

jury. The action was brought on behalf of a wife who had left her husband and lived as the wife of another man, while he conversely lived with another woman. She received no support from him, but only casual small sums which might have been given by a stranger. Substantially, therefore, she did not lose much, but still she had lost her husband, for which the jury gave her £5. To this happy conclusion of the case the defendants demurred, and moved that judgment be entered for them on the ground that there was no cause of action. In giving judgment, Mr. Justice Manisty lays down the law as to the duties of husbands towards their wives. Lord Coke is vouched for the proposition that an adulterous wife tarrying away from her husband loses her dower, and later on the Court of King's Bench laid down that a husband is not obliged to support an adulterous wife. A similar view was taken in a poor-law case. The question under the Act was whether the wife had suffered any pecuniary loss by the death of her husband. Mr. Justice Manisty decides that under the circumstances, and there being no evidence of any reconciliation being probable, the wife loses her cause of action. Mr. Justice Stephen assumes in the plaintiff's favour that the statute applies when there is a legal right in the plaintiff to support from the deceased, but that the right must be such as to give a reasonable expectation of pecuniary advantage. The example he gives of a father who supports his son, and whose income depends on his own life, being killed, and his son bringing an action, is not particularly happy. A father is not bound to support his son; and if the point of the illustration lies in the father having a life interest, the case put is one in which the plaintiff has no legal right, but he has reasonable expectations of pecuniary advantage. If the point lies in the fact that there was no legal duty on the father, it only helps the present occasion to the extent of showing that it is unnecessary, which appears an elementary proposition.

The true solution of the question would seem to lie in the fact that Lord Campbell's Act does not create a cause of action. It adds heads of damage to existing causes of action, and to decide that the bare fact of

matrimony gives the wife a right to succeed under Lord Campbell's Act, would be to read that Act as if it brought into existence a new cause of action. The test is not whether the person killed was legally bound to support the plaintiff, but whether he did in fact support him, and would have continued to do so. The woman with whom the dead man had been living would, from this point of view, better qualify as a plaintiff under the Act than the lawful wife. She may have had a reasonable prospect that the husband's provision for her would be continued, but she could not sue for the reason that the statute only applies to relatives, which means legal relatives. The mere fact that the plaintiff was the wife of the deceased was no doubt of pecuniary value to her, and enabled her to obtain the small sums given her, and it is no objection under Lord Campbell's Act that the pecuniary gain was gratuitous. A schoolboy could, we suppose, recover damages for the loss of an uncle who gave him a sovereign every Christmas. The fact of having a husband, although separated from him in the way in question, is in a sense a commodity, but its loss can hardly be held to amount to a pecuniary loss under Lord Campbell's Act unless that Act creates an entirely new cause of action.—*Law Journal* (London).

#### COURT OF QUEEN'S BENCH— MONTREAL.\*

*Lease—Occupation of shed not mentioned in the lease—Accessory—Acquiescence.*

*Held* :—Where the lessee leased buildings in course of construction, and on taking possession of the same, also occupied and used, without objection on the part of the lessor, during nearly four years, a small shed in the rear of the leased premises,—that the shed, though not mentioned in the lease, nor shown on the architect's plans of the buildings, must be considered as an accessory of the premises leased, and that the lessor, by acquiescing in the lessee's occupation, for so long a period, without claiming rent, had placed that construction upon the contract.—*Myler et vir & Styles, Dorion, C. J., Cross, Baby, Church, J.J., Feb. 25, 1888.*

\*To appeal in Montreal Law Reports, 4 Q. B.