[HIGH COURT OF AUSTRALIA.]

HARDING APPELLANT;
PLAINTIFF,

AND

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Negligence—Accident causing death—Action against council—No notice by deceased

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Latham C.J.,
Rich, Starke,
Dixon, Evatt
and McTiernan

JJ.

person—Right of widow to bring action—"Maintain an action and recover damages"—Compensation to Relatives Act 1897-1928 (N.S.W.) (No. 31 of 1897—No. 8 of 1928), sec. 3 (1)*—Local Government Act 1919-1935 (N.S.W.) (No. 41 of 1919—No. 50 of 1935), sec. 580.*

A right of action against a municipal or shire council may arise under the Compensation to Relatives Act 1897-1928 (N.S.W.) although the deceased person has not given a notice of action under sec. 580 of the Local Government Act 1919-1935 (N.S.W.).

The meaning of the expression "entitled . . . to maintain an action and recover damages" in sec. 3 (1) of the Compensation to Relatives Act 1897-1928 (N.S.W.), discussed.

Decision of the Supreme Court of New South Wales (Full Court): *Harding* v. *Lithgow Municipal Council*, (1937) 37 S.R. (N.S.W.) 182; 54 W.N. (N.S.W.) 54; 13 L.G.R. (N.S.W.) 117, reversed.

*Sec. 3 (1) of the Compensation to Relatives Act 1897-1928 (N.S.W.) provides:—"Whensoever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and

although the death has been caused under such circumstances as amount in law to felony."

Sec. 580 of the Local Government Act 1919-1935 (N.S.W.) provides:—"(1) A writ or other process in respect of any damage or injury to person or property shall not be sued out or served upon the council or any member thereof, or any servant of the council or any person acting in his aid for anything done or intended to be done or omitted to be done under this Act, until the expiration of one month after notice in writing

APPEAL from the Supreme Court of New South Wales.

An action under sec. 3 of the Compensation to Relatives Act 1897-1928 (N.S.W.) was brought in the Supreme Court of New South Wales by Mildred Mary Harding against the council of the municipality of Lithgow for the recovery of damages in the sum of £3,000. The plaintiff sued as the widow of Walter Edward Harding and alleged that the defendant was so negligent in and about the care, control, management and operation of certain levelling work on the showground at Lithgow that her husband, who was employed there by the defendant, was injured and died of the injuries so received. The defendant council pleaded that no notice in writing had been served on it by or on behalf of Walter Edward Harding in his lifetime setting out a cause of action in respect of the damage to him alleged in the declaration, and the time and place at which the alleged damage or injury was sustained by him. In a replication to this plea the plaintiff stated that her husband died within two days of sustaining the injury referred to. The defendant demurred to this replication and contended, inter alia, (a) that the plaintiff's husband at the moment of his death had no legal right to maintain an action against the defendant, and (b) that in pursuance of the provisions of the Local Government Act 1919-1935, no action was maintainable by the deceased unless the defendant had had an opportunity of tendering amends in accordance with the Act. The plaintiff gave notice of his intention to object to the plea on the grounds, inter alia, that the plea did not allege (a) that the plaintiff's husband had ceased during his lifetime to have a cause of action, or (b) that at any material time there was an obligation on the plaintiff's husband to serve a notice of action.

has been served on the council or the member servant or person as provided in this section. (2) The notice shall state—(a) the cause of action; (b) the time and place at which the damage or injury was sustained; (c) the name and place of abode or business of the intended plaintiff and of his attorney (if any) in the case . . . (5) At the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action that is not stated in the notice, and unless the notice has been served the plaintiff shall not be entitled to maintain the

action: Provided that at any stage of the proceedings the court or any judge of the court in which the action is pending may, if the court or judge deems it to be just or reasonable in the circumstances so to do—(a) amend any defect in the notice on such terms and conditions (if any) as the court or judge may fix; (b) direct that any non-compliance or insufficient compliance with this section shall not be a bar to the maintenance of the action. (6) Every such action shall be commenced within six months next after the occurring of the cause of action and not afterwards."

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A notice of action in terms of sec. 580 of the *Local Government Act* 1919-1935 had not in fact been given to the defendant by the plaintiff's husband.

The Full Court of the Supreme Court gave judgment for the defendant on demurrer: *Harding* v. *Lithgow Municipal Council* (1). From that decision the plaintiff, by leave, appealed to the High Court.

Evatt K.C. (with him Dwyer and S. C. Taylor), for the appellant. The only limitation on an action brought under the Compensation to Relatives Act 1897-1928 (N.S.W.) is that imposed by sec. 5 of that Act, namely, that the action shall be brought within twelve months after the death of the deceased person. The limitation imposed by sec. 580 of the Local Government Act 1919-1935 (N.S.W.) does not apply to relatives claiming under the Compensation to Relatives Act (British Columbia Electric Railway Co. Ltd. v. Gentile (2); Union Steamship Co. of New Zealand Ltd. v. Robin (3); Venn v. Tedesco (4); Walsh v. Ballina Urban District Council (5), but only to the injured person. The respondent has not alleged anything in the pleadings which would bring its defence within the principles stated in those There is not any allegation that at the moment of his death the deceased person by any act or omission on his part had deprived himself of his right of action. Sec. 580 of the Local Government Act merely lays down certain procedural law which the injured person himself should follow in any action he may bring in respect of injuries sustained by himself, and even then, under the proviso to that section, the court may amend defects in the notice or direct that the action shall proceed notwithstanding non-compliance or insufficient compliance by the injured person. In the circumstances of this case it was impossible for the injured person to give notice as required by sec. 580. [He was stopped on this point.]

Dudley Williams K.C. (with him Head), for the respondent. The test under sec. 3 of the Compensation to Relatives Act is, Would the person injured have been entitled to maintain an action at the

^{(1) (1937) 37} S.R. (N.S.W.) 182; 54 W.N. (N.S.W.) 54; 13 L.G.R. (N.S.W.) 117.

^{(2) (1914)} A.C. 1034. (3) (1920) A.C. 654. (4) (1926) 2 K.B. 227.

^{(5) (1921) 55} Ir. L.T. 140.

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moment of death if death had not ensued? (Grein v. Imperial Airways Ltd. (1); Nunan v. Southern Railway Co. (2)). If the deceased person at the moment of his death could not have maintained an action in respect of the injury sustained by him, then his relatives have no right of action under the Compensation to Relatives Act (Williams v. Mersey Docks and Harbour Board (3), cited with approval in British Columbia Electric Railway Co. Ltd. v. Gentile (4)). At the moment of his death the injured person had not served on the respondent a notice under sec. 580 of the Local Government Act; therefore he was not then "entitled to maintain the action" within the meaning of sub-sec. 5 of that section and sec. 3 (1) of the Compensation to Relatives Act (Gentile's Case (5)). That being so, the appellant, his widow, has no right of action under the Compensation to Relatives Act. Unless and until the Court makes an order under sec. 580 (5) (b) of the Local Government Act, failure to give the requisite notice bars the right of action altogether (Towsey v. White (6); Cobbett v. Warner (7)). Here, however, the provisions of sec. 580 (5) (b) were not available as the deceased person had not issued a writ. The court will not lightly avail itself of the provisions of sec. 580 (5) (b) (Mason v. Birkenhead Improvement Commissioners (8)). Where public interests are involved, as in sec. 580, the requirements of a statute as a condition precedent to the bringing of an action cannot be dispensed with by the court (Craies on Statute Law, 3rd ed. (1923), pp. 237 et seq.). Unless such notice be given the action must fail (R. v. Dyott (9)).

Evatt K.C., in reply. The provisions of sec. 580 are very different from the statutory provisions under consideration by the court in Williams v. Mersey Docks and Harbour Board (3). word "maintain" means, in sec. 3 of the Compensation to Relatives Act, to commence proceedings, and in sec. 580 of the Local Government Act, to continue or carry on proceedings.

Cur. adv. vult.

^{(1) (1937) 1} K.B. 50, at p. 72. (2) (1924) 1 K.B. 223, at p. 227. (3) (1905) 1 K.B. 804.

^{(4) (1914)} A.C., at p. 1042.

^{(5) (1914)} A.C., at p. 1041.

^{(6) (1826) 5} B. & C. 125; 108 E.R.

^{(7) (1856) 1} H. & N. 388; 156 E.R. 1253.

^{(8) (1860) 6} H. & N. 72; 158 E.R. 30. (9) (1882) 9 Q.B.D. 47.

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The following written judgments were delivered:

LATHAM C.J. The appellant is the plaintiff in an action against the respondent (defendant) Lithgow Municipal Council. She sues as the widow of Walter Edward Harding, alleging that the defendant was guilty of negligence in and about the control and management of certain works so that her husband was injured and died. The action was based upon sec. 3 of the Compensation to Relatives Act 1897 as amended by Act No. 8 of 1928 which corresponds in New South Wales to Lord Campbell's Act (Fatal Accidents Act 1846) in England. The defendant pleaded that no notice of action had been given by or on behalf of the deceased husband in his lifetime as required by the Local Government Act 1919, sec. 580. accordingly contended that at the time of the death of the deceased he was not entitled to maintain an action within the meaning of sec. 3 of the Compensation to Relatives Act and that therefore the defendant was not liable in an action by the widow based upon the provisions of that Act. The plaintiff demurred to this plea and the Full Court of the Supreme Court gave judgment for the defendant in demurrer. An appeal by special leave is now brought to this court.

Sec. 3 (1) of the Compensation to Relatives Act is as follows: "Whensoever the death of a person is caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death has been caused under such circumstances as amount in law to felony."

It is established that the moment of time at which it is necessary to consider whether the deceased person would (if death had not ensued) have had a right of action is the moment of his death-"If the deceased could not, had he survived at that moment, (have) maintained, i.e., successfully maintained, his action, then the action under the Act does not arise" (British Columbia Electric Railway Co. Ltd. v. Gentile (1)).

The action of the relatives under the Compensation to Relatives Act is a different action from that which the deceased person could have brought; for example, the measure of damages is different in an action under the Act, where the damages may be proportioned to the injury resulting from such death to the parties by or for whom such action is brought (sec. 4).

Sec. 3 deals with the case of the death of a person being caused by a wrongful act, neglect or default, where the act, neglect or default is such as would (if death had not ensued) have entitled the injured party to maintain an action etc. The application of the section is made to depend upon the character of the act, neglect or default relied upon by the plaintiff. If the act etc. is of the required description then prima facie the relatives can sue under the Act,

But the right of the deceased to maintain an action may be terminated. It may be lost or forfeited (Gentile's Case (1)). Thus if the deceased obtained judgment or settled his claim by a binding agreement, as by accord and satisfaction, the foundation for the action by the relatives would have disappeared. Nothing of this character, however, has happened in the present case.

The contention of the defendant is that the deceased had no right of action because, at the moment of his death, he was not in a position to commence any action, as he had not given the notice required by the Local Government Act, sec. 580. This section, so far as relevant, provides that a writ in respect of any damage or injury to a person shall not be sued out or served upon a municipal council for anything done or intended to be done or omitted to be done under the Act until the expiration of one month after notice in writing, stating certain particulars, has been served on the council. Sub-sec. 5 provides that unless the required notice has been served the plaintiff shall not be entitled to maintain the action—with a proviso that the court or judge may at any stage of the proceedings direct that non-compliance with the section shall not be a bar to the maintenance of the action. Upon these provisions the argument is based that unless the required notice has been given no plaintiff is entitled to maintain an action against the council.

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It is clear that sec. 580 provides a condition precedent to the maintenance of an action for negligence against the municipality, but I think that it is also clear that satisfaction of a condition precedent to the bringing of an action cannot itself be regarded as part of the cause of action. The words of sec. 3 of the Compensation to Relatives Act are "entitled . . . to maintain an action and recover damages." A person cannot maintain an action without issuing a writ and he plainly cannot recover damages in an action without both issuing a writ and obtaining judgment in his favour in the action. It cannot be disputed, however, that the words which I have quoted cannot mean that the deceased person must have issued a writ and obtained a judgment in his favour for damages before his relatives can sue under the Act. The question is whether the deceased person was entitled to maintain an action and recover damages. This question can be expressed in these words, Had the deceased person, if death had not ensued, a right, in view of the character of the wrongful act, neglect or default alleged, to maintain an action and recover damages? If the character of the wrongful act, neglect or default is such that this question can in a particular case be answered in the affirmative, then the condition required by sec. 3 is satisfied. The procedural steps which must be taken, whether before or after the issue of a writ, are not part of the cause of action and do not determine whether or not a person injured is entitled to maintain an action within the meaning of sec. 3 of the Act.

In the present case, upon the allegations contained in the declaration, the deceased person would, if death had not ensued, have been entitled to maintain an action against the defendant and to recover damages. It is true that it would have been necessary for him to give a notice under sec. 580 of the Local Government Act and that if he had not given such notice his action would have failed unless the court had exercised its discretion in his favour under the proviso of sub-sec. 5. But the fact that he had not taken this procedural step when he died did not cause him to forfeit or lose the right of action which was vested in him. He was still entitled, by taking steps which were within his own power, to maintain an action in respect of his injury.

It should be observed that no question arises as to the giving of notice of action by the widow.

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Reference was made to the cases of Towsey v. White (1) and Cobbett v. Warner (2). These cases show that where a condition precedent to bringing an action (such as notice of action) has not been satisfied and the case comes to trial, the plaintiff necessarily fails. But, in my opinion, they do not show that a person can be said not to be "entitled to maintain" an action unless he has taken all the necessary procedural steps at the time when the question arises. If, in the cases cited, the question had been asked, before any procedural steps had been taken, whether the plaintiff was entitled to maintain an action, the answer would have been in the affirmative, even though a failure to give the necessary notice might ultimately have led to the right of action being lost.

Upon the view which I take of the relevant statutes, I am of opinion that the appeal should be allowed and that judgment should be entered for the plaintiff in demurrer.

RICH J. The notice prescribed by sec. 580 of the Local Government Act 1919-1935 is a necessary step antecedent to the issue of a writ. It is intended to protect the defendant to the intended action but not to deprive the claimant of his existing cause of action. The cause of action provided by sec. 3 of the Compensation to Relatives Act 1897-1928 must no doubt subsist at the moment of death. But the cause of action or right to compensation may subsist without the claimant having taken any or all of the preliminaries essential to the issue of process. Failure in this regard does not put an end to the cause of action or disentitle the claimant to prosecute his claim. In my opinion the appeal should be allowed.

Starke J. I agree with the conclusions of the Chief Justice. The Compensation to Relatives Act 1897-1928 of New South Wales confers upon relatives of a deceased person a new cause of action, but they cannot recover on that cause of action unless the deceased had at the time of his death a right to maintain an action and recover damages for the act, neglect or default of which they complain.

^{(1) (1826) 5} B. & C. 125; 108 E.R. (2) (1856) 1 H. & N. 388; 156 E.R. 46.

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But the right of the deceased, if death had not ensued, to maintain an action depends not upon the procedural steps necessary to enforce the right but upon the liability to him of the person guilty of the wrongful act, neglect or default.

The deceased, as has been pointed out in the cases "may have lost such a right in a number of ways." But neglect to give a notice of action before commencing proceedings would not affect his cause of action, but only the process by which it is enforced.

DIXON J. I am unable to agree in the decision of the Supreme Court that the relatives of a deceased person can obtain under the Compensation to Relatives Act 1897-1928 no cause of action against a municipal council in respect of his death unless before he died one month's notice in writing has been served upon the council stating his cause of action, the time and place of his injury and his name and place of abode.

Sec. 580 of the Local Government Act 1919-1935 requires a notice of this description before the person injured brings his action. It does so as a preliminary condition to the writ. But it does not affect or destroy that person's cause of action considered as a title to a right to damages; it does no more than impose a condition upon the assertion or enforcement of the right by judicial process.

Sec. 3 of the Compensation to Relatives Act provides a new cause of action for the relatives of the deceased man, but a new cause of action depending on the cause of his death. The cause must be such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages.

It is well settled that at the moment of death the cause of action must subsist and that the deceased's remedy must not be barred so as to relieve the defendant of liability to him (See, per Scrutton L.J., Nunan v. Southern Railway Co. (1)). But I do not think that this means that before his death the deceased must have taken every step which would enable him then to sue out process. The expression "as would have entitled the party injured to maintain an action" is descriptive and, of course, the description is hypothetical; the hypothesis being the survival of the deceased. The description

connotes the existence at death of a title in the deceased to enforce a liability. But the imposition in favour of a particular defendant of a condition of suit, such as giving notice, is a procedural matter not going to the validity of the title to enforce the liability, but only to the mode of enforcing it, or the fulfilment of a preliminary procedural condition.

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Dixon J.

In my opinion the appeal should be allowed with costs, the judgment of the Supreme Court set aside, and in lieu thereof judgment in demurrer entered for the plaintiff.

EVATT J. The New South Wales Compensation to Relatives Act 1897-1928 is based upon the provisions of the English Fatal Accidents Act 1846, usually known as Lord Campbell's Act. Lord Campbell introduced the Act because at common law, if a man was killed by negligence, not only did the victim's right of action die with him, but his wife and family were precluded from recovering damages in respect of the death and the losses consequent thereon. Accordingly the statute conferred a new right of action upon the relatives of the deceased. In 1852 Coleridge J. held that the right was "a totally new right of action, on different principles" (Blake v. Midland Railway Co. (1)), and despite a number of decisions which proceeded upon an inconsistent footing, this view of the statute has finally prevailed.

In New South Wales the statutory liability of the defendant is created by sec. 3 (1). The liability is subjected to two conditions, viz., (a) that the death is caused by act, neglect or default; and (b) that the act, neglect or default is "such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof." Now the second condition seems to concern itself with the quality of the act, neglect or default and with nothing else. It requires the making of the hypothesis that the deceased has been only injured and sets the further question, "Assuming that he was injured and survived, was the act, neglect or default causing his injury of such a character that he could have recovered damages in respect of it?"

But if such is the true meaning of the second condition, it is plain that the fact that the deceased actually recovered damages

^{(1) (1852) 18} Q.B. 93, at p. 110; 118 E.R. 35, at p. 41.

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while alive would be immaterial except perhaps as evidencing the fact that his injury was such that he was entitled to "maintain an action and recover damages." And a fortiori the fact that during his lifetime the deceased allowed his right of action to be barred would not preclude his relatives from recovering. On the other hand, the condition of liability is not satisfied in cases of contributory negligence or common employment, because if, in an action at common law, the injured person had been guilty of contributory negligence or the negligence was that of a fellow employee, the action would have failed.

The above analysis has not been accepted by the courts, and there is grave reason to suppose that far too narrow an interpretation of this beneficial Act has been adopted. Evidence of this appears even in Blake's Case (1) where Parke B. and Lord Campbell C.J. were strongly opposed to an interpretation by which only pecuniary damages or the possibility thereof could be considered in assessing damages for the benefit of relatives. As a result of the view which prevailed, it is often less expensive for a person who is negligent to kill outright than merely to injure, especially in the case of the death of a child. Moreover, despite the observations of the Earl of Selborne in the "Vera Cruz" Case, (2) it must apparently be taken that, if prior to his death, the injured person's action became barred by lapse of time or his claim was otherwise satisfied, the relatives cannot maintain the statutory action. The accepted theory is that there is a "punctum temporis," viz., the moment of death, and that, under the second condition, the question is, was the deceased at the moment of his death able to maintain an action? (British Columbia Electric Railway Co. Ltd. v. Gentile (3)). True, the condition as stated in the statute says nothing whatever about a punctum temporis, and is concerned only with the ascertainment of the quality of the act which caused the death. On the terms of the statute, the only relevant punctum temporis would seem to be not the moment of death, but the moment of injury, because, according to the statement of the condition causing death, the court should only examine the character of the negligence.

^{(1) (1852) 18} Q.B. 93; 118 E.R. 35. (2) (1884) 10 App. Cas. 59. (3) (1914) A.C., at p. 1041.

Accepting the interpretation of the Statute which refers the court to the position existing as at the moment of death, the present respondent contends that, unless at the moment of death the deceased has already satisfied every legal requirement (including notice of action, &c.) without which an action could not be maintained, the deceased is not in a position "to maintain an action," and the second condition of sec. 3 (1) is not satisfied.

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In my opinion, such a construction does violence to the words of sec. 3 (1) and, whatever may be said of the decisions already pronounced, none of them compel us to hold that the hypothesis of survival, i.e., "if death had not ensued," should be interpreted as meaning "if death had not ensued but the person injured survived and subsequently failed to observe the legal requirements for maintaining an action for the injuries sustained." Upon the view contended for by the respondent, the hypothesis of survival is to be abandoned solely for the purpose of disabling the person injured from taking a step essential to his successfully maintaining an action.

In my opinion, the statute only requires us to assume the survival of the injured person and then to ask, in relation to the moment of bis death, "But for his death, could such person have successfully maintained such an action?" The fact that such person may subsequently lose his right to maintain an action is immaterial. As Lord Buckmaster said in Robin's Case (1), "the right of the workman to claim is a right which must exist on his death, and if by any means that right has been taken away," the dependants cannot sue. Similarly, in Gentile's Case (2), Lord Dunedin makes the crucial finding that "the deceased man had at the moment of his death in no way forfeited or parted with the right of action." In the present case, confining attention to the moment of death, the right of the deceased to sue had not then been "taken away," "forfeited" or "parted with." Accordingly, the second condition in sec. 3 (1) of the New South Wales Act is satisfied. The defendant's demurrer is based solely on the fact that the deceased had not, prior to his death, given a notice of action so as to satisfy the requirements of the Local Government Act. That fact is not material because,

^{2) (1914)} A.C., at pp. 1042, 1043.

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at the time of his death, the deceased, if he had survived, would still have been able to take all necessary steps preliminary to launching his action.

The appeal should be allowed.

McTiernan J. Sec. 3 of the Compensation to Relatives Act 1897-1928 of New South Wales is a copy of sec. 1 of the Fatal Accidents Act 1846, usually known as Lord Campbell's Act. The effect of this section has been judicially interpreted to be that an action is maintainable under the section after the death of the injured party, only when that party, if alive, could have sued the defendant in respect of the injury. For example, where the deceased after the accident and before death accepted compensation and extinguished his own right of action, a right of action does not arise under the Act in his personal representative (Read v. Great Eastern Railway Co. (1)). Again, the personal representative cannot maintain an action under the section if the injured party's claim would have been barred by a statute (Williams v. Mersey Docks and Harbour Board (2)). "The punctum temporis at which the test is to be taken is at the moment of death, with the idea fictionally that death has not taken place. At that moment, however, the test is absolute. If therefore the deceased could not, had he survived at that moment, have maintained, i.e., successfully maintained, his action, then the action under the Act does not arise" (British Columbia Electric Railway Co. Ltd. v. Gentile (3)).

The question is whether the application of these principles to the present case leaves the appellant without any cause of action under sec. 3 in respect of the matters pleaded in her declaration in the action, because her husband did not serve a notice of action under sec. 580 of the Local Government Act 1919. This section provides that a particular form shall be observed before a writ or other process may be sued out against a body constituted under the Act, and unless the court in its discretion orders otherwise, the plaintiff is not to be permitted at the trial of the action to go into evidence and "the plaintiff shall not be entitled to maintain the action." A

^{(1) (1868)} L.R. 3 Q.B. 555. (3) (1914) A.C., at p. 1041.

right of action arose in the appellant's husband upon the happening of the injury which caused his death. The existence of the right of action in the interval between the accident and death did not depend on the serving of a notice of action under sec. 580 or on the deceased taking any other step to enforce it. The effect of the section was not to destroy his right of action. If he had survived there would have been no bar to him maintaining the action, but the section would have required him to serve the prescribed notice of action before suing the respondent. It follows that the appellant is not disentitled from suing under the Compensation to Relatives Act 1897-1928 because her husband died without launching any claim by serving the statutory notice of action.

There should in my opinion be judgment for the plaintiff on the demurrer and the appeal should be allowed.

Appeal allowed with costs. Judgment of the Full Court set aside. Judgment for the plaintiff in demurrer with costs.

Solicitors for the appellant, Rosendahl & Devereux.

Solicitors for the respondent, Dawson, Waldron, Edwards & Nicholls.

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