HOUSE . . . . . No. 609.

[Bill accompanying the petition of Carl M. Ebert and another for legislation relative to the recovery of damages from railroad and railway companies for injuries resulting in death. Joint Judiciary. January 31.]

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Two.

AN ACT

Relative to the Recovery of Damages against Railroad or Railway Companies for Injuries resulting in Death.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section two hundred and sixty-seven of chapter one hundred and eleven of the Revised Laws is hereby amended by striking out the words "the sum of not less than five hundred nor more than five thousand dollars," in the seventeenth and eighteenth lines, and inserting in place thereof the words: — such a sum as the jury, upon a trial, deems to be a fair and just compen-

9 sation for the pecuniary injuries resulting from
10 the death of the deceased to the person or persons
11 for whose benefit the action is brought, — so as
12 read as follows: —

13 *Section 267.* If a corporation which operates a
14 railroad or a street-railway, by reason of its negli-
15 gence or by reason of the unfitness or gross
16 negligence of its agents or servants while engaged
17 in its business, causes the death of a passenger,
18 or of a person who is in the exercise of due
19 care and who is not a passenger or in the em-
20 ploy of such corporation, it shall be punished by
21 a fine of not less than five hundred nor more than
22 five thousand dollars, which shall be recovered by
23 an indictment prosecuted within one year after
24 the time of the injury which caused the death,
25 and shall be paid to the executor or administrator,
26 one-half thereof to the use of the widow and one-
27 half to the use of the children of the deceased; or
28 if there are no children, the whole to the use of
29 the widow; or, if there is no widow, the whole to
30 the use of the next of kin; but a corporation
31 which operates a railroad shall not be so liable for
32 the death of a person while walking or being upon
33 its road contrary to law or to the reasonable rules
34 and regulations of the corporation. Such corpora-
35 tion shall also be liable in damages in such a sum
36 as the jury, upon a trial, deems to be a fair and
37 just compensation for the pecuniary injuries re-
38 sulting from the death of the deceased to the
39 person or persons for whose benefit the action is
40 brought, which shall be assessed with reference

to the degree of culpability of the corporation or of its servants or agents, and shall be recovered in an action of tort, commenced within one year after the injury which caused the death, by the executor or administrator of the deceased for the use of the persons hereinbefore specified in the case of an indictment. If an employee of a railroad corporation, being in the exercise of due care, is killed under such circumstances as would have entitled him to maintain an action for damages against such corporation if death had not resulted, the corporation shall be liable in the same manner and to the same extent as it would have been if the deceased had not been an employee. But no executor or administrator shall, for the same cause, avail himself of more than one of the remedies given by the provisions of this section.

SECTION 2. This act shall take effect upon its passage.