JOHN WEEMS, ... APPELLANT (*a*).
JANET MATHIESON (WIDOW), . . RESPONDENT.

1861
May 31*st*.

1. *Dangerous Works—Obligation of Care cast on the Master.*—The master of dangerous works is bound to be careful to prevent accidents to those employed by him. If his machinery or apparatus be not staunch and appropriate, or if he permit it to be used without proper guards, and mischief consequently arises, he will be responsible.

Per Lord Wensleydale: The accident arose in consequence of the master not having taken the precaution to secure the safety of the workmen employed, and he is responsible, according to the cases decided in this House, particularly the case of the Bartonshill Colliery (*b*).

Per Lord Cranworth: All that the master is bound to do is to provide machinery fit and proper for the work, and to have it superintended by himself or his workmen in a fit and proper manner.

2. *Damages to a Mother for Loss of her Son.*—Where a mother sought reparation from a master of works for the loss of her son, he having been killed by an accident occasioned through the master's default: Held by the House, that (as the mother had a legal claim on her son for support, and as he actually was supporting her at the time of his death,) the mother's claim was valid.

Per Lord Cranworth: The right of a mother to maintain such an action as this is beyond doubt.

Per Lord Brougham: It is established, not only that in point of fact this son did maintain his mother, but that in point of law he was bound to maintain her to the extent of his ability.

Per the Lord Chancellor (*c*): This son, who was of the age of 21, and able to maintain his mother, might have been compelled to do so by process of law.

(*a*) On the death of Mrs. Mathieson the action was insisted in by Mrs. Love, her daughter and executrix.

(*b*) *Suprà*, vol. 3, p. 266. (*c*) Lord Campbell.

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Per the Lord Chancellor: Even if there was no legal obligation on the part of a child to maintain the parent, the imperfect moral obligation would have been sufficient to raise an action upon, the son being her only support at the time of his death.

3. *Relevancy of Summons.*—Observations of the Law Peers, showing the importance of having a relevant summons, and the mischief which may arise from the want of it, even in the last resort.

Per Lord Cranworth: I think it right to state that however distressing it might be to let such a matter go off upon a point of form, it would have been our duty to do so if the summons had not been relevant.

4. *Rule under the Judicature Act,* 6 *Geo.* 4. *c.* 120. *s.* 40.—Per the Lord Chancellor: The Inner House do not by their Interlocutor repeat the finding of the Lord Ordinary; but they refer to his finding, and adopt it as their own, which is as good as if they had in express terms repeated it.

IN this case, which commenced before the Sheriff of Renfrewshire, and came afterwards by advocation to the Court of Session, Mrs. Mathieson, a widow, by her summons dated 3rd May 1857, stated that her son, a journeyman tinsmith, aged 21,—

Was killed in the employment of the Defender Weems at his works, on or about the 12th day of November 1855, while working, by direction of the Defender, or his manager, or other person for whom he was responsible, at the lower end of a cylindrical air-heater made of sheet iron, and weighing about two tons, which had been, by the Defender or some person or persons for whom he was responsible, raised from the ground, and suspended perpendicularly in the air between three shear-poles, by means of blocks and chains attached to the apex of the poles, and to a gland with two bolts placed round the circumference of the heater near the upper end thereof, which gland or bolts, from want of due skill or attention on the part of the Defender, or some person or persons for whom he was responsible, were insufficient in strength or construction, or were unskilfully applied to the purpose of suspending the heater, or the chains were negligently or unskilfully attached to the gland, in consequence of which one or both of the gland-bolts broke, or some other part of the said apparatus

gave way, and the heater fell suddenly to the ground, crushing or striking the said William Mathieson, and causing his almost instantaneous death.

In these circumstances Mrs. Mathieson claimed 300*l.* from Mr. Weems as "a *solatium* and reparation for loss, injury, and damage" sustained by her in consequence of the death of her son.

Mr. Weems, by his defence, made the following statement :—

The Defender's Procurator stated that the preliminary defence was—(1st.) The Pursuer has no title to sue the present action; (2nd.) The action is irrelevant. On the merits—(1st,) The statements in the libel are denied; and, even if true, are not relevant to infer damages against the Defender. (2nd.) The deceased, William Mathieson, had only recently before his death completed his apprenticeship. During his apprenticeship he required all his earnings for his own support, and, indeed, the Defender had to supplement them. He had nothing with which he could maintain his mother, who has a son and two daughters married, the one to a master and the other to a journeyman tinsmith, equally able and liable with the deceased for her support. (3rd.) The machinery used by the Defender on the occasion when William Mathieson met with the accident were sufficiently strong, so far as human skill could anticipate, and had been used in the same way for raising heavier heaters. (4th.) The death of the said William Mathieson was caused accidentally, and under such circumstances as to infer no damages against the Defender. The damages claimed, if any due, are excessive.

The Sheriff-Substitute found that the summons was relevantly laid. He repelled the dilatory defence, and sent the case to proof. Mr. Weems thereupon appealed to the Sheriff-Principal, who adhered to the Interlocutor of the Sheriff-Substitute, annexing to judgment the following note :—

The action is not at the instance of a collateral, and it is not limited to a *solatium* for injured feelings. The Pursuer will be entitled to establish that, by the loss of her son, she has been deprived of her sole source or means of support.

After proof the Sheriff-Substitute pronounced as follows :—

16*th February* 1858.—In point of fact finds that the Pursuer has failed to prove her averment, that her son's death was caused by

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the insufficiency of the machinery or apparatus used by the Defender, or by its unskilful application. In point of law finds no damages due; assoilzies the Defender and decerns, but finds no expenses due.

The Pursuer appealed against this Interlocutor to the Sheriff-Principal, who pronounced the following Interlocutor :—

Edinburgh, 12*th April* 1858.—Recals the Interlocutor appealed against. Finds it proved in point of fact that the Pursuer's son was killed while working in the Defender's employment at his works, that his death took place in consequence of a cylinder of nearly two tons in weight, under which he was working, breaking down and falling upon him; and that the cylinder broke down and fell upon the deceased through the fault of the Defender, inasmuch as the hoop and bolts used as part of the apparatus for suspending and keeping it up were insufficient for the purpose; and in respect also, that the lifting chain used as part of said apparatus, was attached to the hoop or ring round the cylinder in an unskilful and insufficient manner. Finds, likewise, in point of fact, that the Pursuer was, at the time her son was killed, a widow, depending chiefly, if not entirely, on him for her support. Finds, therefore, in point of law, the Defender liable to the Pursuer in reparation and damages for the loss of her son, modifies the damages to 125*l*., and decerns therefor, against the Defender. Finds the Pursuer entitled to expenses of process; appoints an account thereof to be lodged, and when lodged, remits the same to the auditor to tax and report.

His Lordship's note was as follows :—

The question then is, did the son's death occur through the fault of the Defender? or did it take place, as seems to be assumed by the Sheriff-Substitute, through the reckless interference of a person for whose acts the Defender is not responsible? or was the death the result of an accident, for the consequences of which neither the Defender nor any one else can be made responsible.

It has not been suggested, and it does not appear that there is any ground for imputing blame to the deceased himself.

The operation referred to was one full of risk and danger; and it is in the Sheriff's apprehension of much importance to keep in view that it was gone about in a novel way, suggested, as it would appear, by the Defender himself. It was, therefore, peculiarly incumbent on the Defender to take care that the apparatus by which a cylinder of such great weight, suspended over the heads of his workmen, was in all respects unobjectionable in material and strength, as well as in its mode of application.

Nor has the Sheriff been able to satisfy himself that the calamity happened through the reckless interference with the cylinder by

another workman, who had no right to meddle with it, as seems to be the opinion of the Sheriff-Substitute.

Upon advocation to the Court of Session, the case came before Lord *Kinloch*, who, on the 4th January 1859, pronounced the following Interlocutor :—

Finds it proved in point of fact, 1st. That the deceased son of the Pursuer was killed whilst working in the Defender's employment on or about the 12th day of November 1855; and that at the time of his death he was residing with the Pursuer, his mother, and was her chief support; 2ndly. That the death was caused by a cylinder of nearly two tons in weight, which was suspended perpendicularly, and under which he was working in the course of his employment by the Defender, falling on him and instantaneously killing him; 3rdly. That the fall of the cylinder and the consequent death arose in consequence of the Defender not having taken due precaution to secure the safety of the workmen employed by him in connexion with this cylinder, and of the apparatus for suspending the same being defective and insufficient, more particularly inasmuch as the hoop and bolts used as parts of the said apparatus were in the circumstances insufficient for the due suspension of the cylinder, and the lifting chain was attached to the hoop in an unskilful and insufficient manner. In these circumstances, Finds, in point of law, that the death of the Pursuer's son was occasioned by the fault of the Defender, and that the Defender is, in respect thereof, liable in damages to the Pursuer.

Mr. Weems reclaimed to the Inner House (First Division), and by that Court a judgment was pronounced on the 17th February 1860, adhering to the *Lord Ordinary's* Interlocutor simpliciter in point of fact and in point of law.

This final judgment, with the Interlocutor adhered to, was brought under the review of the House by the present appeal.

Sir *Fitzroy Kelly* and Mr. *Anderson* for the Appellant. The judgment of the Inner House is not in conformity with the 6 Geo. 4. c. 120. s. 40, for it fails to specify the facts (*a*).

(*a*) See *Fleming* v. *Orr*, *suprà*, vol. 2, p. 14, where it was held that under the Judicature Act, 6 Geo. 4. c. 120. s. 40, the Court of Review is confined to the facts found in the Interlocutor complained of, and cannot look at the evidence by which those facts are supported.

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[The LORD CHANCELLOR : Whatever the *Lord Ordinary* found, the Inner House has found, *totidem verbis.*]

The summons is irrelevant. It does not allege any obligation, nor any negligence on the part of the master. It neither avers a duty nor an omission to perform it. But were this otherwise, we say, on the merits, that by Scotch law a mother cannot maintain such an action as this. Her son was not bound by law to support her.

[The LORD CHANCELLOR : That is a very fit subject to be considered, if, as you say, it be not settled.]

In *Greenhorn* v. *Addie* (*a*), it was held that brothers could not sue for a *solatium* unless they suffered patrimonially, that is, in a pecuniary point of view, by the death of their brother. The decision there was as to collaterals, but the principle would seem to extend to ascendants and descendants. At common law a son is not bound to support his parents. Accordingly, the other side can produce no precedent to justify the present proceeding.

The *Lord Advocate* (*b*) and Mr. *Roundell Palmer* for the Respondent, were told by the House that they might confine their arguments to the question as to the mother's title. They maintained that by the law of Scotland a son, being of full age and competent ability, is bound to maintain his parent. They cited Erskine's Institute (*c*), where it is laid down that the obligation for maintenance is reciprocal between parents and children. The same doctrine is affirmed by Mr. Fraser (*d*). This point was not contested in the Court below.

(*a*) 17 Sec. Ser. 860. (*b*) Mr. Moncrieff.
(*c*) B. 1. tit. 6. s. 57.
(*d*) Personal and Domestic Relations, vol. 2. p. 46, and see authorities he cites.

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The LORD CHANCELLOR:

I think your Lordships can have no difficulty in coming to the conclusion that there is no ground for this Appeal.

The first objection raised is that the Court of Session do not find *in extenso* the law and facts which are relied upon by the Respondent, and that they have not complied with that which is required by the Act of the 6th of George the Fourth, chapter 120. But they find in the clearest manner both the law and the facts in the terms found by the *Lord Ordinary.* They do not in their Interlocutor repeat what the *Lord Ordinary* had found, but they refer to his finding, which was contained in a written document, and they adopt that as their own. I think it is precisely the same as if they had in express words repeated the finding of the *Lord Ordinary.*

Then the Appellant contends that the summons is insufficient, and that the finding of the *Lord Ordinary* is insufficient. It seems to me that there is no ground of objection to either the one or the other. With regard to the summons, it was observed in the early part of the argument by a noble and learned Lord, that there is no warranty in such a case as this, that the machinery shall be so complete that no injury shall be incurred by the workmen; but it must be alleged and shown that there is negligence on the part of the employer. And for that purpose it is alleged here, after giving a description of the machinery, that "the gland or bolts, from want of due skill or attention on the part of the Defender, or some person or persons for whom he is responsible, were insufficient in strength or construction, or were unskilfully applied to the purpose of suspending the heater, or," (that is, by reason of the want of reasonable care on

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the part of the Defender, or of some person or persons in his employ,) "the chains were negligently or unskilfully attached to the gland," in consequence of which the death occurred.

There is, therefore, a clear allegation of negligence on the part of the Defender with reference to insufficient strength or construction of the gland, and its being unskilfully applied to the purpose of sustaining the weight. To support that allegation it would be necessary not only to show that this machinery had been insufficient, but to show that this deficiency did not arise from any inherent secret defect, but that it was known, or might by the exercise of due skill and attention have been known to the Defender, who was the employer of the deceased.

Then we come to the finding of the *Lord Ordinary*. The charge here being that there was negligence on the part of the Defender, the *Lord Ordinary* finds "That the fall of the cylinder on William Mathieson, and his consequent death, arose in consequence of the Defender not having taken due precaution to secure the safety of the workmen employed by him in connexion with the cylinder, and of the apparatus for suspending the same being defective and insufficient; more particularly inasmuch as the hoop and bolts used as parts of the said apparatus were in the circumstances insufficient for the due suspension of the cylinder, and the lifting chain was attached to the hoop in an unskilful and insufficient manner."

My Lords, I say that this is a finding within the terms of the summons. The summons imputed want of skill and want of due attention, and insufficiency in the machinery arising from the default of the Defender, and that this was the cause of the death of the deceased. We are not in such a case to apply

any subtle rules of construction as to what meaning may possibly be extracted from words used, but we are to give to the words their natural and reasonable construction, and, reading the Interlocutor in that manner, it appears to me clearly to come within the terms of the summons.

The only point upon which I have entertained any doubt is with respect to the liability of the Defender to make good this loss to the mother of the deceased, and that doubt arose from the allegation that by the law of Scotland there is no legal obligation on the part of a child to maintain the parent. I was a little startled to hear that, for I thought the law was otherwise. Even if it had not been so, there was always, certainly, the imperfect obligation, which would be sufficient to raise an action upon when it was proved that under that imperfect obligation the son actually was maintaining his mother, and was her only support at the time of his death. But it is now proved by the clearest authority, cited by the *Lord Advocate* (to which Mr. *Palmer* thought it unnecessary to add anything, and I perfectly agree with him), that by the law of Scotland there is a reciprocal obligation on the part of the parent and child to support each other, when there is destitution on the one side and ability on the other. Therefore, what Sir *Fitzroy Kelly* relied upon fails him altogether, for here there is proof of legal obligation, and under this legal obligation this son of the age of 21, who was able to maintain his mother, and was maintaining her, might have been compelled to do so by process of law.

It seems to me, therefore, that there is no foundation for this appeal upon any of the grounds which have been taken, and that it must be dismissed with costs.

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Lord Brougham's opinion.

LORD BROUGHAM:

My Lords, I entirely agree with my noble and learned friend in the view that he takes upon both the material points in the case, namely, upon the question arising upon the pleadings, and upon the other question, whether or not this action lies. Upon the second point I had some doubt originally, and was very glad to have the matter argued as it was done, with his usual ability, by the *Lord Advocate*. It appears to me to be clearly established, not only that in point of fact this son did maintain his mother, but that in point of law he was bound to maintain his mother in those peculiar circumstances to the extent of his ability, that ability amounting to sufficient to provide some maintenance for her. I therefore think that there was a clear patrimonial interest. My only doubt was whether without patrimonial interest such an action could be maintained. It is not necessary that we should now decide that without that interest an action could be maintained. The Court below seems to have had no doubt whatever upon this point. I apprehend that it was not very much argued below, but that it was mainly raised here by the Counsel for the Appellant. I have no doubt, therefore, that this judgment is well founded, and that the Appeal ought to be dismissed with costs.

Lord Cranworth's opinion.

Lord CRANWORTH:

My Lords, I am entirely of the same opinion. With regard to the liability of a son to maintain a mother, or rather the right of a mother after the death of a son to maintain such an action as this, I think the authorities quoted by the *Lord Advocate* put that matter beyond doubt.

I confess that in the course of the argument I had

some doubt as to the relevancy of the summons. That is the only point upon which I felt any hesitation, and I think it right to state that, however distressing it might be to this House as the ultimate Court of Appeal to let such a matter go off upon a point of form, the facts having been found which undoubtedly create a liability, yet I think it would have been our duty to do so, if we had come to the conclusion that the summons was not relevant; because we cannot regard this as analogous to the case of disputing a question of fact after verdict, for this is the first time that the party could make his Appeal upon such a ground. I think that looking at the summons, and fairly construing it, admitting that it is very ungrammatical, yet nevertheless we may say that there is a relevant ground of complaint stated. "Which gland or bolts" (now observe this applies to every one of the allegations that follow) "from want of due skill or attention on the part of the Defender, or some person or persons for whom he is responsible, were insufficient in strength or construction, or were unskilfully applied to the purpose of suspending the heater." Mr. *Anderson* seemed to admit that it was a reasonable construction to apply those words, imputing want of due skill and attention, to that second proposition, but he contended that it was not applicable to the third, because it goes on "or the chains were negligently or unskilfully attached to the gland." Now, it must be observed that that clause is quite ungrammatical, and I think the only fair way of construing it is, that having first applied the allegation of want of due skill or attention on the part of the Defender to the gland or bolts to which the first two propositions in the summons relate, it then takes the third, viz., "the chains," and I think you must read that in the same way as the others, "or the chains from want of due care or attention on the part

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of the Defender were negligently and unskilfully attached to the gland." It is ungrammatical no doubt, but it seems to me that this is the fair and reasonable construction.

Lord Cranworth's opinion.

Lord Wensleydale's opinion.

Lord WENSLEYDALE:

My Lords, I agree with my noble and learned friends who have preceded me. I felt considerable doubt at one time with respect to the construction of the summons as to whether the last alternative put in the summons was properly alleged, but I certainly think that the part of the Interlocutor depending upon that last alternative must be understood according to its true construction as resting entirely upon the preceding allegation, of the Defender not having taken due precaution to secure the safety of the workmen employed by him in connexion with the cylinder. The Interlocutor is not very grammatically expressed, but I take the meaning to be that the accident arose in consequence of the Defender not having taken the precaution to secure the safety of the workmen employed. And if that is proved, he is responsible according to cases decided in your Lordships' House, particularly the last case, which was decided some months ago, the case of the Bartonshill Colliery, where the matter was fully considered, and an elaborate and very proper judgment was pronounced by my noble and learned friend Lord *Cranworth.* Now, reading that final Interlocutor according to the reasonable construction, and looking at what the intention of the *Lord Ordinary* was, I take it to be clear that he meant only to make the Defender responsible for what he was responsible for in point of law, namely, the defect on his part in not providing good and sufficient apparatus, and in not seeing to its being properly used. I think that is to be considered as pervading the

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whole of the finding of facts in the Interlocutor, and that it does not mean to rest upon anything done or omitted to be done by the workmen themselves. I take it to be perfectly clear that in these cases there is no warranty. All that the master is bound to do is to provide machinery fit and proper for the work, and to take care to have it superintended by himself or his workmen in a fit and proper manner. I think it is clear that this judgment was pronounced solely upon the ground of negligence on the part of the Defender. Therefore upon that point I think the judgment is right.

With respect to the rest of the case, I take it to be clear that there is a remedy in this case by the mother for the death of her son, who was bound to support her if he could, and who it is clear had the means of doing so. Therefore I agree with my noble and learned friends in thinking that the Interlocutor ought to be affirmed.

Lord KINGSDOWN:

Lord Kingsdown's opinion.

My Lords, I entirely agree. I cannot say that I have myself entertained any doubt upon any part of the case from the beginning to the end of it.

Interlocutors appealed against affirmed, and Appeal dismissed with Costs.

J. F. ELMSLIE—DEANS & ROGERS.