

for in that enactment; and child there includes step-son and step-daughter.

There is no doubt of my power to apportion the damages; that is expressly provided for in The Fatal Accidents Act; sec. 9; but the difficulty of so doing is increased by the fact that the amount recovered is an arbitrary sum.

Different methods have been adopted in dividing money thus recovered; in some cases statutes of distributions of deceased's estates have been taken as the guide, and indeed in some states seem to have been made, by legislation, to govern; but, except where they are made by legislation to rule, they cannot be the best guide; and they would be helpless in this case. That which the law says ought to be done with the property of an intestate is obviously no very strong evidence of that which he would have done with his means, if he had not been killed. The true guide must be the actual pecuniary loss of each of the claimants.

The only damages which can be recovered in such an action as this are, reasonable damages, for pecuniary loss only, sustained by persons coming within the provisions of the Acts, giving such a right of action, limited, in some cases, to a maximum fixed amount.

Accordingly there seems to me to be but two ways in which an apportionment can rightly be made in cases such as this: first, by finding the amount of pecuniary damages which each of the claimants has really sustained; and, if the whole be more or less than the fixed sums, awarding to each his proper proportion; or, second, by finding the proportion, which the right of each bears to the others, and dividing the amount available accordingly; and the latter method is better applicable than the former to the circumstances of this case.

The case would be quite different, in the apportionment of the damages, if the children were the deceased's own. It is improbable that, had he lived, they would have fared, in a pecuniary sense, from his bounty, as they would, by reason of his duty as well as his bounty, had they been his own; and it is quite probable that any of such benefits as they might have received through his earnings would largely have been only indirectly through his wife, their mother.

There is, I think, enough evidence now before me to warrant a finding that the pecuniary losses of the children