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VOL. 775



7015



Supreme Court of Canada



Cour suprême du Canada

# START OF FILE

# DÉBUT DU DOSSIER



Supreme Court of Canada



Cour suprême du Canada

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DOCUMENTS

Casefile No.: 7015

N° de Dossier: \_\_\_\_\_

Date Initiated: 1943

Date du dossier: \_\_\_\_\_

Short Style of Cause: Paul Pongracz

Intitulé: \_\_\_\_\_

(vs) Takashi T. Sawayama + Conzo SAWAYAMA

MOST COMMONLY  
OCCURRING COURT  
DOCUMENTS:

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- Notice of Motion on Application for leave
- Application for leave to Appeal
- Respondent's memorandum of Argument
- Discontinuance
- Minute Sheet
- Order Granting Leave to Appeal/Formal Judgment
- Bill of Costs taxed

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- Feuille des minutes
- Ordonnance/jugement
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- Inscription
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- Taxation des dépens



7015  
549

**In the Supreme Court of Canada**  
ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

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BETWEEN:

PAUL PONYICKI, Administrator of the Estate of Anna  
Ponyicki, deceased,  
(Plaintiff) APPELLANT)

AND:

TAKASHI T. SAWAYAMA and CONZO SAWAYAMA,  
Defendants (RESPONDENTS).

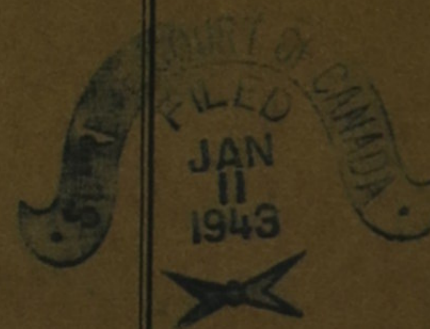
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**Case on Appeal**

---

A. H. Fleishman, Esq.,  
Solicitor for Appellant.  
Messrs. McCracken, Fleming & Shroeder  
Ottawa Agents.

Messrs. Farris, McAlpine, Stultz, Bull & Farris  
Solicitors for Respondents.  
Messrs. Newcombe & Co.  
Ottawa Agents.



that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



**In the Supreme Court of Canada**  
ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

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BETWEEN:

PAUL PONYICKI, Administrator of the Estate of Anna  
Ponyicki, deceased,  
(Plaintiff) APPELLANT)

AND:

TAKASHI T. SAWAYAMA and CONZO SAWAYAMA,  
Defendants (RESPONDENTS).

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**Case on Appeal**

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ENDORSEMENT OF WRIT  
P. 213/1942

The Plaintiff, Administrator of the Estate of Anna Ponyicky, claims damages from the Defendants and each of them in accordance with the provisions of the "Administration Act" for the shortening of expectation of life of the said Anna Ponyicky and claims further damages in accordance with the provisions of the "Families Compensation Act" for loss of earnings and damages and additional expenses incurred and to be incurred  
10 in the future, which loss and damage was caused on or about the 23rd day of February, 1942, at or near the intersection of Hastings and Glen Streets in the City of Vancouver, Province of British Columbia, by the negligence of the Defendant Takashi T. Sawayama in the operation of a motor car owned by the Defendant Gonzo Sawayama and driven with the knowledge and consent of the said Gonzo Sawayama, which said motor was proceeding West upon the said Hastings Street in the said City and ran down and killed the said Anna Ponyicky.

20 THE PLAINTIFF also claims special damages, being funeral and medical expenses and damage to baby carriage, hiring of a housekeeper and other incidental expenses in connection with the death of the said Anna Ponyicky.

ENDORSEMENT OF WRIT  
P. 214/1942

The Plaintiff's claim is as Administrator of the Estate of Betty Anna Ponyicky for damages from the Defendants and each of them in accordance with the provisions of the "Administration Act" for the shortening of the expectation of life of the said Betty Anna Ponyicky, which loss and damage was caused  
30 on or about the 23rd day of February, 1942, at or near the intersection of Hastings and Glen Streets in the City of Vancouver, Province of British Columbia, by the negligence of the Defendant Takashi T. Sawayama in the operation of a motor car owned by the Defendant Gonzo Sawayama and driven with the knowledge and consent of the said Gonzo Sawayama, which said motor car was proceeding West upon the said Hastings Street in the said City and ran down and killed the said Betty Anna Ponyicky.

40 THE PLAINTIFF also claims special damages, being funeral, medical, hospital and other incidental expenses in connection with the death of the said Betty Anna Ponyicky.

that the said appeal

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## STATEMENT OF CLAIM

P. 213/1942

WRIT ISSUED THE 16TH DAY OF FEBRUARY,  
A. D. 1942.

## STATEMENT OF CLAIM

1. The Plaintiff is a carpenter and resides at 825 Powell Street in the City of Vancouver, in the Province of British Columbia, and was the husband of Anna Ponyicky, deceased, who died at the City of Vancouver, in the Province of British Columbia, on the 23rd day of January, A.D. 1942.

2. The Defendant, Takashi T. Sawayama, is a boom-man and resides at Port Hammond, in the Province of British Columbia, and the Defendant, Gonza Sawayama, is a merchant and the father of Takashi T. Sawayama and resides at Port Hammond aforesaid.

3. The Plaintiff is administrator of the Estate of Anna Ponyicky, Deceased, by Letters of Administration of the Estate of the said deceased granted to him on February 14th, 1942.

4. The Plaintiff is suing as such administrator for the benefit of the estate of the said deceased under the provisions of the "Administration Act," R.S.B.C. 1936, Chapter 5 and its amending Acts, and is also suing as such administrator for the benefit of himself and Betty Anna Ponyicky, the daughter of the said deceased, for damages under the provisions of the "Families Compensation Act" of the Province of British Columbia, R.S. B.C. 1936, Chapter 93.

5. The said Betty Anna Ponyicky, since deceased, resided on the 23rd day of January, A.D. 1942, with the said Paul Ponyicky and the said Anna Ponyicky, deceased, at 825 Powell Street, in the City of Vancouver, aforesaid.

6. On or about the 23rd day of January, A.D. 1942, at about 8:10 o'clock in the evening, the said Anna Ponyicky was lawfully walking across Hastings Street in a northerly direction at or near the intersection of Glen Drive in the City of Vancouver aforesaid, when she was violently struck by a Plymouth Sedan Motor Car, B. C. License No. 82-558, causing severe injuries to the said Anna Ponyicky as a result of which she died on or about the 23rd day of January, A.D. 1942.

same coming on this day for judgment

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 213/1942

7. The said Plymouth Sedan Motor Car, B. C. Motor License No. 82-558, was on the evening of January 23rd, A.D. 1942, and at all other times material hereto owned by the Defendant, Gonzo Sawayama and was being driven and operated by his son, the Defendant, Takashi T. Sawayama, who had acquired possession of the said motor car with the knowledge and consent of his father, the Defendant, Gonzo Sawayama.

10 8. The said motor car struck the said Anna Ponyicky by reason of the carelessness and negligence in the driving and operation of the said motor car by the Defendant, Takashi T. Sawayama, particulars of which negligence are as follows:

(a) In the Defendant, Takashi T. Sawayama, driving the said motor vehicle at a time later than one-half hour after sunset, without lights or without proper head-lights, or in the alternative, with inadequate or improper lights, in that the said Defendant was driving only with parking lights.

20 (b) In the Defendant, Takashi T. Sawayama, travelling at an excessive rate of speed.

(c) In the Defendant, Takashi T. Sawayama, failing to keep a proper or any lookout when approaching the said Anna Ponyicky.

(d) In the Defendant, Takashi T. Sawayama, failing to sound the horn of the said motor car and failing to give any warning, or in the alternative, failing to give proper or adequate warning to the said Anna Ponyicky of the approach of the said motor car.

30 (e) In the Defendant, Takashi T. Sawayama, failing to have the said motor car under proper control.

(f) In the Defendant, Takashi T. Sawayama, failing to give the right of way to the said Anna Ponyicky who was a pedestrian crossing the street pushing a baby carriage.

(g) In the Defendant, Takashi T. Sawayama, failing to apply the brakes of the said motor vehicle as he approached the said intersection, or in the alternative, in travelling with inadequate or defective brakes.

that the said appeal was

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 213/1942

(h) In the Defendant, Takashi T. Sawayama, failing to drive with proper care under all the circumstances and in driving in a reckless or careless manner or to the common danger at the time when he struck the said Anna Ponyicky and driving contrary to the provisions of the "Motor Vehicle Act" and the "Highway Act" of the Province of British Columbia.

10 9. At the time of the death of the said Anna Ponyicky, the Plaintiff and the said Deceased were proceeding to enter into a joint business venture, which was to be carried on in a portion of the residence owned and occupied by the Plaintiff at 825 Powell Street, in the City of Vancouver aforesaid, of which the profits to the Plaintiff are estimated to be approximately \$100.00 per month.

10. As a result of the death of the said Anna Ponyicky, the Plaintiff will be unable to go on with the said business venture and will suffer loss of income due to the loss of profits aforesaid.

20 11. The Plaintiff has further suffered damage from the death of the said Anna Ponyicky through loss of consortium of his said wife, and further, by reason of the death of the said Anna Ponyicky, it will be necessary for the Plaintiff to engage a housekeeper to take care of his home at a cost to the Plaintiff of not less than \$25.00 per month.

30 12. As a result of the careless and negligent driving and operation of the said motor car by the Defendant, Takashi T. Sawayama, as aforesaid, the said Anna Ponyicky received injuries which resulted in her death as aforesaid, and the expectation of life of the said Anna Ponyicky was shortened and the Plaintiff has incurred medical, hospital and funeral expenses and damages, particulars whereof are as follows:

Vancouver General Hospital	\$ 5.00
Dr. Frank Turnbull	15.00
Incidental expenses, taxis, telephone calls, etc.	25.00
Funeral expenses—Armstrong & Co.	165.00
	\$210.00

40 13. The said Plymouth Sedan Motor Car, B. C. License No. 82-558, was at the time of the said accident and at all other times relevant hereto being driven by the Defendant Takashi T. Sawa-

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 213/1942

yama, with the knowledge and consent and at the request or for the benefit of his father, the Defendant, Gonzo Sawayama.

14. The said Anna Ponyicky was at the date of her death, being the 23rd day of January, A.D. 1942, of the age of 28 years and in good health and with a normal expectation of life for a person of her years.

10 WHEREFORE THE PLAINTIFF CLAIMS AGAINST  
THE DEFENDANTS AND EACH OF THEM:

- (a) General damages for loss of income to the Plaintiff as a result of the death of the said Anna Ponyicky and for loss of consortium.
- (b) General damages for loss of expectation of life of the said Anna Ponyicky, deceased.
- (c) Special damages in the sum of \$210.00.
- (d) Costs of this action.
- (e) Such further and other relief as in the premises may seem meet.

20 PLACE OF TRIAL—VANCOUVER, B. C.

"A. H. FLEISHMAN"  
Solicitor for the Plaintiff.

that the said appeal was  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 214/1942

WRIT ISSUED THE 16TH DAY OF FEBRUARY,  
A. D. 1942.

STATEMENT OF CLAIM

1. The Plaintiff is a carpenter and resides at 825 Powell Street, in the City of Vancouver, in the Province of British Columbia, and was the father of Betty Anna Ponyicky, deceased, who died at the City of Vancouver aforesaid on or  
10 about the 27th day of January, A.D. 1942.

2. The Defendant, Takashi T. Sawayama, is a boom-man and resides at Port Hammond, in the Province of British Columbia, and the Defendant, Gonzo Sawayama, is a merchant and the father of the Defendant, Takashi T. Sawayama, and resides at Port Hammond aforesaid.

3. The Plaintiff is administrator of the Estate of Betty Anna Ponyicky, deceased, by Letters of Administration of the Estate of the said deceased granted to him on February 14th, 1942.

4. The Plaintiff brings this action as such administrator for  
20 the benefit of the Estate of the said deceased in accordance with the provisions of the "Administration Act," R.S.B.C. 1936, Chapter 5 and its amendments thereto.

5. On or about the 23rd day of January, A.D. 1942, at about 8:10 o'clock in the evening, the said Betty Anna Ponyicky was being lawfully conveyed in a baby carriage pushed by her mother in a northerly direction across Hastings Street, at or near the intersection of Glen Drive in the City of Vancouver aforesaid, when the said baby carriage and the said Betty Anna Ponyicky were violently struck by a Plymouth Sedan Motor Car, B. C.  
30 License No. 82-558, causing severe injuries to the said Betty Anna Ponyicky, as a result of which she died on or about the 27th day of January, A.D. 1942.

6. The said Plymouth Sedan Motor Car, B. C. License No. 82-558, was on the evening of January 23rd, A.D. 1942, and at all other times material hereto owned by the Defendant, Gonzo Sawayama, and was being driven and operated by his son, the Defendant, Takashi T. Sawayama, who had acquired possession of the said motor car with the knowledge and consent of his father, the Defendant, Gonzo Sawayama.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 214/1942

7. The said motor car struck the carriage conveying the said Betty Anna Ponyicky by reason of the carelessness and negligence in the driving and operation of the said motor car by the Defendant, Takashi T. Sawayama, particulars of which negligence are as follows:

- 10 (a) In the Defendant Takashi T. Sawayama driving the said motor vehicle at a time later than one-half hour after sunset, without lights or without proper headlights, or in the alternative, with inadequate or improper lights, in that the said Defendant was driving only with parking lights.
- (b) In the said Defendant, Takashi T. Sawayama, travelling at an excessive rate of speed.
- (c) In the said Defendant, Takashi T. Sawayama, failing to keep a proper or any lookout when approaching the said Betty Anna Ponyicky.
- 20 (d) In the said Defendant, Takashi T. Sawayama, failing to sound the horn of the said motor car and failing to give any warning, or in the alternative, failing to give proper or adequate warning to the mother of the said Betty Anna Ponyicky of the approach of the said motor car.
- (e) In the said Defendant, Takashi T. Sawayama, failing to have the said motor car under proper control.
- (f) In the said Defendant, Takashi T. Sawayama, failing to give the right of way to the mother of the said Betty Anna Ponyicky who was a pedestrian crossing the street pushing the baby carriage aforesaid.
- 30 (g) In the Defendant, Takashi T. Sawayama, failing to apply the brakes of the said motor vehicle as he approached the said intersection, or in the alternative, in travelling with inadequate or defective brakes.
- (h) In the Defendant, Takashi T. Sawayama, failing to drive with proper care under all the circumstances and in driving in a reckless or careless manner or to the common danger at the time when he struck the

same coming on this day 1942

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



STATEMENT OF CLAIM  
P. 214/1942

said Betty Anna Ponyicky and driving contrary to the provisions of the "Motor Vehicle Act" and the "Highway Act" of the Province of British Columbia.

8. As a result of the careless and negligent driving and operation of the said motor car by the Defendant, Takashi T. Sawayama as aforesaid, the said Betty Anna Ponyicky, deceased, was caused pain and suffering and received injuries which resulted in her death as aforesaid, and the expectation of life of the said Betty Anna Ponyicky was shortened and the Plaintiff has incurred medical, hospital and funeral expenses and damages, particulars whereof are as follows:

Vancouver General Hospital	\$10.00
Funeral expenses—Armstrong & Co.	45.00
Dr. F. Turnbull	30.0
	<hr/>
	\$85.00

9. The said Plymouth Sedan Motor Car, B. C. License No. 82-558, was at the time of the said accident and at all other times relevant hereto being driven by the Defendant, Takashi T. Sawayama, with the knowledge and consent and at the request or for the benefit of his father, the Defendant, Gonzo Sawayama.

10. The said Betty Anna Ponyicky was at the date of her death of the age of 15 months and in good health and had the normal expectancy of life for a child of her years.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AND EACH OF THEM:

- (a) General damages for pain and suffering of the said Betty Anna Ponyicky and damages for loss of expectation of life.
- (b) Special damages in the sum of \$85.00.
- (c) Costs of this action.
- (d) Such further and other relief as in the premises may seem meet.

PLACE OF TRIAL—VANCOUVER, B. C.

"A. H. FLEISHMAN"  
Solicitor for the Plaintiff.

that the said

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## ORDER OF CONSOLIDATION

ORDER MADE BY THE HONOURABLE

MR. JUSTICE ELLIS

BEFORE THE HONOURABLE

MR. JUSTICE ELLIS

IN CHAMBERS

Monday, the 9th day of March, A.D. 1942.

UPON application on behalf of the defendants AND UPON  
10 READING the Chamber Summons herein dated the 5th day of  
March, 1942, and the pleadings and proceedings herein and  
UPON HEARING Mr. Brice S. Evans of Counsel for the  
Defendants and Mr. A. H. Fleishman of Counsel for the plain-  
tiff:

IT IS ORDERED that the above actions be consolidated and  
that the issues in respect of the actions be tried together at the  
same time.

AND IT IS FURTHER ORDERED that the costs of this  
application be costs in the cause.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## STATEMENT OF DEFENCE

1. The defendants deny each and every allegation of fact contained in paragraph 1 of the Statements of Claim herein.
2. The defendants deny each and every allegation of fact contained in paragraph 2 of the Statements of Claim herein.
3. The defendants deny each and every allegation of fact contained in paragraph 3 of the Statements of Claim herein.
4. The Defendants deny each and every allegation of fact contained in paragraph 4 of the Statements of Claim herein.
- 10 5. The defendants deny each and every allegation of fact contained in paragraph 5 of the Statements of Claim herein.
6. The defendants deny each and every allegation of fact contained in paragraph 6 of the Statements of Claim herein.
7. The defendants deny each and every allegation of fact contained in paragraph 7 of the Statements of Claim herein.
8. In further answer to paragraphs 6 and 7 of the Statements of Claim herein the defendants deny that the said Plymouth sedan was owned by the defendant Gonzo Sawayama or was being driven or operated by the defendant Takashi T. Sawayama and deny that the said Takashi T. Sawayama ac-  
20 quired possession with the knowledge or consent of the defendant Gonzo Sawayama.
9. The defendants deny that the said motor car struck the said decedents by reason of carelessness or negligence and specifically deny that the defendant Takashi T. Sawayama:
  - (a) drove at a time later than one-half hour after sunset without lights or without proper lights or with inadequate or improper lights or with parking lights;
  - (b) travelled at an excessive rate of speed;
  - 30 (c) failed to keep a proper or any lookout;
  - (d) failed to sound the horn or failed to give any warning or proper or adequate warning of the approach of the motor car;
  - (e) failed to have the motor car under proper control;

same coming on this

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## STATEMENT OF DEFENCE

- (f) failed to give the right-of-way to the decedents or that the decedents were entitled to the right-of-way;
- (g) failed to apply the brakes or travelled with inadequate or defective brakes;
- (h) failed to drive with proper care under all the circumstances or drove in a reckless or careless manner or to the common danger or drove contrary to the provisions of the "Motor-vehicle Act" or the "Highway Act" of the Province of British Columbia.
- 10 10. The defendants deny each and every allegation of fact contained in paragraph 8 of the Statements of Claim herein.
11. The defendants deny each and every allegation of fact contained in paragraph 9 of the Statements of Claim herein.
12. The defendants deny each and every allegation of fact contained in paragraph 10 of the Statements of Claim herein.
13. The defendants deny each and every allegation of fact contained in paragraph 11 of the Statements of Claim herein.
14. The defendants deny each and every allegation of fact  
20 contained in paragraph 12 of the Statements of Claim herein.
15. The defendants deny each and every allegation of fact contained in paragraph 13 of the Statements of Claim herein.
16. The defendants deny each and every allegation of fact contained in paragraph 14 of the Statements of Claim herein.
17. The defendants deny that the motor car was being driven by the defendant Takashi T. Sawayama with the knowledge or consent or at the request or for the benefit of the defendant Gonzo Sawayama or at all.
18. In answer to the whole of the Statements of Claim herein  
30 the defendants say that if the said Anna Ponyicky and the said Betty Anna Ponyicky died as the result of injuries sustained by being struck by a motor car, which is not admitted but denied, such injuries and the resulting deaths were occasioned solely by the negligence of the said Anna Ponyicky, which negligence consisted in:
- (a) not keeping a proper lookout;

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## STATEMENT OF DEFENCE

(b) crossing a street with an umbrella over her head in such a fashion as to disable her from seeing approaching traffic;

(c) crossing the street at a place other than a pedestrian crossing.

19. In the alternative and in further answer to the whole of the Statements of Claim herein the Defendants say that the deceased Anna Ponyicky was guilty of contributory negligence,  
10 particulars of which are set out in the preceding paragraph.

20. In the further alternative and in further answer to the whole of the Statements of Claim herein the defendants say that the deceased Anna Ponyicky was guilty of ultimate negligence.

21. The Statements of Claim herein disclose no cause of action against these defendants.

DATED at Vancouver, B. C., this 10th day of March, A.D. 1942.

C. L. McALPINE  
Solicitor for the Defendants.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



OPENING PROCEEDINGS  
IN THE SUPREME COURT OF BRITISH COLUMBIA  
(Before the Honourable Mr. Justice Sidney Smith)

Vancouver, B. C.

June 3rd, 1942.

214/42.

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Betty  
Anna Ponyicky, Deceased,

10

Plaintiff,

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
Defendants.

— and

213/42.

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, Deceased,

Plaintiff,

20 AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
Defendants.

PROCEEDINGS AT TRIAL.

— and —

A. H. FLEISHMAN, Esq., and

J. F. MEAGHER, Esq.,

appearing for the Plaintiff.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## OPENING PROCEEDINGS

C. L. McALPINE, Esq., K.C., appearing for the Defendants.

MR. FLEISHMAN: My lord, I appear for the plaintiff with my learned friend, Mr. Meagher.

MR. McALPINE: My lord, I appear for the Defendants.

MR. FLEISHMAN: My lord, this is an action, a consolidated action brought by the plaintiff against the defendants for the injury and death of the plaintiff's wife and his infant child. On January 23rd of this year, my lord, the defendant, one of the  
 10 defendants, was driving an automobile while on Hastings Street approaching the city and coming towards Glen Drive. The deceased wife and infant was proceeding across the street with a baby carriage, the child being in the baby carriage, and the defendant collided with the wife, the deceased, killed her instantly, and the child died some three days after. The action is brought, my lord, under the "Families Compensation Act" and the "Administration Act" for the death of the wife—the mother and the infant child.

I want to put in as exhibits, my lord, in the matter—I may  
 20 say that the action was consolidated for the purposes of trial by an order made by his lordship Mr. Justice Ellis on the 9th day of March, 1942, and my learned friend, Mr. McAlpine, appearing for the defendants, by letter of the 29th of May admitted liability, and as he says the only question that remains is the assessment of damages. I am going to put in the letter, my lord, as Exhibit 1 in this matter.

(DOCUMENT MARKED EXHIBIT No. 1) (PAGE 24)

MR. FLEISHMAN: I am putting in the letters of administration, my lord, granted to the plaintiff on the 14th of February,  
 30 1942, as administrator of the estate of Anna Ponyicky, the wife.

(DOCUMENT MARKED EXHIBIT No. 2) (PAGE 25)

MR. FLEISHMAN: And the administration of Betty Anna Ponyicky, the infant child, as Exhibit 3.

(DOCUMENT MARKED EXHIBIT No. 3) (PAGE 26)

MR. FLEISHMAN: I am likewise putting in the birth certificate of the infant child as Exhibit 4.

(DOCUMENT MARKED EXHIBIT No. 4) (PAGE 27)

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PAUL PONYICKY—Direct Exam.

MR. FLEISHMAN: And the death certificate of the mother, the wife, who died on the 24th of January, 1942.

(DOCUMENT MARKED EXHIBIT No. 5) (PAGE 28)

MR. FLEISHMAN: And the death certificate of the infant child, who died on the 27th of January, 1942.

(DOCUMENT MARKED EXHIBIT No. 6) (PAGE 29)

MR. FLEISHMAN: I am also putting in the certificate of marriage between the plaintiff and the deceased, Anna Ponyicky, which took place at Vancouver on the 14th of November, 1939.

(DOCUMENT MARKED EXHIBIT No. 7) (PAGE 30)

MR. FLEISHMAN: I call Mr. Ponyicky.

PAUL PONYICKY, the Plaintiff, being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. FLEISHMAN:

Q. Mr. Ponyicky, what is your occupation?

A. Carpenter and mill-wright.

Q. How long have you been a carpenter?

A. I learned my trade in the old country.

20 Q. By the way, how old are you?

A. Forty-two.

Q. You were residing in Vancouver; you reside in the city?

A. Yes.

Q. How long have you been in British Columbia?

A. I have been here since 1936. I was in Nelson 4 years and the rest of the time in Fernie.

Q. Where are you living now?

A. At 825 Powell Street.

Q. In the city of Vancouver.

30 A. Yes.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PAUL PONYICKY—Direct Exam.

Q. Was your wife living with you?

A. Yes.

Q. And baby?

A. Yes.

Q. Your wife looked after the house and cooking?

A. Yes.

MR. McALPINE: If this is directed to any issue of damages, my learned friend has not pleaded any such and I take objection.  
 10 My learned friend's claim for damages is based, as your lordship will see, in paragraph 9—issued by Paul Ponyicky as administrator of the estate of Anna Ponyicky, deceased, and the claim is:

“At the time of the death of the said Anna Ponyicky, the plaintiff and the said deceased were proceeding to enter into a joint business venture, which was to be carried on in a portion of the residence owned and occupied by the plaintiff at 825 Powell Street in the city of Vancouver aforesaid, of which the profits to the Plaintiff were estimated to be approximately \$100 per month.

20 “As a result of the death of the said Anna Ponyicky, the plaintiff will be unable to go on with the said business venture and will suffer loss of income due to the loss of profits aforesaid.”

THE COURT: Excuse me a moment. What paragraphs are you reading?

MR. McALPINE: I have just read paragraphs 9 and 10 of the two statements of claim.

THE COURT: I am looking at the wrong statement.

MR. McALPINE: This is the statement of claim on behalf  
 30 of Anna Ponyicky.

THE COURT: Do you mind if I just read them now? Yes, thank you.

MR. McALPINE: Then 11, which my learned friend indicates:



## PAUL PONYICKY—Direct Exam.

"The plaintiff has further suffered damage from the death of the said Anna Ponyicky through loss of consortium of his said wife, and further by reason of the said Anna Ponyicky it will be necessary for the plaintiff to engage a housekeeper to take care of his home at a cost to the plaintiff of not less than \$25 a month."

My lord, I am sorry, I did not realize those last words were there.

10 MR. FLEISHMAN: Will my learned friend look at paragraph 14 as well?

MR. McALPINE: That does not add anything to it.

MR. FLEISHMAN: I am giving evidence with regard to it.

MR. McALPINE: Probably my objection is illfounded. I have to withdraw it.

MR. FLEISHMAN: Q. What was the state of your wife's health at the time she died?

A. I work in my trade 8 months and she do the house work.

Q. Who does the housework in the place?

20 A. My wife.

Q. Was she strong or sick?

A. She was perfect. I will show you a picture.

Q. Never mind the picture. She was in perfect health?

A. Yes.

Q. She looked after the house, did you say?

A. She looked after the house and did the housework.

Q. Tell his lordship what kind of a house you had. Where was it located? Is it near some factories?

A. Yes.

30 Q. What did you intend to do with the place?

A. Her sister came down last July first and stayed a month

same coming on

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PAUL PONYICKY—Direct Exam.

and she learned her trade at hairdressing and she came to consider the business situation in Vancouver and I talk with her—I have my own cousins here—she had her own shop; how much money she could make more than the prairie and she talk with my wife and she say, "We come down next summer," and I am going to build them a building 30 feet—

Q. What were you going to do?

A. I was going to make a lunch counter and hair dresser  
10 shop.

Q. Who was to look after the lunch counter and hair dressing shop?

A. My wife and her sister.

Q. You were working at that time?

A. Yes.

Q. Now what about the child? Was the child in good health?

A. Yes.

Q. Strong?

A. Excellent health.

20 Q. After your wife died did you have anybody working for you?

A. Just only one month. That is when I was working for wages. She had a house and I did her plumbing and I am experienced in that, too, and she washed my clothes and everything.

Q. I believe you had some expense in reference to your wife, Mr. Ponyisky, at the time she died. What expense did you have?

A. It is right here from Armstrong Funeral Company.

MR. McALPINE: If it will save you any time I will agree  
30 those items set out in the Statement of Claim were paid. As to liability, that is another matter.

MR. FLEISHMAN: Armstrong & Company bill, \$174. It is \$164 in the Statement of Claim. It is \$174. I put that in.

(DOCUMENT MARKED EXHIBIT No. 8) (PAGE 31)

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



PAUL PONYICKY—Direct Exam.  
and Cross-Examination

THE WITNESS: And \$25 it cost me in taxi and cabling expenses.

MR. FLEISHMAN: My learned friend admits Dr. Frank Turnbull \$15.00, and \$10.00 Vancouver General Hospital.

MR. McALPINE: I admit they were paid. I do not want my learned friend to be under misapprehension. I admit they were paid but liability is another matter.

10 MR. FLEISHMAN: Q. How many roomers did you have in the house?

A. Six; two upstairs and four downstairs.

Q. Who looked after them? Who looked after the rooms?

A. My wife.

Q. How much were you getting?

A. \$26.00. She got \$8 from the person staying in the front room, and \$10.00—

Q. Have you still got roomers in there?

A. No, since my wife died I no bother.

20 Q. Now, about the child. How much were the funeral expenses?

MR. McALPINE: I make the same admission.

THE WITNESS: Here is the whole thing in a bundle. Show it to Mr. McAlpine.

MR. FLEISHMAN: The amount, my lord, with respect to the infant child's expense—the special damages are \$85.00—General Hospital \$10.00, Funeral Expenses \$45.00, and Dr. Turnbull \$30.00. It appears on page 9 of your record.

CROSS-EXAMINATION BY MR. McALPINE:

30 Q. Mr. Ponyicky, prior to your wife's death, as I understand it, you took in roomers?

A. Before she lost her life.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## PAUL PONYICKY—Cross-Exam.

Q. You owned the house?

A. Yes.

Q. And the income from the roomers went—

A. Went to her, and what belonged to her belonged to me and what belong to me belong to my wife I guess.

Q. So you got an income of \$26.00?

A. Yes.

Q. From renting your rooms?

10 A. Yes.

Q. A month after the death of your wife you rented—

A. To Mr. Fraser.

Q. The lower part of your house?

A. Yes.

Q. What rent do you get?

A. \$25.00. There is my furniture, you see, my furniture there.

Q. Please answer my question. You get \$25.00 for the lower part of the house?

20 A. Yes.

Q. And you live upstairs?

A. Yes.

Q. And after the first month after your wife's death, there was no necessity for engaging a housekeeper?

A. Just for one month.

Q. How long had you been married?

A. I married since /39.

Q. And prior to that, prior to your marriage, you were living as a bachelor?

30 A. Yes.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PAUL PONYICKY—Cross-Exam.

Q. And were you living in this house?

A. Yes, I buy it in 1938 from Mr. Campbell.

Q. And did you have the lower part of it rented before your marriage?

A. Yes, I rent the whole house at that time because I used to room.

Q. As I understand your evidence you and your late wife had definitely decided or at least you had decided this, that you were going to build an annex to your property which would contain a hair dressing establishment on one side and a lunch counter on the other?

A. Yes.

Q. And you were going to rent the hairdressing establishment and the lunch counter for \$25.00 a month?

A. Yes.

Q. And that was going to cost you—you estimated the cost of building this building at somewhere between \$1,000 and \$1,500?

A. Yes.

20 Q. And you were going to put that plan into operation and your wife was going to run this lunch counter this spring?

A. Yes.

Q. She was going to get out and run it?

A. Yes.

MR. McALPINE: That is all, thank you.

THE COURT When did he state he was married?

MR. FLEISHMAN: The certificate of marriage is in, my lord.

(Witness aside).

same coming on this day

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## MARY MONTAN—Direct Exam.

MARY MONTAN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. FLEISHMAN:

Q. Where do you live?

A. I live 400 Princess at present.

Q. City of Vancouver?

A. Yes.

Q. Are you a sister of the late Mrs. Ponyicky?

10 A. Yes.

Q. How long have you been in British Columbia this time?

A. Since when that excursion was on, the latter part of March.

Q. Were you here last year?

A. I was visiting her last July, 1941.

Q. What did you come to Vancouver for this time?

A. To complete my hairdressing course.

Q. What else were you going to do?

A. Well, I don't know what I will do now.

20 Q. What were you going to do?

A. When I speak with her then?

Q. Yes.

A. To start up a hairdressing shop and work on my hairdressing. I spoke to her I was going to brush up on it and we own the business when I start my own. My brother-in-law was going to build a shop for us.

Q. What was she going to do, Mrs. Ponyicky?

A. She was going to run the lunch counter.

Q. Who was going to put up the building for you?

30 A. My brother-in-law Paul Ponyicky.



MARY MONTAN—Direct Exam.

Q. And you came back to Vancouver for that purpose; did you say came back in March to carry out that arrangement, is that right?

A. Yes, if it is necessary we will see how it could be.

Q. And you had some experience as a hairdresser, I believe?

A. Yes.

Q. You know something about that line of work?

A. Yes, I do.

10 MR. FLEISHMAN: All right.

MR. McALPINE: No questions.

(Witness aside).

MR. FLEISHMAN: That is the case, my lord.

THE COURT: There is just the one child, I suppose?

MR. FLEISHMAN: Just the one child, my lord.

MR. McALPINE: I am calling no evidence, my lord.

(ARGUMENT BY MR. FLEISHMAN)

(ARGUMENT BY MR. McALPINE)

I hereby certify the foregoing to be a true and accurate report  
20 of the said proceedings.

"D. F. SAUNDERS"

Deputy Official Stenographer.

THE COURT: Thank you, gentlemen. I should like to give the matter some thought, and I would like to look up the cases you refer to. You see the difficulty I am in. I am of course bound by the authorities, and cannot depart from them any more than you can.

(C. A. V.) I hereby certify the foregoing to be a true and accurate report of the said proceedings.

30

"M. S. BRYAN"

Deputy Official Stenographer.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



24 24  
-30-  
Exhibit 7. 7

# MARRIAGE CERTIFICATE

Registered at Vancouver, B. C.

I HEREBY CERTIFY that on Tuesday, the Fourteenth day of November in the year of our Lord One Thousand Nine Hundred and Thirty-Nine,

Paul Ponyicky of Vancouver, B. C., and

Anna Dobrescu of Vancouver, B. C.

were by me united in the bonds of Matrimony at First United  
10 Church, 424 Gore Ave., Van., B. C.

Witness my hand this 14th day of November, 1939.

Witnesses: Mrs. Esther Williamson  
Gustave Stefon

ANDREW RODDAN  
Officiating Minister.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



255  
27  
Exhibit 4.

THE GOVERNMENT OF THE PROVINCE OF  
BRITISH COLUMBIA  
VITAL STATISTICS ACT

CERTIFICATE OF BIRTH

THIS IS TO CERTIFY that the following particulars of Birth have been recorded in the Office of the District Registrar of Births, Deaths, and Marriages at Vancouver, B. C.

Name of Child: BETTY ANNA PONYICKY

10 Date of Birth: October 14th, 1940. Sex. Female.

Place of Birth: Vancouver General Hospital, Vancouver, B.C.

Name of Father: Paul Ponyicky.

Birthplace of Father: Hoves Magye, Hungary.

Maiden Name of Mother: Anna Dobrescu.

Birthplace of Mother: Limerick, Saskatchewan.

Occupation of Father: Miner; Ashloo Gold Mine.

Residence of Parents: 1825 Powell Street, Vancouver, B.C.

Doctor or Nurse in attendance at Birth: Dr. K. Shimotakahara.

Signature of Informant: Paul Ponyicky.

20 Registered at Vancouver, B.C., this 13th day of November, 1940.

Marginal notations:—

Given under my hand at Vancouver, B.C., this 13th day of November, 1940.

“L. RUSSELL”  
Deputy District Registrar, Births, Deaths,  
and Marriages.

VITAL STATISTICS  
ACT  
BRITISH COLUMBIA  
30 (SEAL)

The fee for this Certificate is 50 cents.

D 74738

the said  
Court of Appeal for British Columbia should



## Exhibit 3.

28310  
Form C.IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN PROBATE

Vancouver Registry.

BE IT KNOWN that on the 13th day of February, 1942, Letters of Administration of all the estate which by law devolves to and vests in the personal representative of Betty Anna Ponyicky, late of the City of Vancouver, Province of British Columbia, deceased, who died on the 27th day of January, 1942, at the said City of Vancouver, intestate, were granted by the Supreme Court of British Columbia to Paul Ponyicky, of the City of Vancouver, B. C., the lawful Father of the said intestate.

Given under the Seal of the said Court this Fourteenth day of February, A.D. 1942.

"H. BROWN"  
Deputy District Registrar.

Extracted by Messrs. Norris & MacLennan,  
Solicitors.

20

This Grant is made upon the condition that no portion of the assets shall be distributed or paid during the War to any beneficiary or creditor who is a National of the German Reich or Italy wherever resident, or to any one on his behalf, or to or on behalf of any person resident in the German Reich or Italy of whatever nationality, without the express sanction of the Crown acting through the Minister of Finance; and if any distribution or payment is made contrary to this condition the grant of probate or letters of administration will be forthwith revoked.

30

Vancouver  
Feb. 14, 1942  
Registry

... should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



27-7  
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Exhibit 2

28309  
Form C.

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN PROBATE

Vancouver Registry.

BE IT KNOWN that on the 13th day of February, 1942,  
Letters of Administration of all the estate which by law de-  
volves to and vests in the personal representative of Anna  
10 Ponyicky, late of the City of Vancouver, Province of British  
Columbia, deceased, who died on the 23rd day of January, 1942,  
at the said City of Vancouver, intestate, were granted by the  
Supreme Court of British Columbia to Paul Ponyicky, of the  
City of Vancouver, B. C., the lawful Widower of the said  
intestate.

Given under the Seal of the said Court this Fourteenth day  
of February, A.D. 1942.

"H. BROWN"  
Deputy District Registrar.

20 Extracted by Messrs. Norris & MacLennan,  
Solicitors

This Grant is made upon the condition that no portion of the  
assets shall be distributed or paid during the War to any bene-  
ficiary or creditor who is a National of the German Reich or  
Italy wherever resident, or to any one on his behalf, or to or on  
behalf of any person resident in the German Reich or Italy of  
whatever nationality, without the express sanction of the Crown  
acting through the Minister of Finance; and if any distribution  
or payment is made contrary to this condition the grant of  
30 probate or letters of administration will be forthwith revoked.

Vancouver  
Feb. 14, 1942  
Registry

... stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



2828  
-31

Exhibit 8.

TELEPHONE: Highland 0141

ARMSTRONG & CO.  
FUNERAL DIRECTORS AND EMBALMERS

304 Dunlevy Avenue

Vancouver, B. C., March 17, 1942.

Mr. Paul Ponyicky  
1825 Powell St.

8 per cent interest charged on overdue accounts.

10 Jan. 31/42	To our charges Re Funeral of Anna and Betty Anna Ponyicki	\$165.00
	Advertising	4
	Cemetery Charges	33
	Donation Clergyman	5
		<hr/>
		\$207.00
Jun. 28/42	By Cr.	33.00
		<hr/>
		\$174.00

March 17/42 By Cr. in  
full \$174.00

20

Armstrong & Co.  
Per W. M. Scott

that the said appeal should stand over for judgment  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## Exhibit 6.

THE GOVERNMENT OF THE PROVINCE OF  
BRITISH COLUMBIA  
VITAL STATISTICS ACT 504 601

## CERTIFICATE OF DEATH

THIS IS TO CERTIFY that the following particulars of Death are on record in the Office of the Division of Vital Statistics:—

Name of Deceased: Betty Anna Ponyicky.

10 Date of Death: January 27th, 1942. Sex: Female.

Place of Death: Vancouver General Hospital, Vancouver, B.C.

Date of Birth: October 14th, 1940. Age: 1 yr., 3 mos., 13 dys.

Place of Birth: Vancouver, B.C.

Residence: 1825 Powell St., Vancouver, B.C.

Occupation: ————— Condition: Single.

Name of Father: Paul Ponyicky.

Maiden Name of Mother: Anna Dobrescu.

Cause of Death: Pneumonococci Meningitis following a fractured skull; Left Lateral Sinus of Brain, Thrombus.

20 Contributor: Broncho Pneumonia.

Held Inquiry on January 28th, 1942. Jno. Whitbread, Coroner.

Name of Undertaker: Armstrong & Company, 960, 304 Dunlevy St., Vancouver, B.C.

Marginal notations:—

Given under my hand at Victoria, B.C., this 29th day of May, 1942.

“Percy W. Weston”

“J. Marshall”

Director of Vital Statistics.

30 VITAL STATISTICS ACT  
BRITISH COLUMBIA  
(SEAL)

The fee for this certificate is 50 cents.

21066

that the said appeal should stand over for judgment at same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia shou.



30  
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Exhibit 5

THE GOVERNMENT OF THE PROVINCE OF  
BRITISH COLUMBIA  
VITAL STATISTICS ACT

503 601

CERTIFICATE OF DEATH

THIS IS TO CERTIFY that the following particulars of  
Death are on record in the Office of the Division of Vital Sta-  
tistics:—

Name of Deceased: Anna Ponyicky

10 Date of Death: January 23rd, 1942. Sex: Female.

Place of Death: Vancouver General Hospital, Vancouver, B.C.

Date of Birth: September 1914. Age: 27 yrs., 4 mos.

Place of Birth: Saskatchewan.

Residence: 1825 Powell St., Vancouver, B.C.

Occupation: Housewife Condition: Married.

Name of Father: Stoica Dobrescu.

Maiden Name of Mother: Lena Stoian.

Cause of Death: Cerebral Hemorrhage, Compression of Brain,  
Fractured Skull Base, Fracture Right Tibia and Fibula.

20 Contributory: Accidental.

Held Inquest on January 26, 1942. Jno. Whitbread, Coroner.

Name of Undertaker: Armstrong & Company, 960, 304 Dun-  
levy St., Vancouver, B.C.

Marginal notations:—

Given under my hand at Victoria, B.C., this 29th day of May,  
1942.

"Percy W. Weston"

"J. Marshall"

Director of Vital Statistics.

30 VITAL STATISTICS  
ACT  
BRITISH COLUMBIA  
(SEAL)

The fee for this certificate is 50 cents.

21065

that the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



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Exhibit 1.

FARRIS, McALPINE, STULTZ, BULL & FARRIS  
Barristers and Solicitors  
Suite 1508, Standard Bank Building  
Vancouver, B. C.

Address all communications to Farris & Co.

Hon. J. W. De B. Farris, K.C.	Telephone Marine 6341
C. L. McAlpine, K.C.	Cable Address "Farem"
R. S. Stultz	Code Western Union
10 Ernest B. Bull	Five Letter Edition
John L. Farris	

29th May, 1942.

A. H. Fleishman, Esq.,  
Barrister and Solicitor,  
510 West Hastings Street,  
Vancouver, B. C.

Re Ponyicky vs. Sawayama

Dear Sir:

We beg to advise you that at the trial of the above action we  
20 will be admitting liability so that the only question that remains  
will be the assessment of damages.

Under these circumstances there is no necessity of examining  
Sawayama at Oakalla or elsewhere.

Yours very truly,

FARRIS & CO.  
Per: "C.L.M."

CLM:FMC

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## REASONS FOR JUDGMENT

SIDNEY SMITH, J.

In these consolidated actions I award damages as follows:—

(a) Under the "Administration Act":—

(1) For loss of wife's expectation of life      \$1,000.00

(2) For loss of child's expectation of life      750.00

(b) Under the "Families' Compensation Act":—

For loss of wife's services      125.00

The above amounts are without abatement. Judgment accord-  
10 ingly.

"Sidney Smith"  
J.

June 4, 1942.

and the  
for judgment.  
THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



JUDGMENT made the 4th day of June, A.D. 1942,

by MR. JUSTICE SIDNEY SMITH

THIS CONSOLIDATED ACTION coming on for trial on Wednesday, the 3rd day of June, A.D. 1942, in the presence of A. H. Fleishman, Esq., and J. F. Meagher, Esq., of Counsel for the Plaintiff, and C. L. McAlpine, Esq., K.C., of Counsel for the Defendants, and UPON HEARING the evidence adduced on behalf of the Plaintiffs, and the Defendants by their Counsel admitting liability, and UPON HEARING Counsel aforesaid  
 10 and Judgment having been reserved and the same coming on this day for Judgment:

THIS COURT DOTH ORDER AND ADJUDGE that the Plaintiff, Paud Ponyicky, as the Administrator of the Estate of Betty Anna Ponyicky, Deceased, do recover from the Defendants the sum of \$750.00.

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Plaintiff, as the Administrator of the Estate of Anna Ponyicky, Deceased, do recover from the Defendants the sum of \$1125.00.

20 AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants do pay the Plaintiff his costs of these actions forthwith after the taxation thereof.

BY THE COURT

J.F.M.  
 C.L.M. D.R.  
 CHECKED S.S.  
 E.W.W. J.

"J. F. MATHER"

Disriet Registrar.

ENTERED

30

JUN 19 1942

ORDER BOOK, VOL. 44, Fol. 61

Per E.W.W.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## NOTICE OF APPEAL

TAKE NOTICE that the above-named Plaintiff, Paul Ponyicky, Administrator of the Estate of Anna Ponyicky, Deceased, intends to appeal and does hereby appeal from that part of the Judgment of the Honourable Mr. Justice Sidney Smith, pronounced in these consolidated actions the 4th day of June, A.D. 1942, whereby the said Judge awarded to the said Plaintiff the sum of \$1,000.00 damages for loss of expectation of life of the said Anna Ponyicky, under the provisions of the "Administration Act" of the Province of British Columbia, and the sum of \$125.00 damages for the death of the said Anna Ponyicky, under the provisions of the "Families' Compensation Act" of the said Province.

AND FURTHER TAKE NOTICE that a motion will be made to the Court of Appeal at the Law Courts at the City of Victoria, in the Province of British Columbia, on Tuesday, the 8th day of September, A.D. 1942, at the hour of eleven o'clock in the forenoon, or so soon thereafter as Counsel can be heard on behalf of the above-named Plaintiff, that the said Judgment of the Honourable Mr. Justice Sidney Smith may be varied by increasing the amounts awarded to the Plaintiff as Administrator of the Estate of Anna Ponyicky, Deceased, under the said "Administration Act," and the "Families' Compensation Act," on the following, amongst other grounds:

1. That the said judgment is against the law.
2. That the amount awarded by the learned Judge as damages for the death of the said Anna Ponyicky, Deceased, is inconsistent with, or not in accord with the evidence present in the said actions.
- 30 3. That the learned Judge erred in assessing damages under the Administration Act for the loss of expectation of life of the said Anna Ponyicky, Deceased, in that the amount awarded was insufficient having regard to the evidence and the facts of the case.
4. That the learned Judge erred in his assessment of damages under the "Administration Act," for loss of expectation of life, in that he failed to consider the nature of the remedy provided by the said Act.
- 40 5. That the learned Judge erred in assessing damages under the "Families' Compensation Act" for the death of the

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## NOTICE OF APPEAL

said Anna Ponyicky, Deceased, in that he failed to consider the nature of the remedy provided by the said Act, and further that he misdirected himself as to the proper basis for assessing damages under the said "Families' Compensation Act."

6. That the learned Judge erred in assessing damages under the "Families' Compensation Act" for the death of the said Anna Ponyicky, Deceased, in that he failed to allow damages for the death of the said Anna Ponyicky to the estate of the infant Betty Anna Ponyicky, Deceased, to which damages the said infant, or her Estate, is entitled under the provisions of the said "Families' Compensation Act."
7. That the amount of damages awarded by the learned Judge for the death of the said Anna Ponyicky, Deceased, under the provisions of the "Families' Compensation Act" is insufficient, having regard to the evidence and the facts of the case.
8. That in assessing damages under both the aforesaid acts the learned Judge departed from the rule which should be followed in such cases, and from the principle intended to be effected by the said Acts.

DATED at Vancouver, British Columbia, this 24th day of August, A.D. 1942.

Solicitor for the Plaintiff.

TO THE DEFENDANTS

—and—

TO C. L. McALPINE, Esq., K.C.,  
THEIR SOLICITOR.

This NOTICE OF APPEAL is filed by Mr. Arthur H. Fleishman, of the firm of Fleishman & Meagher, whose place of business and address for service is at 314 Standard Bank Building, 510 West Hastings Street, Vancouver, B. C.

that the said appeal should be allowed and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF D. A. McDONALD,  
C.J.B.C.  
COURT OF APPEAL

PONYICKY Plaintiff (Appellant)	}	JUDGMENT OF  THE HONOURABLE  THE CHIEF JUSTICE  OF BRITISH COLUMBIA
v.		
10 SAWAYAMA Defendants (Respondents)	}	

Appellant, as representing his deceased wife's estate, recovered \$1000 for her loss of expectation of life, and, as her husband, recovered \$125 compensation for her death.

Neither party presses an appeal against the award of \$1000, but both parties appeal against the smaller award, the appellant on the ground that it is too small, the respondents on the ground that nothing should have been allowed.

20 Several important points have been raised, but all seem to be well covered by authority.

The recent decision of the House of Lords in *Davies v. Powell* (1942) 1 All E.R. 657 makes it clear that a plaintiff cannot recover twice for the death of a relative, so that if he recovers as administrator of the deceased, at the same time taking the estate beneficially, under the intestacy, that factor reduces the damage he suffers as an individual from the death so that if the latter is separately assessed, he can only recover the larger sum of the two, and not both.

30 Appellant argued that here there is nothing in the record to show that appellant took the deceased's property beneficially. I cannot agree. We have the letters of administration, which show that deceased died intestate. We have also proof (A.B. p. 26, lines 15, 16) that there are no surviving children. It is true that the deceased child survived its mother by a few days, and became entitled under s. 112 of the Administration Act (taken with s. 126) to one-half of her estate, the appellant taking the other half. But on the child's death, appellant became entitled to the whole: *ibid.* s. 115.

40 Appellant complains of the inadequacy of the award of \$125 to him as husband, on the ground that it takes no account of his

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
D. A. McDONALD, C.J.B.C.

loss of consortium and generally that it gives no real compensation for his loss.

We have several times allowed husbands damages for loss of consortium in cases of mere injury. No case has been brought to our attention where damages for "consortium" as such have been assessed where the accident was fatal. But it seems to me perfectly clear that nothing can be recovered under such a head.

<sup>10</sup> In *Blake v. Midland Ry. Co.* (1852) 18 Q.B. 93 it was said that nothing can be given for "solatium" and the Privy Council in *G.T. Ry. v. Jennings* (1888) 13 App. Cas. 800 and *Royal Trust Co. v. C.P.R.* (1922) 38 T.L.R. 899, laid down in the most sweeping terms that no compensation could be given for any but pecuniary loss. See likewise *Berry v. Humm* (1915) 1 K.B. 627, where as here the plaintiff's wife was killed. I see nothing to the contrary in *St. Lawrence & Ottawa Ry. Co. v. Lett* (1885) 11 S.C.R. 422, so strongly relied on by respondents.

It may seem peculiar that loss of consortium is remediable

<sup>20</sup> where the injured wife lives, but not where she dies. Probably the distinction turns on the theory that a bereaved husband may re-marry, whereas, if his wife is incapacitated but living, he cannot. Whatever the reason, it seems to be settled that nothing can be given, except for pecuniary loss, where the wife is killed.

Apart from the element of consortium, the appellant complains that \$125 is inadequate to meet his pecuniary loss. But where a married man has no children, it can be only rarely that he suffers pecuniary loss by his wife's death; for in most cases the wages of a housekeeper would be less than it would cost a

<sup>30</sup> husband to feed and clothe his wife, and keep her supplied with spending-money. Most childless men, when they become widowers, either re-marry or give up keeping house. The present appellant appears to have only kept a housekeeper for a month after his wife's death. All the cases that I have seen where a husband recovered substantial damages for the death of his wife are cases where he had children. I can easily see that there a husband might be put to a good deal of expense by his wife's death. I have not overlooked that the appellant's child survived his wife by four days, nor the argument that we must take the

<sup>40</sup> facts as at the date of the accident. If that is correct, it does not help us. It might if there was some conventional way of arriving at damages; but where we can consider only pecuniary loss, it seems clear that the survival of the infant for four days cannot effect the quantum of loss caused by the wife's death.



REASONS FOR JUDGMENT OF  
D. A. McDONALD, C.J.B.C.

Appellant tried to show damage by setting up that he and his wife had planned to set up a hairdressing business in which they would be partners, and that he expected to make a good profit out of this. It is, however, a novel idea that one partner can recover damages for the killing of his business partner. And the estimate of profit cannot be taken seriously. It seems to me that this evidence is, if anything, damaging to the appellant, as  
10 showing that the wife would have very little time to give to her housekeeping.

However, I do not think it necessary to consider whether the allowance of \$125 for loss of the wife's services is adequate, for at all events I would not be prepared to increase this to \$1000; and unless more than that amount were allowed, appellant could not benefit by an increase, in view of the decision in *Davies v. Powell* supra. In fact, he can recover nothing under this head.

This appeal therefore substantially fails. And for the reasons given, the cross-appeal against the award of \$125 succeeds.

20 On the argument before us, it appeared that an item of \$40 for disbursements by appellant was not allowed by the judgment below. So far as appears this was an oversight. When the point was raised before us, respondents' Counsel at once objected that it was not raised by the notice of appeal, saying that if it had been, he would probably have yielded the point. He further stated that he did not object to the allowance provided it did not affect Costs. As the point was not raised until the hearing before us, I do not see how the appellant can claim to have succeeded on that point; it is yielded as a matter of indulgence. So, as to  
30 the costs of the appeal and the cross-appeal, I do not see how the appellant can escape liability.

Since writing the above I learn that my brothers, other than Mr. Justice O'Halloran, would dismiss the appeal and cross-appeal with a set-off as to costs. I am therefore withholding any dissent and judgment will go accordingly.

"D. A. McDONALD" "C.J.B.C."

Vancouver, B.C., 10th November, 1942.

VANCOUVER, B. C.

10th November, 1942.

that the - and the  
same coming on this day for judgment.  
THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF McQUARRIE, J.A.  
COURT OF APPEAL

PONYICKY	}	JUDGMENT OF
v.		THE HONOURABLE
SAWAYAMA		MR. JUSTICE McQUARRIE

I agree that the appeal and cross-appeal should be dismissed  
with a set-off as to costs.

"W. C. McQUARRIE"

J.A.

<sup>10</sup> VANCOUVER, B. C.

10th November, 1942.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF SLOAN, J.A.  
COURT OF APPEAL

PONYICKY  
Plaintiff  
(Appellant)

v.

SAWAYAMA  
Defendants  
(Respondents)

JUDGMENT OF

THE HONOURABLE

MR. JUSTICE SLOAN

- 10 The appellant seeks to increase the amount of damages awarded him under the provisions of the Families Compensation Act, R.S.B.C. 1936, Chap. 93, for the death of his wife. The respondent cross-appeals from the judgment below, alleging that the appellant is not entitled to any damages because he failed to prove that he had sustained any pecuniary loss by her death.

Prior to the passage of the Families Compensation Act the husband could not at common law have recovered anything for the death of his wife. As Ritchie, C.J.C., said in *Monaghan v. Horn* (1882) 7 S.C.R. 409 at 420-422:

- 20 The death of a human being, though clearly involving pecuniary loss, is not at common law the ground for an action for damages. . . .

It was to remedy this situation that the said Act was passed, but the right conferred upon the surviving spouse to recover damages is restricted to the actual pecuniary loss sustained by him.—*Pym v. The Great Northern Railway Co.* (1863) 32 L.J.Q.B. 377 and *Grand Trunk Railway of Canada v. Jennings* (1888) 13 A.C. 800. There may be included in the assessment of damages future pecuniary benefits lost to him by reason of the death of his wife.—*Hetherington v. The Northern Eastern Railway Company* (1882) 51 L.J.Q.B. 495.

30 In the present appeal the appellant sought to have his damages increased, claiming a present and potential pecuniary loss in excess of the \$125.00 awarded by the learned trial judge. If the matter stood there I am of the opinion that something might be said in favour of his submission. I do not however interpret the findings of the learned trial judge as awarding that sum. In

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
SLOAN, J.A.

my view the addition of the phrase "without abatement" after his awards under the Administration Act and Families Compensation Act must mean, unless it be ignored as meaning nothing at all, that the learned trial judge assessed the damages under the Families Compensation Act at \$1125.00, and then applying *Davies v. Powell* (1942) 1 A.E.R. 657, deducted therefrom the \$1000.00 awarded under the Administration Act, leaving a balance of \$125.00 for which judgment was to be entered under this head.

On the evidence I am unable to say that in awarding \$1125.00 the learned trial judge was obviously in error or had overlooked some relevant element in his assessment of the damages.—*Stroud v. DesBrisay* (1930) 42 B.C.R. 507.

I would therefore dismiss both the appeal and cross-appeal.

"GORDON McG. SLOAN"

J.A.

VANCOUVER, B.C.

10 10th November, 1942.

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF O'HALLORAN, J.A.  
COURT OF APPEAL

PONYICKY

v.

SAWAYAMA

JUDGMENT OF

THE HONOURABLE

MR. JUSTICE O'HALLORAN

The twenty-seven-year-old wife and fifteen-month-old daughter of the appellant were killed when run down by a motor car belonging to one of the respondents, and negligently driven by the other. Damages were awarded in the Court below in the  
10 sum of \$1125.00 (\$1000.00 under the "Administration Act" and \$125.00 under the "Families Compensation Act") in respect to his wife, and \$750.00 (under the "Administration Act" only) in respect to his infant daughter. This appeal relates to the wife only, and is confined to the quantum of damages. It raises questions of general importance.

The respondents cross-appealed on the ground that damages allowed under the "Families Compensation Act" should take into consideration any award made under the "Administration Act"; in short that the two awards should not be added together  
20 in this case. That also involves a principle of general importance. The appellant is forty-two years of age, is a millwright and carpenter by trade, and appears to be in moderate circumstances. He owns a furnished six-room home, and at the time of his wife's death they were planning an annex to cost between \$1000.00 and \$1500.00, in order to open a lunch counter and a hair-dressing establishment. His wife was young, active and healthy. They had been married only two years and two months and had the one child. The evidence portrays them as responsible citizens, happily married, well settled in life and to whom  
30 the future held out favourable prospects.

In view of the 1942 amendment to our "Administration Act" no ground was advanced upon which to increase the sum of \$1000.00 awarded under that Act. But in my view the award of \$125.00 to the husband under the "Families Compensation Act" is wholly insufficient, and has no intelligible relation to the realities of a normal married life. In particular it bears no relation whatever to the favourable marital conditions the evidence discloses in the case under review. While damages under the "Families Compensation Act" are founded on a reasonable

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THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

expectation of pecuniary benefit which the death has terminated, that does not mean that only special damages are recoverable, or that the damages are calculated on the basis that marriage must be regarded as a business relationship and vide *Taff Vale Railway v. Jenkins* (1913) A.C. 1—Lord Atkinson at p. 7.

In addition to her management of the household, a wife does numberless things which add to the husband's comfort, convenience, health and actual saving of money, as well as helping him in improving his business prospects. Those varied services, while essentially of pecuniary value, seldom admit of complete reduction to precise figures. In *Grand Trunk Railway Company of Canada v. Jennings* (1888) 13 A.C. 800 Lord Watson said in this respect pp. 803-4 that often,

"The extent of loss depends upon data which cannot be ascertained with certainty, and must necessarily be matter of estimate, and it may be, partly of conjecture."

Evidence of loss of pecuniary benefit does not appear here with such meticulous particularity that the assessment of damages is resolved into a matter of almost automatic computation. But the evidence does show her general capacity and relation to her family. It shows her a loyal, competent, active wife who performed her household and conjugal duties efficiently and satisfactorily. That such services are of pecuniary value cannot be doubted. Their value is a matter of estimate, even though some of it, as Lord Watson said, may be a matter of conjecture. Her death obviously imposed a monetary loss upon the husband in respect to those services rendered gratuitously by the wife at the time death interrupted the certain prospect of their being continued freely reasonably in the future; and vide Scrutton J. in *Berry v. Humm & Co.* (1915) 1 K.B. 627 at 633.

*St. Lawrence & Ottawa Railway Company v. Lett* (1885) 11 S.C.R. 422 related to a statute described as a copy of Lord Campbell's Act. A 63 year old husband (and therefore with an actuarial life expectation of some twelve years) was apportioned \$1500.00 damages arising from the death of his 53 year old wife. The point taken and to which the Court did not accede, was that the loss of a wife, no matter how industrious, careful or attentive she might have been in looking after her husband's domestic affairs, was still sentimental, and not of sufficient pecuniary character to support the action. Chief Justice Sir

that the same . . . judgment and the

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THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

William Ritchie, with whom the majority of the Court agreed, pointed out that the term pecuniary is not used in the statute and that damages for the injury should not be limited only to an immediate loss of money or property.

He explained the principle of the English decisions to be, that if there is a reasonable expectation of pecuniary advantage, the destruction by death of such expectation by the negligence of a  
10 third party, will sustain the action. The judgment proceeded at p. 433:

"I am free to admit that the injury must not be sentimental or the damages mere solatium, but must be capable of pecuniary estimate; but I cannot think it must necessarily be a loss of so many dollars and cents capable of calculation. The injury must be substantial . . . It may be impossible to reduce an injury to an exact pecuniary amount."

And further at p. 434:

20 "There are abundant cases in our law where there is the same difficulty in reducing the injury to a pecuniary standard; . . . slander . . . libel, breach of promise of marriage, and many others where substantial injury is complained of, but the amount of damage is left to the discretion and judgment of the jury."

The learned Chief Justice continued at p. 434:

30 "There are no judicial tables by which the amount of such damages can be ascertained, nor any judicial scales on which they can be weighed, yet pecuniary damages are, without difficulty awarded, assessed by the good sense and sound judgment of the jury, upon and by reference to, all the facts and circumstances of each particular case, and who are, as Lord Campbell expresses it, to take a reasonable view of the case and give a fair compensation."

40 Applying what has been said, I am of the view with respect that an award of \$7500.00 damages under the "Families Compensation Act," would represent a just appreciation of the substantial nature of the injury suffered. The forty-two-year-old husband has an actuarial expectation of life of 26.14 years, vide schedule "B" of the "Succession Duty Act"—C. 270, R.S.B.C. 1936. In the *Lett* case, supra, \$1500.00 was apportioned to the

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REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

husband in 1885, when the purchasing power of a dollar in Eastern Canada was certainly several times as great as it is today in Vancouver. The wife there was 53 compared to 27 here. The husband's actuarial expectation of life there was twelve years compared to twenty-six here. The deceased's wife's actuarial expectation of life there was eighteen years compared to thirty-six years here. In *Price v. Glynea and Castle Coal and Brick Co.* (1916) 85 L.J.K.B. 1278, Bankes L.J. said at p. 1282  
 10 that in a claim under Lord Campbell's Act the expectation of life of the claimant as well as that of the deceased must be taken into consideration.

If for that period of twenty-six years his much younger wife would have contributed services to him and to his household to the extent of \$25.00 per month, or \$300.00 per year, we would have here the figure of \$7800.00. And that would not include special services, such as, for example, nursing in illness. As conditions of living have existed on this Coast for many years,  
 20 such an estimate for cooking, washing, sewing, nursing, cleaning and generally looking after a household and a husband, month in and year out, cannot be considered out of the way, in the condition of homelife the evidence discloses. It contemplates not an eight-hour day, but virtually a twenty-four-hour day. It includes care and thought in the carrying out of duties, which the husband could not expect or receive from a month-to-month employee.

It includes an eye to the prevention of waste and the saving of money in the repair and maintenance of clothes, furniture,  
 30 house and household effects. While many of those services may be described as routine, yet they would not be of a perfunctory or casual nature. The management of the home virtually fell on her shoulders. All that of course terminated with her death and represents a real monetary loss to the husband. Such a computation is not referred to as a conclusive method of calculating the loss of pecuniary benefit. It is an illustration how that loss may be estimated in everyday terms, if emphasis is sought to be placed upon some precise method of calculating the reasonable expectation of loss of pecuniary benefit to the hus-  
 40 band.

It is recognized, of course, that figures calculated to represent the actuarial expectations of human life are based on averages. But under modern conditions the great assistances to be derived

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THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

from such figures is an element which cannot be ignored in claims under the "Families Compensation Act." It is to be observed also that the willingness, intelligence and enthusiasm with which a happily married woman may perform her numerous duties is necessarily an element which enters into the value of her services. For certainly the services of a wife are pecuniarily more valuable than those of a month-to-month employee. The  
10 frugality, industry, usefulness, attention and tender solicitude of a wife surely make her services greater than those of an ordinary servant, and therefore worth more.

During the wife's lifetime they received \$26.00 per month from roomers. After her death the husband discontinued that, and instead rented the four downstairs rooms furnished for \$25.00 per month. It seemed to be argued before us therefore that any loss the husband incurred by the death of his wife was offset by the rental of \$25.00 per month. That submission is obviously untenable. It excludes entirely the real basis of the  
20 husband's claim, viz., loss of services his wife rendered him as a wife in the conduct and management of his home. The comforts and conveniences a married man has in his own home are something more than is available to him living as a bachelor in a single room. As was said by Cockburn, L.C.J. in *Pym v. Great Northern Railway* (1862) 31 L.J.Q.B. 249 at 252, the enjoyment of greater comforts and conveniences of life depend on pecuniary means to procure them, and hence their loss is one which is capable of being estimated in money.

It further omits from consideration that the husband is now  
30 either buying his meals, or if he prepares himself, he is deprived of his wife's services in that respect. This extends also to his laundry, cleaning and repairing his clothes and dozens of things for which a husband depends on his wife. The \$25.00 rental now received has only this effect, that if he did not have it or could not get it, the basis of his claim would be increased by the \$26.00 received from roomers before her death. It is in effect the same as if he had kept roomers and had hired a housekeeper at \$25.00 per month for that purpose. Reduced to its proper perspective his pecuniary loss in that respect alone arising from the wife's death would then be the \$25.00 a month he  
40 would pay the housekeeper to do the work his wife had been doing to maintain the monthly roomer rental of \$26.00.

But quite apart from the roomers and the subsequent rental which may be said to set-off each other, there is the basic

same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

ground of the claim, viz., loss of his wife's services. Chief Justice Sir William Ritchie observed in the *Lett* case supra at p. 435:

10 "I must confess myself at a loss to understand how it can be said that the care and management of a household by an industrious, careful, frugal and intelligent woman . . . is not a substantial benefit to the husband . . . ; or how it can be said that the loss of such a wife . . . is not a substantial injury but merely sentimental, is, to my mind, incomprehensible."

20 On the facts of this case there is an actual and substantial loss, independent of any sentimental feeling, grief, or loss of society, and clearly independent also of any benefit accruing from the \$25.00 monthly rental after death, which when viewed in its true perspective, can have no greater effect at best, than to balance the loss of revenue from roomers received before her death. In any event, to my mind it would make a mockery of the "Families Compensation Act" to hold, that if a man should be able to rent his furnished home monthly for more than the estimated monthly value of his deceased wife's services, that he should be held for that reason alone, to have suffered no substantial loss from his wife's death. It would of course be contrary to the inherent nature of damages as such, to require the surviving husband to adopt a lower scale of living, in order to reduce the amount of damages payable by a third party whose negligence has brought about the interruption in his accustomed and appropriate mode of life.

30 This brings us to the cross-appeal. I think Counsel for the respondent was right in principle in his cross-appeal, although I must reject the result based on the figures in the Court below. For reasons stated earlier I must regard them as wholly erroneous estimates of the damage suffered by the husband, bearing no true relation to the factual conditions under review. It is true that the claims under the two statutes are distinct and independent, although they arise out of the same act of negligence. Under the "Administration Act" the benefit goes to the estate of the deceased. Under the "Families Compensation Act" the benefit goes to the dependents of the deceased. In this case it happens the husband is the sole dependent of the deceased and also the sole beneficiary of the estate of the deceased.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

In *Rose v. Ford* (1937) A.C. 826 it was stated there might be some overlapping in the damages awarded under the two statutes. In *Feay v. Barnwell* (1938) 1 All E.R. 31, Singleton J. held an award under Lord Campbell's Act (the equivalent of our "Families Compensation Act") should be reduced pro tanto by the amount of the damages awarded under "The Law Reform Act 1934" (the equivalent of our "Administration Act"), even though the "rights" given under the latter statute were expressed to be "in addition to and not in derogation of" any rights conferred on dependants of a deceased person by the former statute. That view was approved by the House of Lords in *Davies v. Powell Duffryn* (1942) 111 L.J.K.B. 418.

It was there explained that in calculating the damage "proportioned to the injury" under Lord Campbell's Act, gains as well as losses should be taken into account, so as to ascertain on balance the compensation to be awarded under that statute. It was the view that the language of the "Law Reform Act" 1934 was not specific enough to make any change in that method of assessment. Accordingly it was decided that any benefit received indirectly under the Law Reform Act 1934 by a dependant under Lord Campbell's Act, should be taken into account in estimating the damages to be awarded that dependant under the latter statute.

Our "Administration Act" (section 71 (6) thereof) provides "that nothing in this section shall prejudice or affect any right of action . . . under the provisions of the 'Families Compensation Act'." In 1942 section 71 (2) was amended by adding the words "provided that nothing herein contained shall be in derogation of any rights conferred by the 'Families Compensation Act'." That language cannot be read as any wider in meaning than "shall be in addition to and not in derogation of" which appears in the English Act. It seems to me the applicable reasoning in *Davies v. Powell Duffryn* cannot be escaped. It must be concluded, that if the Legislature had intended that damages which may be awarded under the "Administration Act" should not be taken into account in assessing damages under the "Families Compensation Act," it would have said so in unequivocal terms.

To recapitulate; \$7500.00 is found to be a proper award to the husband dependant under the "Families Compensation Act" subject to any gains from the wife's death which may reduce

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF  
O'HALLORAN, J.A.

that amount pro tanto. The wife's estate was awarded \$1000.00 under the "Administration Act" and the husband dependant is the sole beneficiary of her estate. The award of \$7500.00 should therefore be reduced pro tanto to \$6500.00. In the result the awards stand (a) \$1000.00 under the "Administration Act" plus (b) \$6500.00 under the "Families Compensation Act."

I would allow the appeal with costs and in the circumstances  
10 would dismiss the cross-appeal but without costs.

"C. H. O'HALLORAN"

J.A.

VANCOUVER, B. C.

10th November, 1942.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



REASONS FOR JUDGMENT OF FISHER, J.A.  
COURT OF APPEAL

PONYICKY  
Plaintiff  
(Appellant)

v.

SAWAYAMA  
Defendants  
(Respondents)

JUDGMENT OF

THE HONOURABLE

MR. JUSTICE FISHER

10 I would dismiss both the appeal and the cross-appeal for the reasons given by my Brother Sloan.

"A. I. FISHER"

J.A.

VANCOUVER, B. C.

10th November, 1942.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



JUDGMENT  
COURT OF APPEAL

64/42

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, Deceased,  
Plaintiff (APPELLANT)

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
Defendants (RESPONDENTS)

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CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF  
BRITISH COLUMBIA  
THE HONOURABLE MR. JUSTICE McQUARRIE  
THE HONOURABLE MR. JUSTICE SLOAN  
THE HONOURABLE MR. JUSTICE O'HALLORAN  
THE HONOURABLE MR. JUSTICE FISHER

Vancouver, B. C., the 10th day of November, 1942.

The appeal from the judgment of the Honourable Mr. Justice  
20 Sydney Smith, pronounced on the 4th day of June, A.D. 1942,  
coming on for hearing on the 29th day of September, A.D. 1942,  
UPON HEARING Mr. H. R. Bray and Mr. A. H. Fleishman  
of Counsel for the Appellant, and Mr. C. L. McAlpine, K.C., of  
Counsel for the Respondent, and UPON READING the Appeal  
Book, and Judgment being reserved until this day:

THIS COURT DOTH ORDER AND ADJUDGE that the  
said appeal be and the same is hereby dismissed with costs to be  
paid by the Appellant to the Respondent forthwith after taxation  
thereof.

30 THIS COURT DOTH FURTHER ORDER AND AD-  
JUDGE that the cross appeal be and the same is hereby dis-  
missed with costs to be paid by the Respondent to the Appellant  
forthwith after taxation thereof.

THIS COURT DOTH FURTHER ORDER AND AD-  
JUDGE that the said judgment in favour of the Plaintiff as  
Administration of the estate of Anna Ponyicky, deceased, be  
varied by striking out the figures "\$1125.00" and substituting  
therefor the figures "\$1165.00".

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that there shall be a set-off of the costs awarded to the Appellant and to the Respondent, and in the event of the costs awarded to the Respondent exceeding the costs awarded to the said Appellant the difference shall be set off against the amount of the said judgment.

BY THE COURT

"CLEEVE G. WHITE"

(SEAL)

Registrar.

10 B.C.L.S. \$1.10.

Court of Appeal  
British Columbia.  
Settled as Amended  
Cleeve G. White  
Registrar

"D.A.M."  
C.J.B.C.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



ORDER GRANTING LEAVE TO APPEAL TO  
SUPREME COURT OF CANADA  
COURT OF APPEAL

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, Deceased,

Plaintiff (APPELLANT)

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
Defendants (RESPONDENTS)

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF  
BRITISH COLUMBIA

THE HONOURABLE MR. JUSTICE McQUARRIE

THE HONOURABLE MR. JUSTICE SLOAN

THE HONOURABLE MR. JUSTICE O'HALLORAN

THE HONOURABLE MR. JUSTICE FISHER

Vancouver, B.C., the 30th day of November, A.D. 1942.

UPON READING the notice of motion of the Plaintiff  
20 (Appellant) dated the 24th day of November, 1942, and the  
affidavit of Arthur H. Fleishman, sworn the 24th day of  
November, 1942, and papers filed; AND UPON HEARING Mr.  
H. R. Bray of Counsel for the above-named Plaintiff (Appel-  
lant) and Senator J. W. deB. Farris, K.C., of Counsel for the  
above-named Defendants (Respondents):

THIS COURT DOTH ORDER that the Plaintiff (Appel-  
lant) be and he is hereby granted special leave to appeal to the  
Supreme Court of Canada from the Judgment of this Honour-  
able Court pronounced herein on the 10th day of November,  
30 1942, and entered on the 26th day of November, 1942.

AND THIS COURT DOTH FURTHER ORDER that the  
costs of this application be costs in the appeal.

BY THE COURT

"J. F. MATHER"

Registrar.

(SEAL)

Minutes filed.

"J. F. M."

R.

"A.I.F."

C.L.McA.

"J. A."

40 Entered Vol. 6, Fol. 437.

Date 29-12-42

By G.K.B.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## COURT OF APPEAL

No. P 214/42

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, Deceased,

Plaintiff (APPELLANT)

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA

Defendants (RESPONDENTS)

10

## REGISTRAR'S CERTIFICATE

THIS IS TO CERTIFY that the above-named Plaintiff  
(Appellant) has caused to be paid into Court to the credit of  
this cause the sum of Five Hundred Dollars (\$500.00) by way  
of security to the above-named Defendants (Respondents) that  
the said Plaintiff (Appellant) will effectually prosecute its  
appeal to the Supreme Court of Canada from the Judgment of  
the Court of Appeal for British Columbia herein dated the 10th  
day of November, A.D. 1942, and will pay such costs and dam-  
ages as may be awarded against it by the Supreme Court of  
20 Canada.

DATED at Victoria, B. C., this 29th day of December, A.D.  
1942.

"J. S. GILL"  
Registrar.

(SEAL)

Victoria  
Dec. 29, 1942  
Registry

*Deputy*

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



ORDER APPROVING SECURITY  
COURT OF APPEAL

No. P. 214/42

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, deceased,  
Plaintiff (APPELLANT)

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
Defendants (RESPONDENTS)

BEFORE THE HONOURABLE  
THE CHIEF JUSTICE  
IN CHAMBERS

Tuesday, the 5th day of  
January, A.D. 1943.

UPON the application of the above-named Plaintiff (Appel-  
lant), and UPON READING the Deputy Registrar's Certificate  
herein dated the 29th day of December, A.D. 1942, and UPON  
HEARING Mr. Arthur H. Fleishman of Counsel on behalf of the  
20 Plaintiff (Appellant):

IT IS ORDERED that the sum of \$500.00 paid into Court to  
the credit of this cause, as appears by the Deputy Registrar's  
Certificate as security to the above-named Defendants (Respond-  
ents) that the said Plaintiff (Appellant) will effectually prose-  
cute the appeal to the Supreme Court of Canada from the  
Judgment of the Court of Appeal for British Columbia, pro-  
nounced herein on the 10th day of November, A.D. 1942, and  
will pay such costs and damages as may be awarded against it  
by the Supreme Court of Canada, be and the same is hereby  
30 allowed as good and sufficient security;

AND IT IS FURTHER ORDERED that the costs of this  
application be costs in the said appeal.

"D. A. McDONALD"  
C.J.B.C.

"D.A.M."  
C.J.B.C.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



AGREEMENT AS TO CASE  
IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, deceased,  
(Plaintiff) Appellant

AND:

10 TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
(Defendants) Respondents

AGREEMENT AS TO CASE

WE HEREBY AGREE that the following shall constitute the printed case upon Appeal from the Judgment of the Court of Appeal for British Columbia to the Supreme Court of Canada:

1. Contents of Appeal Book on appeal to the Court of Appeal for British Columbia.
2. Reasons for Judgment of the Court of Appeal for British Columbia.
- 20 3. Judgment of the Court of Appeal for British Columbia.
4. Order granting special leave to appeal to the Supreme Court of Canada.
5. Certificate of Registrar as to the deposit of security.
6. Order of the Honourable the Chief Justice of British Columbia approving security.
7. Notice of Hearing of Appeal.
8. Agreement as to Case.
9. Registrar's Certificate as to case.

30 Dated at Vancouver, B. C., this 6th day of January, A.D. 1943.

"A. H. FLEISHMAN"  
Solicitor for Appellant.

"C. L. McALPINE"  
Solicitor for Respondent.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## SOLICITOR'S CERTIFICATE

IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL FOR  
BRITISH COLUMBIA

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, deceased

(Plaintiff) Appellant

AND:

10 TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
(Defendants) Respondents

## SOLICITOR'S CERTIFICATE

I, Arthur H. Fleishman, of the City of Vancouver, in the  
Province of British Columbia, HEREBY CERTIFY that I  
have personally compared the within print of the case on appeal  
to the Supreme Court of Canada with the originals, and that  
the same is a true and correct reproduction of such originals.

DATED at Vancouver, B.C., this 7th day of January, A.D.  
1943.

20

"A. H. FLEISHMAN"  
Solicitor for the Appellant.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



REGISTRAR'S CERTIFICATE  
IN THE SUPREME COURT OF CANADA

BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, deceased  
(Plaintiff) Appellant

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
(Defendants) Respondents

10

REGISTRAR'S CERTIFICATE

I, Cleeve White, the undersigned Registrar at Victoria,  
British Columbia, for the Court of Appeal for British Columbia,  
DO HEREBY CERTIFY that the foregoing printed docu-  
ment from pages one to fifty-nine inclusive is the case stated  
by the parties pursuant to Section 73 of the Supreme Court Act  
and the Rules of the Supreme Court of Canada in an appeal to  
the Supreme Court of Canada in a certain case pending in the  
Court of Appeal from British Columbia, between:

20 Paul Ponyicky, Administrator of the Estate of  
Anna Ponyicky, deceased  
Appellant  
and

Takashi T. Sawayama and Gonzo Sawayama  
Respondents.

30 AND I DO FURTHER CERTIFY that the said Paul  
Ponyicky, Administrator of the Estates of Anna Ponyicky and  
Betty Anna Ponyicky, deceased, has given proper security to  
the satisfaction of the Chief Justice of British Columbia, as  
required by the 75th Section of the Supreme Court Act by pay-  
ment into Court of the sum of Five Hundred Dollars (\$500.00)  
to the credit of this cause.

A copy of the Order of the Honourable the Chief Justice  
allowing the same may be found on page 53 of the annexed case.

IN WITNESS WHEREOF I have hereunto subscribed my  
name and affixed the Seal of the said Court of Appeal this 8th  
day of January, A.D. 1943.

(SEAL)

"CLEEVE WHITE"  
Registrar

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## NOTICE OF HEARING OF APPEAL

## IN THE SUPREME COURT OF CANADA

## BETWEEN:

PAUL PONYICKY, Administrator of the Estate of Anna  
Ponyicky, deceased

(Plaintiff) Appellant

## AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA  
(Defendants) Respondents

- 10 TAKE NOTICE that this Appeal will be heard at the next session of the Court, to be held at the City of Ottawa, on Tuesday, the 2nd day of February, A.D. 1943.

Dated at Vancouver, B. C., this 9th day of January, A.D. 1943.

"A. H. FLEISHMAN"  
Appellant's Solicitor.

TO: Takashi T. Sawayama  
and  
Gonzo Sawayama

20 AND TO: Messrs. Farris, McAlpine, Stultz,  
Bull & Farris,  
their Solicitors.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## In the Supreme Court of Canada

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BETWEEN:

PAUL PONYICKI, Administrator of the Estate of Anna  
Ponyicki, deceased,  
(Plaintiff) APPELLANT

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
(Defendants) RESPONDENTS

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## Appellant's Factum

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A. H. Fleishman, Esq.,  
Solicitor for Appellant.  
Messrs. McCracken, Fleming & Shroeder  
Ottawa Agents.

Messrs. Farris, McAlpine, Stultz, Bull & Farris  
Solicitors for Respondents.  
Messrs. Newcombe & Co.  
Ottawa Agents.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## In the Supreme Court of Canada

---

BETWEEN:

PAUL PONYICKI, Administrator of the Estate of Anna  
Ponyicki, deceased,  
(Plaintiff) APPELLANT

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
(Defendants) RESPONDENTS

---

## Appellant's Factum

---

A. H. Fleishman, Esq.,  
Solicitor for Appellant,  
Messrs. McCracken, Fleming & Shroeder  
Ottawa Agents.

Messrs. Farris, McAlpine, Stultz, Bull & Farris  
Solicitors for Respondents.  
Messrs. Newcombe & Co.  
Ottawa Agents.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



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that the said appeal should stand over for judgment and the  
same coming on this day for judgment. .

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## In the Supreme Court of British Columbia

BETWEEN:

PAUL PONYICKI, Administrator of the Estate of Anna  
Ponyicki, deceased,  
(Plaintiff) APPELLANT

AND:

TAKASHI T. SAWAYAMA and GONZO SAWAYAMA,  
(Defendants) RESPONDENTS

### APPELLANT'S FACTUM

#### PART I.

#### STATEMENT OF THE FACTS.

This is an appeal from the Judgment of the Court of Appeal of British Columbia pronounced by a majority of that Court consisting of the Chief Justice of British Columbia and Messrs. Justices McQuarrie, Sloan, O'Halloran (dissenting) and Fisher on 10 November, 1942, sustaining the Judgment of Mr. Justice Sidney Smith of the Supreme Court of British Columbia (*Case* pp. 32-33) delivered 4 June, 1942, after trial before him without a jury at Vancouver, B. C.

Special leave to appeal to this Court was granted by the Court of Appeal of British Columbia to the Appellant (*Case* p. 53).

The action at the trial was a consolidation of two actions brought against the Respondent by the Appellant as Administrator of the Estate of Anna Ponyicky, deceased, and as Administrator of the Estate of Betty Anna Ponyicky, deceased.

Both the deceased were killed when run down by the Respondent while operating a motor vehicle in Vancouver and their actions were based on negligence and the "Administration Act" of the Province of British Columbia and the "Families' Compensation Act" of the Province of British Columbia. Negligence was admitted at the trial (*Case* p. 31) and only damages fell to be awarded by the tribunal.

that the said appeal should  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



It is from the quantum of damages allowed that appeal was taken to the Court of Appeal and is the only subject matter of this appeal.

The pertinent Statutes of British Columbia insofar as this appeal is concerned, are as follows:—

1. "Administration Act" Revised Statutes of British Columbia, Chapter 5:

71. (2) The executor or administrator of any deceased person may bring and maintain an action for all torts or injuries to the person or property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, be entitled to, except that recovery in the action shall not extend to damages in respect of physical disfigurement or pain or suffering caused to the deceased or to damages in respect of expectancy of earnings subsequent to the death of the deceased which might have been sustained if the deceased had not died; and the damages recovered in the action shall form part of the personal estate of the deceased.

(6) This section shall be subject to the provisions of section 12 of the "Workmen's Compensation Act," and nothing in this section shall prejudice or affect any right of action under the provisions of section 81 of that Act or the provisions of the "Families' Compensation Act."

2. "Families' Compensation Act" Revised Statutes of British Columbia Chapter 93:

2. In this Act, unless the context otherwise requires:—"Child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter: "Parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother. (9 & 10 Vict., c. 93, s. 5); R.S. 1924, c. 85, s. 2.

3. Whenever the death of a person shall be caused by 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

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



shall have been caused under such circumstances as amount in law to an indictable offence. (9 & 10 Vict., c. 93, s. 1); R.S. 1924, c. 85, s. 3.

4. (1) Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the Court or jury before which the action shall be tried may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the Court or jury by their judgment or verdict shall find and direct, or as may be determined by the Court upon motion for judgment or further consideration.
5. Not more than one action shall lie for and in respect of the same subject-matter of complaint; and every such action shall be commenced within twelve calendar months after the death of such deceased person. (9 & 10 Vict., c. 93, s. 3); R.S. 1924, c. 85, s. 5.

"Succession Duty Act." Revised Statutes of British Columbia, money only.

#### SCHEDULE B

Age.	Years. Expectation	Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.
0	57.64	25	38.44	50	20.51	75	6.56
1	56.64	26	37.65	51	19.84	76	6.17
2	55.64	27	36.93	52	19.17	77	5.85
3	55.09	28	36.18	53	18.50	78	5.48
4	54.83	29	35.47	54	17.81	79	5.22
5	53.83	30	34.75	55	17.14	80	4.93
6	53.08	31	34.04	56	16.53	81	4.61
7	52.67	32	33.30	57	15.90	82	4.36
8	55.17	33	32.59	58	15.26	83	4.04
9	50.80	34	31.86	59	14.64	84	3.84
10	49.89	35	31.15	60	13.99	85	3.58
11	49.38	36	30.41	61	13.42	86	3.44
12	48.38	37	29.69	62	12.83	87	3.26
13	47.50	38	28.97	63	12.26	88	3.05
14	46.60	39	28.27	64	11.72	89	2.94
15	45.90	40	27.57	65	11.17	90	2.68
16	45.14	41	26.85	66	10.65	91	2.46
17	44.23	42	26.14	67	10.12	92	2.25
18	43.39	43	25.42	68	9.61	93	2.15
19	42.64	44	24.69	69	9.13	94	2.09
20	41.98	45	24.27	70	8.68	95	1.90
21	41.23	46	23.98	71	8.16	96	1.06
22	40.51	47	22.57	72	7.65	97	1.00
23	39.84	48	21.89	73	7.24	98	0.50
24	39.15	49	21.20	74	6.83		

1934 c. 61 Sch. B.

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



The Appellant is the Administrator of his late wife Anna Ponyicky, killed in the accident hereinbefore referred to—Letters of Administration (*Case* p. 27); and is the Administrator of his late daughter, Betty Anna Ponyicky, who died as a result of the same accident—Letters of Administration (*Case* p. 26). The accident occurred on 23 January, 1942, Anna Ponyicky dying within a few hours thereof and the infant Betty Anna Ponyicky dying on 27 January, 1942 (*Case* pp. 291, L. 30).

Anna Ponyicky was at the time of her death aged 27 years and 11 months (*Case* p. 30, L. 12), while Betty Anna Ponyicky was aged 1 year and 3 months (*Case* p. 29, L. 12).

The husband, the Appellant, for whose benefit the action is brought under the "Families' Compensation Act" was at the time of the death of the two deceased, 42 years old (*Case* p. 15, L. 20).

The Appellant, and the two deceased were living at the time of the accident as a family unit (*Case* p. 15 L. 22, p. 16 LL 2-7), the wife doing the housework (*Case* p. 17 L. 19). They owned their home (*Case* p. 20 LL 2), taking in roomers, which netted them \$26.00 per month (*Case* p. 20 LL 4-9). Since the death of his wife the Appellant has not had roomers (*Case* p. 19 L. 18).

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PART II.

## SUMMARY OF ARGUMENT.

1. The trial Judge and the learned Justices of Appeal erred in not awarding to the estate of Betty Anna Ponyick, the infant who survived her mother four days, any sum under the "Families' Compensation Act."
2. The trial Judge and the majority of the learned Justices of Appeal erred in awarding only the sum of \$125.00 to the Appellant for loss of his wife's services.
3. The learned trial Judge gave no reasons for his Judgment and it is difficult to ascertain how he fell into error save in the result.
4. The learned Chief Justice in Appeal confused "consortium" and "solatium."
5. The learned Justices Sloan and Fisher support the Judgment of the learned trial Judge by supplying language not employed therein.
6. The learned Justices of Appeal erred in deducting from the damages which they awarded under the "Families' Compensation Act," and the damages allowed under the "Administration Act."

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PART III.

## ARGUMENT.

It is conceded that no award may be made under the "Families' Compensation Act" for sentimental feeling and grief, usually referred to in the authorities as solatium. It is contended, however, that allowance should be made in terms of money for the deprivation of all the services, often referred to as consortium, usually performed by a wife, in a happy and well constituted family.

The services rendered or which might reasonably be expected to be rendered by the deceased wife in the case at Bar have been sufficiently detailed in the Reasons for Judgment of Mr. Justice O'Halloran. (*Case* p 42 LL 36, p 43 LL 2-33, p 44 LL 35-41, p 45 LL 2-40, p 46 LL 13-45, p 47 LL 2-29).

The learned trial Judge and the majority of the learned Justices of Appeal took too narrow a view of the damages sustained by the Appellant in confining them to pecuniary losses in the most limited sense.

Although damages are awarded in terms of money it is the general loss to the dependent that is compensated under the "Families' Compensation Act" rather than the mere loss of money only.

*St. Lawrence & Ottawa Railway Company v. Lett* (1885), 11 S.C.R. 422:

Ritchie, C.J.—Page 426. "I cannot think the injury contemplated by the legislature ought to be confined to a pecuniary interest in a sense so limited as to embrace only the loss of money or property, but that, in the case of a husband in reference to a wife—, the loss—may involve many things which may be regarded as of a pecuniary character." "The term pecuniary is not used by the legislature"—Therefore 'a fortiori', the word should not be judicially introduced into our statute with a view to a narrow and strict construction."

and Page 432.

"I think the statute intended that where there was a substantial loss or injury there should be substantial relief"—

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



and Page 433.

"I think the term injury in the statute means substantial injury as opposed to mere sentimental—I am free to admit that the injury must not be sentimental or the damages a mere solatium, but must be capable of pecuniary estimate; *but I cannot think it must necessarily be a loss of so many dollars and cents capable of calculation.*"

and Page 435.

"I must confess myself at a loss to understand how it can be said that the care and management of a household by an industrious, careful, frugal and intelligent woman—is not a substantial benefit to the husband—; or how it can be said that the loss of such a wife—is not a substantial injury but merely sentimental, is, to my mind, incomprehensible."

While there is no statutory authority in England against the award made under the "Administration Act" being deducted from the damages allowed under the "Families' Compensation Act" as appears from the Judgment of the House of Lords—*Davies v. Powell Duffryn Associated Collieries Limited* (1942) 111 L.J.K.B. 418—the British Columbia "Administration Act" does not contain the words of the English statute. On the contrary, the words of the British Columbia statute are against applying the English principle. Lord MacMillan and Lord Wright arrived at their decisions on the English principle on language contained in the "Law Reform Act" (1934) which is not found in the British Columbia "Administration Act" as it existed on the date of the accident. It was obviously for this reason that the learned trial Judge stated that the amount awarded under the "Families' Compensation Act" was without abatement.

The pertinent date insofar as the "Families' Compensation Act" is concerned is the date of death. The deceased's daughter survived her mother four days and the award should have been to her and to her estate on the trial for the loss of her mother. This was claimed in paragraph 4 of the Statement of Claim of the Administrator of the Estate of Anna Ponyicky (*Case p 2 LL 19-26*).

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



No appeal was taken to the Court of Appeal of British Columbia from the award to the Administrator of the two estates for loss of expectancy of life and the Judgment of the trial tribunal on these items is not objected to.

Respectfully submitted.

Counsel for the (Plaintiff) Appellant.

A. H. FLEISHMAN

that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



7015-

# IN THE SUPREME COURT OF CANADA

---

ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

---

BETWEEN:

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,  
Plaintiff (Appellant)

AND

TAKASI T. SAWAYAMA AND GONZO SAWAYAMA,  
Defendants (Respondents)

---

## Respondents' Factum

---

A. F. Fleishman, Esq.,  
Solicitor for Appellant.

Messrs. McCracken, Fleming & Shroeder,  
Ottawa Agents.

Messrs. Farris, McAlpine, Stultz, Bull & Farris,  
Solicitors for Respondents.

Messrs. Newcombe & Co.  
Ottawa Agents.

PRINTED BY WRIGLEY PRINTING COMPANY LIMITED, 576 SEYMOUR STREET, VANCOUVER, B. C.

that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



# IN THE SUPREME COURT OF CANADA

---

ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

---

BETWEEN:

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,  
Plaintiff (Appellant)

AND

TAKASI T. SAWAYAMA AND GONZO SAWAYAMA,  
Defendants (Respondents)

---

## Respondents' Factum

---

A. F. Fleishman, Esq.,  
Solicitor for Appellant.

Messrs. McCracken, Fleming & Shroeder,  
Ottawa Agents.

Messrs. Farris, McAlpine, Stultz, Bull & Farris,  
Solicitors for Respondents.

Messrs. Newcombe & Co.  
Ottawa Agents.

SERIES C  
10 CENTS 10

as for the Respondents, whereupon and upon hearing what was  
alleged by Counsel aforesaid, this Court was pleased to direct  
that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



## INDEX

### PART I

Statement of Facts ..... 1

### PART II

Contentions of Respondents..... 2

### PART III

Argument ..... 2

SERIES C  
10 CENTS 10

as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



ON APPEAL FROM THE COURT OF APPEAL  
FOR BRITISH COLUMBIA

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,  
Plaintiff (Appellant)

## STATEMENT OF FACTS

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



## PART II

Contentions of Respondents:

The damages awarded were not insufficient.

## PART III

## ARGUMENT

Damages under the "Families Compensation Act", R.S.B.C. 1936, C. 93, are awarded for the loss of a reasonable expectancy of pecuniary benefit.

*Grand Trunk Railway v. Jennings*, 1888, 13 A.C. 800.

Cas. p. 17-18.

*Royal Trust v. C.P.R.*, 1922, 38 T.L.R. 899.

10

The Appellant claimed damages for the loss of his wife's services as housekeeper. The evidence discloses merely that the wife acted as housekeeper and took care of her infant child, who was killed in the same accident as the wife. After his wife's death the Appellant employed a housekeeper for one month at a cost of \$25.00. No other evidence of loss was given. Admittedly such services rendered gratuitously may constitute a pecuniary loss under the "Families Compensation Act",

*St. Lawrence & Ottawa Rwy. v. Lett*, 1885, 11 S.C.R. 422.

but not, it is submitted, unless such services are worth more than the cost of maintaining the wife with food, clothing, etc. See Scrutton, J., in

*Berry v. Humm*, 1915, 1 K.B. 627 at p. 630.

The burden of proving pecuniary loss is on the Appellant, and he failed to prove such loss.

*Meddam v. Mannix*, 1893, 37 Sol. J. 253.

Cas. p. 17-18.

The Appellant attempted to show that prior to his wife's death, they had arranged at some future time to enter a joint business venture. The appellant was to build a lunch counter for his wife, which she was to manage on a profit sharing basis. No evidence of any anticipated profit was led by the Appellant, nor is there proof of any.

10 CENTS 10

as for the Respondents, whereupon and upon the evidence alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should



It is submitted that in any event a claim for such loss is not maintainable, as the loss for which damages may be awarded must arise by reason of the claimant's relationship to the deceased, and not from a contract between them.

*Sykes v. North Eastern Rwy.*, 1875, 44 L.J., C.P. 191.

*Quinn v. Greenock Tramways*, 1926, S.C. 544.

It was also argued by the Appellant that the Appellant was entitled to damages for loss of consortium.

In *Grand Trunk Rwy. v. Jennings*, 1888, 13 A.C. 800 and *Royal Trust v. C.P.R.* 1922, 38 T.L.R. 899, it was held that no compensation could be awarded for any but pecuniary loss.

In *Blake v. Midland Rwy.*, 1852, 18 Q.B. 93, it was held that nothing could be given for solatium.

It is submitted that the quantum of damages cannot be disturbed on appeal unless it is clear that the Trial Judge overlooked some element of damage.

*Middleton v. McMillan*, 1929, 1 D.L.R. 977.

Respectfully submitted.

C. L. McALPINE,  
Counsel for the Respondents. 20

Vancouver, B. C.,  
January 11th, 1943.

10 CENTS 10

as for the Respondents, whereupon and  
alleged by Counsel aforesaid, this Court was pleased to direct  
that the said appeal should stand over for judgment and the  
same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said  
judgment of the Court of Appeal for British Columbia should



7015-  
89

IN THE SUPREME COURT OF CANADA  
ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

FRIDAY, the 2nd day of April, A.D. 1943.

PRESENT:

THE HONOURABLE MR. JUSTICE RINFRET,  
THE HONOURABLE MR. JUSTICE DAVIS,  
THE HONOURABLE MR. JUSTICE KERWIN,  
THE HONOURABLE MR. JUSTICE HUDSON,  
THE HONOURABLE MR. JUSTICE TASCHEREAU.

B E T W E E N:

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,

(Plaintiff) Appellant,

-and-

TAKASHI T. SAWAYAMA and CONZO SAWAYAMA,

(Defendants) Respondents.

The appeal of the above named Appellant from the judgment of the Court of Appeal for British Columbia pronounced in the above cause on the Tenth day of November in the year of Our Lord One Thousand Nine Hundred and Forty-two, dismissing the Appellant's appeal from the Judgment of the Supreme Court for British Columbia rendered in the said cause by the Honourable Mr. Justice Smith on the Fourth day of June in the year of Our Lord One Thousand Nine Hundred and Forty-two, having come on to be heard before this Court on the Second and Third days of February in the year of Our Lord One Thousand Nine Hundred and Forty-three, in the presence of Counsel as well for the Appellant as for the Respondents, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment and the same coming on this day for judgment.

THIS COURT DID ORDER AND ADJUDGE that the said judgment of the Court of Appeal for British Columbia should





be and the same was affirmed and that the said appeal  
should be and the same was dismissed with costs to be  
paid by the said Appellant to the said Respondents.

*Settled this 29th day of April 1945*  
*[Signature]*  
REGISTRAR.



IN THE SUPREME COURT OF CANADA

---

B E T W E E N

PAUL PONYICKI, Administrator  
of the Estate of Anna  
Ponyicki, deceased

Appellant

-and-

TAKASHI T. SAWAYAMA and  
CONZO SAWAYAMA,

Respondents.

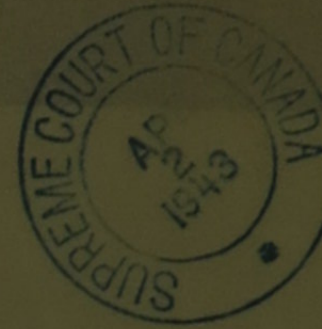
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MINUTES OF JUDGMENT

---

NEWCOMBE & COMPANY,  
Barristers &c.,  
140 Wellington St.,  
O t t a w a, Ont.





Ponyicky v. Sawayama.

Coram: Rinfret, Davis, Kerwin, Hudson and Taschereau, JJ.

Kerwin J.:

Paul Ponyicky was the husband of Anna and the father of their child, Betty Anna. These two were run down by a motor vehicle owned by one of the respondents and operated by the other, as a result of which the wife died almost immediately and the daughter four days later. Ponyicky was appointed administrator of his wife's estate and he was also appointed administrator of his daughter's estate. Two actions were brought against the respondents but an order was made consolidating them and directing that the issues be tried together at the same time. The respondents admitted liability so that the only question remaining to be tried was that of damages. In the first action, damages were claimed by Ponyicky as administrator of his wife's estate for loss of expectation of her life, under the Administration Act, R.S.B.C. 1936, chapter 5, and also damages for his benefit personally as husband, and for the benefit of Betty Anna as daughter (represented by her administrator), under the provisions of the Families' Compensation Act, R.S.B.C. 1936, chapter 93. In the second action, the appellant sued as administrator of the daughter's estate for damages for loss of expectation of her life.

The trial took place before Mr. Justice Sidney Smith without the intervention of a jury. It appears that at the time of the accident the wife was twenty-seven years and eleven months old, the daughter was aged one year and



three months, and the husband forty-two years. The family lived together in a two story house, owned by the husband, in a factory section of the City of Vancouver. The husband was a carpenter and mill-wright. The wife was strong and in good health and did all the house work, including looking after six roomers who paid, in all, twenty-six dollars per month. After the wife's death another woman looked after the house for the husband, washed his clothes, etc., for one month, in return for which he did some plumbing work. After that, he rented the lower part of the house, furnished, for twenty-five dollars per month and he lived upstairs. No roomers have been kept since the wife's death. The above narrative relates the only evidence on the question of damages, except that of the husband and of his sister-in-law who testified that it had been arranged that he would build an addition to the house to contain a hair-dressing shop on one side and a lunch counter on the other, the former to be managed by the sister-in-law and the latter by the wife.

On this evidence the trial judge directed:-

"In these consolidated actions I award damages as follows:-

(a) Under the 'Administration Act':-

(1) For loss of wife's expectation of life \$1,000.00

(2) For loss of child's expectation of life 750.00

(b) Under the 'Families' Compensation Act':-

For loss of wife's services 125.00

The above amounts are without abatement. Judgment accordingly."

Only one formal judgment was taken out in the consolidated actions and by it Paul Ponyicky as administrator of his



daughter's estate was awarded \$750, and as administrator of his wife's estate \$1125. In view of the daughter's death, all of the \$1125 would go to Paul Ponyicky, irrespective of what part thereof would have been allowed under the Families' Compensation Act. No doubt for that reason it was considered unnecessary to state in the formal judgment that he was the sole party entitled to damages under that Act.

As plaintiff in the first action, Paul Ponyicky in his capacity as administrator of his wife's estate appealed from the judgment in the consolidated actions on the ground, according to the notice of appeal, that the damages of \$1125 were insufficient. The present respondents cross-appealed on the ground that nothing should have been awarded for loss of the wife's services. The Court of Appeal with Mr. Justice O'Halloran dissenting, dismissed the appeal and cross-appeal, subject to a variation by which the total amount was increased to \$1165 to cover a small item that had been overlooked. Upon leave granted by the Court of Appeal, the plaintiff in the first action as administrator of his wife's estate now appeals to this Court.

At bar, counsel for the appellant, quite properly I think, abandoned the claim advanced in his factum that because the daughter survived her mother four days some amount should have been awarded the former's estate under the Families' Compensation Act. He admitted that damages could not be awarded the husband because of grief and suffering at his wife's death but argued that the sum awarded by the trial judge bore no relation to the loss in money suffered by the husband by the deprivation of his wife's services. The sum was either \$125 or \$1125, depending upon the construction to be placed upon the trial judge's direction. Counsel also contended that if the trial judge had really decided to



allow \$1125 under the Families' Compensation Act and had then deducted the \$1000 allowed under the Administration Act, there was no justification for so doing under the provisions of the relevant statutes.

It is advisable, therefore, to refer to the provisions of the two statutes under which the two rights of action were advanced. The Families' Compensation Act, R.S.B.C. 1936, chapter 93, is for all relevant purposes the same as the Imperial Fatal Accidents Acts, giving a right of action for damages, where wrongful act, negligence or default causes death, for the benefit of the wife, husband, parent and child of the deceased. Subsections 2 and 6 of section 71 of the Administration Act, R.S.B.C. 1936, chapter 5, deal with the other right of action and read as follows:-

"(2) The executor or administrator of any deceased person may bring and maintain an action for all torts or injuries to the person or property of the deceased in the same manner and with the same rights and remedies as the deceased would, if living, be entitled to, except that recovery in the action shall not extend to damages in respect of physical disfigurement or pain or suffering caused to the deceased or to damages in respect of expectancy of earnings subsequent to the death of the deceased which might have been sustained if the deceased had not died; and the damages recovered in the action shall form part of the personal estate of the deceased.

(6) This section shall be subject to the provisions of section 12 of the 'Workmen's Compensation Act,' and nothing in this section shall prejudice or affect any



right of action under the provisions of section 81 of that Act or the provisions of the 'Families' Compensation Act.'"

In *Davies v. Powell Duffryn Associated Collieries Ltd.* (1942) A.C. 601, the House of Lords decided that subsection 5 of section 1 of The Reform (Miscellaneous Provisions) Act, 1934, does not alter the measure of damages recoverable for the benefit of the named persons under the Fatal Accidents Acts and that damages awarded under The Law Reform Act of 1934 must be taken into account in fixing the amount that would otherwise be given under the former. The speeches of all the peers indicate that all that is meant by subsection 5 of section 1 of The Law Reform Act is that the right of action under each enactment shall co-exist. The wording of subsection 6 of section 71 of the British Columbia Act, "nothing in this section shall prejudice or affect any right of action", is even more emphatic than the corresponding Imperial statute and the decision of the House of Lords applies. On this point there appears to be no disagreement among any of the judges who have so far considered this case.

At the date of the trial judgment, the decision of the House of Lords was probably not known to the trial judge or to counsel but all were familiar with the earlier decision in *Rose v. Ford* (1937) A.C. 826. In view of the speeches of some of the peers in that case, the expression used by the trial judge "The above amounts are without abatement", would be idle unless it is construed as meaning that he had fixed the damages of the husband, under the Families' Compensation Act, at \$1125, and deducted from it the amount allowed under the Administration Act. In this he did exactly what the House of Lords, in the later case, decided was proper. Construing



the direction for judgment in that way, there is nothing to indicate that the trial judge did not take into consideration all relevant matters. The decision of this Court in *St. Lawrence and Ottawa Railway Company v. Lett* (1885) 11 S.C.R. 422, relied upon by the appellant, contains nothing in conflict with this conclusion. The amount of damages was not there in question, the whole argument being confined to the question whether any amount could be given a husband for the death of his wife in the absence of proof that the husband had lost so many dollars and cents.

The principle to be applied was stated by the Judicial Committee in *Grand Trunk Railway Company of Canada v. Jennings* (1888) 13 A.C. 800 and re-affirmed in *Royal Trust Company v. C.P.R.* (1922) 67 D.L.R. 518, where Lord Parmoor observes:-

"When a claim for compensation to families of persons killed through negligence is made, the right to recover is restricted to the amount of actual pecuniary benefit which the family might reasonably have expected to enjoy had the deceased not been killed. It is not competent for a Court or a jury to make in addition a compassionate allowance. The principle, as stated by Lord Watson in *G.T.R. Co. v. Jennings* (1888) 13 App. Cas. 800, at 804, is applicable in cases where the loss, in respect of which compensation is claimed, is based on the cessation of an income derived from professional skill:-

'It then becomes necessary to consider what, but for the accident which terminated his existence, would have been his reasonable prospects of life, work and remuneration; and also how far these, if realised, would have conduced to the benefit of the individual claiming compensation.'



The difficulty arises not in the statement of the principle, but in its application to a case in which the extent of the actual pecuniary loss is largely a matter of estimate, founded on probabilities, of which no accurate forecast is possible."

Finally, in the House of Lords, Lord Wright in the Davies case puts it thus:-

"The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value."

Applying this principle to the evidence in this case, no damages for the loss of his wife's society could be allowed the husband under the Families' Compensation Act but there is nothing to prevent an allowance for the reasonable expectation of pecuniary loss suffered by him in the death of a healthy, industrious and careful woman who had performed all the household duties in and about the residence of the spouses. While the evidence is meagre, it justifies a conclusion that <sup>could be</sup> Anna Ponyicky ~~might have been~~ so described, and by her death the husband sustained "a substantial injury and one for which it was the intention of the legislature to indemnify the husband" (per Sir William Ritchie, C.J., in the Lett case, at 433). The evidence does not justify an allowance of damages in connection with the proposal for the hair-dressing shop and lunch counter as there is nothing to warrant a finding that there were any reasonable prospects of the earning of profits by the services of the wife which would have conduced to the benefit of the husband. Under these circumstances, I am unable to say that the trial judge "has acted on a wrong principle of law or has misapprehended the facts or has for these or other reasons made a wholly erroneous estimate of the damage suffered" (1942, A.C. at 617), and I would not, therefore, interfere with the assessment of damages.



The appellant finally contended that in any event, on the assumption that \$1125 was fixed as the damages under the Families' Compensation Act, there should be an abatement of only one-half of the \$1,000 awarded under the Administration Act because the husband would be entitled to that proportion and the child, represented by her father as administrator, to the balance. However, the child having died, the trial judge undoubtedly treated the matter in a realistic manner, knowing that the full amount allowed under the Administration Act would go to the husband. The gain in money to the husband under that Act accrued to him by reason of the death of his wife although one-half came from another source, and the total should therefore be deducted from the award under the Families' Compensation Act. In the Davies case, Mrs. Williams, one of the appellants, took all the damages awarded her because her husband's estate was under £1000 in value. Her right thereto arose under a different statute but nevertheless the £250 fixed as her damages under the Law Reform Act accrued to her by reason of her husband's death.

The appeal should be dismissed with costs.



Ponyloky

v.

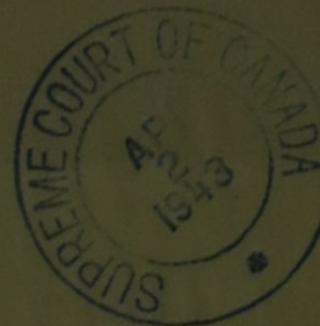
Sawayama.

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Kerwin J.

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PONYICKI

v.

SAWAYAMA

Present: Rinfret, Davis, Kerwin, Hudson  
and Taschereau, JJ.

Davis, J. -

I agree that this appeal should be dismissed  
with costs.

The only question in the appeal is the amount  
of damages which should be allowed for the husband's  
loss of his wife by death. The right conferred by  
statute to recover is restricted, to use the words of  
Lord Watson in *Grand Trunk Railway Company v. Jennings*,  
(1888) 13 App. Cas., 800, at 803, "to the actual  
pecuniary loss sustained."

Giving effect to what the learned trial judge  
obviously intended by the use of the words "without  
abatement" in his judgment, the amount fixed by him  
was \$1,125. The evidence of the probability of any  
pecuniary loss was so scanty that I do not see how  
the learned trial judge would have been justified in  
awarding any larger sum. His judgment was affirmed  
by the Court of Appeal and there is no ground upon  
which we should interfere.



P. Ponyicky

v.

T. R. Sawayama.

*We concur  
Rinfret  
R. S. Sawayama*

Present: Rinfret, Davis, Kerwin, Hudson and  
Taschereau, JJ.



Hudson, J. -

The plaintiff's wife and infant daughter, while on a public street, were struck by an automobile and so severely injured that the wife died within a few hours and the infant daughter within a few days thereafter.

Originally, there were two actions, each alleging that the accident arose through the negligence of the defendant Takasi Sawayama, for which both he and his father were responsible.

In the first of such actions, the plaintiff claims as administrator of his wife's estate (a) general damages for loss of income to the plaintiff as a result of the death of his wife and for loss of consortium; and (b) general damages for loss of expectation of life of his wife; and (c) special damages.

The second action was brought by the plaintiff as administrator of the estate of his infant daughter and claimed general damages for pain and suffering of the daughter and damages for loss of expectation of life, and also special damages.

By order these two actions were consolidated.

The defendants admitted liability and the matter was heard before Mr. Justice Sydney Smith for assessment of damages. That learned judge gave judgment as follows:

"In these consolidated actions I award damages as follows:



(a) Under the 'Administration Act'; -

(1) For loss of wife's expectation of life \$1,000.00

(2) For loss of child's expectation of life 750.00

(b) Under the 'Families' Compensation Act': -

For loss of wife's services 125.00

The above amounts are without abatement.  
Judgment accordingly."

An appeal and cross-appeal to the Court of Appeal were dismissed.

In respect of the items awarded by Mr. Justice Smith, no question is raised with reference to the amount allowed for the wife's expectation of life, nor for the child's expectation of life, but the plaintiff contends that the amount allowed for the loss of his wife's services is grossly inadequate.

Although the amount allowed for loss of expectation of life is not questioned, yet it cannot be ignored when considering the award which is made to the plaintiff in respect of the loss of his wife's services. This point was recently considered by the House of Lords in the case of *Davies v. Powell Duffryn* (1942) 1 All E. R. at p. 657. In that case the appellants, each of them suing as administratrix of her deceased husband, brought actions against the respondents for breach of statutory duty and negligence. Each claimed damages (1) under the Fatal Accidents Acts, 1846 to 1908, on behalf of the deceased's dependants, and (2) under the Law Reform (Miscellaneous Provisions) Act, 1934, in respect of the deceased's shortened expectation of life. The appellants contended that no allowance should be made in assessing damages under the Fatal Accidents Acts in respect of any damages awarded under the 1934 Act. It was held that in assessing damages under the Fatal Accidents Act, 1846, damages awarded under the Law



Reform 1934, must be taken into account in the case of dependents who will benefit under the latter Act.

There are minor differences between the English legislation and that of British Columbia, but none which would appear to be material on this point.

All of the learned judges in the Court of Appeal have agreed that the present case is governed by the Davies v. Powell Duffryn case and that, therefore, in considering what should be allowed the plaintiff in respect of his wife's services, the amount allowed him for loss of his wife's expectation of life must be taken into account.

In the present case the total amount awarded under either heading goes to the plaintiff himself, so that he gets in respect of the two headings an aggregate of \$1125.00.

Counsel for the plaintiff raised another question worded in this way, "that the learned judge erred in assessing damages under the Families' Compensation Act for the death of the said Anna Ponyicki, deceased, in that he failed to allow damages for the death of the said Anna Ponyicky, deceased, to the estate of the infant Betty Anna Ponyicky, deceased, to which damages the said infant, or her estate, is entitled under the provisions of the said 'Families' Compensation Act'."

Even if the appellant were able to overcome the initial objection that this point was not raised in the pleadings nor at the trial, I am of the opinion that on the facts here it is not well founded.

In Williamson v. John I. Thornycroft and Co. Ltd. (1940) 2 K. B. 658, it was held by the Court of Appeal that while the damages had to be assessed as at the date of the husband's death, the Court was entitled to inform its mind of subsequent events throwing light upon the realities of the case, such as the fact that one defendant had only had a short tenure



of life before her dependence was brought to an end, and that, therefore, in this case only a comparatively small sum ought to have been allowed to the widow under Lord Campbell's Act.

If we look at the realities, we must consider that the plaintiff recovers \$1125.00 in respect of his wife's death and \$750.00 in respect of his child's death, both these events taking place within a few days. It is strongly argued that even on this basis the amount awarded to the plaintiff in respect of his wife's death is grossly inadequate and, in the court below, Mr. Justice O'Halloran gave a dissenting judgment on this point. He would have allowed an aggregate of \$7,500.00.

The principles of law applicable to compensation in cases of this kind do not seem to be open to any amount of doubt. Damages are awarded for the loss of a reasonable expectancy of pecuniary benefit. See *Grand Trunk Railway v. Jennings* (1888) 13 A. C. 800; *Royal Trust v. C. P. R.* (1922) 38 T. L. R. 899. The appellant claimed damages for the loss of his wife's services as housekeeper. The evidence discloses merely that the wife acted as housekeeper and took care of her infant child, who was killed in the same accident as the wife. After his wife's death the appellant employed a housekeeper for one month at a cost of \$25.00. No other evidence of loss was given. Services rendered gratuitously may constitute a pecuniary loss under the 'Families Compensation Act', but such services must be worth more than the cost of maintaining the wife with food, clothing, etc.

The burden is on the appellant and although the amount allowed seems small, the difficulty we are met with here is that the evidence is so meagre and inconclusive that it is difficult to say that the trial Judge and the majority in the court below are clearly wrong, and, for that reason, I would dismiss the appeal with costs.



P. Ponjicky

v.

T. R. Sawayama

---

HUDSON, J.



IN THE SUPREME COURT OF CANADA



E T W E E N

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,

7015

1943

PONYICKY  
V.  
SAWAYAMA

REGISTRAR



IN THE SUPREME COURT OF CANADA



E T W E E N

PAUL PONYICKI, Administrator of the Estate  
of Anna Ponyicki, deceased,

Appellant,

-and-

TAKASHI T. SAWAYAMA and CONZO SAWAYAMA

Respondents.

RESPONDENTS' BILL OF COSTS

Taxed off

	<u>Fees</u>	<u>Dsbts.</u>
Attendance on giving security	\$ 3.00 ✓	
Fee on special case	25.00 ✓	
Engrossing and superintending printing of Factum, 10 folios @ 15¢ per folio	1.50 ✓	
5.92 Paid printer		\$ 25.92 ✓
Paid forwarding Factum		.40 ✓
Fee on Factum	50.00 ✓	
Counsel fee	200.00 ✓	
Paid postage and telegrams		5.00 ✓
Agency fee	45.00 ✓	
Fee attending to hear judgment	25.00 ✓	
Paid search for particulars to draft minutes		.25 ✓
Paid entry of judgment		10.00 ✓
Paid taxation and appointment		1.50 ✓
Paid allocatur		1.00 ✓
Paid filings		.90 ✓
Registrar's postage		

TAXED AND ALLOWED at the sum of

April 29<sup>th</sup>, 1943.

Total fees  
" dsbts.

Taxed off

Fiat for  
increased coun-  
sel fee

TAXED AT.....

~~349.50~~ 44.97  
~~44.97~~  
~~394.47~~  
~~5.92~~  
~~388.55~~  
~~400~~  
~~788.55~~

REGISTRAR



IN THE SUPREME COURT OF CANADA

---

B E T W E E N:

PAUL PONYICKI,

Appellant,

-and-

TAKASHI T. SAWAYAMA and  
CONZO SAWAYAMA

Respondents.

---

RESPONDENTS' BILL OF  
COSTS

---

NEWCOMBE & COMPANY,  
Barristers &c.,  
140 Wellington St.,  
O t t a w a, Ont.



Supreme Court of Canada



Cour suprême du Canada

**END  
OF  
FILE**

**FIN  
DU  
DOSSIER**