there would not have been, for in that case the pursuer's hand would not have come near the wheel.

Again, it is said that the foreman saw the way in which the pursuer was working and acquiesced in it, but it is not said the foreman gave him any order so to work.

On the whole matter, I think the pursuer having worked as he did, upon his own showing, in a manner which was not the ordinary way, has no case against the defenders.

I am of opinion that the case should be dismissed as irrelevant.

LORDS YOUNG, RUTHERFURD CLARK, and TRAYNER concurred.

The Court dismissed the action as irrelevant.

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

Counsel for the Defenders—Jameson—Fleming. Agents — Drummond & Reid, W.S.

Tuesday, October 27.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GREER *v.* TURNBULL & COMPANY.

Reparation—Master and Servant—Insufficient Precaution for Servant's Safety—Relevancy.

A workman sued for damages for injuries sustained in working his employer's crane, and averred—"The crane is in the moulding-shop of defenders' works, and is used principally for lifting the moulding-boxes. It is placed in line with two columns supporting the roof of the moulding-shed, and within about 19 inches of one of these columns. In the same moulding-shed there is a circular moulding-pit about 12 feet deep and about 8 feet in diameter, and between this pit and the crane at the nearest point there is only some 19 inches or so of space." He had to lift a box from behind the crane to the side of the moulding-pit, and to do so it was necessary to turn round the crane on its base. "In turning round the crane it became necessary for pursuer to pass along the edge of the moulding-pit, which was uncovered, and as the room left to pass was so small that the crane handle overhung the pit, he stumbled on the edge of the pit, and in an endeavour to regain his balance his left hand was caught in the wheels of the crane and the thumb torn off. The mouth of said pit was, on the date of the accident, uncovered, excepting that two planks were laid across the edges, one at the side next the crane and another at the other. It was the duty of the defenders to have had a complete covering over this pit, and had it been covered the accident could not have happened. It is usual in other works to have a complete covering over such pits when not in use."

The Court *held* that the record disclosed that the pursuer's injuries arose from his stumble on the narrow passage, and that neither the condition of the passage nor of the adjoining moulding-pit had anything to do with such injuries, and at all events did not cause them, and *dismissed* the action as irrelevant.

Robert Greer, ironmoulder, Bishopbriggs, sued his employers, Alexander Turnbull & Company, engineers there, for damages for injuries sustained by him while working a crane belonging to the defenders upon 14th February 1891.

He averred—"(Cond. 2) The crane is in the moulding-shop of defenders' works, and is used principally for lifting the moulding-boxes. It is placed in line with two columns supporting the roof of the moulding-shed, and within about 19 inches of one of these columns. In the same moulding-shed there is a circular moulding-pit, about 12 feet deep and about 8 feet in diameter, and between this pit and the crane at the nearest point there is only some 19 inches or so of space." He was lifting a box from behind the crane to the side of the moulding-pit, and to do so it was necessary to turn the crane round on its base. "(Cond. 4) In turning round the crane it became necessary for pursuer to pass along the edge of the moulding-pit, which was uncovered, and as the room left to pass was so small that the crane handle overhung the pit, he stumbled on the edge of the pit, and in an endeavour to regain his balance his left hand was caught in the wheels of the crane and the thumb torn off. (Cond. 5) The mouth of said pit was, on the date of the accident, uncovered, excepting that two planks were laid across the edges, one at the side next the crane and another at the other. (Cond. 6) It was the duty of the defenders to have had a complete covering over this pit, and had it been covered the accident could not have happened. It is usual in other works to have a complete covering over such pits when not in use. (Cond. 7) Repeated complaints had been made by the pursuer and others of the men to the then foreman, Andrew Rutherfurd, about the want of such a cover for the pit, and about the crane handle jamming against the said column, and he had in turn complained to Mr Turnbull, a partner of the defenders' firm. Mr Turnbull had frequently promised to have these defects remedied, but this had never been done."

The pursuer pleaded—"(1) The pursuer having while in the employment of the defenders been injured in manner libelled through the defective and uncovered condition of said pit, and defective position of said crane, for which the defenders are responsible, they are liable in reparation. (2) The pursuer having been injured through the fault of the defenders, is entitled to decree and expenses as craved."

The defenders pleaded—"(3) Said accident not having occurred from any fault of the defenders, or of those for whom they are liable, they should be assoilzied with expenses. (4) The defects complained of being well-known to pursuer, and he having elected to continue working notwithstanding he is barred from recovering in respect of injuries caused thereby."

Upon 6th June 1891 the Sheriff-Substitute (GUTHRIE) allowed a proof.

The pursuer appealed for jury trial.

The defenders argued—The pursuer's averments were irrelevant. The pursuer saw his danger and yet continued to work at the place—*Thomas* v. *Quartermaine*, March 21, 1887, 18 Q.B.D. 685; *Mulligan* v. *M'Alpine*, June 27, 1888, 25 S.L.R. 589; *Wilson* v. *Boyle*, Nov 12, 1889, 17 R. 62.

The pursuer argued—This was not a case of working in the face of a known danger. It was not a question of knowledge, but whether the pursuer had agreed to work while the premises were in the dangerous condition averred. Now, that was not so here, because the pursuer had complained to his foreman, and had been promised that this state of things would be remedied—*Smith* v. *Baker & Sons*, 1890, 7 Times Law Reps. 679; *Grant* v. *Drysdale*, July 12, 1883, 10 R. 1159; *Holmes* v. *Worthington and Another*, 1861, 2 F. and F. 533; *Holmes* v. *Clarke*, February 7, 1862, 31 L.J., Ex. 356.

At advising—

LORD TRAYNER — The pursuer claims damages from the defenders for injuries sustained by him while in their employment, on the ground that such injuries were occasioned through the fault of the defenders.

The fault of the defenders is said to consist (1) in the fact that the crane at which the pursuer was employed was too near one of the columns which supported the roof; and (2) that a moulding-pit, separated from the crane by a passage only 19 inches wide, was uncovered. I am unable to discover from the record that the alleged fault had any connection with the injury which the pursuer sustained. It is stated that the pursuer in passing along the narrow passage between the crane and the moulding-pit, stumbled, and in an endeavour to regain his balance his left hand was caught in the wheels of the crane and his thumb torn off. The proximate cause therefore of the accident which befel the pursuer was his stumbling and endeavouring to regain his balance. It is not said that the stumbling of the pursuer was occasioned by anything for which the defenders are responsible. The passage on which the pursuer stumbled was (so far as the pursuer's averments go) exactly as it had been all the time he had been in the defenders' employment. It was not insufficient for the purpose for which it was used; it was not encumbered or obstructed by anything which should not have been there. The pursuers' stumbling must therefore have arisen from pure accident or from negligence on his part. There is no averment that the passage was at all unusual or different either as regards its width or position from similar passages in other and similar works; there is no averment that the pursuer or anyone else had complained of the passage in any way or at any time. The first part of the defenders' alleged fault seems to me in these circumstances to disclose no ground of action against the defenders.

The second ground alleged is that the moulding-pit was not covered. But the want of covering did not lead to the injury sustained by the pursuer. Had he fallen into the pit, and broken his arm or his leg, or otherwise sustained injury through such a fall, the want of covering would plainly have been important. But it does not appear that if the pit had been covered the result would have been different. Having stumbled, the pursuer would naturally grasp at the nearest thing to enable him to regain his balance and prevent his falling, and this is what he did, with the unfortunate result that he lost his thumb. It was suggested that if the pit had been covered he would not have grasped at the crane for support, but would have allowed himself to fall on the covering of the pit. But this is mere speculation, and is not averment. Had it been averred, it would not have altered my opinion as to the relevancy of the pursuer's averments. I think the record discloses that the pursuer's injuries of which he complains were the result of his having stumbled on the narrow passage, and that neither the condition of the passage nor of the adjoining moulding-pit had anything to do with such injuries, and at all events did not cause them.

In the view I take of the case it is not necessary to consider the effect of the averment that frequent complaints had been made about the pit being uncovered. If the uncovered condition of the pit did not cause the injuries or lead to them, as I think it did not, then although the defenders were held to be in fault in not having the pit covered, there would still be no ground of action against them, as the fault alleged did not produce or lead to the injury complained of. But it may be noticed further that the pursuer's averment that the pit should have been covered is qualified by the words "when not in use." The pursuer does not aver that the pit was not in use at the time he fell. I do not, however, put any weight on this criticism of the record, as it could have been amended, if such an amendment would have made the pursuer's averments relevant. I am of opinion, however, that the pursuer's averments do not set forth any relevant case against the defenders.

LORD RUTHERFURD CLARK, LORD YOUNG, and the LORD JUSTICE-CLERK concurred.

The Court found that the pursuer had not averred a relevant case, and dismissed the appeal.

Counsel for Appellant—Guthrie—Deas. Agents—Simpson & Marwick, W.S.

Counsel for Respondents—Jameson—Younger. Agents—J. & J. Ross, W.S.