

heritable estate, descended to her heirs—to her lineal descendants first, and in default of these, to her collateral heirs.

These two sections,—the fourth and fifth,—although parts of one act, and containing some provisions in common, are in essentials different and independent grants. They are made upon different motives and considerations, for different quantities of land, and to a different class of persons. The first had its motive in the past and the second in the future. The one was made as a reward for immigration and settlement substantially accomplished, and the other was offered as an inducement for future immigration and settlement. *Silver v. Ladd, supra*, 227; *Chambers v. Chambers, supra*, 155.

In *Barney v. Dolph, supra*, 654, Mr. Chief Justice WAITE, who has done so much towards a lucid and comprehensive exposition of this donation act, says: "Section 4 was evidently intended for the benefit of this class"—that is, the early settlers who at the passage of the act were occupying the country under the land law of the provisional government; and that the provision in that section concerning the disposition of the donation to married persons in case of the death of one of them, after compliance with the act and before the issue of a patent, is, from "the language used, evidently" confined "in its effect to the married person mentioned" therein.

The demurrer is sustained.

CLARK, by his Next Friend, v. CHICAGO, B. & Q. Ry. Co.*

(Circuit Court, S. D. Iowa. January, 1883.)

RAILROAD—NEGLIGENCE—INJURY TO PASSENGERS—PLEADING.

The plaintiff in a suit against a railroad company to recover damages for injuries received while traveling as a passenger on the defendant's cars through the defendant's negligence, is not bound to state in his declaration the particular facts constituting the negligence. It is sufficient to state generally that the injury was the result of the defendant's negligence.

At Law. Action to recover damages for personal injuries. Motion to make declaration more specific.

Hagerman, McCrary & Hagerman, for plaintiff.

H. H. Trimble, for defendant.

The opinion of the court was delivered orally by McCRARY, circuit judge, who discussed the requisites of a declaration in such a case

*From the Colorado Law Reporter.

with respect to the allegation of negligence. He said in substance: The question is one of pleading, and not necessarily one of evidence. The plaintiff, who was injured while traveling as a passenger on board the defendant's cars, alleges that he was injured by the derailment of the train on which he was traveling, and that the injury resulted from negligence on the part of the defendant, but he does not state in what the negligence consisted. If this were a suit by an employe it might, perhaps, be necessary to specify in the complaint the facts constituting the negligence; but there is a material difference between a suit by an employe and a suit by a passenger for personal injury. The latter has, as a general thing, no means of knowing what has caused the accident or injury. He has nothing to do with the operation of the road. He may be only one of a thousand passengers occupying many coaches. He may be so seriously injured as to be unable to inquire into the causes of the accident. He may be killed, and suit may be brought by his representatives. Many reasons suggest themselves at once why it would be a harsh rule to require a passenger who sues for an injury to specify the acts of negligence, or the facts showing want of care, on the part of the railroad company. It is accordingly settled, we think, by reason and authority, that it is sufficient to state in the declaration generally that the injury was the result of defendant's negligence. When it comes to the trial the burden is upon the plaintiff to show a *prima facie* case. Whether he does so by showing simply that the car ran off the track, and that he was injured in consequence, is a question which may arise on the trial, but which is not now before us. He must show enough to raise a presumption of negligence on the part of the defendant, but how far he must go in order to do this we need not now determine.

This view is supported by the authority of Thompson's work on Carriers of Passengers, p. 547, § 9, and by the cases there cited.

UNITED STATES v. MURPHY.

(Circuit Court, D. Indiana. 1883.)

I. BANKRUPTCY—CLAIM OF THE UNITED STATES—RIGHT OF PRIORITY IN PAYMENT—PERSONAL LIABILITY OF TRUSTEE.

By the Revised Statutes the right of priority in payment of debts due the United States is established, *inter alia*, in cases where an act of bankruptcy has been committed, and every assignee and other person, who pays debts due by the person or estate from whom or for which he acts before he has discharged