Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dame Mary Miller ès-nom et ès-qualité v. *The Grand Trunk Railway Company of Canada, from the Supreme Court of Canada; delivered the 14th February* 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
SIR FORD NORTH.
SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

The Appellant Mary Miller was the widow of Richard Ramsden, an employé in the service of the Respondent Company. On the 10th January 1900 Ramsden was killed in a collision which took place between two trains on the Respondent Company's railway. The Appellant has brought this action on her own account and as tutrix of Ramsden's minor children against the Respondent Company for damages occasioned to them by the accident. The action was tried by Mr. Justice Doherty with the assistance of a jury, and by their verdict the jury found (amongst other things) that Ramsden's death was caused by the fault of the Respondent Company and its employés, and that Ramsden did not by his conduct contribute to bring about the said accident. The jury assessed the damages suffered by the Appellant personally at $6,000 and those suffered by the children at $4,000.

The learned Judge without entering judgment reserved the case for the consideration of the Court of Review. That Court gave judgment

in favour of the Appellant, and their Judgment was affirmed by the Court of King's Bench, but was subsequently reversed by the Supreme Court from whose Judgment the present Appeal is brought.

Article 1056 of the Civil Code of Quebec contains the following provision :—

"In all cases where the person injured by the commission "of an offence or a quasi-offence dies in consequence without "having obtained indemnity or satisfaction, his consort and "his ascendant and descendant relations have a right, but "only within a year after his death, to recover from the person "who committed the offence or quasi-offence, or his repre-"sentatives, all damages occasioned by such death."

It has been decided by this Board in *Robinson v. Canadian Pacific Railway Company* (1892 A. C. 481) that the right of action of the widow and relatives under this Article is an independent and personal right of action, and not as in the English Act known as "Lord Campbell's Act" conferred on the representatives of the deceased only. The right of action of the Appellant is therefore *primâ facie* clear unless the deceased in his lifetime obtained indemnity or satisfaction for the negligence of the Respondent Company or its employés. Indemnity he had none, for neither he nor his representatives ever received, or became entitled to receive, anything on that account, but it is said that Ramsden "obtained satisfaction" and it is sought to show that as follows.

Ramsden was at the time of his death a member of "The Grand Trunk Railway Insurance "and Provident Society," and indeed he was compelled to become a member of the Society as a condition of his employment. By a by-law of the Society (No. 15), it is provided that "in "consideration of the subscription of the Grand "Trunk Railway Company to the Society no "member thereof or his representatives shall "have any claim against the Company for

" compensation on account of injury or death " from accident." It cannot of course be maintained that Ramsden could by any act of his own release or discharge the independent right of action of his widow and children under Art. 1056, but it is argued that he bartered away any right of action he himself might have had, and had accepted the subscription of the Company to the funds of the Society in accord and satisfaction of such right of action and thus obtained satisfaction within the meaning of Art. 1056. To this argument several answers have been made, but before discussing them it will be convenient to consider the constitution of the Society and its rules and regulations.

The Society was formed by the Respondent Company under the powers conferred by two Acts of the Parliament of Canada, 37 Vict. c. 65 and 41 Vict. c. 25. By the former Act the Company was authorized to create a Superannuation and Provident Fund, and by the latter Act (Section 2) the Company was empowered to make either separately or in connection with the Superannuation and Provident Fund provision for insurance against accidents to its employés which might include insurance against death, the payment of allowances during any period when they might be unable from accident or sickness to follow their ordinary calling, and the providing of suitable medical or surgical attendance, and (Section 3) the Company was bound to contribute to such fund annually any amount not exceeding one hundred and fifty per cent. of the amount which might be subscribed annually to such fund by the members thereof. The Rules and Regulations of the Society, as amended, are, so far as material, to the following effect :—The objects of the Society are defined to be (3) to provide benefits or allowances to members when rendered

incapable of following their usual, or any other suitable, employment in the Company's service by illness or bodily injury. (4) To provide, in case of the death of any member, a sum of money contributed by members of the Society, and payable in accordance with Rules 50 to 62. (12) The affairs of the Society are managed by a Committee of Management and local Executive Committees. (13) The Committee of Management is composed partly of members nominated by the Board of Directors or the local Executive Committees, and partly of officers of the Respondent Company. (40 and 41 as amended) Sick allowance is given at the rate of 50 cents per diem for the first six months, and 25 cents per diem for the second six months and thereafter, until the member is certified to be incurable or unfitted for his usual employment, when all further claims on the sick fund cease, but the member may continue his subscriptions to the Insurance Fund, or any member so certified may be permitted to commute his insurance for an immediate payment of one-fiftieth of the total amount insured for each completed year of membership. (50) Insurance is divided into six classes. (57) The amounts of insurance in each class, and the premium rate in each are defined. (58) Upon the death of a member all the other members are to be assessed as many rates of the class in which insured as will in the aggregate produce as nearly as possible the amount for which the deceased member was insured, the balance over or under being carried forward to the next ensuing levy. In Rule 66 it is stated that the Respondent Company will each half year contribute out of the revenues of the Company a sum in aid of the sick benefits and allowances of the Society.

It will thus be seen that the provisions for "sick allowance" and "insurance" are quite

distinct. The Respondent Company contributes only to the former and does not undertake to contribute to "insurance," as it was apparently contemplated by the Act that they would do. The sums payable on death or in commutation of insurance are to be raised exclusively by a levy on the other members. The scheme is, in fact, one for mutual life insurance.

The by-law in question (No. 15) which is relied on was made by the Committee of Management in exercise of a power contained in Rule (19) "to make such by-laws as may from "time to time be found necessary for the "management of the affairs of the Society." It was contended in the Courts below that the by-law was not a due exercise of the power, and was invalid. It was also contended that the by-law was invalid on the ground that the Provincial law does not permit a person to contract himself out of responsibility for the consequences of his own wrong though he may so relieve himself from responsibility for the acts and defaults of his employés. And a question of some nicety was raised whether the verdict of the jury had found negligence on the part of the Company itself. Both these points formed part of the grounds of decision by some at least of the learned Judges who were in favour of the Appellant. But these points were not discussed at the Bar on this Appeal, and their Lordships are not called upon to express, and do not express or imply, any opinion upon either of them.

Assuming the by-law to be valid, is it, in the circumstances, an answer to the Appellant's action? It is not sufficient to say that the possible right of action of the deceased has been extinguished, as was held in the case of *Robinson* v. *Canadian Pacific Railway Company*, where it had been lost by prescription. And, as Lord

Watson pointed out, the provision as to duelling in Art. 1056 shows that cases were intended to be comprised in which there could be no right of action in the deceased. Their Lordships see no reason why the release or discharge by the deceased of his possible right of action should be held to be satisfaction within the meaning of Art. 1056 of itself, or unless the deceased has thereby obtained from the offender something which is a real and tangible indemnity or satisfaction for the offence or quasi-offence in question. In this case Ramsden, of course, was not, and neither his representatives nor his widow nor his children were, entitled in consequence of the offence or quasi-offence of the Company to a single dollar out of the sick fund. The insurance cannot be considered to be such indemnity or satisfaction, first, because the money payable in respect of it did not (according to the Rules) proceed from the offender even in part, and secondly, because the payment is independent of, and bears no relation to, the offence or quasi-offence, and would equally have to be made if the deceased had died a natural death. Their Lordships are aware that evidence was given that the Respondent Company does not recognize any division of the Society and makes its contribution to the Society to be used as it pleases. But this is not in accordance with the scheme contained in the Rules, and for the present purpose their Lordships can only regard the Rules as they stand.

Holding the views which have been expressed their Lordships do not find it necessary for them to discuss the question raised on Section 243 of the Dominion Railway Act 1888.

Their Lordships are not sure that in coming to a conclusion in favour of the Appellant they are differing from the real opinion of the learned

Judges in the Supreme Court. Chief Justice Taschereau said in the course of his Judgment:—

"Here, were I unfettered by authority, I would be inclined "to doubt if the deceased can be said to have received any "indemnity or satisfaction, but I am bound by the authority "of *The Queen* v. *Grenier* (30 S.C.R., 42) to hold that he "has."

And the other learned Judges who delivered Judgments in favour of the Respondent Company also hold themselves bound by that decision which they thought could only be distinguished if the Company was itself in fault and not merely responsible for the fault of its employés. In *The Queen* v. *Grenier* the Judgment of the Court was delivered by Chief Justice Strong. The learned Judge held that the action given by Art. 1056 is merely an embodiment in the Civil Code of the action which had previously been given by a Statute of Canada re-enacting Lord Campbell's Act, and that therefore the English decisions on that Act, such as *Griffiths* v. *Earl of Dudley* were applicable to the case. He is reported to have said:—

9 Q.B.D. 357.

"It must be acknowledged that if the deceased would, if he "had survived, have had no claim for damages against the "Crown, the suppliant can have none, provided we are right "in assuming this to be a proceeding to be governed by the law "applicable to actions under 'Lord Campbell's Act.'"

The assumption thus made was admitted by learned Counsel to be erroneous, and their Lordships cannot attach any weight to a decision founded upon it.

Their Lordships will therefore humbly advise His Majesty that the Judgment of the Supreme Court dated the 10th November 1903 be reversed and the Judgment of the Court of Review, dated the 31st March 1902, and the Judgment of the Court of King's Bench, dated the 20th November 1902, be restored, and that the Respondent Company do pay to the Appellant

the costs of its Appeal to the Supreme Court. As the Appellant is appealing to His Majesty in Council *in formâ pauperis* she will have only such costs of her Appeal as are usual in such cases.