the rule ceases to be operative whenever, and as long as, the place is closed against the servant, and he is authoritatively notified that it is unsafe and warned to avoid it. The master who furnishes the place may, of course, abandon or suspend its use, whenever he discovers that it has ceased to be safe; and a servant, so notified and warned, who ignores the notice and warning, does so at his own risk.

Judgment reversed.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY *v.* CARROLL, ADMINISTRATRIX.

CERTIORARI TO THE SUPREME COURT OF INDIANA.

No. 87. Argued January 15, 1930.—Decided February 24, 1930.

1. Where the plaintiff in an action in damages for personal injuries dies pending an appeal from a judgment in his favor, the judgment subsequently being reversed and remanded by this Court for a new trial on the ground that the Federal Employers' Liability Act and not state law was applicable, an amendment of the complaint by the administrator so as to include a claim for damages on account of the death introduces a new cause of action and can not be allowed if the two-year period of limitation has already run against that cause of action. P. 494.
2. Under the Federal Employers' Liability Act, the cause of action which arises from death accrues, and the two-year period of limitations begins to run, at the time of the death. P. 495.
3. A judgment based on a verdict awarding a single sum as damages upon two causes of action, one for personal injuries and the other for death resulting therefrom, must be reversed if one of the causes of action was erroneously allowed to go to the jury, and must be sent back for retrial on the other cause of action. P. 495.
4. The duty of the employer to provide a safe place to work and safe working appliances is not absolute; he is held only to the exercise of reasonable care to that end. P. 496.

200 Ind. 589, reversed.

CERTIORARI, *post*, p. 537, to review a judgment of the Supreme Court of Indiana, which affirmed a judgment against the Railroad Company in an action under the Federal Employers' Liability Act.

Mr. William A. Eggers, with whom *Messrs. Morison R. Waite, Harry R. McMullen* and *Cassius W. McMullen* were on the brief, for petitioner.

Mr. Oscar H. Montgomery, with whom *Messrs. T. Harlan Montgomery* and *William J. Hughes* were on the brief, for respondent.

The liability created by § 1 of the Federal Employers' Liability Act is for both injury and death resulting from certain specified negligence. This liability is readily distinguishable from that given for death by statutes patterned after Lord Campbell's Act. Such statutes merely modify the common law to the extent that an action is given to specified beneficiaries for a death which is the result of any wrongful act.

The federal Act is exclusive in its field, and, by amendment, was intended to grant all the relief afforded by the statutes of any of the States under like circumstances. Death and survival acts, in a number of States, authorized recovery of damages resulting to an injured employee, and also resulting to his widow and children from his death because of the negligent or wrongful act of his employer.

The amendment of April 5, 1910, provides that "any right," or the entire right of action, so given, not for personal injuries only, nor for death only, but for both, shall survive; but, that there shall be only one recovery.

The cause of action in this case is not barred, since suit was timely brought; but the effect of the amendment to the federal statute is to permit and require all damages, both to decedent in his lifetime, by reason of the injury, and to his widow and children, by reason of his death, to be merged upon his death and to be recovered in one

action for the benefit of his widow and children. *St. Louis, I. M. & S. R. Co.* v. *Craft,* 237 U. S. 648; *Great Northern R. Co.* v. *Capital Trust Co.,* 242 U. S. 144; *Kansas City Southern R. Co.* v. *Leslie,* 238 U. S. 599; *Moffett* v. *Baltimore & O. R. Co.,* 220 Fed. 39; *Northern Pac. R. Co.* v. *Maerkl,* 198 Fed. 263; *Illinois Cent. R. Co.* v. *O'Neill,* 177 Fed. 328; 217 U. S. 604.

The decision of this Court in *St. Louis, I. M. & S. R. Co.* v. *Craft, supra,* awarding damages both for personal injuries and death in the same action, under the amended federal Act, has been followed in many cases.

Mr. Justice Sutherland delivered the opinion of the Court.

The deceased, Guerney O. Burtch, sustained personal injuries while assisting to unload a heavy ensilage cutter from a freight train operated by petitioner. He sued in a state court, and recovered damages on the theory that state law, and not the Federal Employers' Liability Act, applied. This court reversed the judgment, holding that the federal act applied, and remanded the cause for a new trial. On February 10, 1921, while the appeal was pending in the state supreme court, Burtch died, and his widow (now Lula Carroll) was appointed administratrix. Upon her application she was substituted as respondent in this court. *B. & O. S. W. R. R.* v. *Burtch,* 263 U. S. 540.

Three years after the death of Burtch when the case was back in the state court of first instance, respondent, by leave of that court, amended the complaint, and, among other things, alleged for the first time the death of Burtch as a result of the injury, and demanded judgment in a single sum for the loss and injury sustained by the deceased during his lifetime and the pecuniary loss resulting from his death. A motion to require respondent to state these claims as separate causes of action was over-

ruled. The answer affirmatively alleged that in so far as the amended complaint was based upon the death of Burtch, the cause of action was barred because not brought within two years, as required by § 6 of the act (U. S. Code, Title 45, § 56), which provides that no action shall be maintained under the act unless commenced within two years from the day the cause of action accrued. The jury returned a verdict for respondent and the judgment thereon was affirmed by the state supreme court.

In respect of the statute of limitations, that court held that the challenged amendment did not introduce a new cause of action, but was a mere amplification of the original complaint and related back to the commencement of the action. In support of the ruling, reliance was had upon the decisions of this court that neither an amendment for the first time setting up the right of the plaintiff to sue as personal representative, *Mo., Kans. & Tex. Ry.* v. *Wulf,* 226 U. S. 570, nor an amendment for the first time alleging that the parties were engaged in interstate commerce, *N. Y. Cent. R. R.* v. *Kinney,* 260 U. S. 340, introduces a new cause of action. Each of these decisions proceeds upon the ground that the amendment did not set up any different state of facts as the ground of action, and therefore it related back to the beginning of the action. In the *Kinney* case it was pointed out that the original declaration was consistent with a wrong under either state or federal law, as the facts might turn out; and that the acts constituting the tort were the same, whichever law gave them that effect.

But here two distinct causes of action are involved, one for the loss and suffering of the injured person while he lived, and another for the pecuniary loss to the beneficiaries named in the act as a result of his death. *St. Louis & Iron Mtn. Ry.* v. *Craft,* 237 U. S. 648, 658; *C., B. & Q. R. R.* v. *Wells-Dickey Trust Co.,* 275 U. S. 161, 162. In the *Craft* case it was said: "Although originating in the same

wrongful act or neglect, the two claims are quite distinct, no part of either being embraced in the other. . . . One begins where the other ends, and a recovery upon both in the same action is not a double recovery for a single wrong but a single recovery for a double wrong." And in the *Wells-Dickey* case it was explicitly held that for an injury resulting in death the act gives two distinct causes of action.

The statute, it is true, provides that " there shall be only one recovery for the same injury "; but this has the effect not of merging the two rights into a single cause of action, but of limiting the personal representative " to one recovery of damages for both, and so to avoid the needless litigation in separate actions of what would better be settled once for all in a single action." *St. Louis & Iron Mtn. Ry.* v. *Craft, supra,* p. 659.

The cause of action which arises from death accrues at the time of death, and the two-year period of limitation then begins. *Reading Co.* v. *Koons,* 271 U. S. 58. Here, more than two years having passed, the amendment, introducing as it did a new and distinct cause of action, does not relate back to the beginning of the action so as to avoid the bar of the statute of limitations, *Union Pacific Railway* v. *Wyler,* 158 U. S. 285, 296–298; and since the verdict of the jury was for a single sum, including an undetermined amount as damages for the death, the judgment must be reversed and the cause remanded for a new trial only upon the alleged cause of action for the personal injuries suffered by the deceased.

The court below gave weight to the fact that this court, in disposing of the former appeal, remanded the cause for a new trial, and suggests that this would not have been done if the complaint was not subject to amendment so as to allow a submission of the case to a jury under the federal act. It is enough to say that on the former appeal the right to maintain an action on account of

Burtch's death was in no way involved; and there is no warrant for assuming that this court had in mind any future proceedings in respect thereof.

We do not stop to discuss the complaint, rather faintly urged, that the trial court gave conflicting and improper instructions to the jury on the subject of assumption of risk. That question received the consideration of this court in *Texas & Pacific Railway* v. *Archibald,* 170 U. S. 665, 671, and *Choctaw, Oklahoma &c., R. R. Co.* v. *McDade,* 191 U. S. 64, 68, and the rule to be followed in any subsequent trial of this case will there be found fully and carefully stated. Under the rule established by these cases, some of the instructions of the court were over favorable to the railroad company rather than the reverse. On the other hand, the charge in respect of the duty of the employer to furnish safe appliances was without qualification, and the jury might well have understood that the duty was an absolute one. That is not the law. The employer is not held to an absolute responsibility for the reasonably safe condition of the place, tools and appliances, but only to the duty of exercising reasonable care to that end. *Seaboard Air Line* v. *Horton,* 233 U. S. 492, 502; *Yazoo & M. V. R. R. Co.* v. *Mullins,* 249 U. S. 531, 533.

Judgment reversed.

EARLY, RECEIVER, *v.* RICHARDSON.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 133. Argued January 21, 22, 1930.—Decided February 24, 1930.

1. When the purchaser of stock of a national bank receives from the seller the certificates properly endorsed, title passes and the transfer is complete as between the parties; and, as between them, the purchaser alone becomes liable for assessments thereafter imposed on the shares. P. 498.