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FELA Beneficiaries

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used by any school district for public school, recreation, or any purposes." But the Pennsylvania court refused to extend tax exemption to a faculty residence of the supervising principal of a sixth-district public school.³¹

It has been shown that the majority of the states within the "exclusively" used classification declare fraternity houses and faculty dwellings taxable, despite whatever benefits or auxiliary aids they furnish the educational institutions. A minority of the states feels that every building has some non-charitable use, and as long as the dwelling furthers the purpose for which the institution was evolved, it is nontaxable. In those states which employ "primarily" in their constitutional provisions, the primary use to which the school property is devoted is determinative of whether property is taxable. Jurisdictions following the minority view of the interpretation of "exclusively" tend to reach the same result as states with constitutional and statutory provisions granting tax exemption if the property is only used "primarily" for educational purposes. And in the remaining states, which employ neither of the controversial adverbs, no definite trend can be noticed from the relatively few and diverse decisions.

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FELA BENEFICIARIES

Under the heading "Beneficiaries Under the Federal Employers' Liability Act," the Illinois case of *Jensen v. Elgin, Joliet & E. Ry.*¹ was the subject of comment in 19 Wash. & Lee L. Rev. 102 (1962). In *Jensen* the decedent was injured while in the employ of the defendant railroad and sued under section 1 of the Federal Employers' Liability Act.² While this action was pending he died of other causes and his

³¹School Dist. of Borough of Freeport v. Armstrong County, 162 Pa. Super. 237, 57 A.2d 692 (1948). Contra, *Elder v. Trustees of Atlanta Univer.*, 194 Ga. 716, 22 S.E.2d 515 (1942); *Southern Lancaster Academy v. Town of Lancaster*, 242 Mass. 553, 136 N.E. 626 (1922).

¹31 Ill. App. 2d 198, 175 N.E.2d 564 (1961).

²This section reads as follows: "Every common carrier by railroad while engaged in commerce . . . shall be liable in damages to any person suffering injury while . . . 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. . . ." 35 Stat. 65 (1908), 45 U.S.C. § 51 (1958).

administratrix, one of three adult nondependent children, was substituted as plaintiff. The complaint was amended so as to limit the action to a recovery under section 9³ for the amount of damages that the decedent might have recovered in his lifetime. Under this survival provision of the FELA a judgment was awarded for \$10,000 in the Illinois trial court for the benefit of decedent's three adult nondependent children.

It is well settled that pecuniary loss is a necessary prerequisite for the vesting of a cause of action under section 1,⁴ so the Appellate Court, by a rule of statutory interpretation,⁵ imposed this same restriction for beneficiaries under section 9 and reversed the trial court.

The Supreme Court of Illinois reversed the Appellate Court, holding the application of the rule of statutory interpretation, which in effect imposes wrongful death requirements upon beneficiaries seeking to recover under a survival provision to be error.⁶

In *Gulf, Colo. & Santa Fe Ry. v. McGinnis*⁷ the Supreme Court of the United States held that a married daughter could not recover under section 1 without allegations of dependency or pecuniary loss. The Appellate Court found *McGinnis* to be persuasive authority for deciding that *children* as used in the FELA means *minor children*.⁸ However, since the Illinois Supreme Court found no case construing the provisions of section 1 to give the word *children* other than its ordinary meaning, the view expressed in the principal comment as to the interpretation of the *McGinnis* case, *i.e.*, that the United States Supreme Court precluded recovery simply because of the absence of pecuniary loss irrespective of any adult-minor differentiation,⁹ is strengthened.

The ultimate decision in *Jensen* is in accord with the intention of

³This section reads as follows: "Any right of action given by this chapter 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 of the next of kin dependent upon such employee. . . ." 36 Stat. 291 (1910), 45 U.S.C. § 59 (1958).

⁴*Michigan Cent. R.R. v. Vreeland*, 227, U.S. 59 (1912); *Chicago, B. & Q.R.R. v. Kelly*, 74 F.2d 80 (8th Cir. 1934).

⁵"By the recognized rule of statutory interpretation, identical language in different sections of the same statute must receive the same construction." 175 N.E.2d at 566.

⁶*Jensen v. Elgin, Joliet & E. Ry.*, 182 N.E.2d 211 (Ill. 1962).

⁷228 U.S. 173 (1912).

⁸"The *McGinnis* case . . . holds that a wrongful death action may not be prosecuted for the benefit of an adult, married daughter." 175 N.E.2d at 567.

⁹See Note, 19 Wash. & Lee L. Rev. 102, 104 (1962).

Congress in amending the Act in 1910.¹⁰ Moreover, it is both correct and desirable from the standpoint of application of law and implications of social justice.

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¹⁰See S. Rep. No. 432, 61st Cong., 2nd Sess. 12-15 (1910).