

W. B. Kingsmill, for the appellant company.

G. Lynch-Staunton, K.C., for the respondents.

HON. SIR WM. MEREDITH, C.J.O.:—The action is brought by the executors of James Goodwin, deceased, on behalf of his seven children, to recover damages under the Fatal Accidents Act, for the death of the deceased, who was killed owing, as alleged, to the negligence of the appellant company. That the death was caused by the negligence of the appellant company is not disputed, but it is contended that the persons on whose behalf the action is brought have suffered no pecuniary loss by his death, or at all events that the damages should have been assessed at a much less sum than \$1,650, the amount awarded by the Chancellor.

The facts, having regard to which the question in dispute is to be determined, are not in controversy. The deceased was a superannuated Methodist minister and was in receipt of an allowance of \$330 a year, during his life, from the Superannuation Fund of that church, and he was possessed of property of the value of about \$23,000, which, by his will, he left to his children in equal shares. He was eighty-two years old and his expectation of life, according to the mortality tables, was shewn to be 3.90 years, but according to the testimony of Dr. Smith, a medical witness, who was well acquainted with the deceased, and had been his physician for several years, his physical condition was such that he "might easily have been expected to live for ten years."

The Chancellor came to the conclusion that the reasonable expectation of life of the deceased was five years, and being of opinion that upon the evidence there was a reasonable expectation that what the deceased, if he had lived, would have received from the Superannuation Fund, would have been saved by him and have passed at his death to his children, he assessed the damages on that basis, allowing as the pecuniary loss sustained by the children five of the yearly payments of the superannuation allowance.

In support of the appeal, it was contended, first, that the children of the deceased had sustained no pecuniary loss by his premature death because his whole estate passed to them at his decease and they had thus been pecuniarily benefited by it; second, that at all events they had benefited by the accelerated enjoyment of his estate more than they had lost by the superannuation allowance having ceased; and third, that