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1877

An act concerning damages, and to repeal an act entitled "an act concerning damages," approved February 8, 1872.

Colorado General Assembly

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Recommended Citation

Colorado General Assembly, "An act concerning damages, and to repeal an act entitled "an act concerning damages," approved February 8, 1872." (1877). *Session Laws 1861-1900*. 1269.

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to his defense; that he cannot proceed to trial without them; what he expects to prove by each of them; that they are within the judicial district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means and is actually unable to pay the fees of such witnesses,—the court in term, or the judge thereof in vacation, if it appears to said court or the judge thereof that the evidence of such witnesses would be material in the trial of the cause, may order that such witnesses be subpoenaed, if found within the limits aforesaid. In such case, the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpoenaed in behalf of the people.

CHAPTER XXV.

DAMAGES.

AN ACT CONCERNING DAMAGES, AND TO REPEAL AN ACT ENTITLED
 "AN ACT CONCERNING DAMAGES," APPROVED FEBRUARY 8, 1872.

Be it enacted by the General Assembly of the State of Colorado:

Liability of corporations or individuals owning or managing any railroad, coach, or public conveyance, for death from injuries resulting from defects, negligence, &c.

877. SECTION I. Whenever any person shall die from any injury resulting from, or occasioned by the negligence, unskillfulness or criminal intent of any officer, agent, servant or employé, whilst running, conducting or managing any locomotive, car or train of cars, or of any driver of any coach or other public conveyance whilst in charge of the same as a driver, and when any passenger shall die from any injury resulting from, or occasioned by any defect or insufficiency in any railroad or any part thereof, or in any locomotive or car, or in any stage coach, or other public conveyance, the corporation, individual or individuals in whose employ any such officer, agent, servant, employé, master, pilot, engineer or driver, shall be at the time such injury is committed, or who owns any such railroad, locomotive, car, stage coach, or other public conveyance, at the time any such injury is received, and resulting from, or occasioned by defect or insufficiency above described,

shall forfeit and pay for every person and passenger so injured the sum of not exceeding five thousand (5000) dollars, and not less than three thousand (3000) dollars, which may be sued for and recovered:

First—By the husband or wife of deceased; or,

Second—If there be no husband or wife, or he or she fails to sue within one year after such death, then by the heir or heirs of the deceased; or,

By whom
damages may be
recovered.

Third—If such deceased be a minor or unmarried, then by the father and mother who may join in the suit and each shall have an equal interest in the judgment; or if either of them be dead, then by the survivor. In suits instituted under this section, it shall be competent for the defendant for his defense to show that the defect or insufficiency named in this section, was not a negligent defect or insufficiency.

878. SEC. 2. Whenever the death of a person shall be caused by a wrongful act, neglect or default of another and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured.

Who liable for
damages for
death caused by
wrongful act,
etc., of another.

879. SEC. 3. All damages accruing under the last preceding section, shall be sued for and recovered by the same parties and in the same manner as provided in the first section of this act, and in every such action the jury may give such damages as they may deem fair and just (not exceeding five thousand (5000) dollars), with reference to the necessary injury resulting from such death, to the surviving parties, who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect or default.

Jury to consider
mitigating or
aggravating cir-
cumstances in
making award.

880. SEC. 4. All actions provided for by this act shall be brought within two years from the commission of the alleged negligence resulting in the death for which suit is brought.

Action to be
brought within
two years.

881. SEC. 5. The act "concerning damages," passed Repeal.

by the council and house of representatives of the territory of Colorado, and approved February 8, 1872, is hereby repealed.

Approved, March 7, 1877.

CHAPTER XXVI.

DESCENTS AND DISTRIBUTIONS.

[Revised Statutes, Chapter XXIII.]

In what manner
real or personal
estate, not other-
wise limited or
disposed of,
shall descend,
(Amendment,
1876.)

882. SECTION 1. Whenever any person having title to any real estate, or property having the nature or legal character of real estate, or personal estate, undisposed of or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts, in the following course and manner, namely: If such intestate leave a husband or wife and children, or the descendants of any children, him or her surviving, one half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children as hereinafter limited; if such intestate leave a husband or wife, and no child nor descendants of any child, then the whole of the estate of such intestate, real and personal, shall descend to and vest in such surviving husband or wife as his or her absolute estate, subject to the payment of debts as aforesaid. Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other, save as herein provided. Except in the cases above enumerated, the estate of every intestate shall descend and be distributed as follows:

First—To his children surviving, and the descendants of his children who are dead, the descendants, collectively, taking the share which their parent would have taken if living.

Second—If there be no children nor their descendants, then to his father; if there be no father, then to his mother; if there be no mother, then to the brothers and sisters, and