

is not published, but there is nothing in the report to shew that their attention was especially called to the probability of the child, had he lived, being able to assist his father financially in the future and the importance of such expectation to the plaintiff's case. The only evidence, apparently, on which such expectation could be based is set out in the dissenting opinion of Moss, C.J.O., and will be referred to later.

Meredith, C.J., delivered judgment for the Divisional Court, and after dealing with questions of misdirection complained of, evidence as to negligence, the quantum of damages, and the point whether or not it is necessary in these cases to prove actual benefit received or if a reasonable expectation for the future is sufficient of itself, concludes as follows:—

“Though no reported case had been cited, nor have I found any, in which an award of damages has been made in the case of a child so young as the deceased child in this case, it is impossible to say that, as a matter of law, his being of such tender years precluded the plaintiff from obtaining the benefit of the Act, the provisions of which he is invoking by his action. All that can be said is that the younger the child is the more difficult it is to determine whether there is such a reasonable and well founded expectation of pecuniary benefit as can be estimated in money, and to estimate the damages which should be awarded; and there remains, as a insuperable difficulty in the way of the defendants' success, the fact that it was for the jury to determine both of these matters, there being, as I have already said, evidence proper to be submitted to them.”

Mr. Justice Osler says:—

“It is the extreme youth of the child for whose death this action is brought which alone causes hesitation in maintaining the plaintiff's right to recover. The damages recoverable under the Act cannot be founded on sentimental considerations, but are to be given in respect of some pecuniary loss only, and that not merely nominal, caused by the death. Here the child was an infant of four years of age, healthy, intelligent and with as good a prospect of prolonged life as any infant of that age can