a portion of the sums which Sir David Baxter and Mr Gordon of Cairnfield had lent on the security of these shares, being 10 or 20 per cent. under their market value. The cautioner consented that the Bank should give them up so far as he was concerned. It seems to be an absolute consent that the Bank should give up the security over these shares, and that the cautioner should remain bound as if the shares had never been in question. That is the fair reading, and I cannot read it in any other way. The whole history of the case leads to that reading. The question is, what undertaking did the Bank make—what obligation did they undertake to the cautioner? Now, with the Lord Ordinary, I think he makes no stipulation whatever. He says —"So far as I am concerned, give these shares back to their owner Mr Duncan," and not "So far as I am concerned give these shares back, provided you give me credit for them by reducing my cautionary obligation." Now, suppose a case—that instead of shares and one cautioner there had been two cautioners. That is just the same case, and one of the two co-cautioners asks to be discharged. The other says to the creditor, "You may consider my fellow-cautioner to be free; I authorise you to discharge him so far as I am concerned." No doubt the Bank might say, "We wont let any of you off." But if the Bank does discharge one of them the consenting cautioner would remain by virtual consent the sole cautioner for the full amount under which he bound himself under the original obligation. That is sufficient for the determination of the case, because Mr Gordon of Craigmyle remained cautioner to the Bank for £10,000, or any less sum than £10,000 which Mr Duncan might be indebted to the Bank, and Mr Gordon must pay the amount so incurred. I do not think there is any want of equity in it. It is perfectly just. Mr Gordon wanted Mr Duncan to have these shares, and he consented to give up the right which he as cautioner had to the equitable relief against the debtor's security which the debtor had given to the creditor, and the result is that these shares have been dealt with in another form—used for other debts—and the result is that this obligation must stand upon the terms on which it was placed when the alteration was made in the Bank's security with Mr Gordon's consent in December 1864. In short, I may say that on the case it has become clear to my mind that the cautioner cannot be relieved from this absolute and pure obligation under the promissory note to the extent of £10,000, and the debt now claimed is much below that sum. This is sufficient for the disposal of the whole case.

Counsel for Real Raisers (Reclaimers) Gordon's Trustees—Strachan. Agents—Macbean & Malloch, W.S.

Counsel for Commercial Bank (Respondents) —Mackay. Agents—Melville & Lindesay, W.S.

Tuesday, July 6.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

GIBB *v.* CROMBIE.

Reparation—Damages—Statutes 7 *and* 8 *Vict. c.* 15 (*Factory Act*, 1844) *secs.* 65, 21; 13 *and* 14 *Vict. c.* 54, *sec.* 1; *and* 19 *and* 20 *Vict. c.* 38 (*Factory Act*, 1856), *sec.* 4—*Minor—Contributory Negligence.*

A lad, seventeen and a-half years of age, while in the course of employment at night work in a factory, was injured by the belt of the teaser at which he worked slipping off the drum and catching his arm. The body of the machine was all boxed in. In an action of damages by the lad against his employers, they alleged in defence that the pursuer had misled them as to his age, and that the accident must have arisen from his own negligence.—*Held* (1) that the defenders had not taken every precaution to ascertain pursuer's age; (2) that in employing pursuer at night work the defenders were disregarding a statutory duty; (3) that the machinery was not properly fenced in accordance with the provisions of the Factory Acts; and (4) therefore the defenders were liable in damages.

This was an action of damages at the instance of William Gibb, against J. & J. Crombie, manufacturers, Woodside, for injuries sustained by the pursuer in the factory of the defenders while in their employment. The facts are fully stated in the following interlocutor of the Sheriff-Substitute (J. DOVE WILSON):—

"*Aberdeen, 4th December* 1874.—Having considered the cause—Finds that the time the injury libelled was sustained the pursuer was a young person within the meaning of the Factory Acts, and was employed, in breach of their provisions, by the defenders at night work, and at unfenced machinery: Finds that the injury happened in consequence of his being so employed: Finds that the defenders have failed to prove that the pursuer was so employed through his own fault, or that his own negligence contributed to the accident: Finds therefore that the pursuers are liable in damages; modifies the same to the sum of £100 sterling, and decerns for said sum against the defenders: Finds the defenders liable in expenses: Allows an account to be given in, and when lodged remits the same to the Auditor of Court to tax and report.

"*Note.*—I do not think that any ground is made out at common law for attaching liability to the defenders. Under the decision of Lord Chancellor Cairns in the case of *Weir or Wilson* v. *Merry & Cunninghame*, 29th May 1868, 6 Macph. (H.L.) 85, the law as to the liability of a master for accidents happening to the servant is placed on the broad and intelligible ground that the master is not liable unless it can be shewn that he was negligent in the performance of some duty which he had undertaken to the servant to perform. In the present case it is apparent that the defenders did not undertake personally to superintend the details of the machinery. It would have been impossible for them to do so. All that their servants could expect would be that the defenders should provide

competent workmen, and a due supply of materials to keep their machinery in order. These duties the defenders appear to have discharged with liberality, as there does not appear to have been even a complaint made to them by their servants on the subject. If the case, therefore, stood on the common law, and were one between an adult and the defenders, it would seem to me to be clear that the defenders would fall to be assoilzied. As illustrations of the application of the principle of *Wilson* v. *Merry & Cunningham* to circumstances somewhat resembling the present, I may refer to the cases of *Balleny* v. *Cree*, 23d May 1873, 9 Macph. 626, and *Searle* v. *Lindsay*, 22d November 1861, 31 L.J. (C.P.) 106.

"In the present case, however, two statutory duties have been disregarded. The pursuer was a young person under eighteen years of age, and in respect of such persons it is provided by the Factory Acts, firstly, that they shall not be employed during the night, and, secondly that the machinery at which they are to be employed shall be fenced. As to the first of these provisions, and its breach, there is no room for question. The obligation is contained in the Act 13 and 14 Vict. c. 54 § 1. The breach is proved by the certificate of the pursuer's age, showing him to be under eighteen, and by his having, notwithstanding this, been employed in the night shift. The second statutory duty is contained in the Act 7 and 8 Vict. c. 15, § 21, as amended by the Act 19 and 20 Vict. c. 38, § 4. Under the first of those Acts it was held that all machinery had to be fenced, but the second Act restricted it so as to make the obligation to fence applicable only to the machinery with which any men, children, or young persons, are liable to come in contact. The machine at which the pursuer was employed was unfenced, and it seems to me that this constitutes a breach of the second statutory duty. It is no answer to the statutes to say here that such machines are never fenced, or that young persons are not intended to be employed at them. The statutes cannot be construed so as to permit the occasional employment of young persons at unfenced machinery; and so long as a young person was employed at the machine in question it fell within the statutory provisions as to fencing. The mere fact of such employment brings it within the statutes.

"To the action, as one laid for a breach of the statutory duties thus explained, various defences have been pleaded. These defences seem to me capable of being reduced to the three following propositions:—(1) That the breaches of the statutory duties give rise merely to claims for penalties, and do not authorise actions of damages for resulting injuries; (2) That the breaches of duty in this case occurred without fault on the part of the defenders, and in consequence of fault on the part of the pursuer; and (3) That the accident did not result from the breaches of statutory duty, but from the fault or negligence of the pursuer at the time when it happened.

"(1) The defence that breaches of the statutory duties, though they may render the breaker liable to various pecuniary penalties, cannot give rise to claims of damages, has been negatived by decisions already pronounced. In *Conch* v. *Steel*, 18th January 1854, 23 L.J. (Q.B.) 120, it was held that where a public duty was laid on any one by statute, damages caused by its breach might be recovered in addition to the penalty. That case was laid under a statute relating to merchant shipping, but in *Casswell* v. *North*, 18th January 1856, 25 L.J. (Q.B.) 121, it was held that the same rule applied to the Factory Acts. The rule has been followed in several cases since. As the duty is by the Factory Acts laid on the occupiers of the mill, it is a resulting peculiarity of claims of damages under the Factory Acts, distinguishing them from claims at common law, that the occupiers of the mill are personally responsible for the breach, and are debarred from the benefit of any plea that the breach was committed by their managers without personal fault being attributable to themselves. The person on whom the statute lays the duty is answerable for the damage done by the breach. Whether in the cases in which the occupiers have under the Acts recourse for the penalty against a defaulting manager, they might not also have recourse for the damages awarded, may be a question; but there is no question but that between the injured party and the occupiers the latter are liable.

"(2) The defence that the breaches of the statutory duty in this case were not the defenders' but the pursuer's fault, raises the question, whether the pursuer can be blamed for undertaking the employment? In considering this, the relative positions of the pursuer and the defenders must be kept in view. The pursuer, although he happened to be within six or seven months of eighteen, and thus possessed almost the same discretion as if he had been of full age, was as much a young person under the Factory Acts as if he had been barely thirteen; and under the Factory Acts the duty of keeping the statutory provisions in question is laid distinctly on the employer, and upon him only. It seems the Legislature has thought that from young persons of tender years neither a knowledge of the statutes nor the discretion necessary to understand the importance of keeping them was to be expected. Had the pursuer been fourteen years of age, a plea that he knew the statutes, and voluntarily undertook the risk of disregarding them, could not have been maintained and I see no ground on which a distinction can be drawn in this respect between one young person and another. It might have been different had the defenders been able to maintain that they had been fraudulently misled as to the pursuer's age. There is, however, no satisfactory evidence that the pursuer ever said he was eighteen; and moreover, I doubt much if even such a statement would have protected the defenders. In a prosecution for the statutory penalty it is plain that it would not. Under the 65th section of the Factory Act of 1844 the defenders would not escape unless they proved at the trial that the pursuer was truly eighteen. It would perhaps be going too far to make this the test of civil responsibility, but I can see no ground for escape for the defenders unless they could at least show that they had made diligent enquiry as to the pursuer's age, and were (notwithstanding) misled through some fraud on the pursuer's part. Merely asking the pursuer is truly no sufficient enquiry. One object of the statute is to protect young persons against themselves, and the temptation to falsehood in the chance of getting higher wages might be so irresistible as to make the enquiry at the party himself practically worth nothing. There is no attempt in this case to prove anything beyond such an enquiry. Although the pursuer's relatives lived in

the neighbourhood, no enquiry was made at them; and although a certificate of his birth, as the sequel has shewn, could easily have been got, it was not asked for. No doubt the Factory Acts do not specify either of those modes of proof, but under those Acts the defenders were liable to the penalty unless they proved the age. The provisions of the Factory Acts seem to me so stringent as to leave no escape for the defenders unless it were at least proved that they or their managers did everything which it was possible to do to obey them, and that they took every possible precaution to be certain as to the pursuer's age.

"It appears that the defenders' managers, who employed the pursuer, were to some extent misled by his having been previously at night work in the employment of a paper maker, but the enquiry at those works may also have been perfunctory; and besides, there appears to be in the Factory Acts a power to papermakers in certain circumstances to employ young persons at night.

"In conclusion, in regard to this defence, I think, although not without hesitation, that it is insufficient, firstly, because the statutory duties are laid on the defenders, and it is not proved that they or their servants did everything which it was possible to do in order to obey them; and secondly, because the statutory protection is given to the pursuer, and it is not proved that he committed any fraud by which it ought to be forfeited.

"(3) There remains the question whether it was the breaches of duty, or some fault or negligence on the part of the pursuer at the time, which caused the accident. It is clear that negligence on the pursuer's part would bar his claim, (*Casswell* v. *North*, quoted *supra*, 18th Jan. 1856, 25 L.J. (Q.B.) 121.) and that he would not escape from its consequences by reason of his being a young person, (*Abbot* v. *Macfie*, 7th Dec. 1863, 33 L.J. (Ex.) 176.)

"*Prima facie* the accident looks as if it had been caused by the breach of the statutory duties. It happened to a young person at the end of a night's work, for which his capacity must be taken to have been insufficient, and from unfenced machinery, of which he must be presumed to be unfit to have the control. In these circumstances, it is reasonable to ask for some proof of negligence on the pursuer's part. What is said is, that the pursuer must have been 'tampering' with the machine. It is not suggested that through mere mischief he was meddling with machinery he had no business with, or was playing tricks with his own machine. What is suggested is that, although he had often been warned not to do so, he was trying to adjust the belt after it had flown off, without first stopping the machine. Whether the accident happened in this way, or in the way the pursuer describes, there is no positive evidence sufficient to decide, but assuming that the defenders' theory was true, it was, at most, an indiscretion committed by the pursuer in attempting to perform his duty, and it was precisely the bad consequences of such natural indiscretions on the part of young persons which the Legislature must have desired to prevent when it prohibited their employment at dangerous work. In considering what is negligence or misconduct on his part, the capacity of the pursuer must always be kept in view. Even in an adult, doing a thing merely in the knowledge that it is dangerous is not of itself proof of negligence See *Britton* v. *Great Western Cotton Co.*, 29th Feb. 1872, 41 L.J. (Ex.) 98, in which an adult got damages though he knowingly undertook to work at unfenced machinery). In the case of a young person it is much clearer that a similar thing amounts to no more than an indiscretion.

"On the whole matter, I am of opinion, for the reasons I have stated, that no sufficient answer has been made to the pursuer's case in so far as it is laid on the Factory Acts, and therefore that damages are due."

The defenders appealed to the Sheriff (J. Guthrie Smith), who pronounced the following interlocutor:—

"*Edinburgh 16th February*—The Sheriff having considered the Reclaiming Petition for the defenders against the interlocutor of 4th December last, with the answers thereto for the pursuers, proof, productions, and whole process—Sustains the appeal, recalls the interlocutor appealed against; finds that it is not proved that the injuries of the minor pursuer were caused by any want of fencing or other defect in the machine in question, for which the defenders are responsible; and, in respect it appears they had used all due diligence to enforce the provisions of the Factory Acts, they are not liable to the pursuer or his father for his being employed at night work under eighteen years of age, contrary to the requirements of said Acts; therefore assoilzies the defenders from the conclusions of the summons; finds the pursuer liable in expenses, allows an account thereof to be given in, and remits the same to the Auditor for taxation, and decerns.

"*Note.*—With the consent of the parties, the Sheriff went to the defenders' mill to see the machine at which the accident occurred. It is a teaser of the description usually found in woollen factories, standing by itself in a part of the building specially devoted to this kind of work, with abundance of room for the person in charge to move about. In accordance with the usual arrangement, the body of the machine, which is its most dangerous part, is all boxed in, and a slide opens and shuts at the end where it is fed and discharged.

"The fan which blows away the dust from the wool in the process of teasing is driven by a belt at the side, passing round the drum; and it was this belt which caused the accident. The pursuer says he had been oiling the fan and was in the act of returning 'when the belt sprang, caught his right arm, and before he knew where he was had it round the drum.' He is the only witness to the occurrence, and it is not easy to understand how the accident could have happened in the way described; for, first, there was no need for his being so close to it; and second, the strap of the upper pulley which passes round the axle of the drum and is on the outside of the fan strap, must necessarily have acted as a fence in keeping the latter in its place in the event of its slipping off. The more likely explanation is that the strap having slipped the pursuer was trying to put it on without first stopping the machine, which it is admitted was contrary to orders, and indeed would be a most dangerous proceeding. If this is how it happened, there is plainly an end of the case; for, all question of fencing apart, a master is not liable to a workman himself for the consequences of his own folly, at least when he possesses the intelligence which may be supposed to be possessed by a lad of eighteen. While the Factory Acts make

fencing in certain circumstances a matter of statutory obligation, the omission of which both subjects the offender to penalties and entitles the injured person to redress, it has laid down in each of the three kingdoms 'that the action must be subject to the rules of Common Law, and one of these is, that a want of ordinary care or wilful misconduct on the part of the plaintiff is an answer to the claim,—*Casswell* v. *Worth*, 5 Cl. & Bl. 849; *Traills* v. *Small & Boase*, 11 Macph. 888, and an Irish case, *M'Cracken* v. *Dargan*, 1 Ir. Jurist, N. S. 404.

"The pursuer, however, denies that he was touching the strap at the time, and a large body of evidence has been led on the question, whether anything could have been done by the defenders to prevent such an occurrence as the pursuer says did happen on the occasion. As regards the mill gearing—meaning the reby the train of toothed wheels at the upper part of the side of the machine—any further protection was evidently unnecessary, because they are practically out of anybody's reach; and although, no doubt, the term as defined by the Act of 1844, section 73, must be held to include every 'wheel, drum, or pulley,' by which motion is communicated from the moving power to the different parts of the machinery, two observations fall to be made on the provisions of the statute relating to fencing. In the first place, these parts of the gearing only now require to be fenced 'with which children, young persons, and women are liable to come in contact either in passing or in their ordinary occupation in the factory,' 19 and 20 Vict. c. 38, sec. 4. In the second place, so far as the Sheriff is aware the term has never been held to apply to belting. That is specially dealt with in the Act—the inspector being empowered to direct any driving strap or band which in his opinion is dangerous to be fenced, and in the event of a difference of opinion between him and the mill owner whether it is necessary and possible to do so, the question is referred to arbitrators, 7 and 8 Vict. c. 15, sections 43, 60, and 19 and 20 Vict. c. 38, section 6. Now it is abundantly proved that the risk of injury from young persons coming in contact with the strap in question never occurred to any one; that in similar establishments it is not customary to have any special protection at this part of the machine, and no instance is mentioned of any factory inspector having deemed it his duty to interfere. Upon these facts the Sheriff has no difficulty in holding that the guarding of the fan belt is not made matter of statutory obligation; and as regards the alleged liability of the belt to slip off from the looseness of the bushes, the pursuer has entirely failed to show that any defects which may have arisen from wear and tear were directly connected with the accident.

"The remaining ground of action pleaded for the pursuer is, that the accident having happened at night the defenders took the risk of it, because the pursuer being under eighteen ought not to have been allowed into the mill after six P.M. It seems to be a sufficient answer that he was employed as an adult at an adult's wages, and in the belief that he was an adult. In point of fact the pursuer came asking night-work from another work where he had been working on the night shift. Young persons employed by day get from 7s. to 10s. a-week, adults by night 14s. and upwards, and the pursuer received 15s. While, therefore, his motive for passing himself off as being four or five months older than he really was is intelligible, it is impossible to understand what object the defenders had to gain by wilfully breaking the law. Mr Brooks says that he expressly asked him his age before he was engaged. This the pursuer denies; but it is not disputed that the question was repeated in a different but much more formal manner sometime after he had obtained admission to the defenders' mill. Having reason to suspect that some of the night hands were under age, they caused a general muster to be made, and the whole being passed through Mr Crombie's room, every one about whose age there could be a doubt was expressly asked the question. That the examination was particular is proved by the fact that it resulted in a number of dismissals, including the pursuer's companion Ross, who succeeded along with him in passing Brooks at the time of the engagement. At the above muster the pursuer again denies that he was asked his age; but if the question were not put in so many words, he must have quite well understood the object of the proceeding, and that to be found out meant being turned out. A factory hand of eighteen is far too intelligent not to understand that. To give him damages for having successfully eluded detection on that occasion, notwithstanding that the defenders were doing their best to comply with the law, on the ground, forsooth, that 'young persons' like him refused protection against themselves, and that this was the object of the Factory legislation, would be bringing the matter to a point which is in violation of the plainest equity, and never could have been contemplated."

The pursuer appealed.

Authorities cited—*Casswell* v. *Worth*, 5 Cl. and Bl. 849; *Traill* v. *Small and Boase*, 11 Macph. 888; *M'Cracken* v. *Dargon*, 1 Irish Jur. N.S. 404; *Balleny*, 9 M. 626; *Searle*, 31 L. J. (C.P.) 106; *Conch*, 23 L. J. (Q. B.) 120; *Casswell*, 25 L. J. (Q. B.) 121; *Abbot*, 33 L. J. (Ex.) 176; *Britton*, 41 L. J. (Ex.) 98; 13 and 14 Vic. c. 54; 19 and 20 Vic. c. 38, sec. 4.

At advising—

LORD ORMIDALE—(after stating the facts)—This is an important case, and depends very much on the view taken of the Factory Acts. I wish to make it quite clear that at the time of the pursuer's entering on the employment of the defenders he was a young person under eighteen years of age; he was under eighteen at the time of the accident, and he was put upon the night-shift, and the accident occurred during the night-shift. The first question that arises then is, were the defenders so deceived by the pursuer at the time of his entering on their employment as to deprive him of any action on the Factory Acts? I do not think they were. The pursuer denies he was asked his age. Benjamin Ross, who was with the pursuer when he was engaged, is clear that "nothing was said about age." John Mitchell says "that in the beginning of last year he heard a conversation between Mr Brooks, manager to the defenders, and the pursuer and Mitchell as to engaging at defenders, and nothing was then said or asked about their ages." Brooks, the manager, gives very peculiar evidence on this point. He says, "I remember pursuer applying for employment. He and Benjamin Ross came to my house and asked for night work. I asked their age. *They smiled*

and said eighteen. Nothing more was said to me about the age." No doubt one of the defenders had a suspicion as to the age of certain hands, and there was a parade, but he cannot recollect if the pursuer was among those so paraded. Brooks says he was, but it don't appear that even then the pursuer said anything as to his age. The only person who gives evidence of deception is Brooks, and I cannot hold it to be established. I hold the plea of the defenders unfounded. The policy of the Factory Acts is absolutely to prohibit the owners of certain mills and factories from employing young persons at night work, and if a young person is admitted to night work as here, and we were to sustain such a plea, these Acts would, in my opinion, be rendered abortive.

The second question arises under the Factory Acts. Was it legal to employ such a person at night work. I apprehend not. The authorities quoted by the Sheriff-Substitute make that point quite clear. The lad was employed on night work, and while so employed met with this accident, which gave him a claim for damages. If I am so far right, it appears that the defenders violated the Factory Acts in another particular. They had employed the lad at machinery not sufficiently fenced. No doubt some distinctions have to be kept in view on this point. I do not think the belt itself requires to be fenced under the Acts, but it is clear the fan shaft and lower pulleys require to be fenced, and the accident may have occurred in consequence of want of fencing at that point.

Alexander Tawse speaks to this in his evidence, and says, "There might have been something to keep the straps on, and a fence of iron or wood between them and where people passed. I don't think that would have interfered with the working." And Alexander Aitken says, "Unless a person touched the strap he is quite safe. If it slipped off the lower pulley I don't say what it might do. It might catch the ancle, but not the hand." Looking at that evidence, I think the defenders ought to have had that part fenced, and that the accident might have occurred from the want of such fencing. I think the belt came off partly on account of the looseness of the bushes.

On these grounds I think the pursuer has made out his claim. It is said there was contributory fault. I see no evidence of that, it is mere conjecture, and so we have not to consider the effect of such fault in a case like the present. I don't say that any person of sufficient intelligence who wantonly thrusts his arms into a machine is entitled to damages, but the policy of these Factory Acts undoubtedly is to protect persons under eighteen against themselves. I think that here there was not such enquiry as to age as would have satisfied a careful owner, and that no contributory fault has been proved or stated, and I am for recalling the Sheriff's judgment and returning to that of the Sheriff-Substitute.

Lord Neaves—I concur on the same grounds. The abstract question as to the effect of fraudulent deception does not arise. The law forbids the employment of young persons at certain times and in connection with certain machines. In such a case as this the owner has the onus laid on him of showing that he was clearly justified in what he did. I do not think that has been made out here. The examination as to age was cursory, and almost elusory, and that settles the liability unless some other defence is set up. The objects of these Acts is to protect young persons against themselves, the temptation of high wages is strong and it lies with the employer to make a strict and rigid scrutiny of the matter.

As to contributory fault, I don't deny there may be contributory misconduct on the part of a young person, but if after a long stretch of employment during the day young persons are kept strained at illegal hours, you cannot make them liable for contributory fault.

Lord Gifford—I concur. I think these Factory Acts were intended to protect young persons against themselves. I think that if there is a fraud committed by a young person as to his age it may perhaps bar a claim of damages. But there is no such case here. The owners committed two offences against the Factory Acts—(1) They employed a young person at night work, and (2) they employed him at unfenced machinery. I think the Substitute has taken the correct view of this case.

Lord Justice-Clerk—I entirely concur. I have only a single observation to make on two questions raised in the case. (1) I am not prepared to say that if a lad of seventeen and a-half fraudulently deceives the owners of a factory as to his age the result might not be different, but that case does not arise here? The owners were clearly guilty of negligence in the matter. (2) Can contributory fault on the part of a young person bar such a claim as we have here? I give no opinion on that question, which does not arise.

The Court pronounced the following interlocutor:—

"Sustain the appeal; find that at the time the injury complained of was sustained the appellant William Gibb (pursuer) was a young person within the meaning of the Factory Acts, and was employed in breach of their provisions by the respondents (defenders) at night work and at unfenced machinery; find that the injury happened in consequence of his being so employed; find that the respondents have failed to prove that the appellant was so employed through his own fault, or that his own misconduct or negligence contributed to the accident; find therefore that the respondents are liable in damages, and modify the same to the sum of One hundred pounds sterling; therefore recall the interlocutor of the Sheriff appealed against, and decern against the respondents for payment to the appellant and his administrator-in-law of the said sum of One hundred pounds; find respondents liable in expenses both in this Court and in the Sheriff-court, and remit to the Auditor to tax the same and to report."

Counsel for Appellant—Macdonald and Lang. Agent—W. Officer, S.S.C.

Counsel for Respondents — Solicitor-General (Watson) and Jameson. Agents—Adam & Sang W.S.