

The Colonial Acts are expressed in the same terms and, therefore, construed in the same manner as that of England (*b*).

In Alabama, Colorado and Indiana, the measure of damages is limited to the pecuniary injury sustained by the persons to whose benefit the recovery enures. Exemplary or vindictive damages cannot be recovered, nor can anything be allowed on account of the pain and suffering of the deceased, the grief and distress of his family, or the loss of his society (*c*).

In Massachusetts the representatives of the deceased servant may recover damages for all the damage accruing to him before death, including his mental and physical sufferings (*d*).

XII. TRIAL PRACTICE.

(In the article published March 1st, sec. 3, notes (a) and (c), some additional cases dealing with points of pleading are cited.)

13. Scope of subtitle.—In this subtitle, as already intimated at the commencement of the article, it is proposed merely to collect, under appropriate headings, the cases in which various points of pleading and procedure have been determined in actions brought under the statutes. It would be out of place to attempt, in the present connection to develop fully the general rules which these cases illustrate. For a more complete discussion of the subjects touched upon, the reader is referred to the various treatises on trial practice (*a*).

14. Institution of distinct suits at common law and under the statute.—By the express terms of the English Act (sec. 6), a statutory action must, in the first instance, be commenced in a County Court. But, as the common law rights of a servant are not affected by the Act, the institution of such an action will not debar him from bringing another action at common law, either in the County Court or the High Court. If actions are brought in

(*b*) *Rumbaugh v. Balch* (1900) 27 Ont. App. 32.

(*c*) *Louisville & N.R. Co. v. Orr*, 91 Ala. 548, 8 So. 360; *James v. Richmond & C. R. Co.*, 92 Ala. 231 [both cases under the Employers' Liability Act]; *Denver & C. R. Co. v. Wilson*, 12 Colo. 20, 20 Pac. 340; *Ohio & C. R. Co. v. Tindall*, 13 Ind. 366. See generally Sutherland on Dam., secs. 1263, et seq.; Shearn & Redf. Negl., secs. 137, 466.

(*d*) See Shearn & Redf., sec. 767a.

(*a*) So far as the English procedure is concerned the works of Mr. Beven, Mr. Ruegg, and Messrs. Roberts and Wallace on Employers' Liability will supply lawyers in other jurisdictions with all the information that they are likely to require.