

**Michigan Central R. Co. Vs. Vreeland**

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**Court :** US Supreme Court

**Decided On :** Jan-20-1913

**Appeal No. :** 227 U.S. 59

**Appellant :** Michigan Central R. Co.

**Respondent :** Vreeland

**Judgement :**

Michigan Central R. Co. v. Vreeland - 227 U.S. 59 (1913)

U.S. Supreme Court Michigan Central R. Co. v. Vreeland, 227 U.S. 59 (1913)

**Michigan Central Railroad Company v. Vreeland**

**No. 242**

**Argued December 4, 1912**

**Decided January 20, 1913**

**227 U.S. 59**

*ERROR TO THE CIRCUIT COURT OF THE UNITED STATES*

*FOR THE NORTHERN DISTRICT OF OHIO*

## SYLLABUS

If the constitutional questions on which the writ of error was based were not foreclosed when the writ was sued out, this Court retains jurisdiction to consider other assignments of error even if the constitutional questions have meanwhile been decided in other cases adversely to plaintiff in error.

The Employers' Liability Act of 1908 will not receive such a narrow interpretation as to defeat all liability because the injured employee survived the injury for a brief period.

Congress has always had power under the commerce clause of the Constitution to regulate the liability of interstate carriers to their employees for injuries, but until it did act, the subject was within the police power of the states. Since the passage of the Employers' Liability Act of 1908, that act is paramount and exclusive, and so remains unless and until Congress shall again remit the subject to the states. *Reid v. Colorado*, [187 U. S. 137](#) .

A federal statute upon a subject exclusively under federal control must be construed by itself and cannot be pieced out by state legislation. If a liability does not exist under the Employers' Liability Act of 1908, it does not exist by virtue of any state legislation on the same subject.

At common law, the right of action for an injury to the person is extinguished by the death of the party injured, whether death be instantaneous or not. As the Employers' Liability Act of 1908 did not provide for any such survival, the right was extinguished by death.

At common law, loss and damage may accrue and a right of action accrue to persons dependent upon one wrongfully injured, but this cause of action, except for loss of services prior to death, abates at the death.

The evident purpose, however, of Congress in enacting the Employers' Liability Act of 1908 was to save a right of action to certain relatives dependent upon the employee wrongfully injured for the loss and financial damage resulting from his

death, and there is no express or implied limitation of the liability to cases in which death was instantaneous.

This liability is for pecuniary damage only, and the statute should be construed in this respect as Lord Campbell's Act has been construed,

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not as granting a continuance of the right the injured employ had, but as granting a new and independent cause of action.

The pecuniary loss recoverable under the Employers' Liability Act of 1908 by one dependent upon the employee wrongfully killed must be a loss which can be measured by some standard, and does not include an inestimable loss such as that of society and companionship of the deceased or of care and advice in case of a husband for his wife.

There is no hard and fast rule by which pecuniary damages may be measured in all cases.

A minor child sustains a loss from the death of a parent of a different kind from that of wife or husband from the death of the spouse; while the former is capable of definite valuation the latter is not.

In this case, the judgment under the Employers' Liability Act of 1908, of damages for death of a husband who survived the injury for a brief period is reversed because, although the wife was entitled to maintain the action notwithstanding the death was not instantaneous, the damages were not properly estimated, as the court charged the jury that they could consider the relation of husband and wife and the care and advice of the former to the latter.

The facts are stated in the opinion.

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MR. JUSTICE LURTON delivered the opinion of the Court.

This was an action under the Employers' Liability Act of April 22, 1908, to recover damages for the wrongful death of the intestate, an employee in the service of the railroad company. The constitutionality of the act was drawn in question by the plaintiff in error in the court below, and this afforded ground for bringing the case directly to this Court. Since the allowance of the writ of error all of the constitutional questions have been decided adversely to the plaintiff in error. *Second Employers' Liability Cases*, [223 U. S. 1](#) . But this does not justify

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our dismissing the case, since the constitutional questions which gave the right to bring it here were not foreclosed when the writ was allowed, and we therefore have jurisdiction to consider other assignments of error.

These relate to the construction of the act and the measure of damages thereunder. Sections 1 and 2 of the Act of 1908, and 2 of the amendatory Act of April 5, 1910, 36 Stat. 291, c. 143, are set out in the margin. [ [Footnote 1](#) ]

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This case, however, involves only a construction of the act prior to the amendment referred to.

The decedent survived his injuries for several hours. His personal representative has brought this action not for the injury suffered by his intestate, but for the loss suffered by his widow as a consequence of his wrongful death.

For the railroad company, it has been argued that the fact that the injured employee survived his injuries for several hours operates to extinguish its liability for both the wrongful injury and the death which ensued. The view of counsel seems to be that the act declared a single liability and constituted a cause of action in behalf of the injured person if he survived, or, in case his death was instantaneous, a cause of action for the benefit of the specified dependent relatives surviving. This is a narrow interpretation of the act, and would operate to defeat all liability unless the injured person should survive long enough to conduct

his action to a recovery.

We think the act declares two distinct and independent liabilities, resting, of course, upon the common foundation of a wrongful injury, but based upon altogether different principles. It plainly declares the liability of the carrier to its injured servant. If he had survived, he might have recovered such damages as would have compensated him for his expense, loss of time, suffering, and diminished earning power. But if he does not live to recover upon his own cause of action, what then? Does any right of action survive his death and pass to his representative? This is a question which depends upon the statute.

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We may not piece out this act of Congress by resorting to the local statutes of the state of procedure or that of the injury. The act is one which relates to the liability of railroad companies engaged in interstate commerce to their employees while engaged in such commerce. The power of Congress to deal with the subject comes from its power to regulate commerce between the states.

Prior to this act, Congress had not deemed it expedient to legislate upon the subject, though its power was ample. "The subject," as observed by this Court in *Second Employers' Liability Cases*, [223 U. S. 1](#) , [223 U. S. 54](#) , "is one which falls within the police power of the state in the absence of legislation by Congress." *Nashville, C. & St.L. Ry. Co. v. Alabama*, [128 U. S. 96](#) , [128 U. S. 99](#) . By this act, Congress has undertaken to cover the subject of the liability of railroad companies to their employees injured while engaged in interstate commerce. This exertion of a power which is granted in express terms must supersede all legislation over the same subject by the states. Thus, in *Gulf, Colorado & Santa Fe Ry. Co. v. Hefley*, [158 U. S. 98](#) , [158 U. S. 104](#) , it was said, in reference to state legislation touching freight rates upon interstate freight which conflicted with the legislation of Congress upon the same subject, that:

"Generally it may be said in respect to laws of this character that, though resting upon the police power of the state, they must yield whenever Congress, in the

exercise of the powers granted to it, legislates upon the precise subject matter, for that power, like all other reserved powers of the states, is subordinate to those in terms conferred by the Constitution upon the nation."

"No urgency for its use can authorize a state to exercise it in regard to a subject matter which has been confided exclusively to the discretion of Congress by the Constitution."

" *Henderson v. New York*, [92 U. S. 259](#) , [92 U. S. 271](#) ."

"Definitions of the police power must, however, be taken, subject to the condition that the state cannot, in its exercise,

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for any purpose whatever, encroach upon the powers of the general government, or rights granted or secured by the supreme law of the land."

" *New Orleans Gas Co. v. Louisiana Light Co.*, [115 U. S. 650](#) , [115 U. S. 661](#) ."

"While it may be a police power in the sense that all provisions for the health, comfort, and security of the citizens are police regulations, and an exercise of the police power, it has been said more than once in this Court that, where such powers are so exercised as to come within the domain of federal authority as defined by the Constitution, the latter must prevail."

" *Morgan v. Louisiana*, [118 U. S. 455](#) , [118 U. S. 464](#) ."

It therefore follows that, in respect of state legislation prescribing the liability of such carriers for injuries to their employees while engaged in interstate commerce, this act is paramount and exclusive, and must remain so until Congress shall again remit the subject to the reserved police power of the states. *Reid v. Colorado*, [187 U. S. 137](#) , [187 U. S. 146](#) .

The statutes of many of the states expressly provide for the survival of the right of action which the injured person might have prosecuted if he had survived. But,

unless this federal statute which declares the liability here asserted provides that the right of action shall survive the death of the injured employee, it does not pass to his representative, notwithstanding state legislation. The question of survival is not one of procedure, "but one which depends on the substance of the cause of action." *Schreiber v. Sharpless*, [110 U. S. 76](#) , [110 U. S. 80](#) ; *Martin v. Baltimore & Ohio R. Co.*, [151 U. S. 673](#) .

Nothing is better settled than that, at common law, the right of action for an injury to the person is extinguished by the death of the party injured. The rule, "*Actio personalis moritur cum persona*" applies whether the death from the injury be instantaneous or not. The Act of 1908 does not provide for any survival of the right of action created in

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behalf of an injured employee. That right of action was therefore extinguished. The act has been many times so construed by the circuit courts. We cite a few of the cases: *Fulgham v. Railway*, 167 F. 660; *Walsh v. Railroad*, 173 F. 495.

At common law, loss and damage may, in some cases, accrue to persons dependent upon one wrongfully injured, and a right of action in some cases arises in their behalf. But this cause of action, except for loss of personal services before the death, abates at the death.

In *Baker v. Bolton*, 1 Campbell 493, Lord Ellenborough ruled that, "in a civil court, the death of a human being could not be complained of as an injury." *Mobile Life Ins. Co. v. Brame*, [95 U. S. 756](#) ; *The Harrisburg*, [119 U. S. 199](#) , [119 U. S. 204](#) .

The obvious purpose of Congress was to save a right of action to certain relatives dependent upon an employee wrongfully injured, for the loss and damage resulting to them financially by reason of the wrongful death. Thus, after declaring the liability of the employer to the injured servant, it adds:

"or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents, and, if none, then of the next of kin dependent upon such employee, for such injury or death,"

etc. There is no express or implied limitation of the liability to cases in which the death was instantaneous.

This cause of action is independent of any cause of action which the decedent had, and includes no damages which he might have recovered for his injury if he had survived. It is one beyond that which the decedent had -- one proceeding upon altogether different principles. It is a liability for the loss and damage sustained by relatives dependent upon the decedent. It is therefore a liability for the pecuniary damage resulting to them, and for that only.

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The statute, in giving an action for the benefit of certain members of the family of the decedent, is essentially identical with the first act which ever provided for a cause of action arising out of the death of a human being -- that of 9 and 10 Vict. c. 93, known as Lord Campbell's act. This act has been, in its distinguishing features, reenacted in many of the states, and both in the courts of the states and of England has been construed not as operating as a continuance of any right of action which the injured person would have had but for his death, but as a new or independent cause of action for the purpose of compensating certain dependent members of the family for the deprivation, pecuniarily, resulting to them from his wrongful death. For convenience in comparing Lord Campbell's act with the Act of Congress of 1908, the first and second sections of the former are set out in the margin. [ [Footnote 2](#) ]

In one of the earliest cases which arose under the act, Coleridge, J., said:

"It will be evident that this act does not transfer this right of action to his representative, but gives to the representative a totally new right of action, on

different principles."

*Blake v. Midland Ry. Co.*, 18 Q.B. 93.

In *Seward v. The Vera Cruz*, 10 App.Cases 59, Lord Blackburn said:

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"A totally new action is given against the person who would have been responsible to the deceased if the deceased had lived -- an action which . . . is new in its species, new in its quality, new in its principle, in every way new, and which can only be brought if there is any person answering the description of the widow, parent, or child, who, under such circumstances, suffers pecuniary loss."

But, as the foundation of the right of action is the original wrongful injury to the decedent, it has been generally held that the new action is a right dependent upon the existence of a right in the decedent immediately before his death to have maintained an action for his wrongful injury. Tiffany, *Death by Wrongful Act*, 124; *Louisville, E. & St.L. R. Co. v. Clarke*, [152 U. S. 231](#) ; *Read v. G.E. Ry.*, L.R. 3 Q.B. 555; *Hecht v. O. & M. Ry.*, 132 Ind. 507; *Fowlkes v. Nashville & Decatur R. Co.*, 9 Heisk. 829; *Littlewood v. New York*, 89 N.Y. 24; *Southern Bell Tel. Co. v. Cassin*, 111 Ga. 575.

The distinguishing features of that act are identical with the Act of Congress of 1908 before its amendment: first, it is grounded upon the original wrongful injury of the person; second, it is for the exclusive benefit of certain specified relatives; third, the damages are such as flow from the deprivation of the pecuniary benefits which the beneficiaries might have reasonably received if the deceased had not died from his injuries.

The pecuniary loss is not dependent upon any legal liability of the injured person to the beneficiary. That is not the sole test. There must, however, appear some reasonable expectation of pecuniary assistance or support of which they have been deprived. Compensation for such loss manifestly does not include damages by way of recompense for grief or wounded feelings. Tiffany, *Death by Wrongful*

Act, 153, 154; [Illinois Cent. R. Co. v. Barron](#), 5 Wall. 90, [72 U. S. 105](#) -106; *Davis v. Guarnieri*, 45 Ohio St. 470; *Blake v. Midland Railway*, cited above; *Hurst v.*

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*Detroit City Railway*, 84 Mich. 539, 545; *Munro v. Pacific Dredging Company*, 84 Cal. 515.

The word "pecuniary" did not appear in Lord Campbell's act, nor does it appear in our Act of 1908. But the former act and all those which follow it have been continuously interpreted as providing only for compensation for pecuniary loss or damage.

A pecuniary loss or damage must be one which can be measured by some standard. It is a term employed judicially

"not only to express the character of that loss to the beneficial plaintiffs which is the foundation of their right of recovery, but also to discriminate between a material loss which is susceptible of a pecuniary valuation, and that inestimable loss of the society and companionship of the deceased relative upon which, in the nature of things, it is not possible to set a pecuniary valuation."

Patterson, Railway Accident Law 401.

Nevertheless, the word as judicially adopted is not so narrow as to exclude damages for the loss of services of the husband, wife, or child, and, when the beneficiary is a child, for the loss of that care, counsel, training, and education which it might, under the evidence, have reasonably received from the parent, and which can only be supplied by the service of another for compensation.

In *Tilley v. Hudson River Railroad*, 24 N.Y. 471, and 29 N.Y. 252, the court stated that

"the word 'pecuniary' was used in distinction to those injuries to the affections and sentiments which arise from the death of relatives, and which, though most painful

and grievous to be borne, cannot be measured or recompensed by money. It excludes also those losses which result from the deprivation of the society and companionship, which are equally incapable of being defined by any recognized measure of value."

To the same effect are the cases of *Schaub v. Hannibal & St. J. R. Co.*, 106 Mo. 74, s.c., 16

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S.W. 924, which was followed by the Circuit Court of Appeals for the Eighth Circuit in *Atchison &c.; Ry. v. Wilson*, 48 F. 57; *Lett v. Railway*, 11 Ont.App. Rep. 1; *Pennsylvania R. Co. v. Goodman*, 62 Pa. 329, 339; *Railroad v. Rush*, 127 Ind. 545; Tiffany, *Death by Wrongful Act*, 154 to 162, inclusive; Patterson, *Railway Accident Law* 401 to 406.

No hard and fast rule by which pecuniary damages may in all cases be measured is possible. In *Lett v. Railway*, cited above, it was said in the opinion of Patterson, J.A. after a review of all the English cases construing the Act of Lord Campbell:

"That there is through them all the same principles of construction applied to the statute. Each fresh state of facts, as it arose, was dealt with, and furnished a further illustration of the working of the act. The party claiming was held to be entitled or not to be entitled, the scale of compensation acted upon by the jury was approved or disapproved, in view of the immediate circumstances; but in no case has it been attempted to decide by anticipation what are the limits beyond which the benefit of the statute cannot be claimed."

The rule for the measurement of damages must differ according to the relation between the parties plaintiff and the decedent

"according as the action is brought for the benefit of husband, wife, minor child or parent of minor child, for the loss of services or support to which the beneficiary was legally entitled, or is brought for the benefit of a person whose damages consist only in the loss of a prospective benefit to which he was not legally

entitled."

Tiffany, Death by Wrongful Act 158, 160-162.

The court below instructed the jury that they could not allow damages for the grief and sorrow of the widow, or as a "balm to her feelings." They were directed to confine themselves to a proper compensation for the loss of any pecuniary benefit which would reasonably have

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been derived by her from the decedent's earnings. The court did not stop there, but further instructed the jury that,

"in addition to that, independent of what he was receiving from the company, his employer, it is proper to consider the relation that was sustained by Mr. Wisemiller and Mrs. Wisemiller -- namely, the relation of husband and wife, and draw upon your experiences as men, and measure, as far as you can, what it would reasonably have been worth to Mrs. Wisemiller in dollars and cents to have had, during their life together, had he lived, the care and advice of Mr. Wisemiller, her husband."

This threw the door open to the widest speculation. The jury was no longer confined to a consideration of the financial benefits which might reasonably be expected from her husband in a pecuniary way.

A minor child sustains a loss from the death of a parent, and particularly of a mother, altogether different from that of a wife or husband from the death of the spouse. The loss of society and companionship, and of the acts of kindness which originate in the relation and are not in the nature of services, are not capable of being measured by any material standard. But the duty of the mother to minor children is that of nurture, and of intellectual, moral, and physical training, such as, when obtained from others, must be for financial compensation. In such a case, it has been held that the deprivation is such as to admit of definite valuation, if there be evidence of the fitness of the parent, and that the child has been actually

deprived of such advantages. *Tilley v. Railroad Co.* and *Lett v. Railway Company*, both cited above. If the case at bar had been of such a character, the loss of "care and advice" might have been a proper matter for compensation.

Neither "care" nor "advice," as used by the court below, can be regarded as synonymous with "support" and "maintenance," for the court said it was a deprivation

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to be measured over and above support and maintenance. It is not beyond the bounds of supposition that, by the death of the intestate, his widow may have been deprived of some actual customary service from him, capable of measurement by some pecuniary standard, and that in some degree that service might include as elements "care and advice." But there was neither allegation nor evidence of such loss of service, care, or advice, and yet, by the instruction given, the jury were left to conjecture and speculation. They were told to estimate the financial value of such "care and advice from their own experiences as men." These experiences, which were to be the standard, would, of course, be as various as their tastes, habits, and opinions. It plainly left it open to the jury to consider the value of the widow's loss of the society and companionship of her husband.

In this part of the charge, the court erred. The assignments of error are otherwise overruled. But, for this error, the judgment must be reversed and a new trial ordered.

MR. JUSTICE HOLMES concurs in the result.

[ [Footnote 1](#) ]

"SEC. 1. That every common carrier by railroad, while engaging in commerce between any of the the several states territories, or between any of the states and territories, or between the District of Columbia and any of the states or territories, or between the District of Columbia or any of the states or territories and any foreign nation or nations, shall be liable in damages to any person suffering injury

while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents, and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment."

"SEC. 2. That every common carrier by railroad in the territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States, shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment."

Section 2 of the Act of April 5, 1910:

"That said act be further amended by adding the following section as section nine of said act:"

" SEC. 9. That any right of action given by this act to a person suffering injury shall survive to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee, and, if none, then of such employee's parents, and, if none, then of the next of kin dependent upon such employee, but in such cases there shall be only one recovery for the same injury."

[ [Footnote 2](#) ]

"Whenever the death of a person shall be caused by wrongful act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death,"

etc.

The second section provides that:

"Every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased, and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought."

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