least is capable of considerable amendment. We say this not in any spirit of disparagement of its late distinguished author, to whom is due the credit of having provided some practical remedy for an evil of present urgency, but as a comment upon the Act considered as a piece of legal mechanism which we are induced to make in the interests of law, and which we think will be found to be justified by fair argument and criticism. This statute, however, may be referred to in passing, as a characteristic specimen of the rough and ready, but not always scientific workmanship of its author, while the great popularity with which it has been received may be also notified as an appreciation of his services. As, however, the tendency of the enactment is all in favour of the public and against railway companies, its popularity is sufficiently accounted for without accepting it as any proof of the strict equity of the measure, still less of its perfection as a specimen of jurisprudence.

In criticising the act as the work of the Legislator, common fairness requires that a due regard should be paid to the antecedent state of the law, and the occasion which called for it. It was professedly a substitution for the ancient system of deodands. By the ancient common law, in case of death by accident, the instrument of death was forfeited as a deodand, to be disposed of for the benefit of the soul of the deceased. The specific deodand was gradualy converted into a pecuniary fine assessed by the jury as the value of the instrument, in place of which it was paid; and this fine became forfeited beneficially to the crown, or the lord of the manor, after the ulterior purpose to which it was formally applied had been declared superstitious. Juries, however, were naturally disinclined to inflict a fine in this manner and with this destination, and gradually took upon themselves to diminish the amount, until the practice prevailed of assessing the deodand at an amount merely nominal. Upon the introduction of railways, however, their feelings were excited in an opposite direction, and they vented their indignation at the supposed negligence of railway companies by an exercise of their long dormant power of assessing the deodand at a substantial amount. This attempt to revive deodands was found to be quite alien to the spirit of the age, and quite inadequate to the requirements of the occasion; and at the same time the novel apprehensions excited by railway accidents called urgently for some legislative interposition. Accordingly, deodands, which had become practically obsolete, were abolished by statute, and in their stead was enacted the statute, which now passes by the name of the late Lord Chancellor, which was thus inspired by the twofold intention of providing a suitable penalty in place of the deodand, for the cause of death, and of appropriating the amount of the penalty by way of compensation to the relatives of the deceased.

The statute is now no longer to be considered on historical grounds, and only with reference to the purpose which called it forth. It retains a prominent place in our statute book, and occupies a position of serious importance in our social system. It must stand or fall by its own merits or demerits with respect to the circumstances of the present day, and by its intrinsic capacity to fulfil the functions which it undertakes to discharge. In this view we propose to discuss it, and we may fairly take as a test its manner of dealing with the relation between railway companies and their passengers, which is by far the most important and frequent subject of its operation, and that which it was most particularly designed to regulate. As the subject, we find, is too extensive for our present limits we must reserve our observation on the details of the measure for another week, and confine our attention at present to a single point. It is a point, however, of vital importance, as it touches the very groundwork and principle of the statute.

Before this act came into operation, the action for damages caused by negligence, which resulted in death, was barred by the maxim of the common law; "*actio personalis moritur cum persona.*" This maxim was originally universally applicable to all actions for wrongs, whether to person or property; but the superior wisdom of after ages appear to have interpreted it as exposing the deficiency rather than expressing the policy of the common law, and to have arrived at the conviction that in common justice every vested right of action, so far as practicable, should pass to the representatives of the deceased party entitled. Rights of action in respect of injuries to property, real and personal, had already been thus secured to the deceased's estate by successive enactments; but rights of action in respect of injuries to the person had remained hitherto extinguished, as at common law, by the death. Was it then the policy of the statute to supply this defect of the common law in a similar manner in respect of rights of action for personal injuries? Does the statute in effect operate by transferring the deceased's right of action to his estate or representatives? or does the statute leave the common law untouched, and create an entirely new cause of action? The language of the enactment will be found most undecided and ambiguous upon this point, which nevertheless we venture to suggest is a point of serious importance, and one which goes to the very root of the claim. The question has on one occasion been incidentally mooted, but not in a manner to require a decisive examination. It may be safely predicted, however, that it will one day again present itself to the judges in a manner which will demand a solemn decision. We have only to suppose the very probable case, that a person injured in a railway accident should accept compensation from the company in satisfaction of the cause of action, and after receiving satisfaction should die of the injury, and that claim under the statute in respect of his death should afterwards be prefered by his representatives against the company. The questions might then be raised; would the right of action against the company for their negligence be wholly discharged by the satisfaction made to the deceased? or would the representatives of the deceased acquire a new and distinct cause of action notwithstanding the satisfaction?

In whichever way the point is decided, the results will be remarkable; if the action in question is that of the person injured, the company by a speedy adjustment of their claims for compensation may often avoid the more serious liability arising upon the death; if on the other hand the action is that of the representatives, the company may be actually compelled to pay full compensation to the deceased, and yet remain liable for damages to his relatives, who at the same time, may be the very persons who have become entitled by the death to the previous compensation.

The fact that this question is left open to argument on the face of the statute is a conclusive proof that in framing its provisions their bearing upon the previous state of the common law did not receive a due measure of consideration. Attention appears to have been directed too exclusively to the avowed objects of replacing the ancient deodand by other form of penalty and providing for its distribution amongst the family of the deceased. It appears to have been overlooked, that the party injured, if he survived a sufficient time for the purpose, might himself have his action for the negligence of the company, and recover compensation, which, in case of serious injury might and probably would be greater in amount than that assessed upon his death. It could scarcely have been intended that the company should suffer the penalty for their negligence twice over; nor on the other hand that by a speedy settlement with persons slightly injured they should be enabled to escape the risk of ultimate liability to the family in case of death. The liability of the company ought at any rate to be adjusted on such terms as would avoid these uncertainties; and the statute requires a corresponding amendment. What particular form of amendment is expedient, and upon what principles the liability of the company should be finally adjusted, are questions to which we can only attempt an answer after a full consideration of all the provisions of the statute which we are compelled to postpone to a future occasion.—*Jur.*