

Privy Council Appeal No. 17 of 1930.

The Regent Taxi and Transport Company, Limited - - - *Appellants*

v.

La Congregation des Petits Frères de Marie dit Frères Maristes - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH JANUARY, 1932.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD BLANESBURGH.
LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
SIR GEORGE LOWNDES.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

This appeal, brought by special leave from a judgment of the Supreme Court of Canada, involves two important questions arising under the Civil Code of the Province of Quebec, upon one of which an acute division of judicial opinion was disclosed in the Supreme Court.

The respondents are a religious community, incorporated by a Quebec statute, and bound by rules to maintain in sickness and in health its members who, by their vows, own no property, everything acquired by them vesting in the community. One of the members was Brother Henri-Gabriel who was mainly engaged in the writing of textbooks and the teaching of boys.

On the 14th August, 1923, while travelling in a motor omnibus driven by a servant of the appellants, Brother Henri-Gabriel sustained serious bodily injuries by reason of the "faute," or "fault" of the driver.

The community thereby lost his services and were put to expense for his treatment and care, the actual disbursements amounting to a sum of 2,236.90 dollars.

Brother Henri-Gabriel (who died on the 26th March, 1927) brought no action in respect of his injuries; but on the 7th August, 1925, the community sued the appellants claiming from them damages, which included the disbursements, amounting to

nearly 15,000 dollars. This action was tried in the Superior Court in Montreal by Fabre-Surveyer J., who, by his judgment, dated the 10th February, 1928, awarded to the community 4,000 dollars by way of damages composed of the amount of the said disbursements and a sum for loss of services.

As will appear, the judgment of the Supreme Court of Canada reduced the damages to the sum of 2,236·90 dollars, by disallowing any claim for loss of services. Against this reduction the community have not appealed. Such disallowance must therefore, in any event, stand.

The two questions in dispute which survive are (1) whether any cause of action accrued to the community and (2) whether any such cause of action was barred after one year.

At this point it will be convenient to set out the relevant provisions of the Code under which these questions arise: and since nothing turns upon a consideration of the respective texts it will suffice to give the English version. They are as follows:—

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.

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 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 their pupils;

Curators or others having the legal custody of insane persons, for the damage 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.

Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed.

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, action 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 the judgment determines the proportion of such indemnity which each is to receive.

These actions are independent of criminal proceedings to which the parties may be liable and are without prejudice thereto.

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.

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.

While it was not disputed that Brother Henri-Gabriel, as the immediate victim of the bodily injury, could have sued under Article 1053 to recover such damages as he had sustained, it was claimed by the community, but denied by the appellants, that the community had under the same article a right (separate from and independent of the right of the Brother) to sue and recover such damages as the community had sustained. It was further claimed by the community that their right of action was not an action "for bodily injuries" within Article 2262, which would be prescribed by one year, but fell within Article 2261 as being an action "for damages resulting from offences or quasi offences" to which no other provisions applied, which was prescribed by two years. The appellants contended that the action, if maintainable, fell within Article 2262 with the result that it was out of time and should have been dismissed.

The trial judge held that the community had a cause of action, and that their action fell within Article 2261 (2) and was not barred.

An appeal by the present appellants to the Court of King's Bench for the Province of Quebec (Appeal Side) was dismissed. Greenshields J. held that the community had a right of action under Article 1053 which had not become barred. Dorion, Bernier, Cannon and Cousineau JJ. all agreed with this view.

On appeal to the Supreme Court of Canada that Court, by a majority, varied the judgment in favour of the community by reducing the amount of damages to 2,236.90 dollars and subject to that modification dismissed the appeal.

The Chief Justice of Canada was of opinion that the community had a cause of action under Article 1053. As regards the question of limitation, he thought that the action by the community, being a distinct action from the action which could be maintained by the person who actually sustained the bodily injuries, was not an action "for bodily injuries" within Article 2262 (2) which words, he considered, should not be read as meaning "for damages resulting from bodily injuries." It fell within Article 2261 (2). Lamont J. in a separate judgment took the same view upon both points. Smith J. simply expressed his concurrence with the Chief Justice.

Mignault and Rinfret JJ. dissented and held that the community had no cause of action under Article 1053. Their judg-

ments contain no express statement of what their views as to limitation would have been if they had thought that a cause of action did exist in the community.

In the argument before their Lordships the appellants raised a further contention based upon the special relationship between Brother Henri-Gabriel and the community of which he was a member. The contention was that even if both the main questions could be decided against the appellants, nevertheless the appeal should succeed upon the grounds that the community was under no legal obligation to make any of the disbursements comprised in the amount of 2,236.90 dollars, that the payments by the community were entirely voluntary, and that therefore the community had suffered no damage for which they could sue. In support of this view reliance was placed upon Article 1667 of the Code which it was said disabled the Brother from binding himself to the community for life, and therefore precluded the existence of any legal obligation to maintain him. It runs thus :—

“ 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.”

As a result of a full argument before the Board their Lordships have formed clear views upon two of the contentions advanced by the appellants, which they now proceed to state.

In regard to the point last mentioned their Lordships feel no doubt upon the facts that a legal obligation rested on the community to make the payments in question and that consequently the further contention raised before them cannot prevail. They are content to adopt what was said by Dorion J. in the following passage from his judgment :—

“ Or le frère Gabriel était lié par un voeu envers l'intimée, à qui il devait son temps et son travail, et celle-ci était également liée envers le frère, à qui elle devait en retour la nourriture, le logement et l'entretien. Sans doute on ne peut engager ses services que pour un temps limité. (C. C. 1667.) Mais il ne s'agit pas ici d'un louage de services. Il s'agit d'un engagement *sui generis* que la loi ne sanctionne peut-être pas par une action directe, mais dont elle reconnaît l'existence et qu'elle légalise en accordant une charte corporative à l'institution dont les voeux de religion sont le moyen de recrutement et la condition d'existence.

Nor do their Lordships feel any doubt in regard to the question whether the cause of action (if any) vested in the community under Article 1053 had become barred. This point arises for consideration upon the assumption that the community have under Article 1053 a right to recover by action the damage caused to them by the fault of the appellants' driver, *i.e.*, by the driver's tortious act in wrongfully inflicting bodily injuries upon Brother Henri-Gabriel.

Such an action obviously must fall either under Article 2261 (2) or Article 2262 (2). The question which is the appropriate provision depends for its answer upon the true construction of Article 2262; for if upon its true construction that Article

includes such an action, then there is no scope for the application to that action of Article 2261 (2).

The words in Article 2262 (2) "for bodily injuries" cannot, their Lordships think, be read literally as they stand. There is no action *for* bodily injuries in the literal sense of those words. A man sues for his wages, but he does not sue for bodily injuries; he sues to recover the damages which he has sustained from the wrongful infliction of bodily injuries. Article 2262 (2) must accordingly be read as if it referred to an action brought to recover damages sustained from the wrongful infliction of bodily injuries. Such a construction might (if the words "for bodily injuries" stood alone) still leave open the view that the only action referred to in Article 2262 (2) is an action brought to recover damages sustained from the wrongful infliction of bodily injuries upon the plaintiff in the action. But this view is, in their Lordships' opinion, rendered untenable by the words which follow, viz., "saving the special provisions contained in Article 1056." This reference to Article 1056 can only be made for the purpose of ensuring that the one year mentioned in Article 1056 shall prevail over the one year mentioned in Article 2262, thus showing that in the view of the framers of the Code the words "actions for bodily injuries" in Article 2262 would, of their own force, include an action the plaintiff in which was not the person upon whom the bodily injuries had been inflicted.

From this it follows that the present action, being an action to recover damages caused to the community by the wrongful infliction of bodily injuries upon the Brother, is an action for bodily injuries within the meaning of Article 2262 (2) and was "prescribed by one year" under that Article. Indeed, it would be strange if it were otherwise; for the result then would be (still upon the hypothesis that the community has a right of action under Article 1053) that in the case of a wrongful infliction of bodily injuries, the physical victim must sue within one year while third parties may take twice as long before asserting their claims. Their Lordships find it impossible to suggest any plausible reason why this should be so. If any difference in the periods of limitation should be made between the two plaintiffs, they would have expected to find the respective positions reversed.

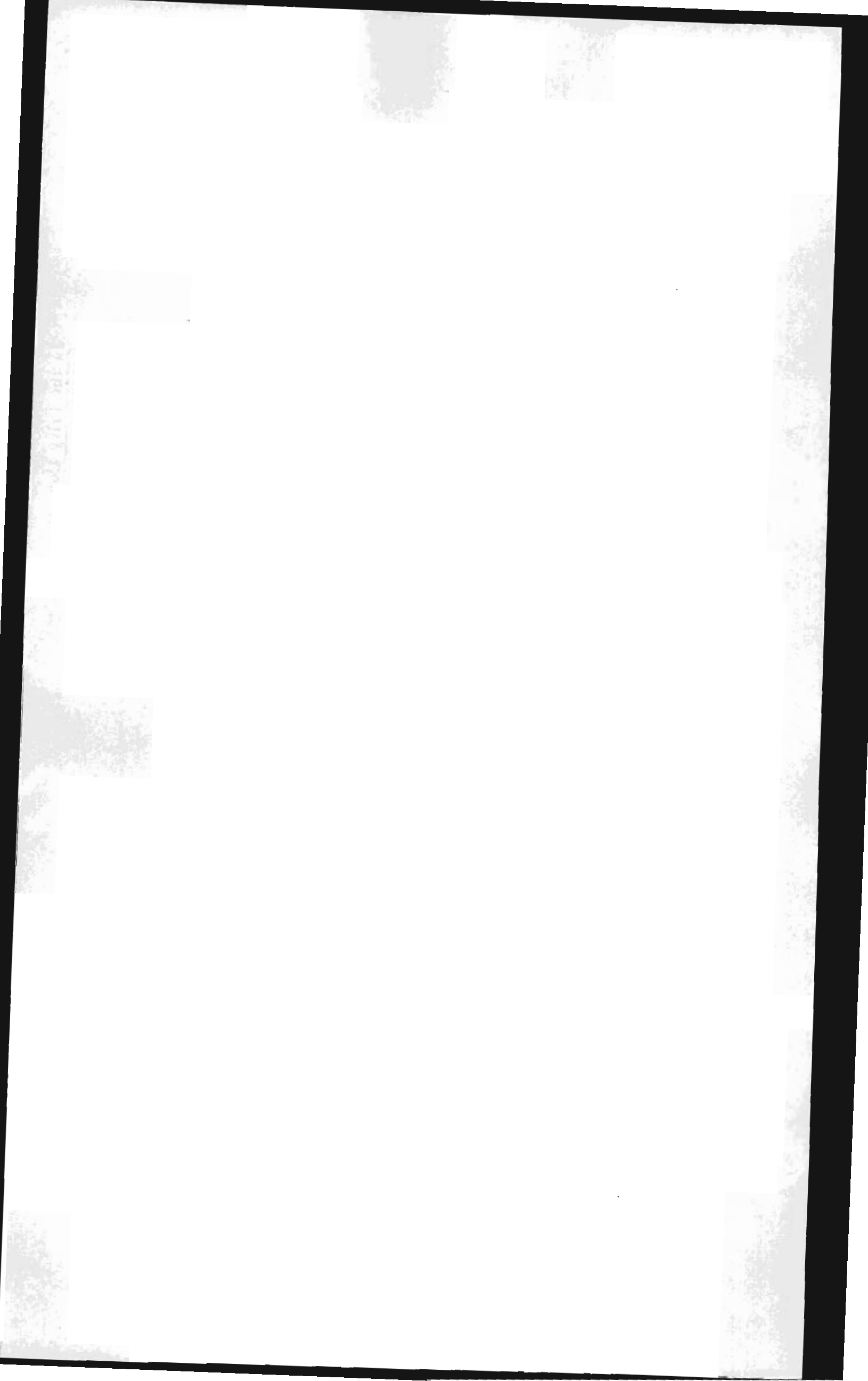
For these reasons their Lordships are of opinion that the community's action should in any event have been dismissed as being "prescribed by one year" under Article 2262 (2).

Their Lordships having come to this clear opinion upon this part of the case, feel grave doubts as to the advisability or propriety of expressing any opinion upon the remaining question. The importance of that question admits of no doubt, and its difficulty is apparent in the division of judicial opinion; but unfortunately any view which their Lordships have formed (and whether clearly or otherwise) would involve no decision upon the point, for the case is determined in any event by the date on which the proceedings were commenced.

In these circumstances would it be advisable or proper that a view, unnecessary to the decision of the case, should be expressed upon so vexed a question? Their Lordships think not. They are of opinion that no opinion should be expressed by their Lordships upon the question until it comes before them upon an appeal in which they can deal with it as the sole factor for consideration, unhampered by any other competing question which would be decisive of the case.

But for the special terms to which the appellants submitted when leave was given to appeal from the judgment of the Supreme Court of Canada, it would be necessary to provide for the repayment by the community of the damages and costs awarded to them. The appellants, however, have submitted "to pay forthwith the damages and costs awarded to the respondents in the Courts below the same in no event to be recoverable and to pay the respondents' cost of the appeal in any event." Their Lordships were informed that the damages and costs awarded below had all been paid. In these circumstances it will not be necessary to do more than to discharge the orders made in the Courts below and to substitute for the judgment of the 10th February, 1928, an order that the action be dismissed.

Their Lordships will therefore humbly advise His Majesty that an order should be made allowing the appeal, discharging the orders in the Courts below and dismissing the action but providing that nothing already paid by the appellants to the respondents shall be recoverable. The appellants will pay the respondents' costs of this appeal.



In the Privy Council.

THE REGENT TAXI AND TRANSPORT
COMPANY, LIMITED

v.

L.A. CONGREGATION DES PETITS FRÈRES DE
MARIE DIT FRÈRES MARISTES.

DELIVERED BY LORD RUSSELL OF KILLOWEN,

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