



**Annotated Code of Civil Procedure of the State of
New York as in Force January 1, 1883; With
Copious Notes Containing the Adjudications to
January 1st, 1883**

New York

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1883 edition. Excerpt: ...must be brought jointly against all the heirs, to whom any real property descended from the decedent, or jointly against all the devisees, as the case may be. § 184:7. Recovery to be apportioned, In such an action, the sum, which the plaintiff is entitled to recover, for damages and costs, must be apportioned among all the defendants, in proportion to the value of the real property descended to each heir, or devised to each devisee, as the case may be, as prescribed in section 1839 of this act, for a similar apportionment among legatees or next of kin, in proportion to the assets received by them. The final judgment must, in like manner, award against each defendant the proportionate sum, with which he is chargeable. 2 R. s., Part 3, ch. s, tit. 3, §§ 52 and 53. ART. 2. § 184:8. Requisite to recovery against, 1191", Where the action is brought against heirs, the plaintiff must show, either 1. That the decedent's assets, if any, Within the State, were not sufficient to pay the plaintiff's debt, in addition to the expenses of administration, and debts of a prior class; or 2. That the plaintiff has been unable, or will be unable, with due diligence, to collect his debt, by proceedings in the proper surrogate's court, and by action against the executor or administrator, and against the surviving husband or wife, legatees, and next of kin. The executor's or administrator's account, as rendered to, and settled by, the surrogate, may be used as presumptive evidence of any of the facts, required to be shown by this section. Id., § 33, as amended by L. 1859, ch. 110, and § 86. Held, under 2 R. S., 453, § 33, as amended by L. 1859, ch. 110, that a defendant could not be charged...

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