

TRAVELLING BY RAIL.

point are far from being uniform: *In-galls v. Bills* 9 Metcalf 15.

Lord Campbell's act, 9 and 10 Vict. c. 93 (of which our act, Con. Stat. Can. ch. 78, is a transcript), has proved a great boon to the relations of persons deprived of their lives by railway accidents, and many have been the actions decided thereunder. It is now definitely settled that a jury in estimating the damage sustained by the wife, husband, parent or child of a person killed by misfeasance, cannot take into consideration mental suffering endured or loss of society, but must give compensation only for the pecuniary loss sustained. If the jury were to enquire into the degree of mental anguish which each member of a family suffers from a bereavement, then not only the child without filial piety, but a lunatic child and a child of very tender years, and a posthumous child, on the death of the father may have something for pecuniary loss, but cannot come in *pari passu* with other children, and must be cut off from the solatium. If a jury were to proceed to estimate the respective degrees of mental anguish of a widow and twelve children from the death of the father of the family, a serious danger might arise of damages being given to the ruin of the defendants: especially would the consequences be disastrous if all the relatives mentioned in the fifth section of the Imperial Act, (the sixth of ours), the father and the mother, grandfather and grandmother, stepfather and stepmother, grandson and granddaughter, stepson and stepdaughter, not only got compensation for pecuniary loss, but a solatium for their shattered affections and broken hearts: *Blake v. The Midland R. W. Co.*, 18 Ad. & Ell. N.S. 93. *Pym v. Great Northern R. W. Co.*, 4 B. & S. 306 (Ex. Ch.) also, decides that no solatium for grief or the loss of the society of the deceased can be recovered.

The Scotch law is more generous, for

by it a solatium is given for wounded feelings, even where the death of the sufferer, instead of being a loss to his family, might be regarded as a benefit to them, from his bankruptcy or dissipated habits: *Ersk. Inst.* 592, note 13. It also grants a solatium to a man injured in his happiness and circumstances by the death of his wife and child: whereas in England a widower will not get anything unless the death of his wife causes him some pecuniary loss, (in argument *Gilliard v. Lancashire & Yorkshire R. W. Co.*, 12 Law Times 356): it being a pure question of pecuniary compensation, and nothing more, which is contemplated by the act. (See also *Armstrong v. South Eastern R. W. Co.*, 11 Jurist 758.)

On one occasion when Byles, J., was leaving the matter to the jury, he said, "If the deceased had a fatal disease which would be sure to kill him, but if his death was precipitated by the collision, the defendants were liable. As to the damages, the plaintiff was only entitled to recover for actual pecuniary loss. If sound, the deceased might have lived some years; if unsound he might have died in a short time, and so the amount of damage would be less: *Birkett v. Whitehaven Junction R. W. Co.*, 4 H. & N. 732.

When after a man was injured the defendants paid him, and he accepted a sum of money in full satisfaction and discharge of all claims and causes of action he might have against the company; if he subsequently dies from the effects of such injuries no fresh cause of action accrues to his representatives: *Read v. Great Eastern R. W. Co.*, L.R. 3 Q.B. 555. But a remark of Erle, C. J., in *Pym v. Great Northern R. W. Co.*, 4 B. & S., at page 406, to the effect that the statute gives to the personal representative a cause of action beyond that which the deceased would have had had he survived, and based on a different principle—