4, 1932

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In the Privy Council

No. 17 of 1930.

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN

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The Regent Taxi & Transport Company Limited

(Defendants) Appellants

and

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La Congregation des Petits Freres de Marie dits Freres Maristes

(Plaintiffs) Respondents.

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APPELLANT'S CASE

1.—This is an appeal by special leave from a judgment of the Supreme Court of Canada dated the 4th of November, 1929, Mignault & Rinfret, J.J. dissenting, (page 74) confirming in part a judgment of the Court of King's Bench of the Province of Quebec (page 44) which had
40 confirmed a judgment of the Superior Court of the District of Montreal (page 41).

2.—The Respondent is a religious community of Roman Catholic Faith, incorporated by the Quebec Statute, 50 Victoria, Chapter 29. The Corporation is mostly devoted to teaching children. The members take vows;the preliminary vows are for the period of five years, then come the perpetual vows, and, finally, the vow of stability by which the

Facts & pleadings

member promises to remain with the Congregation until his death, and to perpetuate the institution and its spirit. (Evidence of Frère Gervaisius, page 32).

3.—The Appellant is a common carrier engaged in the business of furnishing transportation for passengers by taxi cabs and omnibus.

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4.—On the 14th of August, 1923, Brother Henri Gabriel, a member of the Respondent's Congregation, who has pronounced his perpetual vows, and his vow of stability, sustained serious injuries while travelling in one of the Appellant's motor omnibus.

5.—The Appellant had not contracted with the Respondent Corporation, but with other Maristes Brothers established, in the State of New York, who did not form part of the Quebec Community. It had undertaken to drive a group of children and Brothers around the City of Montreal, and to take them back to Rouses Point, in the United States of America.

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6.—On their way to Rouses Point, at St. Philippe de Laprairie, they stopped to take gazoline; the chauffeur in charge of the autobus asked for five gallons; he was holding the hose himself while the gazoline was poured into the tank by way of an automatic distributor; unfortunately the gazoline overflowed and was spread all over the car and ignited; an explosion took place, and, Brother Henri Gabriel was burned and very seriously injured. He was still under treatment when the trial took place, and the evidence was to the effect that he would be unable to resume his functions.

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7.—The action was taken on August the 7th, 1925, that is, 23 months after the accident.

8.—The case was tried on March 5th, 1926, and, Brother Henri Gabriel died while the case was still under advisement on March 26th, 1927. (See admission, page 40). The judgment of the Superior Court was rendered on the 10th of February 1928 (page 41).

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9.—The Respondent's action is for $14,898.00, made up as follows:

(a) Amounts spent by the Respondent for medical treatment given to Brother Henri Gabriel, for hospital, nurses and operations........	$ 4,780.00
(b) Value of clothes and personal effects of Brother Henri Gabriel, belonging to the Respondent, destroyed, and the cost of his transportation to Montreal........	118.00

(c) Loss of the services of Brother Henri Gabriel, etc. 10,000.00

The action is entirely based on Article 1053 and 1054 of the Civil Code of the Province of Quebec :

ARTICLE 1053 :

" Toute personne capable de discerner le bien du mal, est responsable du dommage causé par sa faute, à autrui, soit par son fait, soit par imprudence, négligence où inhabileté. "

ARTICLE 1053 :

Every person capable of discerning right from wrong, is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill. "

ARTICLE 1054 :

Elle est responsable non seulement du dommage qu'elle cause par sa propre faute, mais encore de celui causé par la faute de ceux dont elle a le contrôle, et, par les choses qu'elle a sous sa garde. Le père, et après son décès, la mère sont responsables du dommage causé par leurs enfants mineurs. Les tuteurs sont également responsables pour leur pupilles; les curateurs ou autres ayant légalement la garde des insensées pour le dommage causé par ces derniers. L'instituteur et l'artisan pour le dommage causé par ses élèves où apprentis, pendant qu'ils sont sous sa surveillance. La responsabilité ci-dessus a lieu seulement lorsque la personne qui y est assujettie ne peut prouver qu'elle n'a pu empêcher le fait qui a causé le dommage, les maîtres et les commettants sont responsables du dommage causé par leurs domestiques et ouvriers, dans l'exécution des fonctions auxquelles ces derniers sont employés.

ARTICLE 1054 :

He is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control, and by things which he has under his care; The father, or, after his decease, the mother, is responsible for the damage caused by their minor children; Tutors are responsible, in like manner for the pupils. Curators or others having the legal custody of insane persons, for damages done by the latter; Schoolmasters and artisans, for the damage caused by their pupils or apprentices, while under their care. The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage; matters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed. "

10.—The Respondent contends that under Article 1053 and 1054, it has a distinct and separate recourse from that of the victim for the damages it may have suffered, as a consequence of the accident, imputed to the fault of the Appellant.

11.—The Respondent claims that the prescription of such an action is governed by Article 2261, reading as follows : 10

> Article 2261.—" The following actions are prescribed by two years :
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> 1.—For seduction, or lying-in-expenses.
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> 2.—For damages resulting from offences or quasi-offences, whenever other provisions do not apply.
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> 3.—For wages of workmen not reputed domestics, and, who 20 are hired for a year or more.
>
> 4.—For sums due schoolmasters and teachers for tuition, and board and lodging furnished by them. "

12.—The Appellant contends on the other hand that in case of bodily injury, not followed by death, no one but the immediate victim (in this present case Brother Henri Gabriel) can sue.

13.—The Appellant maintains that the general principle of res- 30 ponsibility enacted in Article 1053 is modified in cases of bodily injury, by the Article 1056 :

> " Article 1056 : 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 representatives, all damages occasioned by such death. In the case of a duel, ac- 40 tion may be brought in like manner, not only against the immediate author of the death, but also against all those who took part in the duel, whether as seconds or as witnesses. In all cases no more than one action can be brought in behalf of those who are entitled to the indemnity and that judgment determines the proportion of such indemnity, which each is to receive. These actions are independent and do not prejudice the criminal proceedings to which the parties may be subject. "

14.—On the question of prescription, the Appellant claims that this being an action for bodily injury, it is governed by Article 2262, and prescribed by one year :

" Article 2262 : The following actions are prescribed by one year :

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1.—For slander or libel reckoning from the day that it came to the knowledge of the party aggrieved.

2.—For bodily injuries, saving special provisions contained in article 1056, and cases regulated by special laws.

3.—For wages of domestic or farm servants, merchants' clerk and other employees who are hired by the day, week or month, or, for less than a year.

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4.—For hotel or boarding-house charges. "

15.—The appellant contends that the vows of Brother Henri Gabriel constituting a perpetual engagement, were not binding in law under Article 1667, of the Civil Code :

" Article 1667 : " The contract of lease or hire of personal service can only be for a limited term, or, for a determinate undertaking. It may be prolonged by tacit renewal. "

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Judgment of the Superior Court.

16.—The judgment of the Superior Court rendered by Ed. Fabre Surveyer, J. (pages 41, 42 and 43) may be summed up as follows :

The accident was due to the fault of the Appellant or to an inanimate thing belonging to it, and, there is no doubt that Brother Henri Gabriel had a legal recourse for bodily injuries.

In cases of damages caused by offence or quasi-offense, there are, in principle, as many indemnities or compensations as persons in-
40 jured (French authorities under the French Code Napoléon being quoted).

It is true that the action of Brother Henri Gabriel would have been for bodily injuries and prescribed by one year, but, the action of the Respondent is a distinct recourse, which is not a consequence of the bodily injuries, sustained by Brother Henri Gabriel but results from the expenses that the Appellant was forced to incur, and, the fact of being deprived of the Brother's services. The expenses incurred amount to

$2,236.90, and the other damages are assessed at $1,763.10, forming a total sum of $4,000.00, which is the amount of the condemnation.

Judgment of the Court of King's Bench.

17.—This judgment was confirmed by the Court of King's Bench, on the 21st of December 1928 (Greenshields, Dorion, Bernier, Cannon, Cousineau (ad hoc) JJ.) page 44.

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Greenshields, J. would not have allowed the claim for loss of services on the ground that there was no binding engagement to give such services, but, he would have allowed in addition to the $2,236.90, for out of pocket expenses, the sum of $900.00, to cover all expenditure for replacing Brother Henri Gabriel, on its teaching staff. Cousineau, J. would have allowed $2,236.90 only.

Reasons of Greenshields, J.

18.—In the Court of King's Bench, Greenshields, J. gave the following reasons :

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There can be no recourse against the Appellant as a common carrier under Article 1672 of the Civil Code, because the Appellant did not contract to transport the person of the Respondent, nor property, which was impossible from the nature of the thing. The responsibility of the Appellant can only be based on Articles 1053 and 1054 of the Civil Code, whether the accident was caused by the fault of the Appellant, or by an inanimate thing belonging to it. In both cases the solution should be the same. The accident was due to a quasi-offence" article 1053 declares a responsibility as wide and all embracing as words could be found to state a principle. Everyone is the debtor of the obligations mentioned in article 1053 towards the whole world, and, in like manner, and, at the same time he is the creditor of that obligation, and, the whole world is his debtor."

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In the case of Cedar Shingle Co. vs Rimouski Insurance Co. (2 B. R. page 379) the judgment being based on article 1053, the plaintiff obtained from the author of the fire, the indemnity it had paid to its insured.

In consideration of Brother Henri Gabriel's services, the Respont was bound to maintain him in sickness and in health, and, this was an agreement amounting to a valid contract.

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The Respondent suffered direct damages by being forced to incur special expenses in the discharge of its obligation to maintain Brother Henri Gabriel.

In the case of Ortenberg vs Plamondon, 24 K. B. pp. 69 and 385, it was decided that under article 1053 everyone suffering damages as a consequence of diffamatory statements even if directed against a group, or a community (Jews) has a recourse.

The Learned Judge then quoted French authorities on articles
10 1382 and 1383 of Code Napoléon.

In a case of Paquin vs Grand Trunk Railway 9 S.C. page 336, the Plaintiff, a doctor, had treated the victim of an accident due to the fault of the Grand Trunk Railway, without his services having been required; he obtained judgment against the Railway Company not under Article 1053, but, because he had rendered services, which the Company would have been bound to render at its expenses.

The Learned Judge approves the judgment of the Superior Court
20 as to the sum of $2,236.90, and he would add $900.00 to this sum for money expended to replace Brother Henri Gabriel. He would not have granted anything, however, for loss of services, because the vows of Brother Henri Gabriel, constituting a perpetual engagement, was not binding in law, and his services could be terminated at his will (Article 1667 C.C.).

On the question of prescription he simply declared that he agreed with the finding the trial Judge.

30 19.—Dorion, J. gave the following reasons :

Reasons of Dorion, J.

On the question of prescription the Learned Judge says that the Respondent being a moral person could not sue for bodily injuries. The nature of the respondent's action differs from the recourse of the victim himself, and, the prescription of two years applies. In principle the Learned Judge admits the recourse of the Appellant. He does not agree with Greenshields, J. on the point that the vows of Brother Henri Gabriel constituted a contract of hire of services. He contends that it is a contract " sui generis " not sanctioned by law, but recognized and lega-
40 lized by the Charter of the Corporation, and, therefore, that the Respondent could claim for loss of services.

As to the expenses incurred, the Learned Judge expresses the opinion that this could be obtained in virtue of the principle of " negotiorum gestio " or, of the action " de in rem verso. " The Learned Judge maintains that it is only in the case of death that the recourse of the person injured is restricted, and, that the disposition of Article 1056 do not apply, in the case of survival. The Learned Judge admits, however, that this seems illogical.

We quote his remarks at page 53 : " S'il semble illogique d'accorder dans le cas de survie une indemnité, que l'on refuse dans le cas de mort, il faut se résigner à l'illogisme créée par l'article 1056 qui introduit les dispositions de Lord Campbell's Act en marge de notre droit civil. "

Reasons of Bernier, J.

20.—BERNIER, J. gave the following reasons : 10

The Learned Judge does not even refer to the question of prescription. He contends that the Respondent was bound to take care of Brother Henri Gabriel, and, to pay the hospital expenses. These expenses having been occasioned by the fault of the Appellant, the Respondent has suffered direct damages, and it has a recourse against the Appellant. Brother Henri Gabriel having contracted the obligation to devote all his talents and activities to the benefit of the Respondent, by being deprived of his services, the Respondent has also suffered direct damages, which could be claimed from the Appellant as " lucrum cessans. " 20

Reasons of Cannon, J.

21.—CANNON, J. gave the following reasons :

The wide wording used in Article 1053, and the authorities quoted by the Judge of the first instance, are sufficient to establish a " lien de droit " between the parties.

On the question of law he agrees with the remarks of Greenshields J. excepting that he does not think that the amount of the first judgment should be modified. The fact by the Respondent being deprived of the services of Brother Henri Gabriel constitutes direct damages. 30

Reasons of Cousineau, J.

22.—COUSINEAU, J. gave the following reasons :

The Learned Judge simply refers to the remarks of Greenshields, J. and declares that he would reduce the indemnity to $2,236.90.

Judgment of the Supreme Court.

23.—By the judgment of the Supreme Court of Canada, page 74 (Anglin, C.J.C., Mignault, Rinfret, Lamont and Smith, JJ.) the judgments of the Superior Court and of the Court of King's Bench, Appeal side, were varied by reducing the amount of damages to $2,236.90, and, subject to this modification, the appeal was dismissed without costs. The Court was divided; Anglin, C.J.C. and Smith, J. were in favor of affirming the judgment below; Lamont, J. considered that only the claim for medical treatment and expenses, and, not the claim for loss of services should be allowed. The two Quebec Judges, Mignault and Rinfret, JJ. would have dismissed the action. 40

Reasons of Anglin, C.J.C.

24.—In the Supreme Court, Anglin, C.J.C. gave the following reasons :

The expression " another " or " autrui " in Article 1053 cannot be restricted to the immediate victim only.

10 Re : LARIVEE vs LAPIERRE (1890) 20 R.L. page 3, an action instituted by a father for damages sustained as a consequence of his son being injured, was maintained.

RE : SHEEHAN vs Bank OF OTTAWA : 35 K.B. 432, a father obtained damages on account of his son having been shot by a boy imprudently entrusted with a revolver by the Bank.

ALLARD vs FRIGON, 28 RL. n.s. 223, and 3 LANGELIER, page 468, are also quoted to show that the word " another " should be ex-
20 tended to all persons suffering damages.

Article 1056 cannot be read as narrowing the scope of article 1053. We quote his remarks at pages 80 and 81 : " Notiwthstanding any apparent violence to logic in excluding claims by persons other than those named in article 1056 C.C. when the immediate victim of the tort dies, for damages occasioned by his death, while allowing all who sustain direct loss to claim, if the immediate victim survives, there is not here such inconsistancy, repugnance or absurdity as requires the Court to deny their plain meaning and effect to the words of Article 1053, C.C.
30 ABLEY vs DALE. "

" To support the actions for which it provides article 1056 C.C. may have been unnecessary; and, we are not unfamiliar with those provisions in legislation. The presence of such a provision whether introduced "per incuriam" or "ex majore cautela" cannot, I think justify cutting down the purview of the clear terms in which article 1053 C.C. is couched, except so far as may be necessary to exclude from it the special cases for which article 1056 C.C. provides (Article 2613 C.C.). Had the legislature intended to exclude from the application of article 1053
40 C.C. other cases so plainly within its ex facie purview, as is that at bar, a more direct method would assuredly have been found to effectuate that purpose. "

In case of offences or quasi-offences, the recourse extends even to damages that could not have been foreseen, and, it is not restricted as in the case of the inexecution of an obligation. Notwithstanding the contingency of Brother Henri Gabriel's premature death, or, his abandonment of his religious vocation, the Respondent had sufficient interest

and status to sue. The statutory incorporation of the Respondent covers the validity of Brother Henri Gabriel's contract, or, engagement with the Respondent. Relations such as those which the community had with Brother Henri Gabriel justified an action (French authorities being quoted).

The Learned Judge cannot distinguish in principle from the case at bar, that of Cedar Shingle vs La Compagnie d'Assurance de Rimouski, 2 Q.B. 379. 10

The degree of fault does not affect the quantum of damages. Articles 1074 and 1075 C.C. do not apply to offences or quasi-offences.

ORTENBERG vs PLAMONDON, 24 K.B. pp. 69 and 385 shows how far the extension of the word " another " could go.

The Respondent's recourse for the item of $118.00 representing loss of its own property, can make no doubt. The item of $2,246.90, for out of pocket expenses it also approved, and, it could be justified by Articles 1141 and 1146, and also by the principle of the action " de in rem verso. " 20

The Learned Judge agrees with Bernier and Cannon, JJ. that the amount allowed for actual damages beyond the out of pocket expenses, was far from being exorbitant.

On the question of prescription Article 2226 (2) would apply only to the action taken by the immediate victim. This article does not read " actions resulting from bodily injuries " but "actions for bodily injuries. " On the other hand, the Article 2261 (2) reads " actions for damages resulting from offences or quasi-offences. " 30

Reasons of Mignault, J. (Dissenting).

25.—Mignault, J. (Dissenting) gave the following reasons :

The Appellant did not contract with the Respondent, but with Brothers, called Maristes, established in the State of New York, and not forming part of the Quebec community, incorporated by 50 Victoria Chapter 29, and, therefore, the Respondent cannot have any contractual recourse, against the Appellant. 40

There is no doubt that Brother Henri Gabriel had a right of action for bodily injuries against the Appellant, and, that his vows could not

The Learned Judge admits that the Modern French jurisprudence has given to articles 1382 and 1383 of the Code Napoléon, an absolute extension, as stated in the judgment of Surveyer, J. It is to be noted, however, that there is no disposition in the French Code corresponding to our article 1056. No jurisprudence worthy of that name ever gave such an extension to our Articles 1053 and 1056, in case of bodily injury.
10 Article 1053 applies to all offences and quasi-offences, while article 1056 refers only to cases of bodily injuries. The general principle adopted in Quebec as to the measure of damages, is that the direct damages to the exclusion of indirect and remoted damages only, can form the basis of an action. The case of inexecution of an obligation resulting from the fraud of the debtor (Article 1075 C.C.) is equivalent to an offence or quasi-offence, and, only the damages that are a direct and immediate consequence of the fault can be asked for. There is no reason why the recourse could be more extended in cases of offences and quasi-offences.

20 KIMBALL vs CITY OF MONTREAL (1887) M.L.R. 3 S.C. 131.

It is not sufficient that the fact complained about be one of the first and remoted causes of the damages, but, it must have directly determined the damage. If the fault must be followed up to its last consequence, Article 1056 is useless. On the contrary, it is in perfect harmony with Article 1053, if the word "another" means "the immediate victim." It would then create an exception to the general rule of Article 1053. If the judgment stands good, we must infer that in the case of the survival of the victim, or, of his death, after having obtained indemni-
30 ty, the persons mentioned in Article 1056 and all others injured could sue.

In CURLEY vs LATREILLE (1919) 60 Can. S.C.R. page 131, the Court thought that the French authors were going too far on the question of responsibility, and refused to follow them.

The judgment in the case of CEDAR SHINGLE & Rimouski Insurance Company is based on French authorities, only, and, it was not
40 a case of bodily injury.

In the case of ORTENBERG vs PLAMONDON, the Plaintiff was the direct victim of the defendant's fault.

PAQUIN vs GRAND TRUNK RAILWAY was decided in virtue of the principle of the action "de in rem verso."

This cannot be a case of " negotiorum gestio " as the Respondent never intended to look after the affairs of the Appellant. The Respondent could have claimed for his expenses by way of the action " de in rem verso, " on the ground that it had paid the debt of the Respondent, but it was essential to prove that the Appellant had enriched itself by so much, and, such an action had to be taken within the limit of time fixed by law for Brother Henri Gabriel to institute his own action that is, one year. 10

Reasons of Rinfret, J. (Dissenting).

26.—Rinfret, J. (Dissenting) gave the following reasons :

In France all offences and quasi-offences are governed by Articles 1382 to 1386, corresponding to Articles 1053, 1054 and 1055, of our Civil Code, but the French Code does not contain any provision similar to our Article 1056. The presence of this article in our Code renders inapplicable the theory exposed by the French authors, and, the French Jurisprudence. In Quebec all other cases of offences and quasi-offences 20 are governed by Article 1053, but the cases of bodily injuries are subject besides to the disposition of Article 1056. Article 1056 does not deal only with the cases of death, but it applies to all cases of bodily injuries. A special prescription of one year has been established in those cases, which are treated differently by our law.

The Learned Judge agrees with the remarks of Mignault, J. as to the action " de in rem verso. " The object of Article 1056 is not to create a new recourse, but, to modify article 1053, with reference to bodily injuries. The combination of these two articles shows that the word " an- 30 other " or " autrui " in Article 1053 corresponds to the " person injured " or, " la partie contre qui le délit où quasi-délit a été commis. " It is only when the immediate victim dies without having obtained indemnity, that the recourse is extended to persons mentioned in Article 1056. In all the other cases of bodily injuries, the immediate victim alone can sue. The object of Article 1056 is to concentrate the right of action in the person of the victim as long as it lives. The action of Brother Henri Gabriel would undebtedly be prescribed, and, the Learned Judge refuses to believe that one could get indirectly what could not be obtained directly. The indemnity that the immediate victim is entitled to obtain in law, 40 covers all the damages resulting directly from its bodily injuries. A third party can only be affected by the indirect consequence of the victim's incapacity and, such damages cannot be asked for in justice.

The Learned Judge points out many illogical consequences that would result from the respondent's construction of Article 1053. He quotes on that point the remarks of Lord Cains re SIMPSON vs

THOMPSON (1877) 3 App. Cas. page 279, at page 289. There is no instance of a similar action in the province of Quebec, since the enactment of the Code, in 1867.

The following quotation is summing up the opinion of Rinfret, J.:

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" La véritable solution imposée par notre article 1056 C.C. c'est que, en dernière analyse, les dommages intérêts résultant " d'injures corporelles " appartiennent seulement à la victime "contre qui le délit ou quasi-délit a été commis" et qu'il n'y a pas de responsabilité vis-à-vis des autres. Ce n'est que si la victime décède sans avoir obtenu des dommages, qu'une responsabilité limitée existe à l'égard de certains proches mentionnés dans l'article. Ni dans l'un, ni dans l'autre cas, il n'y a place pour l'intimée."

20 27.—Lamont, J. gave the following reasons:

Reasons of Lamont, J.

Article 1053 by itself would clearly give a right of action to every person to whom the fault caused damages. Article 1056 does not restrict such a recourse to the immediate victim during its lifetime. This articles has no application, unless and until the person injured dies in consequence of the injury sustained without having obtained indemnity or satisfaction. In reading Articles 1053 and 1056 together, the Learned Judge considered that the latter article was designed merely to give special rights, and to impose special obligations in those cases in which the fault 30 caused the death of the victim, and, that in other cases the meaning of the word " another " in Article 1053 was not limited. He was of the opinion that Article 2262 (2) had no application to the respondent's claim, which is not for bodily injuries, and, that the period of prescription was therefore two years. The Respondent is entitled to $2,236.90, because this expenditure was caused by the Appellant's fault. The item $118.00, should be disallowed, said clothes having been given to the Brother in recognition of his services. The claim for loss of services should also be disallowed, because the Respondent has not established any right to such services; the Brother's vows did not create any legal relationship, and, 40 the parties never believed that contractual obligation existed between themselves; Brother Henri Gabriel might legally have ceased at any time to give his services to the Respondent, and, no legal relation of master and servant was created.

28.—The Appellant submits that the Judgments of the Supreme Court of Canada, of the Court of King's Bench, and of the Trial Judge are wrong, and should be reversed and that the action should be dismissed for the following amongst other.

Conclusions.

Reasons of appeal.

1.—Because this is an action for bodily injuries, which could only be instituted by " the immediate victim " and, there is no "lien de droit" between the parties.

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2.—Because the damages asked for are not resulting directly from the Respondent's fault, but are only an indirect consequence of the victim's incapacity, and, are too remote and indirect to be asked for in justice.

3.—Because no binding contract or legal obligation existed between the Respondent and the " immediate victim " and, therefore, the expenses asked for were incurred freely by the Respondent, who could have no claim for loss of services.

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4.—Because this being an action for bodily injuries, it is prescribed by one year.

5.—Because the Respondent could only proceed by way of action " de in rem verso " within the period during which the action of the " immediate victim " could have been maintained, and, because no other action exists in the premises.

6.—For the reasons given by Mignault and Rinfret, JJ. in the Supreme Court.

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Montreal, April 22nd, 1931.

AIME GEOFFRION.

MAURICE DUGAS.

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