

Colorado Revised Statutes: Title 2: Legislative:

2-4-211. Common Law of England.

TITLE 2. LEGISLATIVE STATUTES - CONSTRUCTION AND REVISION.

ARTICLE 4. CONSTRUCTION OF STATUTES. PART 2. CONSTRUCTION OF STATUTES.

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**The common law of England
so far as the same is applicable
and of a general nature,**

and all acts and statutes of the British parliament, made in aid of or to supply the defects of the common law prior to the fourth year of James the First, excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and the ninth chapter of thirty-seventh Henry the Eighth,

and which are of a general nature,

and not local to that kingdom,

shall be the rule of decision,

and shall be considered as of full force
until repealed by legislative authority.

Law reviews. For article, "Service of Process on Sunday", see 16 Dicta 320 (1939). For article, "Future Interests in Colorado", Part I, see 29 Rocky Mt. L. Rev. 227 (1948); Part II, 21 Rocky Mt. L. Rev. 1 (1948); Part III, 21 Rocky Mt. L. Rev. 123 (1949). For article, "Is an Attempt to Obtain Money Under False Pretenses a Common Law Crime?", see 29 Dicta 55 (1952). For comment on *Sconce v. Neece*, 129 Colo. 267, 268 P.2d 1102 (1954), appearing below, see 31 Dicta 239 (1954). For article, "An Aspect of Estate Planning in Colorado: The Revocable Inter Vivos Trust", see 43 Den. L.J. 296 (1966). For note, "The Evolution of the Police Officer's Right to Arrest Without a Warrant in Colorado", see 43 Den. L.J. 366 (1966).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

The provision for application of the common law is still in force in this state. *Vogts v. Guerrette*, 142 Colo. 527, 351 P.2d 851 (1960).

The provision for application of the common law was copied largely from the revised statutes of the limited states. *Brown v. Challis*, 23 Colo. 145, 46 P. 679 (1896).

And originally, it applied to criminal cases only, but, as adopted by the general assembly, it embraces civil as well as criminal matters. *Brown v. Challis*, 23 Colo. 145, 46 P. 679 (1896).

However, the adoption of the common law by the territorial legislature of 1861 was limited to the extent that it was applicable to our conditions. *Crippen v. White*, 28 Colo. 298, 64 P. 184 (1901).

The statutory adoption of the common-law is limited to the extent that it is reasonable to apply the English common-law to the needs and conditions of the state. *Lovato v. District Court*, 198 Colo. 419, 601 P.2d 1072 (1979).

Therefore, the common law of England was adopted so far as it is applicable and is of a general nature and has not been altered by legislation. *Dougherty v. Seymour*, 16 Colo. 289, 26 P. 823 (1891); *Canon City & C.R.R. v. Oxtoby*, 45 Colo. 214, 100 P. 1127 (1909); *Marmaduke v. People*, 45 Colo. 357, 101 P. 337 (1909); *Rains v. Rains*, 97 Colo. 19, 46 P.2d 740 (1935); *Young v. Colo. Nat'l Bank*, 148 Colo. 104, 365 P.2d 701 (1961).

So with the exceptions specified, the common law of England, as found in the reports of cases decided since A.D. 1607, and unaffected by subsequent acts of parliament, as well as of those decided before that year, constitutes the rule of decision in the state. *Chilcott v. Hart*, 23 Colo. 40, 45 P. 391 (1896); *Herr v. Johnson*, 11 Colo. 393, 18 P. 342 (1888).

Hence, the common law and acts of parliament in aid thereof prior to the designated time, are a part of the law of this state. *Denver Jobbers' Ass'n v. People ex rel. Dickson*, 21 Colo. App. 326, 122 P. 404 (1912).

But acts of parliament subsequently enacted repealing prohibitions in force at the designated time do not affect the common law in force in this state. *Denver Jobbers' Ass'n v. People ex rel. Dickson*, 21 Colo. App. 326, 122 P. 404 (1912).

However, it was only the public laws of the mother country and those of a general nature which were adopted. People ex rel. Thomas v. Goddard, 8 Colo. 432, 7 P. 301 (1885).

Common-law doctrine of restraints on alienation is part of law in Colorado. Malouff v. Midland Fed. Sav. & Loan Ass'n, 181 Colo. 294, 509 P.2d 1240 (1973).

The common-law doctrine of restraints on alienation is part of the common-law in Colorado and prohibits unreasonable restraints. Perry v. Brundage, 200 Colo. 229, 614 P.2d 362 (1980).

While the original 13 states took the common law by inheritance and so held it at the time of the adoption of their constitutions, Colorado took it by legislative enactment and so held it at the time of the adoption of the Colorado constitution. Herr v. Johnson, 11 Colo. 393, 18 P. 342 (1888); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Teller v. Hill, 18 Colo. App. 509, 72 P. 811 (1903); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

When the courts of the original 13 states came into existence by constitutional creation they took common law powers by reason of the presence of the common law in their respective jurisdictions. Herr v. Johnson, 11 Colo. 393, 18 P. 342 (1888); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Teller v. Hill, 18 Colo. App. 509, 72 P. 811 (1903); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

When the courts of Colorado came into existence by constitutional creation they took common law powers except where the constitution otherwise provided. Herr v. Johnson, 11 Colo. 393, 18 P. 342 (1888); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Teller v. Hill, 18 Colo. App. 509, 72 P. 811 (1903); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

Therefore, the supreme court of Colorado is a constitutional court with common law powers. Herr v. Johnson, 11 Colo. 393, 18 P. 342 (1888); Chilcott v. Hart, 23 Colo. 40, 45 P. 391 (1896); Teller v. Hill, 18 Colo. App. 509, 72 P. 811 (1903); People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

But the common law prevails in this state only by virtue of its adoption into the law of the state by legislative enactment. Colo. State Bd. of Pharmacy v. Hallett, 88 Colo. 331, 296 P. 540 (1931).

Its application in Colorado depends upon legislative enactment, and is only of full force and effect until repealed by legislative authority. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

And it may be repealed, without violating the Colorado constitution, by the general assembly at any time it chooses to do so. Colo. State Bd. of Pharmacy v. Hallett, 88 Colo. 331, 296 P. 540 (1931); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Because the general assembly may at any time by a legislative act, repeal any part of the common law either expressly or by passage of an act inconsistent therewith on any particular subject. Colo. State Bd.

of Pharmacy v. Hallett, 88 Colo. 331, 296 P. 540 (1931); Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Common-law prevails in this state, but the general assembly may repeal any part of the common-law either expressly or by the passage of inconsistent legislation. Shoemaker v. Mtn. States Tel. & Tel. Co., 38 Colo. App. 321, 559 P.2d 721 (1976).

Also because it is within the power of the general assembly to take away any power not expressly granted by the constitution. People ex rel. Attorney Gen. v. News-Times Publ'g Co., 35 Colo. 253, 84 P. 912 (1906) (dissenting opinion), appeal dismissed, 205 U.S. 454, 27 S. Ct. 556, 51 L. Ed. 879 (1907).

And while this statute does adopt certain portions of the common law of England and states that it shall be the law of this state, it does so with the proviso "until repealed by legislative authority". Campbell v. State, 176 Colo. 202, 491 P.2d 1385 (1971).

But the common law will not be held to be abrogated unless the language in the statute requires it. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908); Robinson v. Kerr, 144 Colo. 48, 355 P.2d 117 (1960).

In order to recognize an abrogation of the common-law remedy for tortious bad faith breach of an insurance contract, there must be a clear legislative intent to do so. Farmers Group, Inc. v. Williams, 805 P.2d 419 (Colo. 1991).

The principle of statutory construction that statutes in derogation of the common law must be narrowly construed is a principle applicable only when an ambiguity in the language of the statute in question permits such narrowing construction and when the intent of the legislature is not to the contrary; that principle cannot be invoked to defeat the plain and manifest language of the Industrial Relations Act. Martin v. Montezuma-Cortez Sch. Dist. RE-1, 841 P.2d 237 (Colo. 1992).

An intent to change the common law will not be presumed from doubtful statutory provisions. Schuler v. Henry, 42 Colo. 367, 94 P. 360 (1908).

The general assembly possesses the authority to abrogate the common law remedies; however, the court will not lightly infer a legislative abrogation of that right absent a clear expression of intent. Vaughan v. McMinn, 945 P.2d 404 (Colo. 1997).

And it is true, that where the constitution, code, and statute controlling the proceeding are silent as to the mode of trial, it will be in accord with the usage and practice prevailing before the adoption of the constitution, code, or statute. Clough v. Clough, 10 Colo. App. 433, 51 P. 513 (1897), aff'd, 27 Colo. 97, 59 P. 736 (1899); Huston v. Wadsworth, 5 Colo. 213 (1880).

But in case there is no previous usage or practice, the proceedings including the mode of trial would come within the provisions of the statute declaring that the common law of England, so far as applicable, shall be the rule of decision, and be considered as of full force. Clough v. Clough, 10 Colo. App. 433, 51 P. 513 (1897), aff'd, 27 Colo. 97, 59 P. 736 (1899); Huston v. Wadsworth, 5 Colo. 213 (1880).

And where the law of another state becomes material and there has been no evidence offered concerning it, the Colorado courts will presume that the general principles of the common law prevail there the same as in this state. Sullivan v. German Nat'l Bank, 18 Colo. App. 99, 70 P. 162 (1902).

But it will not be presumed that such other state has adopted the same or similar statutes as have been adopted in Colorado. Sullivan v. German Nat'l Bank, 18 Colo. App. 99, 70 P. 162 (1902).

And because the constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

There has been material change in the common law as it existed in the year 1607. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Because the common law is not a fixed and changeless code for the government of human conduct. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

And its applicability depends to a large extent upon existing conditions and circumstances at any given time. Vogts v. Guerrette, 142 Colo. 527, 351 P.2d 851 (1960).

Applied in Moorehead v. John Deere Indus. Equip. Co., 194 Colo. 398, 572 P.2d 1207 (1977) (decided under present section).