

4, 1932

No. 17 of 1930.

In the Privy Council.

ON APPEAL
FROM THE SUPREME COURT OF CANADA.

BETWEEN—

THE REGENT TAXI AND TRANSPORT
COMPANY LIMITED

(Defendants) *Appellants*

— AND —

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LA CONGREGATION DES PETITS FRERES
DE MARIE DITS FRERES MARISTES

(Plaintiffs) *Respondents.*

CASE FOR THE RESPONDENTS.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of Canada dated the 4th November, 1929, affirming by a majority and with a reduction in the damages awarded, a judgment of the Court of King's Bench of the Province of Quebec dated the 21st December, 1928, which affirmed a judgment of the Superior Court at Montreal dated the 10th February, 1928, in favour of the Respondents.

p. 74.

p. 44.

pp. 41-43.

20 2. The Respondents are a religious congregation incorporated by Statute in the Province of Quebec and bound by its rules to maintain in sickness and in health its members who by their vows own no property, everything they acquire vesting in the Respondents. Among the members was Brother Henri-Gabriel who in the Respondents' behalf was engaged in the writing of text-books and in the teaching of boys.

p. 45, ll. 6-39.

p. 96, ll. 9-25.

3. On the 14th August, 1923, while travelling in a motor omnibus driven by the Appellants' servant, Brother Henri-Gabriel

p. 75, ll. 16-23.

RESPONDENT'S CASE.

p. 43. ll. 8-18.

by reason of the driver's "faute" and of the defective condition of the motor-bus was seriously injured. The Respondents thereby lost his services and were put to expense for his treatment and care, and actually paid out in fees to hospitals, physicians and surgeons and other necessary medical and travelling expenses the sum of \$2,236.90.

pp. 1-3.

4. Brother Henri-Gabriel brought no action against the Appellants in respect of his injuries, but the Respondents by a declaration dated the 7th August, 1925, claimed damages from the Appellants amounting to \$14,898 including the above-mentioned \$2,236.90.

pp. 4-40.

pp. 41-43.

p. 43. l. 31.

5. The trial took place in the Superior Court in Montreal before the Honourable Mr. Justice Fabre-Surveyer, and evidence was heard on the 18th January and the 5th March, 1926, on behalf of the Respondents only. On the 26th March, 1927, Brother Henri-Gabriel died. By a judgment dated the 10th February, 1928, the Court awarded to the Respondents the above-mentioned \$2,236.90 with a further sum for loss of services and other expenses, making in all \$4,000, with interest and costs.

6. Of the matters in issue at the trial only two questions of law are now in dispute: first, whether any cause of action accrued to the Respondents; and second, whether any such cause of action was barred after one year.

7. The parts of articles of the Civil Code relevant to these questions are:—

"17. (10) The singular number extends to more than one person, or "more than one thing of the same sort, whenever the context "admits of such extension."

"1053. Every person capable of discerning right from wrong is respon- "sible for the damage caused by his fault to another, whether "by positive act, imprudence, neglect or want of skill." 30

"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;"

"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 40 "committed the offence or quasi-offence, or his representatives. "all damages occasioned by such death."

“In all cases no more than one action can be brought in behalf
 “of those who are entitled to the indemnity and the judgment
 “determines the proportion of such indemnity which each is to
 “receive”

“2261. The following actions are prescribed by two years:—

- “1. For seduction, or lying in expenses;
- “2. For damages resulting from offences or quasi-offences,
 “whenever other provisions do not apply;
- “3. For wages of workmen not reputed domestics and who
 “are hired for a year or more;
- “4. For sums due schoolmasters and teachers, for tuition, and
 “board and lodging furnished by them.

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“2262. The following actions are prescribed by one year:—

- “1. For slander or libel, reckoning from the day that it came to
 “the knowledge of the party aggrieved;
- “2. For bodily injuries, saving the special provisions
 “contained in Article 1056 and cases regulated by special
 “laws;
- “3. For wages of domestic or farm servants, merchants’
 “clerks and other employees who are hired by the day,
 “week or month, or for less than a year;
- “4. For hotel or boarding house charges.”

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8. The Honourable Mr. Justice Fabre-Surveyer held that every person damnified by a “*faute*” has a right to be indemnified and that there are as many causes of action as there are persons damnified. Brother Henri-Gabriel’s right of action was for bodily injuries, but the Respondents’ right of action was peculiar to them and distinct from that of Brother Henri-Gabriel, being not for bodily injuries but for expenses and loss of services. The claim was based on “*quasi delit*”, and, having been brought within two years, was not barred.

pp. 41-43.

p. 42. l. 36.

p. 42. l. 39.

p. 42. l. 42.

p. 43. l. 1.

p. 43. l. 5.

9. The Appellants’ appeal against the judgment of the Superior Court was dismissed with costs by the Court of King’s Bench on the 21st December, 1928. Of the five Judges, two would have reduced the amount awarded for loss of services, but all were in the Respondents’ favour on the matters raised by this appeal.

p. 44. l. 10.

p. 51. l. 20.

p. 55. l. 11.

10. The Honourable Mr. Justice Greenshields in his judgment stated the facts of the Respondents’ incorporation and Brother

pp. 45-51.

p. 45, ll. 6-30.

p. 45. ll. 31-39. Henri-Gabriel's services, reviewed the pleadings and proceedings
 p. 45. l. 40- and disposed of an argument (not now relied on) that the Respon-
 p. 47. l. 3. dents were entitled to recover against the Appellants as common
 p. 47. ll. 8-30. carriers. Article 1053 declares a wide responsibility independent of
 p. 47. l. 43- any relationship between the author of the damage and the victim.
 p. 48. l. 18. The obligations are towards the whole world. An action alleging
 p. 48. ll. 19-22. that, as a direct result of bodily injuries to another, the plaintiff was
 p. 48. ll. 23-43. caused a material loss and injury is, on its face, a good action.
 Although no such case in Quebec had arisen from bodily injuries
 the principle had been considered. An insurance company, 10
 independently of subrogation, had recovered from the assured's
 lessee whose negligence had caused a fire, and if that case turned on
 a contractual relationship such a relationship existed between the
 Respondents and Brother Henri-Gabriel. The Respondents were
 caused direct damage by the fault of the Appellants to the extent of
 the amount of their out-of-pocket disbursements. The principle
 had also been applied to damage to a Jew caused by a lecture
 attacking the Jewish Talmud and Jews generally. French
 authorities on similar articles of the Code Napoleon (1382 and 1383)
 p. 48. l. 44- also supported the right of action. The liability to hospitals and 20
 p. 49. l. 17. doctors was a liability which the Appellants would have had to
 discharge if sued by the victim, he having paid the amount. There
 p. 49. ll. 18-37. was authority that when the liability was discharged by another the
 Appellants, having benefited, must pay. The claim was not
 p. 49. l. 38- extinguished by lapse of time. The claim for loss of services should
 p. 50. l. 22. be disallowed: but to the amount of \$2,236.90 should be added the
 p. 50. ll. 36-39. sum of \$900 actually expended on replacing Brother Henri-Gabriel
 p. 50. ll. 23-35. during the nine months after the accident.
 p. 51. l. 18.

pp. 51-53. **11.** The Honourable Mr. Justice Dorion held that the action
 was not for bodily injuries but a distinct claim for damages caused 30
 p. 51. l. 45. by *quasi-deliict*, which was not barred. The Appellants had wrong-
 p. 52. l. 9. fully deprived the Respondents of the services of Brother Henri-
 Gabriel on which, *de facto* they were able to count. Moreover, the
 Respondents in paying the expenses of Brother Henri-Gabriel's
 illness had discharged the Appellants' debt and were entitled to
 reimbursement. Article 1056 being an importation of Lord
 p. 51. ll. 29-36. Campbell's Act into the Civil Law, creates an illogicality but cannot
 p. 53. ll. 4-22. be used to affect cases where there is a claim to damages under
 Articles 1053 and 1054.

pp. 53-54. **12.** The Honourable Mr. Justice Bernier held that the Respon- 40
 p. 53. l. 32. dents were bound by their constitution to care for Brother
 et seq. Henri-Gabriel and were entitled to recover the full sum awarded as
 p. 54. l. 21. damages flowing directly from the Appellants' fault.
 et seq.

13. The Honourable Mr. Justice Cannon thought that the wide terms of Article 1053 established the Respondents' right to recover the full sum awarded, and the Honourable Mr. Justice Cousineau held the Respondents entitled to reimbursement of \$2,236·90 only.

p. 54, l. 44.

p. 55, l. 11.

14. An appeal by the Respondents to the Supreme Court of Canada was heard on the 17th and 20th May, 1929, and a considered judgment was delivered on the 4th November, 1929, whereby the Court by a majority (the Right Honourable Chief Justice Anglin and Justices Lamont and Smith, Justices Mignault and Rinfret dissenting) held that the Respondents were entitled to reimbursement of \$2,236·90.

p. 74, l. 35.

pp. 74-75.

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15. The Right Honourable the Chief Justice of Canada, with whom Mr. Justice Smith concurred, stated the unchallenged fact that the injury sustained by Brother Henri-Gabriel was attributable to fault and negligence of the Appellants' employee for which they were responsible, and analysed the claim into three parts of which the first included the claim for \$2,236·90 for out-of-pocket expenses necessarily incurred. The first issue was whether the Respondents are within the purview of the word "another" in Article 1053, or whether the right of recovery is restricted to the immediate victim.

pp. 75-95.

p. 125, l. 31.

p. 75, ll. 19-23.

p. 75, ll. 23-36.

p. 76, l. 18
et seq.

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On Article 1053 (with Articles 1054 and 1055 covering special cases) depends practically the whole law of tort in Quebec covering wrongs against person, property, honour and reputation. The *prima facie* scope of the Article should not be narrowed, the broad application of which was emphasised by jurists and decided cases. The words "to another" are clear and unambiguous and the presence of Article 1056 does not suggest an intent to narrow the scope of Article 1053 except where the person injured dies in consequence and the claim is for damages occasioned by such death. There was

p. 76, l. 38.

p. 77, l. 1
et seq.p. 79, l. 19-
p. 80, l. 23.p. 80, l. 24.
p. 81, l. 16.

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an historical explanation of the presence of Article 1056, which originated in a Statute of the United Province of Canada. Arguments based on remoteness of damages were also unsound. The relations between the Respondents and Brother Henri-Gabriel give the Respondents a cause of action in the clear opinion of leading French text-writers. Insurance Law, Canadian and French, supports this view. The measure of damages applicable to breach of contract does not apply to *delicts* or *quasi-delicts* except in exceptional circumstances. Moreover the claim to \$2,236·90 can be supported, reasonably clearly, on another and distinct basis—an action *de in rem verso*. The judgment was sustainable for the full amount of \$4,000. As regards prescription, by Article 2262 the usual period is 30 years, and the short periods of Articles 2261 and 2262 are exceptional. The limitation of one year applies to all actions by

p. 81, l. 17-
p. 83, l. 10.p. 83, l. 11-
p. 86, l. 40.
pp. 87-88.p. 89, l. 3.
p. 90, l. 42.

p. 91, ll. 6-33.

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p. 92, l. 3-
p. 93, l. 10.
p. 93, ll. 8-14.

- a person who has sustained bodily injury to recover damages therefor, or for the consequences thereof, and runs from the date when the injury was sustained. But an action by someone else for distinct damages is not the same action which the person so injured might have brought. The contrast between "for damages resulting from offences or quasi-offences" in Article 2261 (2) and "for bodily injuries" in Article 2262 (2) shows that Article 2262 (2) is not to be read as if its terms were "for damages resulting from bodily injuries." Whether if the action be regarded as *de in rem verso* the prescription period of one year applies it is unnecessary to determine. The entire cause of action so far as it rests on Articles 1053 and 1054 is maintainable and falls within Article 2261 (2) rather than within Article 2262 (2). 10
- pp. 96-108. 16. The Honourable Mr. Justice Mignault, after setting out the facts, discussed the question of prescription. To a breach of contract Article 2262 would have no application. Modern French jurisprudence gives to Article 1382 and 1383 of the Code Napoleon the widest scope and, although there is no Article corresponding to Article 1056, a right of action by everyone suffering damage caused by a fatal accident. Article 1056 only applies if the person against whom the *delict* or *quasi-delict* is committed dies in consequence. 20
- Article 1053 relates to *delicts* and *quasi-delicts* of all kinds, and not merely those occasioning bodily injuries. The words "to another" if not cut down by their context, are very wide, including not only the person against whom the wrong is committed, but every person who indirectly suffers damage. Quebec Law has never given Article 1053 such a wide meaning. Only direct damage has been recoverable. Article 1056 allows indirect damages by its express terms and as an exception to the rule under Article 1053. Article 1056 is meaningless unless "to another" in Article 1053 means "the person against whom the *delict* or *quasi-delict* has been committed." Article 1056 gives a right of indemnity only to the persons therein mentioned and subject to the deceased not having obtained indemnity. The judgment below, if the victim did not die, would allow him to obtain indemnity and also give rights of action to the persons mentioned in Article 1056 and also to other interested persons. The principle applied by Mr. Justice Fabre-Surveyer would follow a "*faute*" to its most remote consequences—a principle never before admitted in Quebec and fraught with the gravest results. Innumerable persons would be entitled to claim. The draughtsman did not intend to impose such liability. The extended interpretation was supported by modern French authority influenced by considerations of public policy but not by the old 30 40
- p. 93, l. 15
et seq.
- p. 93, l. 42-
p. 94, l. 30.
- p. 95, ll. 4-21.
- pp. 96-108.
- p. 97, l. 38
et seq.
- p. 98, l. 22
et seq.
- p. 99, l. 12
et seq.
- p. 99, l. 31
et seq.
- p. 100, l. 21
et seq.
- p. 101, ll. 9-32.
- p. 101, ll. 32-39.
- p. 102, ll. 9-20.
- p. 102, ll. 20-33.
- p. 102, l. 34.
p. 103, l. 8.

jurists. Article 1056 is inconsistent with the Respondents' contentions and they can only find three decisions to support their submission. These decisions were not conclusive. The claim for medical and surgical expenses (that is the sum of \$2,236.90) could be based on an action *de in rem verso*, to be distinguished from *negotiorum gestio*, which is not applicable in the present case. But the action *de in rem verso* is prescribed by the same lapse of time as the debt paid, in the present case by the lapse of one year.

p. 103, l. 9-
p. 104, l. 16.
p. 104, l. 17-
p. 105, l. 18.
p. 105, l. 24-
p. 107, l. 26.
p. 107, l. 26-
p. 108, l. 2.

10 **17.** The Honourable Mr. Justice Rinfret considered that the general Article 1053 was subordinate to Article 1056 which was exclusively concerned with bodily injuries. Article 1053 establishes the ground of liability and Article 1056 defines the persons to whom liability exists for damage caused by bodily injuries. It was inadmissible to appeal to earlier law and decisions for the purpose of interpreting the Code. The word "another" in Article 1053 is equivalent to the "person injured" in Article 1056. Otherwise illogical consequences would follow: the victim's action would be barred in one year, the stranger's in two; relatives would have an action only under Article 1056, but strangers could sue under the general terms of Article 1053; and relatives could not sue until the conditions of Article 1056 were satisfied. Since these Articles came
20 into force in 1867 there has been no instance of a similar action in Quebec. The absurdity of an unrestricted interpretation of Article 1053 is illustrated by the opinion of Lord Cairns in *Simpson v. Thomson* (3 App. Cas. at 289).

pp. 108-118.
p. 108, ll. 24-44.
p. 112, ll. 1-8.

p. 112, l. 23.
p. 113, l. 8.
p. 114, l. 27
et seq.

p. 116, l. 22.

p. 117.

18. The Honourable Mr. Justice Lamont held that, unless restricted by the context, Article 1053 is wide enough to include all those who have suffered damage as a direct result of a fault. The whole effect of Article 1056 is to give special rights and to impose special obligations in those cases in which the fault causes the death of the immediate victim. It does not limit the meaning of
30 "another" in Article 1053. The action was not for bodily injuries and Article 2262 (2) did not apply. The expenditure of \$2,236.90 was caused by the Appellants' fault and they are liable therefor.

pp. 118-125.
p. 119, ll. 29-41.
p. 119, l. 42-
p. 120, l. 42.
p. 120, ll. 43-46.
p. 121, l. 24-
p. 122, l. 38.
p. 122, l. 43.
p. 123, l. 13.

19. The Respondents respectfully submit that Justices Mignault and Rinfret were in error in the effect on Article 1053 which they attributed to Article 1056, and in holding that startling consequences would follow on an interpretation of Article 1053 according to its natural meaning. The Respondents do not contend,
40 nor do the Judges in their favour hold, that Article 1053 gives a right to damages other than those directly caused by a wrong. Article 1056 on the other hand gives a right of action to those who,

if the injured person had survived, would have no claim. The damage such persons suffer is the loss of continuing benefits voluntarily given by the deceased in his lifetime, and, if the injury were not fatal, compensation to the injured person would enable him still to confer the benefits. But a person mentioned in Article 1056 may have an independent action under Article 1053. Thus if a son carrying property belonging to his father is injured by another's fault and the property destroyed, son and father could each sue under Article 1053, and if the son died clearly the father's action would not abate. Even if the words "to another" in Article 1053 mean "the person injured" the problem is not thereby solved in favour of the Appellants, since the Respondents submit that Brother Henri-Gabriel and they themselves were both within that description as having distinct causes of action for distinct wrongs. 10

20. The Respondents therefore submit that the judgments of the Courts below were right and should be affirmed for the following amongst other

REASONS.

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1. Because the Respondents have suffered damage caused by the fault of the Appellants' servant and the defective condition of their motor-bus.
2. Because Article 1053 should be read in its natural and ordinary meaning and in such meaning gives a right of action to the Respondents.
3. Because Article 1056 does not by implication restrict the scope of Article 1053.
4. Because however Article 1056 may affect the meaning of Article 1053 the Respondents within such meaning have a right of action. 30
5. Because the death of Brother Henri-Gabriel after action brought did not destroy the Respondents' right of action.
6. Because the Respondents' cause of action was not prescribed by the lapse of one year.
7. For the other reasons given by the Judges in the Respondents' favour in the Courts below. 40

F. B. MERRIMAN.

FRANK GAHAN.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN :

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COMPANY LIMITED

(Defendants) *Appellants*

— AND —

LA CONGREGATION DES PETITS
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MARISTES - - (Plaintiffs) *Respondents.*

CASE FOR THE RESPONDENTS.

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