

Court. There is no statute law that I am aware of, and no principle of law that the court can lay down to you. The railway company, so far as the law is concerned, as I understand it, are justified in running at any—at such speed as they may deem best in the transaction of their business. They may run a train, if they can in safety, at 50 or 60 miles an hour, or 100 miles an hour if that speed can be reached; but at whatever speed they do run, they must give timely and reasonable warning of the approach of the train, and the increased speed bears upon that question. A warning which would be sufficient if the train was running 5 miles an hour might not be sufficient if it was running 25 or 30 miles an hour.

In the absence of a statute, damages cannot be recovered by a father for negligently causing the death of his minor son. *Sullivan v. Union Pac. R. Co.*, 2 Fed. Rep. 447.

In an action for negligently causing the death of a minor, the proper measure of damages, where the father is the next of kin, is the probable value of the services of the deceased from the time of his death until his majority, less the expense of his maintenance during the same time. *Mayhew v. Burns*, (Ind.) 2 N. E. Rep. 793; *Stafford v. Rubens*, (Ill.) 3 N. E. Rep. 568; *Pennsylvania Co. v. Lilly*, 73 Ind. 252; *City of Chicago v. Scholten*, 75 Ill. 468; *Rockford, R. I. & St. L. R. Co. v. Delaney*, 82 Ill. 198; and the jury may take into account the reasonable expectation of pecuniary benefit from the continuance of the life even beyond majority. *Johnson v. Chicago & N. W. R. Co.*, (Wis.) 25 N. W. Rep. 223.

But where the next of kin are collateral kindred of the deceased, and have not received pecuniary aid from him, they will be entitled to nominal damages only. *City of Chicago v. Scholten*, 75 Ill. 468.

PATTERSON and others v. MATER and others.

(*Circuit Court, D. Colorado.* December 31, 1885.)

1. REPLEVIN—PROCESS FROM STATE COURT—GOODS IN POSSESSION OF MARSHAL.
Goods in possession of a marshal cannot be taken in replevin by process from a state court.
2. SAME—SUIT ON BOND—JURISDICTION.
Where such a proceeding is attempted, the marshal may sue on the bond in his own name, in the federal court, irrespective of the citizenship of himself and the obligors in the bond, and so may any one beneficially interested in the bond.
3. SAME—CITIZENSHIP—ASSIGNMENT.
Where the parties beneficially interested are citizens in a state other than that of the obligors, they may sue in the federal courts, with, and probably without, an assignment.

Motion for New Trial.

F. M. Hardbrook, for plaintiff.

C. I. Thomson, for defendant.

BREWER, J. I see nothing in the motion for a new trial that calls for hesitation or admits of doubt. The replevin proceedings by De Walt were unwarranted. Goods in possession of a marshal of the United States cannot be taken in replevin by process from a state court. *Freeman v. Howe*, 24 How. 450.

Where such a proceeding is attempted, an undertaking given for the return of the goods may properly be treated as nothing more than a forthcoming bond,—a mere incident to the action in which possession of the goods was taken by the marshal. In such a case the marshal may maintain an action in his own name in the federal court; and this, irrespective of the question of the citizenship of himself and the obligors in the bond. So may any one beneficially interested in the bond. Jurisdiction in these subordinate and ancillary proceedings rests upon the jurisdiction acquired in the original action.

Further, the marshal is a mere nominal party, having no pecuniary interest. The plaintiffs, citizens of a state other than that of the obligors, are alone beneficially interested. As such they may sue in the federal courts, with, and probably without, an assignment. *Browne v. Strode*, 5 Cranch, 303; *Irvine v. Lowry*, 14 Pet. 293; *McNutt v. Bland*, 2 How. 9; *Coal Co. v. Blatchford*, 11 Wall. 172; *Huff v. Hutchinson*, 14 How. 586; *Walden v. Skinner*, 101 U. S. 588.

The motion for a new trial will be overruled.

VAN DE VENTER *v.* CHICAGO CITY RY. CO.

(*Circuit Court, N. D. Illinois. May 8, 1885.*)

1. STREET RAILWAYS—CABLE CARS—DILIGENCE REQUIRED.

Street railways, as common carriers, are bound to the exercise of a high degree of care and diligence in their business, in the care and protection of the persons and lives of their patrons and passengers; are bound to exercise that high degree of care and diligence in the protection of the persons of its patrons, as is usually exercised by very prudent persons in their own business, under like circumstances, and are liable for injuries resulting to passengers from their negligence or want of such care and diligence.

2. SAME—NEGLIGENCE—INJURY TO PASSENGER ATTEMPTING TO GET ON CARS.

Where a person, without negligence on his part, and while the cars are standing still waiting for passengers, endeavors to go aboard the car, with the intention of paying fare and becoming a passenger, and the conductor of the car, without giving such person reasonable and sufficient time to enter, negligently caused or suffered the car suddenly to start, whereby the person attempting to board the same is injured, the company will be liable.

3. SAME—CONTRIBUTORY NEGLIGENCE.

But where the injury was caused by the person's want of care and prudence in attempting to get on the car while it was in motion; or where his own negligence or want of care contributed in any manner to produce the injury, there can be no recovery.

At Law.

W. G. & A. T. Ewing, for plaintiff.

W. J. Hynes, for defendant.

BUNN, J., (*charging jury.*) This action is brought by the plaintiff, Eugenia Van de Venter, a citizen of the city of Buffalo, in the state of New York, against the defendant, the Chicago City Railway Com-