a crystallized legal presumption. Divergent theories regarding the problem of conflicting or inconsistent presumptions, when such is actually presented (that such a situation is logically impossible, that they should cancel out each other, that the stronger should prevail, etc.), usually have resulted from varying views as to the nature and function of presumptions. See generally McBaine, *Burden of Proof: Presumptions*, 2 U.C.L.A.L. REV. 13, 28 (1954); Morgan, *How To Approach Burden of Proof and Presumptions*, 25 ROCKY MT. L. REV. 34, 47 (1952); other general references previously cited regarding presumptions.

acceptable. Had the court reiterated its perception of the anomaly of the so-called "presumption of due care" in unequivocal terms, and impo-
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tuned legislative restatement of policy in some form other than by use of
presumption terminology, any actual decision in the instant case would
be satisfactory.

Rules of evidence are ostensibly established to ascertain the probabili-
ties of actuality in a past factual situation, and by so ascertaining, to enable
the judicial machinery to render justice to litigants. Progress in the de-
velopment of rules of evidence will be signalled by a reduction in the
number of cases in which such procedural disputes are presented. Inac-
curate terminology and laxity in discrimination only add confusion to the
already unsettled area of presumptions. An anomalous statutory presump-
tion such as that contained in the Minnesota statute creates and complicates
judicial problems, and, without disregarding the validity of the intent and
sentiment so inaptly expressed, unquestionably should be repealed and
abolished.

Francis X. Beytagh, Jr.