

MASTER AND SERVANT—NEGLIGENCE—INJURY TO WORKMAN, RESULTING IN DEATH
AFTER ACTION BROUGHT—SECOND ACTION BY MOTHER—EMPLOYERS LIABILITY
ACT, 1880.

Wood v. Gray, (1892) A.C. 576, although an appeal from the Scotch Court of Sessions, touches a question of law deserving careful consideration here. The facts were that a man named Darling was fatally injured whilst occupied in the business of his employers. Before his death he brought an action against the present defendants under the Employers Liability Act, 1880, for damages. He died before the action was tried. His mother then commenced the present action to recover damages for causing his death, which was dismissed by the Court of Sessions as not being maintainable. It would appear from this case that although Lord Campbell's Act is not in force in Scotland, yet by the Scotch common law a husband, father, wife, mother, or child of a deceased person is entitled to bring an action to recover damages for causing his death. The question therefore really was whether, when the deceased had himself commenced an action in his lifetime for the injury, an independent cause of an action for damages resulting from the same injury under the Scotch law vested in his mother. The House of Lords (Lords Watson, Halsbury, C., Herschell, and Morris) affirmed the court below in holding that no second action could be brought. The principle on which the Scotch court proceeded appears to be succinctly stated by Lord President Inglis in *Stevenson v. Pontifex*, 15 Ret. 129: "A single act amounting either to a delict or breach of contract cannot be made the ground of two or more actions for the purpose of recovering damages within different periods, but caused by the same act." How far the principle of this decision is applicable to our law is not quite clear. It seems to depend on whether the right of action given by Lord Campbell's Act (R.S.O., c. 135) is to be regarded in the same light as the right of action possessed by the relatives of the deceased under the Scotch common law. If it is not a separate and independent cause of action from that which the deceased person himself had, as *Read v. Great Eastern Ry.*, L.R. 3 Q.B. 555, and *Griffiths v. Earl of Dudley*, 9 Q.B.D. 357, would appear to show, then the principle of *Wood v. Gray* would apply. On the other hand, it may be observed that the Supreme Court has decided (not, it would appear, in a considered judgment) that the causes of action are distinct: *White v. Parker*, 16 S.C.R. 699.