

TRAVELLING BY RAIL.

and the words of Coleridge, J., in *Blake v. The Midland R. W. Co.*, ante, that "the statute does not transfer the injured party's right of action to his representative, but gives to the representative a totally new right of action on different principles," would appear to give some color to an opposite doctrine. (See also, *Franklin v. South Eastern R. W. Co.*, 3 H. & N. 211 (Ex. Ch.) and *Dalton v. South Eastern R. W. Co.*, 4 C. B., N. B. 296.)

The remedy given by the statutes is to *individuals* and not to a *class*; and therefore on the death of a person whose income arose from lands and personalty, (quite independently of any exertion of his own; and no portion of it was lost to his family by his demise) an action under the act is still maintainable, if in consequence of that death the mode of distribution of his income among the different members of his family is changed to the detriment of some of them. As for instance in this case—the eldest son took the bulk of the property as heir-at-law, leaving but a small settlement for the widow and younger children, who accordingly brought an action and obtained from the jury £1000 for the widow, and £1500 for each of the eight young children; and the court sustained the verdict: *Pym v. Great Northern R. W. Co.*, 4 B. & S. 397, Ex. Ch. And it was also decided that the loss of the reasonable probability of pecuniary benefit from the continuance of the life of the deceased, was a sufficient damage to maintain the action.

The insurances on a man's life, if they go to the benefit of his family, may reduce the amount recoverable for damages. In an unreported case at *Nisi Prius*—*Hicks v. Newport, Abergavenny & H. R. W. Co.*, mentioned in 4 B. & S. 403,—Lord Campbell told the jury to deduct from the amount of damages the amount of an insurance against accidents, and

any reasonable sum that they should think fit in respect of the life insurances. This was the only case mentioned to Pollock, C. B., in reply to a question of his as to whether there was any case in which notice had been taken of insurances left by the deceased.

Robinson, C. J., on one occasion, confessed himself utterly at a loss to make a satisfactory computation of the amount of damages to be awarded, or of the pecuniary loss sustained by a widow and her children by the death of the head of the family: he said, he had no means of determining whether they would have been better off if the father's life had run its natural course; it was mere conjecture. He (the father) might have become extravagant or intemperate and squandered his property, or from too great eagerness to grow rich, might have lost it by grasping at too much, or might have died from natural causes within a year or a month, leaving his family no better off than he did leave them when carried off by the sad accident. The Court will not interfere to reduce the damages assessed, unless they are clearly excessive; but where an industrious, well-to-do farmer was killed at the disastrous Desjardins Canal accident in March 1857, the Court held that £3000 was not an exorbitant compensation for the widow and three children: *Secord v. Great Western Ry. Co.*, 15 U. C. Q. B. 631.

As to attempts to mitigate the damages in the case of *Ferrie*, another Desjardins Canal victim, in 15 Q. B. at p. 517, McLean, J., said, "if, for instance, the deceased had his life insured, and the plaintiff as his executor had received after his death for such insurances an amount, the interest of which would exceed the annual income of the testator while living and exercising his ordinary avocations, it must surely be competent for the defendants to shew that the wid-