

of the interest then due, which was a debt in addition to what was contained in the bill. The argument that the right to recover this accessory debt followed the right to recover the principal debt was advanced, as I have already pointed out, in *Lumley's* case and was repelled.

I am therefore of opinion that our judgment should be in favour of the pursuer for the amount of the loan and 5 per cent. from its date till paid, for which only (although different from the conclusions of the summons) the pursuer now insists. The form of the Lord Ordinary's interlocutor however will require to be altered.

The Court pronounced the following interlocutor:—

“Recal the interlocutor of Lord Well-wood dated 8th June 1891: Find and declare that on 13th August 1885 the pursuer advanced or lent to the deceased John Charles Hope Johnstone the sum of £300, and that the same, with interest thereon at the rate of £5 per cent. per annum from said 13th August 1885 until payment, is a just and lawful debt resting-owing by the said deceased John Charles Hope Johnstone, and that the pursuer is a just and lawful creditor for the same, and has an interest in the means and estate of the said deceased John Charles Hope Johnstone for payment thereof,” &c.

Counsel for the Pursuer—Hope. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Defender—Younger. Agents—Carment, Wedderburn, & Watson, W.S.

Wednesday, January 30.

SECOND DIVISION.

[Lord Kincairney, Ordinary.]

MORRIS v. BOASE SPINNING COMPANY, LIMITED.

Reparation—Master and Servant—Personal Injury—Culpa—Factory and Workshop Act 1878 (41 and 42 Vict. c. 16)—Child.

A girl under the age of fourteen who was employed in a spinning mill as a full-timer, when, under the provisions of the Factory Act, she should only have been employed as a half-timer, met with an accident which caused her death. In an action of damages at the instance of her father, against her employers, the jury returned a verdict for the pursuer. The Court granted a new trial on the ground that the verdict was contrary to the evidence, in respect that it was proved (1) that the work in which the pursuer's daughter had been engaged was quite safe for a child, and that the accident had been caused solely by her own act in removing the guard of a dangerous machine; and (2) that the breach of the Factory Act in employing the pursuer's daughter as a full-timer instead of a half-timer had not contributed in any way to the accident.

The Factory and Workshop Act of 1878 (41 Vict. c. 16) provides, sec. 12—“With respect to the employment of children in a textile factory the following regulations shall be observed—(1) Children shall not be employed except on the system either of employment in morning and afternoon sets, or of employment on alternate days only. (5) A child shall not be employed two successive Saturdays, nor on Saturday in any one week if on any other day in the same week his period of employment has exceeded five and a-half hours.” Sec. 96—“In this Act, unless the context otherwise requires, the expression ‘child’ means a person under the age of fourteen years.”

This was an action of damages by Robert Morris, blacksmith, Lochgelly, Fife, against the defenders, the Boase Spinning Company, Limited, Hawkslaw, Leven, Fifeshire, for the death of his daughter, who had been killed by the carding machine in the defenders' works. The pursuer averred that his daughter, who was under fourteen years of age, had been employed by the defenders in their carding room, at work, which on account of her age and inexperience was dangerous owing to the proximity of the carding machine; that, though she was a child within the meaning of the Factory Acts, the defenders, without obtaining her birth certificate or making any inquiry regarding her age, education, or fitness for such employment, or obtaining the certificate of fitness required by said Acts, had culpably and negligently employed her as a full-timer in the carding machine section, where on account of the danger connected with said machines none but grown-up persons were employed, and that the accident, which resulted in his daughter's death, was due to the fault of the defenders in failing to observe the provisions of the Factory Act, and in employing her in dangerous work unsuited to her age.

The defenders pleaded—“(3) The accident condescended on not having been caused by the fault of the defenders, they are entitled to absolvitor. (4) The said accident having been caused, or at any rate contributed to, by the fault of the pursuer's daughter, *et separatim* of the pursuer himself, the defenders should be absolved. (5) The defenders having, in employing the pursuer's daughter, been misled by her misrepresentation, and the pursuer having induced, or at any rate failed to warn the defenders against such misrepresentation, he is personally barred from holding the defenders responsible for his daughter's death.”

The case was sent to trial by jury on the usual issue of fault.

The evidence showed that the pursuer's daughter was under fourteen years of age at the time of the accident; she entered the mill in or about the last week of March 1894, and had never been employed in a mill before; when asked her age she said she was “going seventeen,” and from her appearance she might have been supposed to be that age; she was accordingly employed as a full-timer in the

carding room; it was not the custom in this factory to employ half-timers in this room; her duty was to carry tow in baskets to the women who fed the carding machine; on Saturdays she had the additional duty of cleaning the wheels of the machine (which were taken off the machine for that purpose), and of sweeping round the machine; these duties were safe and the accident could not have happened, unless the pursuer's daughter had lifted the guard from the carding machine in order to clean it while in motion, which she was not intended, and ought not, to have done.

On the employment of young people in the carding-room, David Galloway, manager of a spinning-mill in Kirkcaldy, called by pursuer, deponed—"I am the manager in Yule's spinning-mill for thirteen years. We have similar machines, but don't employ young people in carding-room where such machine is. Cross.—We employ two feeders and a weigher. Half-timers too young to avoid danger. There is a danger of opening a shutter. Young person less sense than whole-timer. Half-timers never so employed where I have been."

H. M. Robertson, H. M. Inspector of Factories (witness for defenders), deponed—"I was shown room and machine where accident happened. Everything unobjectionable. Mill guarded and boarded in. No more danger to a child under fourteen there than in any other part of factory. Half-timers (children under fourteen) are, in my experience, employed in carding-rooms such as this."

D. H. Saunders, merchant in Dundee (witness for defenders), deponed—"Great experience in carding works and the employment of children in carding works. No more danger in carding-room than any other part of work. There are thousands of children employed in carding-room such as this in Dundee, and I never knew of an accident."

The jury returned a verdict for the pursuer, and assessed the damages at £50.

The defenders moved for and were granted a rule.

The pursuer argued—The machine was dangerous even if it was fenced, and a young person such as the deceased was not able to understand the danger she was in while trying to do what she thought was her duty in sweeping this machine. This arose from the fault of the defenders in employing a child in the carding-room, for there was evidence that there was danger in employing a young person in such work, and she would not have been so employed if the manager of the works had made proper inquiries about her age, as directed by the Act. The fault of the manager thus conduced directly to the accident—*Gibb v. Crombie*, July 6, 1875, 2 R. 886.

At advising—

LORD JUSTICE-CLERK—This is certainly rather a peculiar case. It is not one of that common class of cases that go before a jury, where a young person does some act through carelessness which leads to an accident, and it is alleged that from childish want of discretion an act might be done

which a person of maturer years if employed at the job would not have committed.

The circumstances of the case are these—It was the ordinary duty of the girl who was killed to carry the material to be carded in baskets into the room where this machine was, and I suppose to carry away baskets of the carded material after it had passed through the machine. On Saturdays she had in addition the duty of cleaning the wheels, and of sweeping the floor round about the machine. The evidence shows that when the wheels had to be cleaned they were taken off the machine altogether, so that no danger could have arisen during the cleaning. It seems plain that there was nothing dangerous in the performance of any of the duties I have mentioned.

What happened then was this. The girl, while the machine was still running, for the purpose of allowing other workers to clean the brushes, although it was not doing any work, went to the back of the machine with her long handled brush, and removed one or two of the shutters placed there to prevent anyone having access to the dangerous part of the machine unless they deliberately tried to get access. She then crawled in lying on her face, and the carding part of the machinery seems to have caught her hair and drawn her into the working machinery, with the result that when she was found she was quite dead.

It is plain that such an accident as this was not in contemplation of anyone connected with the works, because the poor girl had removed the screens which were put up with the intention of providing or protecting against accident, and the pursuer must go the length of saying that it was a dangerous thing to allow a girl of fourteen years of age to be in the room in which this carding machine was placed, fenced and protected as the dangerous part was. I cannot assent to such a proposition.

The only other question is, whether under the Factory Acts this girl should not have been employed at all in the room where this machine was placed. In considering that question we have to look to the evidence to see first if there was any fault in the defenders in placing this girl in the carding-room to do such work as I have described. It would not have occurred to me that the circumstances suggest anything wrong in the defenders acting as they did; of course, if it were shown to be the almost universal practice not to employ girls of that age at such work in such a place, there might be something to be said, because that would show that the persons best able to judge of the matter were of opinion that there was danger to children. One witness, David Galloway, says that in the mill where he is manager, young persons are never employed in the carding-room where such a machine is, and it is not the practice in this factory. But there is practically uncontradicted evidence that it is the practice throughout the country to employ thousands of children in such rooms at such work, and that no accidents happen from their employment. Now, if such is

the practice in mills it would be a very strong thing to say that the defenders were in fault in employing the girl in the way they did. They cannot be condemned if they do what has been done as matter of daily practice, and has not led to injury.

But further, there was nothing in the employment of this girl as a full-timer, who should only have been employed as a half-timer, to lead to the danger of any accident happening, because there was no danger unless she undid the shutters of the machine. The only case that occurs to one's mind where danger might result from the employment of a young person in work to which an older person is usually put, is in that class of cases where the danger arises from such a source as occurred in the case of *Gibb v. Crombie*, July 6, 1875, 2 R. 886. In that case two lads under the age of eighteen were employed by the manager of the mill at night work, when the Act said that only persons over eighteen should be employed in such work; one of them was injured, and he recovered damages from the millowners, because they had not used sufficient diligence to ascertain the lad's age before they employed him at night work. In that case, however, the lads were engaged to do an illegal work which the Act of Parliament forbade, and it is plain that it is more dangerous to employ a young person at night work than an older person, because the risk of exhaustion or liability to succumb to fatigue is greater. But here there is no question of exhaustion or fatigue. The girl took off the guards of the machine, an act which was in no way connected with her work, and thus made a danger by her own deliberate act. She was found inside the machine, a place where she had no call to be in doing her work. Upon the whole matter I do not think there is any evidence to support the verdict of the jury, and I would propose that the rule should be made absolute for a new trial.

LORD YOUNG—I am of the same opinion. The question, which was one of pure fact for the jury, and which I left to the jury, was whether upon the evidence which had been led it was blameworthy on the part of the defenders to have employed this girl in the carding-room at all. That evidence consisted of the girl's age, and the account laid before the jury of the dangers which existed in the carding-room. There was no law whatever in the subject, and it was a question for the jury whether it was blameworthy of the defenders to employ a girl of this age in such a place. There was evidence of the opinion of experts on such matters led on both sides as to its being dangerous or safe. One witness for the pursuer said it was a dangerous practice, but there was what I must call an overwhelming body of evidence on the other side that it was quite a safe practice, and that it was commonly practiced in mills to the extent not merely of hundreds but thousands of girls every day.

The jury in the exercise of their discre-

tion found that it was a dangerous practice and involved actionable fault on the part of the employers. What we have to consider is, whether there was reasonable evidence to support that view. I think there was not, and I admit the verdict surprised me.

There may have been—I rather think there was—a violation of the Factory Acts in employing this girl as a whole timer and paying her accordingly, and in her not getting the periodical holiday on Saturday, and there would be liability to a penalty under the Acts for the violation, but that would not support the present case unless there was something to connect it with the accident. There is no evidence in support of that view, and there was no rational ground for suggesting that they were connected, unless it was that, if the girl had not been employed as a full timer, she would not have been there at all. There was no evidence that she would have been taken on as a half timer, but that was no evidence really to justify the verdict. The question really put to the jury was whether, taking her as a half timer, there was any *culpa* in putting a girl of that age to work on that Saturday or at all. If there was, then undoubtedly that conduced to the accident, which must then be attributed to that *culpa*. I agree that we are left without any statement in the evidence at all to support that view.

LORD RUTHERFURD CLARK—I think there is no evidence to support the verdict.

LORD TRAYNER—I agree.

The Court made the rule absolute and granted a new trial.

Counsel for the Pursuer—Guy—Sandeman. Agent—Charles T. Cox, W.S.

Counsel for the Defenders—H. Johnston—Constable. Agent—Andrew H. Hogg, S.S.C.

HOUSE OF LORDS.

Friday, November 16, 1894.

(Before the Lord Chancellor (Herschell) and Lords Watson and Macnaghten.)

NORTH-WESTERN BANK, LIMITED
v. JOHN POYNTER, SON, & MACDONALDS.

(*Ante*, February 2, 1894, p. 401, and 21 R. 573.)

Right in Security—Pledge—Re-delivery of Pledge to Pledger as Agent for Pledger—Ship—Bill of Lading.

On 1st April 1892, Page & Company, merchants in Liverpool, obtained an advance of £5000 from a bank in Liverpool upon the security by way of pledge of a cargo of phosphate rock, then afloat, and handed the bill of lading to the bank. It was agreed that the bank should have immediate and absolute power of sale