

be said to have. Was its death a damage to the parent within the meaning of the Act? Having regard to the position in life of the latter, I cannot hold that in point of law it was not, or that in the case of a child of that description damages to be estimated by such considerations as the decided cases warrant may not be sustained. The question is for the jury, upon the evidence."

The remainder of His Lordship's opinion deals with the question of the necessity to prove actual benefit received and that of the quantum of damages, except where he said, "I am on the whole of opinion that on the evidence a recovery is warranted by the rule or principle established in the *Pym* case, etc."

The only other opinion published, except that of Moss, C.J.O., in dissent, is by Mr. Justice Garrow, who starts by saying: "No case of authority in this province was cited, nor have I been able to find one, in which a recovery was had in the case of the death of a child so young (four years) as that of the plaintiff. The nearest is *Ricketts v. Village of Markdale*, 31 O.R. 610, in which the age was eight."

The next paragraph relates to actual benefit and he winds up as follows:—

"A reasonable prospect of future pecuniary benefit, although somewhat longer postponed, may not unreasonably be regarded as almost as certain in the case of a four year old child as in that of one twice that age. I at least am unable to see how it can be said that in the one case there is evidence proper for a jury and in the other none. If it appeared that the infant was a cripple or an imbecile, or if its age was so tender that there could be no reasonable evidence given of its mental or physical capacity or condition, it would be otherwise. But in the present case the evidence clearly discloses that the infant killed was a bright and capable boy, both mentally and physically, and I, therefore, agree, reluctantly I admit, that there was evidence which could not have been withdrawn from the jury; and the judgment must therefore be affirmed."

Their Lordships say there was evidence proper to be submitted to the jury. They must mean evidence of such "a reasonable and well-founded expectation of pecuniary benefit as