

differs from that of England on this matter. I therefore have come to the conclusion that the interlocutor of the Lord Ordinary is right, and should be affirmed.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

The Court affirmed the interlocutor of the Lord Ordinary, with additional expenses against the claimer.

Counsel for the Claimant and Reclaimer Alfred Henry Beal—Sol.-Gen. Pearson—Shennan. Agent—John C. Junner, W.S.

Counsel for the Claimants and Respondents M'Lennan & Urquhart—Asher, Q.C.—Dickson. Agents—Watt & Anderson, S.S.C.

Friday, November 7.

## SECOND DIVISION.

[Sheriff of Lanark.]

LITTLE v. PATERSON & SON.

*Reparation—Dangerous Machine—Damages—Relevancy.*

A girl sustained injuries to her hand while working at a brick-moulding machine. In an action of damages against her employers she averred that the accident was occasioned through the fault of the defenders in not having the machine properly fenced. She did not aver that the machine differed either in construction or working from ordinary machines used for a similar purpose, or that it might have been made safe, or that it was the practice to fence such machines. *Held* that the action was irrelevant.

On 6th March 1890, Kate Little, while working at a brick-making machine belonging to her employers, John Paterson & Son, builders and brick manufacturers, Glasgow, received severe injuries to her left hand. She brought an action of damages both at common law and under the Employers Liability Act 1880 in the Sheriff Court at Glasgow against her employers, in which she averred—"The clay, after being sorted, is ground with as much water as is required to make it into a stiff paste. This clay-paste is then forced down the vertical column of the brick-making machine by a vertical plunger, and about half-way down the column the clay goes to the two sides of the machine into the moulds. The clay is forced into one of the moulds (in a sliding mould, which contains two moulds) by means of a vertical moving piston or plunger. When the mould is filled it moves to one side till it comes below another vertical moving piston or plunger (this is one of the stamps as it is called), which forces the now formed brick out of the mould on to a board covered with cloth, which rests on two horns or brackets, forming a platform or table for the brick

to fall on. This board, when the brick has fallen, is lifted up by a girl, and carried to a barrow which stands close by, and another board is placed on the horns ready to receive the next brick pressed out from these sliding moulds when the stamp comes down again. The machine has two stamps, and when one of the stamps has pressed out a brick from the sliding mould it rises again, then the mould slides along in a horizontal direction till the other mould is below the other plunger or stamp (this mould having been filled by the centre plunger when the stamp was pressing out the brick out of the first mould), then the brick is pressed out on to a board the same as in the other case. The mould then moves again into the position already mentioned. The three plungers or pistons are worked by means of a horizontal revolving cam, the sliding mould by means of a crank. . . . The machine in question, at the positions where the pursuer and the other girls were set to remove the bricks as they fall on the board, is of a most dangerous character. The distance from the surface of the board to the under face of the slide, which passes like a knife with regularity about twenty times per minute, is only about 7 inches. When the brick is resting on the board the distance between its top surface and the slide referred to is only about 3½ inches. If the operator therefore should happen to raise the board a few inches too high, her thumb and other fingers would come within the area of the slide's motion, and would be cut off or mutilated by it. Accordingly, pursuer was lifting the board off the horns, and finding that it had stuck on the horns owing to some clay having got underneath she was forced to apply an upward pressure, with the result that the thumb of her left hand was brought within the range of the slide's motion, and her hand was severely mutilated, and the thumb cut clean off. . . . The said accident to pursuer was occasioned by the fault and the culpable negligence of the defenders, or those for whom they are responsible, in having failed to take reasonable and adequate precautions for the safety of pursuer. The occurrence of this or any similar accident could have been easily prevented and rendered impossible by having the machine properly fenced and protected. The pursuer has thus been seriously and permanently disabled through the culpable fault or negligence of the defenders, or those for whom they are responsible. As before described, pursuer's work is carried on within a few inches of the moving machinery, which is entirely open, and it constitutes a serious danger to anyone working in the proximity. . . . It is believed and averred that a number of girls and others have had their hands mutilated in the same manner as the pursuer was, and that these injuries have been sustained under similar circumstances in consequence of the defenders' failure to have the machines fenced and protected."

The pursuer pleaded—"(1) The said Kate Little having been permanently injured, as before narrated, through the fault or negligence at common law of the defenders, or

those for whom they are responsible, she is entitled to decree in terms of the first of the alternative conclusions of the petition, with expenses. (2) Pursuer having been permanently injured through the fault of the defenders, or those for whom they are responsible, under the Employers Liability Act 1880, she is entitled to compensation in terms of the second alternative conclusion, with costs. (3) The defenders, or those for whom they are responsible, having been in fault in failing to have fenced or protected the machinery in question, as they were bound to do, . . . they are liable to the pursuer in terms of the first conclusion."

The defenders pleaded—" (1) No relevant case."

On 9th June 1890 the Sheriff-Substitute (LEES) pronounced the following interlocutor:—"Sustains the first plea-in-law stated for the defenders: Dismisses the action, and decerns: Finds the pursuer liable to the defenders in expenses."

The pursuer appealed to the Second Division of the Court of Session, and argued—The machine might easily have been fenced. Five girls had been mutilated by the machine prior to the pursuer's case, and this series of accidents might have shown the defenders that further safeguards were necessary.

Argued for the defenders—It was essential that some mode of fencing the machine should be stated on record. No averment was made that the usual precautions had not been used—*Moore v. Ross*, May 24, 1890, 17 R. 796; *Waterston v. Murray & Company*, July 1, 1884, 11 R. 1036; *Forsyth v. Ramage & Ferguson*, October 25, 1890, 23 S.L.R. 26.

At advising—

LORD JUSTICE-CLERK—The pursuer here states as the cause of her injury the neglect of her employers in not having fenced the machine for moulding bricks at which she was working. There are no grounds for holding, on the pursuer's own statements, that this machine was in any way different from similar machines as ordinarily used. If it was the practice to fence such machines, that could easily have been averred. We must therefore take it that this was an ordinary machine used in the ordinary way, and in its usual state. It is said for the pursuer that she would not have been injured if the machine had been fenced. But in my opinion the defenders' contention is sound, that if the pursuer alleges that the accident was caused by the faulty arrangement of the machine in question she must aver not only that the machine might have been made safe, but must give some description of the precautions required for her safety. I therefore think that the interlocutor appealed against should be affirmed.

LORD YOUNG—I am of the same opinion. I should not, however, like to put our judgment on the absence in the condescendence of the pursuer of any specification of the mode in which danger might be averted. I put my judgment on this ground, that there is no averment on record that this

machine was not of such a construction or in such a condition that a master might use it in his works with perfect safety to his servants. If the pursuer had averred that the machine was of a novel construction or in bad condition all would be right. But nothing of that kind is averred here. There is no suggestion that anything was being done unusual or out of the way. A mere statement that a safer machine might be invented, or that a fencing might be constructed to make the work safer, will not make this a relevant case.

LORD RUTHERFURD CLARK—I also think that we must take it that the machine was of the ordinary kind used in many other brickfields throughout the country, and worked in the same manner as other machines of a similar kind are worked. I do not think that in such circumstances there is any relevant case on record. I agree with Lord Young's opinion.

Counsel for the Pursuer—A. S. D. Thomson. Agent—W. A. Hyslop, W.S.

Counsel for the Defenders—Asher, Q.C.—Guy. Agents—Macpherson & Mackay, W.S.

Thursday, October 30.

## FIRST DIVISION.

[Lord Trayner, Ordinary.

### CALDER v. LOCAL AUTHORITY OF THE DISTRICT OF THE COUNTY OF LINLITHGOW.

*Contagious Diseases (Animals) Act 1878 (41 and 42 Vict. c. 74), sec. 30, sub-sec. 7—Power of Local Authority to Refuse to Pay Compensation for Animals Slaughtered by their Order—Form of Resolution by Local Authority to Withhold Compensation.*

The Contagious Diseases (Animals) Act 1878 provides, sec. 30, sub-sec. 7, that a local authority may, if they think fit, withhold compensation, either wholly or partially, in respect of an animal slaughtered under that Act by their orders, where the owner or the person having charge thereof has in their judgment been guilty in relation to the animal of an offence against the Act.

In consequence of an outbreak of pleuro-pneumonia a local authority, in exercise of their powers under the above Act, caused a herd of cattle to be slaughtered. With regard to certain of the animals slaughtered it was alleged that offences had been committed against the Contagious Diseases Acts, or the regulations made by the local authority in terms thereof, and in accordance with section 179 of the Animals Order of 1886 the local authority gave the owner an opportunity of making representations with regard to the alleged offences. They subsequently minuted a resolution to the effect, that