[ZEKIA AND ZANNETIDES JJ.]

NICOS DROUSHIOTIS, *Appellant*,

AND

ZENON KYPRIANIDES, *Respondent*.

(*Civil Appeal No.* 4209).

Civil Wrong—Negligence—Strict liability—Printing machine—Not a dangerous thing within section 48 *of the Civil Wrongs Law, Cap.* 9*—Child—Licencee—Duty of occupier—Allurement to child.*

The appellant, a child aged 12 years and 10 months, called at the printing office of the respondent to ask for his friend A, the respondent's grandson who was employed there. At the time A was operating an electrically propelled printing press and the appellant stood watching him for a while. While A was engaged in pulling down a lever the appellant, without being noticed by A, inserted his hand in the press in order to straighten a sheet of paper which got out of line, but in doing so his hand was caught in the machine and injured.

Held: (1) that a printing machine was not a dangerous thing within the meaning of section 48 of the Civil Wrongs Law, Cap. 9;

(2) that the respondent's printing machine was not a concealed danger or trap, and that there was no duty cast on him as occupier of the premises to look after the safety of a child licensee against an eventuality which could not reasonably be foreseen;

(3) that the printing machine was not an allurement to a child of the appellant's age; and

(4) that, consequently, the respondent could not be said to have been negligent or to have failed to perform his duty as occupier, and the appeal must be dismissed.

Morley v. *Staffordshire County Council* (1939) 4 Al E.R. 94;

Latham v. *R. Johnson & Nephew Ltd.* (1913) 1 K.B. 411; and *Dyer* v. *Ilfracombe Urban District Council* (1956) 1 All E.R. 581, referred to.

Appeal dismissed.

Appeal.

Appeal from the judgment of the District Court of Limassol (Zenon P.D.C.) dated the 31st December, 1956 (Action No. 720/56), dismissing a claim for damages by the appellant for injuries sustained by him through the alleged negligence of the respondent.

M. Houry for the appellant.
A. Anastassiades for the respondent.

The judgment of the Court was delivered by :

ZEKIA, J. : This is an appeal from the District Court of Limassol dismissing a claim for damages by the appellant for injuries sustained by him through the alleged negligence of the respondent.

The facts of the case are shortly as follows :—

The appellant is a minor born in May, 1943, and was a pupil attending the third form of a secondary school, the Commercial Academy of Limassol, at the time of the accident, which occurred on the 9th March, 1956. Late in the morning of that day he visited the printing office of the respondent, Mr. Kyprianides, an old man of 80, with a view to asking his friend Andrikkos, the grandson of the respondent, to walk home together. The said Andrikkos was an employee of the respondent and was operating the printing machine when the appellant entered the printing office. The said machine is electrically propelled and its printing part consists of two steel plates, upper and lower, and the print is in the lower plate. The upper plate moves up and down at such a speed as to allow the operator who works the machine to pick up and place on the plates with his right hand the blank sheets and remove with his left hand the same, after being printed, to a place on his left. The machine is designed to be operated by a single person ; and a second man cannot render assistance to the operator. It possesses two brakes, one of which is capable of completely immobilising the machine immediately it is applied and the other by means of a lever slows it down and allows the upper plate to approach the lower one within 2 m.m. only. This helps when a leaf gets astray or crooked on the plates and it is desired to be pulled off without being printed.

Appellant having entered the shop went up near his friend, who was working at the printing press, and stood on his right watching him. A sheet of paper got out of position on the plate and the operator pulled the lever in order to slow down the machine and prevent the printing of the paper. Having done this he momentarily turned to look to his left at the pile of the printed sheets. He then heard appellant call out " Virgin Mary ". While the operator was engaged in pulling down the lever and glancing at the pile of printed matter appellant had inserted his right hand in between the two plates in order to straighten the paper which got out of line but, before he was able to withdraw his hand, having apparently miscalculated the time taken by the upper steel plate in moving down on the lower one, the palm of his hand was caught between the two plates and crushed but as the lever

of the machine was pulled down in the meantime the plates did not contact each other and as a result his hand was not utterly smashed. The injuries received partly incapacitated his right hand.

The learned President of the Court below found that appellant was in the premises as a licensee and that it was through his negligence that he sustained the injuries described. The respondent, as occupier of the premises in which the printing machine was installed and as the owner of the machine, was not liable for the accident. Nor was the operator found to be negligent in allowing appellant to have access to the printing machine; and, consequently, respondent was not responsible in his capacity as an employer either.

Appellant's grounds of appeal are two:

(1) The finding of the trial Court that there was no negligence on the part of defendant-respondent or the operator is against the weight of evidence.

(2) Appellant's meddling with the printing press did not disentitle him to claim damages for the injuries he received.

In order to support the appeal it was argued that the printing press when in operation was a dangerous thing within the meaning of section 48 of the Civil Wrongs Law, Cap. 9, and that the onus was on the defendant to show that there was no negligence for which he could be held liable in connection with the keeping of such dangerous thing. And that respondent failed to discharge this onus. We do not think that a printing machine is a dangerous thing within the meaning of section 48 of the Civil Wrongs Law. We agree with the finding of the trial Court.

Charlesworth dealing with this phrase in the second edition on the Law of Negligence at p. 227 says:—

> "The definition of 'dangerous things' must therefore be such as to exclude such things as motor vehicles, railway trains, mechanically propelled vehicles and machinery of all kinds. Liability for this depends on negligence".

The fly-wheel, the motor and the belts of the machine were cased in accordance with the requirements of the Labour Department. There was no infringement of any statutory duty. The machine is not inherently dangerous: Of course machineries can be regarded dangerous within the meaning of certain statutes and regulations for the purpose of protecting workmen, such as for instance under section 55 of the Coal Mines Act, 1911, and of the Factories Act, 1937. This is not the case, however, in the present action and no question for breach of the statutory provisions or regulations arises.

It was also argued that the operator was acting negligently when he turned his attention to his left and thus disabled himself from following the movements of the minor appellant who was in immediate proximity of the printing press. Had he not directed his attention elsewhere he would have noticed the minor placing the palm of his right hand between the two plates and he would then be able instantly to stop the machine and avert crushing the appellant's hand. It was further submitted that appellant, owing to his age, might have been reasonably expected to intermeddle with the business of the operator and the latter was negligent in failing to take the appropriate care and precaution.

Section 47 of the Civil Wrongs Law deals with the duty not to be negligent. Sub-section (1) (*a*) (*b*) and sub-section (2) (*b*) define the duty of an occupier to a person who is lawfully in or upon the immovable property. The second proviso of sub-section (2) (*b*) defines the duty of an occupier of any immovable property towards a bare licensee who comes lawfully upon his property. As far as the condition, the maintenance or repair of his immovable property is concerned his duty is restricted to warn a licensee of any concealed danger or hidden peril which the occupier knew or must be presumed to have known. In accordance with section 47 (2) (*b*) " A duty not to be negligent shall exist in the following cases, that is to say :— (*b*) the occupier of any immovable property shall owe such a duty to all persons who are, and to the owner of any property which is lawfully in or upon or so near to such immovable property as in the usual course of things to be affected by the negligence ".

There is no doubt that a visitor of the printing press is not in the usual course of things likely to be affected by the mode the two steel plates of the machine work and also such a machine could not by any stretch of interpretation be regarded as a concealed danger or hidden peril or trap for any person, including a boy of the age of the appellant, who walks into the printing office. There was no duty cast on the occupier and his employee as an extraordinary measure of precaution to constantly watch the movements of the entrant minor for an eventuality which could not reasonably be foreseen.

There remains to see whether the said machine constitutes an allurement for persons of the age and class of the minor appellant and, if so, whether the occupier failed through the conduct of his employee or otherwise to take extra care for the visitors of minor age when they were allowed to approach the machine in question. There is no evidence that the appellant was either allured or attracted by the working of the plates and that as a result he put his hand between the two plates. He expressed the purpose

for which he did it: He intended to straighten a paper which got out of line. It was not his immature age that prompted him to insert his hand but he wanted to help his friend the operator gratuitously. He was neither asked nor expected to do what he did.

In *Morley* v. *Staffordshire County Council* (1939) 4 All E.R. 94, Mackinnon L.J. in dealing with allurement to children said:

"But it is not suggested that there was any allurement to the child at all, because there is no evidence of it attracting him in any way. Consequently I think there is no trap in that. There is nothing in the nature of a trap".

In *Latham* v. *R. Johnson & Nephew Ltd.* (1913) 1 K.B. 411, Hamilton, L.J. said:

"The rule as to licensees, too, is that they must take the premises as they find them apart from concealed sources of danger; where dangers are obvious they run the risk of them .... Two other terms must be alluded to—a 'trap' and 'attraction' or 'allurement'. A trap is a figure of speech, not a formula. It involves the idea of concealment and surprise of an appearance of safety under circumstances cloaking a reality of danger. Owners and occupiers alike expose licensees and visitors to traps on their premises at their peril, but a trap is a relative term. In the case of an infant, there are moral as well as physical traps. There may accordingly be a duty towards infants not merely not to dig pitfalls for them, but not to lead them into temptation .... Finally, what objects which attract infants to their hurt are traps even to them? Not all objects with which children hurt themselves *simpliciter*. A child can get into mischief and hurt itself with anything if it is young enough. In some cases the answer may rest with the jury, but it must be matter of law to say whether a given object can be a trap in the double sense of being fascinating and fatal. No strict answer has been, or perhaps ever will be, given to the question ....".

Section 54 of the Civil Wrongs Law, which deals with special defence in cases where the plaintiff voluntarily exposed himself to danger, reads:—

"It shall be a defence to any action brought in respect of a civil wrong that the plaintiff knew and appreciated or must be taken to have known and appreciated the state of affairs causing the damage and voluntarily exposed himself or his property thereto:

Provided that the provisions of this section shall not apply to any action brought in respect of any civil wrong when such wrong was due to the non-performance of a duty imposed upon the defendant by any enactment:

Provided also that no child under the age of twelve years shall be deemed to be capable of knowing or appreciating such state of affairs or of voluntarily exposing himself thereto or of himself exposing his property thereto ".

Here the appellant child is over 12 years of age and the trial Court found that he was capable of knowing and appreciating the risk to which he exposed himself by inserting his hand in between the two plates. This was an obvious danger and a boy of his age could easily appreciate the danger attending his act and indeed his own evidence supports this ; when he was cross-examined he said :

" I realised that it was a dangerous thing to put one's hand between the two moving plates of the press ".

He had been to the printing office on previous occasions. We agree with the learned counsel of the respondent that in the context the words we quoted mean nothing else but that he was in a position to appreciate the danger of placing his palm between the two plates lest his hand might be caught in between. Reference was made to various authorities where victims of accidents were either infant children or big children. In *Dyer* v. *Ilfracombe Urban District Council* (1956) 1 All E.R. 581, a child of $4\frac{1}{2}$ years falling through the gap between the rails of a platform of a soundly constructed chute was not found entitled to recover damages for injuries received because there was no hidden danger and for a child of such age the danger of falling from a high platform was an obvious one. We are of the opinion, therefore, that this appeal should be dismissed.

Appeal dismissed.