

Canada Law Journal.

VOL. XLVI.

TORONTO, JANUARY.

Nos. 1 & 2.

LORD CAMPBELL'S ACT.

The last number of the Ontario Law Reports contains the decision of the Court of Appeal affirming the judgment of a Divisional Court and of Chief Justice Falconbridge in the case of *McKeown v. The Toronto Railway Co.*, 19 Ont. L.R. 361, which carries the principle of Lord Campbell's Act considerably farther than any court has gone hitherto. In this case a parent recovered \$300 damages for the loss of a child slightly over four years of age, who was killed through the negligence of the defendant company.

In view of the importance of this decision, it is not surprising to find considerable diversity of opinion among the judges. Chief Justice Moss and Mr. Justice MacLaren dissented, and Mr. Justice Garrow gave a reluctant assent in the Court of Appeal; and, while Mr. Justice MacMahon concurred with his two colleagues in the Divisional Court, he is reported as saying, "I give a grumbling assent."

The majority in both courts followed the decision of a Divisional Court in *Ricketts v. Village of Markdale*, 31 O.R. 180, 610, in which the child killed was eight years old. That case, however, contained an important element which was wanting in the other. The judge who tried the case, without a jury, found as a fact that the child had already been of pecuniary benefit to his father and, as pointed out by Mr. Justice Robinson, there was good reason to assume that, had he lived, such benefit would continue and increase as had been the case with his older brothers. There is no such finding in the *McKeown* case, nor any evidence on which one could be based.

The jury's findings are given in the report. They found negligence by defendants, negatived contributory negligence and assessed the compensation at \$300. That is all. The judge's charge