

writ of habeas corpus and was ordered to be discharged from custody. 37 F. (2d) 1016. The judgment must be reversed for the reasons given in No. 92. It is objected that the mandate of the Circuit Court of Appeals was not stayed, but was issued to the District Court and spread upon its records and that therefore the case is finished. But that does not defeat the jurisdiction of this Court. *The Conqueror*, 166 U. S. 110, 113. *Louisville & Nashville R. Co. v. Behlmer*, 169 U. S. 644, 648. Rule 45.

*Judgment reversed.*

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FLYNN, EXECUTOR, v. NEW YORK, NEW HAVEN,  
& HARTFORD RAILROAD COMPANY.

CERTIORARI TO THE SUPREME COURT OF ERRORS OF  
CONNECTICUT.

No. 235. Argued March 12, 1931.—Decided March 23, 1931.

The Employers' Liability Act gives a right of action to the employee, or, in case of his death, to his personal representative for the benefit of the widow and children, and provides that no action shall be maintained unless commenced within two years from the day the cause of action accrued. *Held* that the right of the representative is derivative and depends upon the continuance of a right in the injured employee at the time of his death, so that where the right of the employee was extinguished before he died, by the lapse of the prescribed period, there was no right in his executor, on behalf of his widow and children. P. 56.

111 Conn. 196; 149 Atl. 682, affirmed.

CERTIORARI, 282 U. S. 821, to review a judgment in favor of the Railroad Company in an action under the Federal Employers' Liability Act.

*Mr. William F. Geenty*, with whom *Messrs. Thomas R. Fitzsimmons* and *William A. Bree* were on the brief, for petitioner.

The statute of limitations begins to run at the time of death. It is then, and not until then, that the cause of

action "accrues." *Reading Co. v. Koons*, 271 U. S. 58; *Chicago, B. & Q. R. Co. v. Wells-Dickey Tr. Co.*, 275 U. S. 161.

The Act does not, in express terms, make the personal representative's right to maintain an action dependent upon the existence of a right of action in the decedent immediately before he dies. It intends that in all cases there shall be but one recovery for the wrongful act, and that the dependents' right shall not be barred unless the deceased had received satisfaction in his lifetime either by settlement and adjustment or by adjudication in the courts. *Mellon v. Goodyear*, 277 U. S. 335, distinguished.

True, at the time of his death, the decedent had no right of action; but this was not due to an affirmative extinguishment of his right, but to lapse of time, affecting his right of action alone. *Seaboard Air Line Ry. Co. v. Oliver*, 261 Fed. 1.

The Act declares two distinct and independent liabilities resting upon the common foundation of a wrongful injury, and based upon altogether different principles. The cause of action created for the benefit of the dependents of an employee who dies as a result of his injuries is not a representative right, but a separate and distinct right which is vested in certain designated dependents. It includes no damages which the employee might have recovered in an action brought by him during his lifetime. It is for the loss and damage sustained by the relatives dependent upon the decedent. *Michigan Central R. Co. v. Vreeland*, 227 U. S. 59; *St. Louis & I. M. Ry. Co. v. Craft*, 237 U. S. 648; *Mellon v. Goodyear*, 277 U. S. 335; *Robinson v. Canadian Pac. Ry.*, [1892] A. C. 481.

*Mr. Edward R. Brumley*, with whom *Mr. Fleming James, Jr.*, was on the brief, for respondent.

No right of action for wrongful death, occurring more than two years after the accident causing the death, where the decedent had never brought suit on such accident,

accrues to the personal representative of his estate. *Michigan Central R. Co. v. Vreeland*, 227 U. S. 59, 68; *Baltimore S. S. Co. v. Phillips*, 274 U. S. 316, 321; *Baltimore & O. S. W. R. Co. v. Carroll*, 280 U. S. 491, 494, 495; *Mellon v. Goodyear*, 277 U. S. 335; *Seaboard Air Line Ry. Co. v. Oliver*, 261 Fed. 1; *Northern Pac. Ry. Co. v. Adams*, 192 U. S. 440; *Frese v. Chicago, B. & Q. R. Co.*, 263 U. S. 1; *Engel v. Davenport*, 271 U. S. 33; *Louisville & St. L. R. Co. v. Clarke*, 152 U. S. 230; *American Railroad v. Didricksen*, 227 U. S. 145, 149; *Reading Co. v. Koons*, 271 U. S. 58; *British Columbia E. Ry. v. Turner*, 49 Can. S. C. R. 470, 496; *British Elec. Ry. Co. v. Gentile*, [1914] A. C. 1034, 1042; *Chicago, B. & Q. R. Co. v. Wells-Dickey Tr. Co.*, 275 U. S. 161; *Littlewood v. Mayor*, 89 N. Y. 24; *Williams v. Alabama G. S. Ry. Co.*, 158 Ala. 396; *Green v. British Col. Elec. Ry. Co.*, 12 British Col. Rep. 199; *Rodgers v. Pennsylvania R. Co.*, 19 F. (2d) 522; *Roberts'*, *Federal Liabilities of Carriers*, 2d. ed., §§ 900 and 957; *St. Louis, I. M. & S. Ry. Co. v. Craft*, 237 U. S. 648; *Tiffany*, *Death by Wrongful Act*, 2d ed., § 24; *Williams v. Mersey D. & H. Board*, [1905] 1 K. B. 804; *Kelliher v. New York Cent. & H. R. R. Co.*, 212 N. Y. 207; *Seaboard Air Line Ry. Co. v. Allen*, 192 Fed. 480, certiorari denied, 226 U. S. 612; *Western Union v. Preston*, 254 Fed. 229, certiorari denied, 248 U. S. 585; s. c. 246 Fed. 543, 250 Fed. 480.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit under the Employers' Liability Act for negligently causing the death of Edward L. Flynn, brought on May 15, 1929, by Flynn's executor for the benefit of Flynn's dependent widow and children. It is alleged that the injury was suffered on December 4, 1923, and that it caused Flynn's death on September 1, 1928.

The defendant, respondent here, demurred to the declaration on the ground that, more than two years having elapsed since the date when Flynn's cause of action accrued, his right to sue was barred, and that therefore the suit could not be maintained. Act of April 22, 1908, c. 149, §§1, 6, 35 Stat. 65, 66. Act of April 5, 1910, c. 143, § 1, 36 Stat. 291. Code, Tit. 45, §§ 51, 56. The demurrer, and judgment for the defendant, were sustained by the Supreme Court of Connecticut. 111 Conn. 196; 149 Atl. 682. A writ of certiorari was granted by this Court. 282 U. S. 821.

The Act of 1908 gives a right of action to the employee or, in case of his death, to his personal representative for the benefit of the widow and children, and provides that no action shall be maintained "unless commenced within two years from the day the cause of action accrued." § 6. Obviously Flynn's right of action was barred, but it is argued that the right on behalf of the widow and children is distinct; that their cause of action could not arise until Flynn's death, and that therefore the two years did not begin to run until September 1, 1928. But the argument comes too late. It is established that the present right, although not strictly representative, is derivative and dependent upon the continuance of a right in the injured employee at the time of his death. *Michigan Central R. Co. v. Vreeland*, 227 U. S. 59, 70. On this ground an effective release by the employee makes it impossible for his administrator to recover. *Mellon v. Goodyear*, 277 U. S. 335, 344. The running of the two years from the time when his cause of action accrued extinguishes it as effectively as a release, *Engel v. Davenport*, 271 U. S. 33, 38, and the same consequence follows. Our conclusion that this action could not be brought is required by the former decisions of this Court.

*Judgment affirmed.*