COURT OF SESSION.

Tuesday, January 7, 1902.

SECOND DIVISION.

[Sheriff Court at Glasgow.

LOUGHNEY *v.* CALEDONIAN RAILWAY COMPANY.

Reparation — Negligence—Master and Servant—Removal of Barrels from Lorry to Railway Platform — Alleged Neglect of Proper Precautions.

A labourer raised an action against a railway company for damages at common law or under the Employers Liability Act 1881. The pursuer averred that while he and two other workmen were engaged in the employment of the defenders removing barrels, each weighing about 5 cwt., from a lorry to a railway platform a few inches higher than the lorry, the pursuer's forefinger was jammed between two of the barrels; that the defenders were in fault either (1) in not providing more men for the removal of the barrels, or (2) in not removing the barrels by means of a crane or by the aid of a block and tackle, or (3) in not providing the workmen with levers or sprags or grappling-irons, or informing them where these articles were procurable; or otherwise, that it was the duty of the defenders' manager and overseer to have taken one or other of the above precautions; and that the pursuer had pointed out to the overseer the necessity of using these precautions, which were usual and necessary.

The Court *dismissed* the action as irrelevant, upon the ground that, as matter of common knowledge, upon which in cases relating to simple operations like this the Court was entitled to proceed, the precautions desiderated by the pursuer were not necessary.

Smith v. *Forbes & Company*, March 11, 1897, 24 R. 699, 34 S.L.R. 513, *distinguished.*

Owen Loughney, labourer, Glasgow, raised an action in the Sheriff Court at Glasgow against the Caledonian Railway Company for £500 damages at common law, or otherwise for £156 damages under the Employers Liability Act 1880.

The pursuer averred—"(Cond. 3) On or about Wednesday the 27th day of February 1901 the pursuer was in the employment of the defenders at their goods station, Kinning Park, Glasgow. He entered their service for the first time on the day preceding, and had had no experience of such work as that at which he was engaged. (Cond. 4) On the date in question the pursuer was engaged, on the instructions of the defenders or of those delegated by them in that behalf, in assisting two other workmen, also in the employment of the defenders, in transferring three barrels, each weighing about 5 cwt. and containing white lead or other material, from a lorry on to a table. (Cond. 5) The table was a few inches higher than the lorry referred to. The lorry having been placed lengthwise to the table, the pursuer and the two other workmen rolled the first of the three barrels to the side of the lorry facing the table and tilted it on to one of its ends. The two other workmen thereupon left the lorry and stepped on to the table. So soon as they had done so the pursuer, in accordance with instructions as aforesaid, lowered the upper end of the barrel on to the edge of the table while the lower end rested on the lorry. This being done, the two workmen referred to commenced to pull said barrel, while the pursuer, who was standing behind on the lorry, endeavoured to push it on to the table. Just then said barrel suddenly and without any warning left the grasp of the two workmen standing on the table as aforesaid, in spite of their best exertions, and, quickly receding, jammed the forefinger of the pursuer's left hand between itself and the second barrel on the lorry adjacent thereto." In condescendence 6 the pursuer described the injury to his finger and the shock to his nervous system which it had caused. The pursuer further averred—"(Cond. 7) For the pursuer's injuries the defenders are responsible. It was the duty of the defenders to have appointed a greater number of men to perform the operation referred to. The barrels in question were much too heavy for the safe removal thereof from the lorry on to the table by means of only three men. This circumstance the defenders knew or at least ought to have known, and had they, as was their duty to have done, appointed additional hands in the removal of said barrels the pursuer would have escaped injury. Seeing the defenders, however, failed in this, then they should have removed said barrels by means of a crane or by the aid of a block and tackle. It is usual and necessary, in the interests of the safety of the men employed in such operations as are above described, for an employer ordinarily careful either to supply a larger number of men for the performance of the work or to carry it through by means of a crane or a block and tackle. It is believed and averred that subsequent to the pursuer being injured the defenders have used a crane in the conduct of all like operations. They should have done so sooner. As the defenders failed to adopt either of the foregoing precautions on the occasion referred to, then they should have supplied the pursuer and his fellow-workmen (as is usual and necessary, and as they were in duty bound to do in the absence of any one of the foregoing safeguards) with levers and sprags or with grappling-irons to enable them to punch forward, block, and hold fast the barrels with the view to prevent them from receding, as occasion required. Had levers and sprags or grappling-irons been provided by the defenders the colliding of the two barrels would have been avoided and the

accident would have been prevented. It is usual in the conduct of like operations to provide such levers and sprags or grappling-irons, and it is necessary in the interests of the safety of those employed. The accident was thus due to the fault of the defenders in pursuing a method of working by means of insufficient plant, which they knew or ought to have known to be unusual, improper, and unsafe. It was further the duty of the defenders to have informed the pursuer and his fellow-workmen where levers and sprags or grappling-irons were procurable, and to have instructed them in the use thereof, and to have seen that they were so used. This the defenders negligently failed to do, with the result that the pursuer was injured as stated. The work is responsible and risky, and the defenders were bound to have warned the pursuer of this or to have adopted usual and necessary precautions for his safety. This they failed to do, with the result that the accident occurred as aforesaid. The accident which happened was a natural and probable result of the negligence of the defenders, as above condescended upon. (Cond. 8) Or otherwise, the defenders are responsible to the pursuer under the Employers Liability Act 1880 for the injury he received. It was the duty of Thomas Meikle, manager, and Gregory, overseer, superintendents within the meaning of said Act, and both in the employment of the defenders at their goods station, Kinning Park, aforesaid, to have provided or to have seen that there were provided a sufficient number of men as aforementioned for the safe transference of the barrels in question from said lorry on to said table. Further, it was their duty to have seen that a crane or a block and tackle were used in the conduct of the operation, as condescended on in the preceding article. As, however, they culpably failed in the exercise of their duty in adopting either of the foregoing precautionary measures which are usual and necessary in the interests of the safety of the employees, they should have supplied or have seen that the pursuer and his fellow-workmen were supplied with a sufficient number of levers and sprags or grappling-irons as aforesaid, so as to enable the pursuer and his fellow-workmen to prize forward the barrels in question, or to prevent them falling back, or to pull them forward and to hold them secure as occasion required. They at any rate ought to have informed those engaged in said operation where said levers and sprags or grappling irons could be procured, and to have instructed them in the use thereof, as also to have seen that they were so used, but this they culpably failed to do. They knew, or at least ought to have known, that in failing to attend to these usual and necessary precautions they were subjecting the pursuer to great and unnecessary danger. Had the said levers and sprags or grappling-irons which were necessary for the safe conduct of the operation described been supplied by the superintendents aforesaid the accident would have been prevented. These things the pursuer pointed out to Gregory, and to whom the pursuer stated he thought the absence of one or other of them would occasion danger, but to this the latter paid no heed."

The defender pleaded, *inter alia*—"(1) The action is irrelevant both at common law and as laid under the Employers Liability Act and ought to be dismissed."

On 24th October 1901 the Sheriff-Substitute (STRACHAN) allowed a proof before answer.

The pursuer appealed for jury trial and proposed an issue.

Argued for the defender—The action was irrelevant. Moving barrels from a lorry to a platform was a matter of everyday occurrence, and it was never performed by means of machinery. In any event, whatever danger there might be in such an operation was patent to all.

Argued for the pursuer—The case was relevant. It was ruled by the decision in *Smith* v. *Forbes & Company*, March 11, 1897, 24 R. 699, 34 S.L.R. 513.

LORD JUSTICE-CLERK—In cases like the present, which relate to simple operations, the Court is entitled to proceed on the common knowledge and experience of mankind. It is vain to suggest that the movement of barrels from a lorry on to a table or platform of about the same height as the lorry is an operation requiring the use of levers or sprags or grappling-irons. That is contrary to common knowledge and observation. Thousands of barrels are transferred daily in this country from lorries to railway platforms without any such appliances, and I am at a loss to see the necessity of these elaborate precautions in order to prevent one barrel from going against another.

The case is quite distinguishable from that of *Smith*. There the injury resulted from part of the machine gearing giving way. The risk was special and not within common knowledge. It was therefore held to be a matter for inquiry whether the risk was such as the master should have provided against.

I am therefore clearly of opinion that the pursuer has failed to make out any relevant case.

LORD YOUNG and LORD MONCREIFF concurred.

LORD TRAYNER was absent.

The Court dismissed the action as irrelevant.

Counsel for the Pursuer—Watt, K.C.—Munro. Agents — St Clair Swanson & Manson, W.S.

Counsel for the Defenders—Dundas, K.C.—Deas. Agents—Hope, Todd, & Kirk, W.S