AN ACT RESPECTING DAMAGES RESULTING FROM ACCIDENTS TO WORKMEN. TEXT OF THE IMPERIAL STATUTE AND OF THE FRENCH LAW UPON THE MATTER

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VARIOUS

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Trieste

Quebec (Province) Attorney ...

AN ACT

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SPEECH MADE IN THE LEGISLATIVE COUNCIL, ON JUNE 1st, 1904,
BY THE HONOURABLE HORACE ARCHAMBEAULT,
ATTORNEY GENERAL OF THE
PROVINCE OF QUEBEC.

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DAMAGES RESULTING

FROM

ACCIDENTS TO WORKMEN

SPEECH DELIVERED BY THE HON. HORACE ARCHAMBEAULT, ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC, IN THE LEGISLATIVE COUNCIL, ON 1st JUNE, 1904, ON MOVING THE SECOND READING OF THE BILL ENTITLED: "AN ACT RESPECTING COMPENSATION FOR DAMAGES RESULTING FROM ACCIDENTS TO WORKMEN."

HONOURABLE GENTLEMEN,

The Bill of which I have the honour to move the Second Reading, relates to accidents which may arise from work or in connection with work.

We have no special legislation in the matter. We are governed by the general principles which apply to delicts and quasi-delicts. These principles are laid down in articles 1053 and 1054 of the civil code. If they are applied to accidents arising from work, they mean that an employer is responsible to his workmen for damages caused by the former's fault or by the fault of persons under his control.

This is what is called *Faute Delictuelle.*

An accident to a workman may be occasioned by different causes. It may be caused: 1. by the fault of the

master or employer; 2. by the fault of the workman or employee; 3. by the fault of both employer and workman; 4. by the fault of a third party; 5. by a fortuitous event or irresistible force; 6. by an unknown cause.

Fault of the master or of the workman.—In the two first cases, there can be no difficulty theorifically, in deciding who must be held responsible for any damages which may be caused by the accident. As the fault is the basis of all responsibility, in the first case the master is held responsible, and in the second, the workman

Faute commune.—When there is fault on both sides, the rule established by our jurisprudence is to apportion the damages, and the loss is divided between both parties, employer and workman in proportion to the extent of the fault of each. The victim is not entitled to full damages seeing he was partly to blame. On the other hand, he has a right to some compensation, seeing the other party was equally in fault. The extent of each party's fault is considered and the loss is divided in proportion.

This has not always been the rule applied by our courts of justice, and our jurisprudence fluctuated a long while before arriving at its present state. The divergency of opinion was due to the difference which exists between English common law and French law.

In England, the *faute commune* is called *contributory negligence*; and it matters not which is the principal or greatest fault, whether it is the employer's or the workman's fault; the question is merely what has been the proximate, the immediate cause of the accident, *causa causans*. It is the party in fault who is held responsible for the consequences of the accident. In France, the rule which is applied when there is *faute commune*, is the rule previously mentioned, viz: that the loss must be apportioned to the extent of the fault of each party.

Until recently, our jurisprudence was altogether unsettled. In 1887, in Cadieux *vs* C. P. R. (29 S. C. R. p.

170), Chief Justice Dorion spoke with approval of the French rule, adding, however, that up to that time the doctrine had not been adopted here. Since 1887, several contradictory judgments have been rendered. But the French rule has prevailed, and was finally sanctioned by the Supreme Court, in 1899, in Price *vs* Roy (29 Supreme Courts Reports, p. 494).

Fault of a third party.—Thirdly, an accident may be due to the fault of a third party.

In this case, if the party in fault is an outsider, a person over whom the master has no control, the victim has recourse against the third party alone. It is the same rule which is applied here, namely, that every person is responsible for the damage caused by his fault, or by the fault of persons under his control.

But if the party in fault, instead of being a stranger, is a fellow-employee, a fellow-workman, the master or employer under the same rule is held responsible. However, the master is held responsible only when the fellow-workman, whose negligence caused the injury, committed the offense while at work in the execution of a duty assigned to him by the master. Otherwise the negligent party would not be under the control of the master, and the latter could not be held responsible.

Here again, our jurisprudence varied, and was contradictory for the same reason as for the *faute commune*, viz: the difference which exists in the matter between English and French laws.

The French doctrine is the rule I have just mentioned: the employer is responsible if the negligent party is in his employ, and if he caused the accident while in the execution of his duties.

In England, the rule is different. There, the master is not liable if he had selected proper and competent workmen. It is the doctrine called *of Common Employment.* The workman is assimilated to a tool. When the master

has furnished his workman with adequate materials and proper tools, he is not liable for any accidents which may be caused by these same tools. Competent workmen may be negligent, and may be the cause of some accident. In both these cases, the master has taken every possible precaution; he is not in fault, and can not be held responsible towards the victim for the accident.

Such was the rule of English law previous to 1880. Since that date, two statutes have altered the principle heretofore in force, and, on that point, English law is today exactly the same as the French law and our own. The first statute, passed in 1880 (The Employers Liability Act of 1880), enacted that the employer would be held responsible if the fellow-workman, whose negligence caused the accident, held in the establishment a position of authority over the injured man, and ordered him to do the act which led to the accident. A second statute, passed in 1897, (The Workman's Compensation Act, 1897) sweeps away that distinction, and lays down the rule that the employer is responsible for damages caused by one of his employees to a fellow-employee, in every case, even if the negligent workman was not in a position of authority over the injured man, and did not order him to do the act which led to the accident.

In this province, certain judges began by applying the doctrine of English law as it existed previous to 1880. But our jurisprudence seems to be settled to day; the master is always liable for damages caused by his workmen in the execution of their duties. The Supreme Court itself sanctioned this rule, in 1887, in Robinson *vs* C. P. R. (14 Supreme Court, pp. 105 & seq. *Vide* page 114 with reference to the question of responsability for negligence of fellow-workman).

Fortuitous Event —Irresistable force.—An accident may also be caused by a fortuitous event or by irresistable force.

In such a case, there is no fault, either on the employer's part, or on the workman's.

Therefore, as the basis of liability is fault, each party bears the damage caused by an unavoidable accident, due to a fortuitous event or irresistable force.

Unknown Cause.—Here, again, nobody is in fault, since the cause of the accident is not known. No liability is incurred either by the master or by the workman. They both bear the damage caused by the accident, without recourse, the same as in the case of fortuitous event or irresistable force.

We also may assimilate to an unknown cause, the case where it is certain there is fault somewhere, but where there is no evidence as to at whose door it might be laid; who is in fault? Is it the master; is it the workman; is it a third party? The victim of such an accident has no recourse.

To summarize the rules which we have just laid down, it is the fault which is the basis and foundation of liability in our law. Every person who is in fault, personnally, or through some person under his control, is liable for any accident which may result from that fault.

If there is no fault, as in the case of fortuitous event or irresistable force, or of unknown cause, or again of some fault which can not be fixed upon any one in particular, each party bears the damage incurred through the accident.

The object of the Bill which I have the honour to present is to replace, in case of accidents arising from work, the principles which we have briefly examined, namely: the theory of liability founded upon fault, by a new principle of responsibility. It consists in the employers being held responsible for all the consequences of any accident, though they be not in fault, to the same