

to recover \$352.20 from the defendants due upon a contract for the carriage of passengers between certain stations on the Intercolonial Railway, which is owned and operated by the Government of Canada. The defendants, by their pleas, admitted the contract and its performance by the Crown, but sought to avoid their liability by alleging (1) That the passengers were carried on *bons*, and that the action should have been brought upon such *bons*, and not upon the agreement set out in the information; (2) That the contract was for the carriage of voters to attend the nomination proceedings at an election then pending, with intent to corruptly influence such voters at such election, and was illegal and void under the provisions of secs. 100 and 122 of the Dominion Elections Act, 1874. A demurrer to these pleas, was filed on behalf of the Crown.

Held, (1) That the defendants having admitted the breach of contract, their liability was not in any way affected by the fact that the passengers were carried on *bons* signed by one, and not by all, of the defendants; and that the cause of action was properly averred in the information.

(2) That the Crown is not bound by sec. 100 of "The Dominion Elections Act," 1874 (37 Vic., c. 9), which avoids every executory contract, promise or undertaking in any way referring to, arising out of, or depending upon any election under the Act, even for the payment of lawful expenses, or the doing of some lawful act; or by sec. 122 thereof, which enacts that *all persons* who have any bills, charges or claims upon any candidate for or in respect of any election, shall send in such bills, charges or claims within one month after the day of the declaration of the election to the agent of the candidate, otherwise such persons shall be barred of their right to recover such claims.

(3) That the language of the 46th clause of the 7th section of the Interpretation Act (R.S.C. c. 1), which enacts that "no provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty shall be bound thereby," is not to be construed by reading into the Act the exception to the common law rule that the

Crown is not bound by a statute unless expressly mentioned, which exception is laid down by Lord Coke in the Magdalen College case (II. Rep., 74 b.), viz: "that the King is impliedly bound by statutes passed for the general good; the relief of the poor; the general advancement of learning, religion and justice; or to prevent fraud, injury or wrong."

Quare, does the clause in the Interpretation Act (R.S.C. c. 1, clause 46, s. 7) preclude the Crown from being bound by a statute in which it is included by necessary implication only?

Demurrer allowed.

O'Connor and *Hogg*, for Crown.

Gormully and *Sinclair*, for defendants.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

JENNINGS v. GRAND TRUNK R. W. Co.

Compensation for death caused by accident—R.S.O. (1887), c. 135—Measure of damages—Life policy—Setting off insurance against damages—Administration—R.S.O. c. 46—R.S.O. (1887), c. 50—Express messengers—Duty to carry—Common employment.

Although the right to recover damages for the death of a relative occasioned by the wrongful act, neglect or default of another, is, under the R.S.O. (1887) c. 135, limited to the actual pecuniary loss sustained by the plaintiff, the amount of a policy falling in by the death is not necessarily to be allowed or disallowed in computing the damages. It is merely a circumstance to be taken into consideration by the jury on reviewing the whole question of pecuniary loss or gain in consequence of the death.

The deceased was a resident of Buffalo, N.Y., being at the time of his death, which occurred in the County of Lincoln, Ont., not possessed of any real or personal property in the province, and the plaintiff (his widow) obtained letters of administration from the Surrogate Court of York.

Held, the grant of letters by the Surrogate of York was valid and effectual, and