The drum and revolving plate of the jolly machine were not part of the mill gearing. They were only connected with the mill gearing when the strap was placed round the plate. Not being part of the mill gearing there was no statutory duty to fence them on the defenders. (2) If the drum and revolving plate were parts of the mill gearing they were properly fenced. The fencing was enough to prevent an accident and the accident was caused not by the want of fencing but by the pursuer going to the wrong side of the fencing. "Securely" fenced means fenced with safety to persons doing their proper work in the mill. The fence here was sufficient for everything but the wilful acts of the pursuer. She approached the machine deliberately on the wrong side, and this was the proximate cause of the accident—*Caswell* v. *North*, January 18, 1856, 5 E. & B. 849; opinion of Lord Ormidale in *Gibb* v. *Crombie*, July 6, 1875, 2 R. 892.

Argued for the pursuer—The drum and plate, or at least the latter, was a part of the mill gearing. It was not properly fenced. A breach of the Factory Act having therefore been committed by the defenders they were liable for the accident. The dangerous character of the employment of cleaning this wheel was not so obvious that the pursuer must be taken to have known it—*Britton* v. *Great Western Cotton Company*, January 29, 1872, L.R., 7 Exch. 130. The reasoning of the Sheriff-Substitute was sound and his judgment should be adhered to.

At advising—

LORD JUSTICE-CLERK—It is clearly proved as matter of fact that the women working in this factory had as part of their recognised duty to clean the revolving disc which was the means of communicating motion to the machine when in motion. It appears that in other factories that is not permitted. It is also quite clear that the revolving disc and its axle were part of the gearing of the pottery machinery. Under the statute such gearing required to be fenced. The question whether this machine was fenced or not depended upon whether the board which stood upright in front of the table where the pursuer worked was fencing. It might in a sense be called fencing, but this was certain that it did not fence a part of the gearing which might cause danger if a person happened to go near it. In this case the pursuer had to go near it in order to clean the machine. It was said that the pursuer was not entitled to claim damages because she cleaned the machine in a way dangerous to herself by going to the side where her hand might be drawn in. It appears to me that that was just one of the things that the Legislature had provided for by ordaining that such gearing should be fenced. Here it was clear that the gearing was not fenced at a point where there was manifest danger.

It is said on the part of the defender that he may have been at fault, but that the pursuer contributed to bring about the accident by deliberately going to the side of the machine where the danger existed. Now, I think the Legislature intended to provide not against a person putting their hand or any part of their person wilfully, deliberately, and intentionally into danger from mere wanton bravado or anything of that kind, but against a person committing the mistake, the inadvertent mistake it might be, of going to the wrong side of the machine and thereby getting injured.

I think that is quite a sufficient ground for upholding the Sheriff's judgment, and I therefore do not express any opinion upon the question whether the defender was not also in fault for allowing a woman to clean this machine.

LORD RUTHERFURD CLARK—I am of the same opinion. It is quite clear that the upright wheel formed part of the mill gearing and should have been fenced. It is also quite clear that it was not fenced at all and that the pursuer was thereby injured. She could not have sustained injury if the defender had performed his statutory duty.

I do not mean to say that if the pursuer had received her injury through her own culpable recklessness there might not have been a good defence. But the present accident may have arisen through inadvertence and nothing more, inadvertence arising through the women in this factory being allowed to clean the machinery while in motion.

LORD TRAYNER—I am of the same opinion.

LORD YOUNG was absent.

The Court refused the appeal.

Counsel for Pursuer—Salvesen—A. S. D. Thomson. Agents—Hutton & Jack, Solicitors.

Counsel for Defender — Shaw — Sym. Agent—John Rhind, S.S.C.

Saturday, February 3.

SECOND DIVISION.

[Sheriff of Lanarkshire.

OLIPHANT *v.* JOHNSTONE & MACLEOD.

Reparation—Master and Servant—Defect in Machinery—Relevancy—No Specific Statement of Defect.

A carter raised an action against a firm of manufacturers in Glasgow for damages for injuries received by him. He averred that after obtaining delivery of goods, which he had been sent to receive from them, on the top flat of their premises, and depositing them in a hoist to be taken to the ground flat, he stepped into the hoist along with the attendant, and that the hoist during the descent fell to the ground with such violence as to throw him out and seriously injure him. He further averred

that it was the duty of the defenders to see that the hoist was in a safe condition before allowing those using it in connection with their business to do so, that the hoist was not in a proper state of repair, or at all events was not running as it should have been, and that the defenders knew, or ought to have known, or at anyrate could have discovered this if they had made a proper examination of the hoist or inquiries with regard thereto.

Held that the pursuer had stated a relevant case.

Robert Oliphant, carter, Glasgow, brought an action for £1000 against Johnstone & Macleod, stay and corset manufacturers, 72 Clyde Street, Glasgow, in the Sheriff Court of Lanarkshire, at Glasgow.

He averred—"(Cond. 3) At the date of the accident, and for some time prior thereto, the pursuer was in the employment of the Caledonian Railway Company, his duties being to deliver and take delivery of goods for the company. (Cond. 4) On or about 23rd June 1893 he was sent to defenders' place of business to receive certain goods to be taken by him to the company's station at Buchanan Street, Glasgow. (Cond. 5) On arrival at said place of business the pursuer proceeded to the top flat of the building, occupied by the defenders, in order to obtain delivery of the goods which he had been sent for, and in order to reach said top flat he stepped into a hoist used for the conveyance of persons and goods from the ground flat thereto, and which was in charge of an attendant in defenders' employment. (Cond. 6) After obtaining delivery of the goods for which he had been sent, and depositing them in the hoist to be taken to the ground flat, the pursuer stepped into said hoist along with said goods, and the same having been set in motion by the attendant, they began to descend, and went all right until they reached the second flat, when the regulating power seemed to lose its control, and hoist and contents fell to the ground with such terrific speed that on reaching it the pursuer was not only thrown out, but the hoist rebounded to the top flat and remained fixed there. (Cond. 7) In consequence of the rapidity of the descent of said hoist, and the violence with which it came into contact with ground flat, and the manner in which the pursuer was thrown therefrom, he sustained serious injuries. . . . (Cond. 8) It was the duty of the defenders to see that the hoist was in a safe condition before allowing those using it in connection with their business to do so, and this they negligently failed to do. The hoist was not in a proper state of repair, or at all events was not running as it should have been, and this the defenders knew, or ought to have known, or at anyrate could have discovered had they made a proper examination thereof, or inquiries in regard thereto."

The pursuer pleaded—"(1) The pursuer having been injured through the fault of the defenders, as within condescended on, he is entitled to reparation from them therefor."

The defenders pleaded—"(1) The action is irrelevant."

On 15th November 1893 the Sheriff-Substitute (GUTHRIE) pronounced this interlocutor:—"Finds that the pursuer has not stated a relevant case: Therefore dismisses the action, and decerns." . . . "*Note.*—No specific fault of the defenders has been set forth."

The pursuer appealed to the Court of Session, and argued—It was impossible in a case of this sort to aver specific fault, and the pursuer was not bound to do so. It was in the same category as injuries received from a railway accident. The maxim *res ipsa loquitur* applied—*Macaulay* v. *Buist & Company*, December 9, 1846, 9 D., opinion of Lord Fullarton, p. 245; *Fraser* v. *Fraser*, June 6, 1882, 9 R. 896; *Walker* v. *Olsen*, June 15, 1882, 9 R. 946.

Argued for the defenders—The Sheriff-Substitute's judgment was right. The defenders were only tenants of this house. The case was distinguished from those quoted by the pursuer. There was no presumption that the accident was caused by a defect in the machinery for which the master was responsible—*Macfarlane* v. *Thompson*, December 6, 1884, 2 R. 232.

At advising—

LORD JUSTICE-CLERK—I have no doubt that the pursuer's case on record is relevant as it stands, and that he is entitled to an issue.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court recalled the interlocutor appealed against, and ordered issues to be lodged for the trial of the cause.

Counsel for the Pursuer—A. M. Anderson. Agent—John Veitch.

Counsel for the Defenders—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Tuesday, February 13.

SECOND DIVISION.

[Lord Kyllachy Ordinary.

MORISON *v.* MORISON.

Entail—Aberdeen Act 1824 (5 *Geo. IV. c.* 87) *—Provision to Widow—Increase after Granter's Death.*

The Aberdeen Act 1824 (5 Geo. IV. c. 87), sec. 1, provides—"That an heir of entail in possession may provide for his wife out of the entailed lands a liferent annuity not exceeding one-third of the rent or value of the lands after deducting all other burdens, 'all as the same may happen to be at the death of the granter.'" Sec. 3 — If two such liferents subsist on lands at one time, a