

H. R. Frost, for the plaintiff.

W. A. Henderson, for Jane Scarlett.

LENNOX, J.:—There are expenses in connection with obtaining letters of administration and the funeral. I am not informed as to whether the deceased left any estate. For three years or more before her husband's death the plaintiff was living apart from him and supporting herself. The husband, during this time, lived with his mother, Jane Scarlett, and paid her \$10 a week. The plaintiff did not release her husband from liability for her support.

The total damages recoverable in the action are to be "proportioned to the injury resulting from the death" to the persons entitled: sec. 4; and the appointment, when it comes to be made, is not to be upon any analogy to the Statute of Distributions, as was done in *Sanderson v. Sanderson* (1877), 36 L.T.N.S. 847, but in proportion to the damages sustained by each person entitled to a share: *Bulmer v. Bulmer* (1883), 25 Ch. D. 409, at p. 413; *Burkholder v. Grand Trunk R.W. Co.* (1903), 5 O.L.R. 428.

The fact that the widow was separated from her husband does not appear to prevent recovery or shift the basis of apportionment, according to American cases cited in *Sedgwick* on Damages, 9th ed., p. 1121; nor would it appear, on principle, to affect the question, so long as he continued liable for her support. And, so long as the wife continued entitled, the husband could contribute to his mother's support only out of the surplus of his wages or other income after supporting and maintaining his wife. The question is not so much what was being paid to the mother as what the wife and mother would relatively have had a right to expect if the deceased had continued to live. It is not made very clear why the husband and wife were separated. *Primâ facie*, the wife has the strongest legal claim.

The order will provide that the plaintiff's costs of the action, as between solicitor and client, over and above the \$100 received on account of costs, and the costs of both parties of this application, shall be a first charge upon the \$1,000; and that, after providing for these sums, the balance of the said \$1,000 shall be equally divided between the plaintiff and the said Jane Scarlett.

As at present advised, I do not see that the expenses above referred to affect this fund; but, if the plaintiff has had to bear these expenses personally, I should be spoken to before the order issues.