

1877

An act to provide for the drainage of mines, and to regulate the liabilities of miners, mine owners and mill men in certain cases, and to repeal all territorial acts on the subject.

Colorado General Assembly

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acts, although the parties may not be associated together at the time of committing the same.

1829. SEC. 3. If any person or persons shall associate and agree to enter or attempt to enter by force of numbers, and the terror such number is calculated to inspire, or by force and violence, or by threats of violence, against any person or persons in the actual possession of any lode, gulch or placer claim, and upon such entry or attempted entry, any person or persons shall be killed, said persons, and all and each of them so entering or attempting to enter, shall be deemed guilty of murder in the first degree, and punished accordingly. Upon the trials of such cases any person or parties cognizant of such entry, or attempted entry, who shall either be present, aiding and assisting, or shall by promise of money, property, influence, assistance, or other thing of value, in any wise encourage such entry or attempted entry, shall be deemed a principal in the commission of said offense.

Killing of person on entry or attempted entry of mine by force of numbers, deemed and punished as murder in the first degree.

Persons cognizant of, or aiding, abetting, etc., deemed principals.

AN ACT TO PROVIDE FOR THE DRAINAGE OF MINES, AND TO REGULATE THE LIABILITIES OF MINERS, MINE OWNERS AND MILL MEN IN CERTAIN CASES, AND TO REPEAL ALL TERRITORIAL ACTS ON THE SUBJECT.

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

1830. SECTION 1. Whenever contiguous or adjacent mines upon the same or upon separate lodes, have a common ingress of water, or from subterraneous communication of the water, have a common drainage, it shall be the duty of the owners, lessees or occupants of each mine so related, to provide for their proportionate share of the drainage thereof.

Drainage by owners or occupants of contiguous or adjacent mines.

1831. SEC. 2. Any parties so related, failing to provide as aforesaid, for the drainage of the mines owned or occupied by them, thereby imposing an unjust burden upon neighboring mines, whether owned or occupied by them, shall pay respectively to those performing the work of drainage, their proportion of the actual and necessary cost and expense of doing such drainage, to be recovered by an action in any court of competent jurisdiction.

Recovery of proportionate share of actual cost from parties failing to provide therefor.

Incorporation
for purpose of
drainage.

1832. SEC. 3. It shall be lawful for all mining corporations or companies, and all individuals engaged in mining, having thus a common interest in draining such mines, to unite for the purpose of effecting the same, under such common name and upon such terms and conditions as may be agreed upon; and every such association, having filed a certificate of incorporation, as provided by law, shall be deemed a corporation, with all the rights, incidents, and liabilities of a body corporate, so far as the same may be applicable.

Proceedings in
case of failure
of parties to
agree.

1833. SEC. 4. Failing to mutually agree as indicated in the preceding section for drainage, jointly, one or more of the said parties may undertake the work of drainage, after giving reasonable notice; and should the remaining parties then fail, neglect or refuse to unite in equitable arrangements for doing the work, or sharing the expense thereof, they shall be subject to an action therefor as already specified, to be enforced in any court of competent jurisdiction.

Inspection and
examination of
mines in case of
suit for recovery
of cost of drain-
age; how to
be made.

1834. SEC. 5. When an action is commenced to recover the cost and expenses for draining a lode or mine, it shall be lawful for the plaintiff to apply to the court, if in session, or to the judge thereof in vacation, for an order to inspect and examine the lodes or mines claimed to have been drained by the plaintiff; or some one for him, shall make affidavit that such inspection or examination is necessary for a proper preparation of the case for trial. The court or judge shall grant an order for the under-ground inspection and examination of the lode or mines described in the petition. Such order shall designate the number of persons, not exceeding three, besides the plaintiff or his representative, to examine and inspect such lode and mines, and take the measurement thereof, relating the amount of water, drained from the lode or mine, or the number of fathoms of ground mined and worked out of the lode or mines claimed to have been drained, the cost of such examination and inspection to be borne by the party applying therefor. The court or judge shall have power to cause the removal of any rock, debris, or other obstacles in any lode or vein, when such removal is shown to be necessary.

to a just determination of the question involved; *provided*, that no such order for inspection and examination shall be made, except in open court or at chambers, upon notice of application for such order of at least three days, and not then except by agreement of parties, nor unless it appears that the plaintiff has been refused the privilege of making the inspection and examination by the defendant, his or their agent.

1835. SEC. 6. That hereafter, when any person or persons, or corporation, shall be engaged in mining or milling, and in the prosecution of such business shall hoist or raise water from mines or natural channels, and the same shall flow away from the premises of such persons or corporations, to any natural channel or gulch, the same shall be considered beyond the control of the party so hoisting or raising the same, and may be taken and used by other parties the same as that of natural water courses.

Use of water hoisted from mines and flowing into natural channels.

1836. SEC. 7. After any such water shall have been so raised, and the same shall have flown into any such natural channel, gulch or draw, the party so hoisting or raising the same shall only be liable for injury caused thereby, in the same manner as riparian owners along natural water courses.

Liability for damage caused by water raised from mines and flowing into natural channels.

1837. SEC. 8. The provisions of this act shall not be construed to apply to incipient or undeveloped mines, but to those only which shall have been opened, and shall clearly derive a benefit from being drained.

No application to undeveloped mines.

1838. SEC. 9. In trial of cases arising under this act the court shall admit evidence of the normal stand, or position of the water while at rest in an idle mine, also the observed prevalence of a common water level or a standing water line in the same, or separate lodes; also, the effect (if any) the elevating or depressing the water by natural or mechanical means in any given lode, has upon elevating or depressing the water in the same, contiguous or separate lodes or mine; also, the effect which draining or ceasing to drain any given lode or mine had upon the water in the same or contiguous or separate lodes or mines, and all other evidence which tends to prove the common ingress or sub-

What evidence admissible in suits under this act.

terraneous communication of water into the same lode or mine, or contiguous or separate lodes or mines.

Approved, March 16, 1877.

CHAPTER LXVII.

MISCELLANEOUS LAWS.

AN ACT TO ENABLE COUNTIES TO PROVIDE WATER FOR MINING, MILLING, IRRIGATING, DOMESTIC AND FIRE PURPOSES.

[Session Laws, 1874.]

Subscription to stock and issue of bonds by counties authorized.

1889. SECTION 1. It shall be lawful for the board of commissioners of any county in this state, to subscribe to the capital stock of any incorporated company organized under the laws of this state, for the purpose of constructing ditches, flumes or other works for the supply of such county with water for mining, milling, irrigating and domestic and fire purposes, such subscription to be paid by the issue of the bonds of said county, as hereinafter provided.

Proceedings necessary to obtain aid from counties: calling of special election.

1840. SEC. 2. Whenever any such incorporated company shall solicit the aid of such county by subscription to its capital stock, it shall submit to the board of county commissioners a statement in writing, to be filed in the office of the county clerk of such county, setting forth the source from which water is to be obtained, and the proposed capacity of the ditch, flume or pipes by which the water is to be brought, together with the number and size of the reservoirs to be constructed, and the route, as near as practicable, over which the same is to be brought, the estimated cost of the said works when completed, and the rates at which they agree to furnish water for the purposes above set forth, for the first three years after the same is in operation. Such statement shall also be accompanied with a petition of at least fifty legal voters of said county, who shall have paid taxes on property, real or personal, in said county during the year preceding that in which such petition is drawn, requesting said board to call an election in said county upon the ques-