

own injuries resulting from his death. They were held to be two distinct rights giving rise to two distinct actions. *Re Chemin de fer v. Margaud*. But now the Code, as the Statute did, though in no such express words, *Read v. The Great Eastern* (cited above), clearly refuses a new action to the survivors in such cases. Now, is this not, as Mr. Justice Cross well remarked in the Court below, enacting as clearly as if it were laid down in so many words, that anguish of mind and mental sufferings are not to be the subject of pecuniary compensation. The injured man, if he settled before his death with the party who caused his injury, obviously did not settle for his wife's or children's anguish of mind caused by his death. So that when the action in that case is taken away from said wife or children, it is, it seems to me, equivalent to an express enactment that their anguish of mind is no ground for damages.

The Code, in my opinion, has taken away the common law action and the remedy it gave.

When *Ravary v. The G. T. R.*, 6 L. C. J., was decided, before the Code, it might have been a question whether the statute had had that effect; but since the Code, there can be no doubt on the subject, and that case upon that ground is entirely distinguishable.

It is expressly enacted by Art. 2613 thereof, that all laws previously in force are abrogated in all cases in which express provision is thereby made upon the particular matter to which such laws relate. This clearly leaves, for an injury caused by death, nothing but the action given by Art. 1056, and the jurisprudence is all in that sense. *Prevost v. Jackson*, judgment of Superior Court, 13 L. C. J. 170; *Ruest v. G. T. R.*, 4 Q. L. R. 181; and in appeal 1 L. N. 129; *Godbout v. G. T.*, 6 Q. L. R. 63. And if the statutory action only now lies, the statutory damages only can be allowed. Moreover, when *Ravary v. G. T.* was decided, *Read v. The Great Eastern Railway* had not been decided, and there was not in the statute, as there is now in Art. 1056, the express refusal of the action where the deceased had received an indemnity. That consideration was consequently not before the judges who determined that case. I would for all these reasons hold that the

charge of the learned judge at the trial in this case is as illegal here as it would be in Ontario or in England.

But I go further, and hold that even under the French law, supposing that it ruled this case, the charge of the learned judge was illegal by its vagueness. Laurent, Vol. 20, p. 569, would call it dangerous. I would say it is illegal, because it is dangerous. The jury may have been led to believe under the terms it was given that they might consider the anguish of mind and mental sufferings of the plaintiff during the fifteen months that elapsed between the accident to the husband and his death. Clearly these could not be taken into consideration. Then, apart from this, there is not a single authority that sustains such a charge. In this case, there is even no evidence of what the deceased earned at his death; nothing but the speculative opinion of one witness who hardly knew him. No evidence whatever of how much it would take to educate the child, to support her or her mother, not a word of all this. Now, all the authorities cited by Mr. Justice Badgley in *Ravary v. G. T. R.*, demonstrate that there must be some basis upon which the damages can be assessed. I need not refer to them more particularly here. As said by Mr. Justice Mondelet, in that case in the Superior Court, 1 L. C. J. 286, "If vindictive damages were to be given, without any rule, upon the mere caprice of juries excited by public clamour, there would be no safety for railway companies against the most monstrous fines."

If a jury could be charged as has been in this case, the Court would lose all control over their verdict. In the present case, for instance, a verdict for \$10,000 or \$20,000 would be unassailable, if this one is. It is not a question of excessive damages. How could the Court say that the damages are excessive, if it has no means to ascertain on what principles and for what they have been assessed. The Court, it seems to me, should direct the jury to state what amount they grant for actual real damages, and what amount for mental sufferings, or anguish of mind. Otherwise, the Court has no check on the verdict. The jury should also be charged that though they may take into consideration the mental