

against the Crown therefor, notwithstanding that the accident was occasioned by the negligence of a fellow-servant of the deceased.

3. The right of action in such case is given by The Exchequer Court Act, sec. 16 (c), and by Art. 1056, C.C.I.C., and is an independent one in behalf of the widow and children. It is not under the control or disposition of the husband in his life-time, and nothing he may do in respect of it will bar the action.

4. Under the provisions of section 50 of "The Government Railways Act," while the Crown may limit the amount for which in cases of negligence it will be liable, it cannot contract itself out of all liability for negligence. *The Grand Trunk Railway v. Vogel*, 11 S.C.R., 612; and *Robertson v. The Grand Trunk Railway Co.*, 24 S.C.R., 611 applied.

5. In cases such as this it is the duty of the Court to give the widow and children such damages as will compensate them for the pecuniary loss sustained by them in the death of the husband and father. In doing that the Court should take into consideration the age of the deceased, his state of health, the expectation of life, the character of his employment, the wages he was earning and his prospects; on the other hand the Court should not overlook the fact that out of his earnings he would have been obliged to support himself as well as his wife and children, nor the contingencies of illness or being thrown out of employment to which in common with other men he would be exposed.

*Stuart*, Q.C., and *Riou* for suppliant. *The Solicitor-General* and *Dunbar*, Q.C., and *Pouliot* for respondent.

Burbidge, J.]

SCHULZE v. THE QUEEN.

[April 10.

*Customs Law — Breach — Importation — Fraudulent undervaluation — Manufactured cloths — Cut lengths — Trade discounts.*

Claimants were charged with a breach of the Customs Act by reason of fraudulent undervaluation of certain cloths imported into Canada. The goods were imported in given lengths cut to order and not by the roll or piece as they were manufactured. The invoices on which the goods were entered for duty showed the prices at which, in the country of production, the manufacturer sells the uncut goods to the wholesale dealer or jobber, instead of showing the fair market value of such goods cut to order in given lengths when sold for home consumption in the principal markets of the country from which they were imported. The values shown on the invoices were further reduced by certain alleged trade discounts for which there was no apparent justification or excuse.

*Held*, that the circumstances amounted to fraudulent undervaluation of the goods and that the decision of the Controller of Customs declaring the goods forfeited must be confirmed.

*Hogg*, Q.C., and *T. Dickson* for claimants. *The Solicitor-General* and *Newcombe*, Q.C., for defendant.