REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

Full Court.]   McKeown *v.* Toronto R.W. Co.   [Sept. 20.

Fatal Accidents Act—Death of child of four years by negligence
of defendants—Pecuniary loss of parent—Reasonable expec-
tation of benefit—Damages.

The plaintiff sued under the Fatal Accidents Act to recover
damages for the death of his son, aged 4 years and 3 months, occa-
sioned by the negligence of the defendants, and obtained a verdict
for $300.   This verdict was affirmed by a Divisional Court,
and the defendants obtained leave to appeal to the Court of
Appeal, on the sole question whether there could be a recovery of
damages, the child being of such tender age, and no special cir-
cumstances touching the question of the right of damages appear-
ing or being found by the jury.

Held, per Osler, J.A. :—It is the extreme youth of the child
.   .   .   which alone causes hesitation in maintaining the plain-
tiff'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
4 years of age, healthy, intelligent, and with as good a prospect
of prolonged life as any infant of that age can 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 considera-
tions as the decided cases warrant may not be sustained.   The
question is for the jury, upon the evidence.   It is settled that
pecuniary benefit or advantage need not have been actually de-
rived by the beneficiary previous to the death, and therefore the
then present inability of the deceased to confer such benefit or
advantage is not conclusive against the right to recover.   The pro-
bability of the continuance of life and the reasonable expectation