complained of, and declared the interdict perpetual.

"*Note.*—The respondents' counsel maintained that the complainer had failed to prove his case with regard to the other entries specified in his statement, but he conceded that the entries Nos. 1051 and 1052 were erroneous, these parcels being included in the subjects entered under No. 967. It was also admitted that the complainer was justified in reading the notices transmitted to him as representing that these two parcels would be entered in accordance with the rental he had furnished under No. 967, and in that respect the old valuation roll would be altered. It follows that the assessor failed to transmit the complainer 'a copy' of two entries affecting him, which are admittedly erroneous, and that appears to be conclusive of the case, because it was further conceded that if one of the entries is erroneous the charge must be suspended, notwithstanding that the others are accurate, unless the respondents are right in maintaining that all challenge of the valuation roll is barred by the statute, even although the notices which the statute prescribes have not been given to the complainer. I may say, however, that in my opinion the complainer's averments have been proved with regard to all the entries in question excepting No. 881. With regard to that subject there is admittedly an erroneous entry, but the error is one of mere description, and there is no double entry for which the complainer can be prejudiced.

"I must add that the case might have been decided without the expense of a proof if the respondents had thought fit, at an earlier stage, to make the admission, which could not ultimately be withheld, as to Nos. 1051 and 1052."

The defenders reclaimed, and argued—Though the amount at stake in the case was small, the question of law involved was of great importance. The same error might occur with subjects valued at hundreds of pounds, and then the question would be whether the proprietor entered in the roll for this was to pay or the other ratepayers. The only safe rule to go by was that the roll was conclusive for the year, and the corrections of the entries could not be altered or even inquired into. The statute prescribes the standard, and the board have no choice but to go by it.

Authorities—*M'Lauchlan* v. *Tennant*, May 4, 1871, 2 Coup. 45—43 Sc. Jur. 390; Valuation Act, secs. 31 and 32; Poor Law Act 1845, secs. 38 and 40.

The pursuer replied—The result of the pursuer's contention would lead to startling and inequitable results. It would prohibit parochial boards from acting officially as honest men—from repaying what they knew to be an erroneous overcharge. This was not a question of valuation, but of assessment on subjects which did not exist, at least which did not exist twice. The subjects were correctly enough valued, but were charged twice over. The valuation roll was conclusive as to valuation, but not as to assessment—Valuation Act, sec. 34.

At advising—

LORD JUSTICE-CLERK—I entirely agree that the valuation roll is conclusive as to the value of all subjects entered on it for assessment for that year, but then in this case it is alleged that although the value of the subjects are correctly entered they are valued and entered twice over, and it is argued that it is unjust for the proprietor to have to pay twice for the same subjects. This contention bears in principle so much equity that I find it impossible to resist giving it effect; and I think the real answer is that the duplication of subjects here with the same valuation is not a question of valuation at all, but of assessment. The assessor is practically trying to collect the assessments twice over, and this is admitted by the defenders. To hold that he cannot exact his debt twice is not to interfere with the conclusiveness of the valuation roll as to the assessable value of the subjects entered in it.

LORDS YOUNG and RUTHERFURD CLARK concurred.

LORD CRAIGHILL was absent.

The Court adhered.

Counsel for Complainer—Jameson—G. Wardlaw Burnet. Agent—William Officer, S.S.C.

Counsel for Respondents (Parochial Board)—Trayner—Baxter. Agent—David Forsyth, S.S.C.

Thursday, July 12.

SECOND DIVISION.

[Sheriff of the Lothians.

GRANT *v.* DRYSDALE.

Reparation—Master and Servant—Culpa—*Contributory Negligence.*

A quarryman while engaged in preparing to blast a piece of rock was injured through the falling upon the powder he was using of a hot cinder from the furnace of a steam-crane used at the edge of the quarry. *Held*, on a proof, that in the circumstances there was fault on the part of the quarrymaster (who personally superintended the working of the quarry) in not having provided the furnace with a fender for catching such cinders, and that the pursuer was not chargeable with contributory negligence in using powder without taking care that the open side of the furnace was at the time so placed that cinders could not fall from it into the quarry.

This was an action of damages for bodily injury raised by a quarryman against his employer. The pursuer claimed, at common law and also under the Employers Liability Act 1880, the sum of £150 as damages for injuries sustained in the following circumstances disclosed by the proof:—

The pursuer was employed in the quarry, under the instructions of John Hill, the defender's foreman, in charging with gunpowder a hole which he had previously drilled in the rock for the purpose of blasting. While he was thus engaged a red-hot cinder fell from the furnace of a steam-crane used for raising stone to the surface, and placed on the edge of the quarry. This cinder, entering the drill hole which the pursuer

was charging, exploded the gunpowder. The pursuer was severely burned about the head and face by the explosion, and entirely lost the sight of one eye. The defender was himself constantly at the quarry superintending operations. The fault alleged by the pursuer against the defender was that the engine attached to the steam-crane was unprovided with a fire-box or plate to catch the ashes from the furnace, and the cinder had thus fallen into the quarry.

The defence was a denial of fault in providing defective machinery, and (assuming that the engine ought to have been provided with such a plate) contributory negligence on the part of the pursuer in neglecting to see that the boiler of the crane was turned by the engineer on to the land side of the quarry so as not to overhang it when the powder was being loaded or fired off, as was alleged to be the practice in the quarry well known to the pursuer, and also in not giving notice to those in charge of the crane that he was about to prepare for blasting.

The defender pleaded—"(1) The pursuer not having been injured by, through, or in consequence of the negligence or carelessness of the defender, or of anyone under him for whom he is responsible, nor by reason of any defects in the machinery or plant used in connection with his business, but such injury having resulted from the fault and carelessness of the pursuer himself, or of some of his fellow-workmen contravening the regulations of the defender as to the conducting of blasting operations, or from sufficient precaution not having been taken by the pursuer himself, the defender is not liable in damages or recompense for injuries as sued for."

The Sheriff-Substitute (Melville) found it proved "that on 20th February 1882, when the pursuer was working in the defender's quarry at Maidenpark, and was loading a shot, a cinder from an engine above fell down and ignited the powder which the pursuer was using; that an explosion then occurred, by which the pursuer was severely injured; that the pursuer and the other workmen had often before seen cinders fall from the said engine, and that the pursuer was not justified in using gunpowder below said engine, and that he is not entitled to recover damages from the defender: Therefore assoilzies the defender.

"*Note.*—The pursuer must have known that the engine was being fired, as he was only about sixty or seventy feet below. He and other workmen state that ashes were often seen falling. Under such circumstances he could not be justified in using gunpowder without first having made sure that no ashes could fall upon him."

On appeal the Sheriff (Davidson) adhered.

"*Note.*—There is no doubt how the injuries to the pursuer were caused. The hole which the pursuer was filling with powder was ignited by a cinder falling from the engine above. The engine had stood there for a considerable time. No provision was made by the defender for preventing cinders falling from it into the quarry immediately below. They were seen to fall often. Sufficient care was plainly not taken that, when shots were to be fired below, the engine was so placed that cinders could not fall from it—the occasions on which precautions were observed being apparently only when great shots were about to be fired; and then, not for the safety of the workmen, but to prevent injury to the engine itself.

"All this was very blameworthy on the part of the defender, and also of his manager. But, unfortunately for the pursuer, their negligence does not of itself entitle him to prevail in this case. Improper as the conduct of his superiors may have been, he had a duty to do in regard to his own safety. It was his duty on the Monday morning distinctly to inform the engineman or Hill, or both, that he was going to load the bore, and to require them to take the necessary precautions. Seeing how the engine stood, he was bound in justice to them, as well as for his own safety, to give them distinct notice, and to refrain from loading the bore till everything was right. A certain notice seems to have been given on the previous Saturday, but none was given on the Monday; and the pursuer seeing the position of the engine, and well knowing the danger, proceeded to load the bore."

The pursuer appealed, and argued—It was well known to the defender that there was danger of hot ashes falling into the quarry in consequence of there being no plate to catch the cinders. The danger, then, was one which the defender could have guarded against by the exercise of ordinary care and caution—*Tuff* v. *Warman*, June 18, 1858, 27 L.J., C.P. 322. The cases cited by the defender were easily distinguishable from the present. In these the known danger was one necessarily incident to the work in which the person injured was engaged. Here the danger was one unnecessary and separate from the work which the pursuer was doing.

The defender replied—There was no obligation on him to supply the ash-box, and any danger of ashes falling from the want of it was very small. But however small it was it was a visible danger of which the pursuer was aware, and of which he must consequently be held to have accepted the risk.

Authorities—*M'Neil* v. *Wallace & Company*, July 7, 1853, 15 D. 818; *Crichton* v. *Keir and Crichton*, February 14, 1863, 1 Macph. 407; *M'Gee* v. *The Eglinton Iron Company*, June 9, 1883, 20 Scot. Law Rep. 649; *Seeley* v. *Jacksons & Sons*, October 18, 1882, 20 Scot Law Rep. 11; *Woodley* v. *The Metropolitan District Railway Company*, February 14, 1877, L.R., 2 Exch. Div. 384.

At advising—

Lord Young—This case was argued on such general grounds (and specially so by the defender), that although I regard it as a special case I think I may usefully preface my opinion upon it with some general observations on the principles which govern cases of the class to which it belongs. And the first remark I have to make is that the ground of action in all such cases is fault. Where there is no fault there is no action, which is only saying that a workman shall not any more than any other recover compensation for injuries for which no one is to blame. Whether or not anyone is to blame is generally a mere question of fact which cannot be answered affirmatively without saying who is. If so answered, the person in fault is of course responsible for the resulting injuries—whether or not any other is responsible for him to the sufferer. When the person in fault is the defender in the action for compensa-

tion, he cannot escape liability otherwise than by showing that the pursuer has by his conduct precluded himself from recovering, as by contributory fault or negligence. But when, as frequently and indeed usually happens, the defender is not the person in fault, but only his superior or employer, and so is sought to be made liable, not as himself in fault but as responsible for him who is, on the maxim *respondeat superior*, a crowd of questions arises regarding the circumstances in which responsibility for another's fault attaches. The general rule of the common law is that while a man is responsible to the outer world, that is, to strangers, for the faults, whether of omission or commission, of his servants in the conduct of his business, he is not responsible to one servant for the faults of another. The latter part of the rule has been modified by the Employers Liability Act, but it is unnecessary here to pursue further the subject either of the rule or the statutory modification of it—the fault here relied on being imputed to the employer (the defender) himself—so that if it is established he is undoubtedly liable, unless the pursuer (the sufferer) has precluded himself from recovering. The fault alleged is that the steam-crane on the summit of the quarry used for lifting stones from the workings at the bottom was placed so close to the edge that hot cinders would fall from the furnace of the boiler to the workings beneath unless there was an ash-pan or plate to catch them, and, there being none, did, causing the explosion from which the pursuer suffered. If the fact be so, and being so infers fault, the defender himself is directly to blame, for it is not doubtful that he personally not only knew of and sanctioned but ordered the arrangement in which the fault consisted—being no doubt of opinion, as he says he was, that the arrangement was right and inferred no blame on his part as a master. There is here therefore no room for any question as to the liability of a master for the fault of others. The defender cannot and does not say that if the arrangement was wrong his foreman or manager and not he is responsible for it, but admitting his responsibility contends that it was right, or, if wrong, that the pursuer is precluded by his own conduct from recovering compensation for the injuries which he sustained in consequence.

On the question of fault or not, which is a question of fact, I am clearly of opinion on the evidence that there was fault, and this is the opinion of both Sheriffs. I think a quarrymaster does not reasonably provide for the safety of his workmen who orders or knowingly sanctions the existence and continuance of an arrangement of his plant by which hot cinders may descend on them at any time according to the state of the boiler furnace, and expose them to the risk of such a calamity as that which here in fact occurred in consequence of it. That it was quite practicable, and indeed easy, to prevent the fall of cinders into the quarry workings by placing the furnace further back from the edge, or by providing a plate or ash-pan, is plain in itself and according to the evidence and thus there is here no occasion to consider the duty of a master to take extraordinary precautions at extraordinary expense, or to adopt the most recent scientific improvements, or to carry on his work in the safest possible manner. Reasonable attention to and care for the safety of his workman is all that need be exacted of a master in order to condemn as faulty and blameworthy the defender's arrangement which is here complained of.

But it is contended that the pursuer knowing of the faulty and dangerous arrangement, as I assume he did, and choosing to work under it, is barred from complaining of it, and so is precluded from recovering compensation for the injuries which he sustained in consequence of it. I cannot assent to this contention, which is indeed very comprehensive. It is true that a man who voluntarily, *i.e.*, unnecessarily, encounters a seen danger which by ordinary care and attention to his own safety he might have avoided, shall not recover. This is the typical case of contributory negligence. But this wholesome rule is only applicable when the danger was visible and avoidable, so that a man with ordinary care of his own safety would avoid it and be chargeable with want of ordinary care if he did not. It would, for example, have applied here had it appeared that the pursuer proceeded to charge his mine with powder under a descending shower of hot cinders, for to proceed with such work at such a time would have been inexcusable rashness on his part. But to say that he knew he was exposed to the possibility of such an irruption is another matter, and I cannot listen to the defender who as a master quarryman defends his own conduct—that is, the arrangements which he sanctioned, and indeed ordered, as being consistent with the reasonable safety of his workmen—when he accuses the pursuer of inexcusable rashness or want of ordinary care of his own safety for working under them. On considering the evidence in the case and hearing a full argument, I am of opinion that they were not consistent with the reasonable safety of the workmen, but I decline on the suggestion of their author to impute inexcusable rashness or want of ordinary care to a workman for the mere fact of working under them with his master's assurance that they were reasonably safe.

Lord Rutherfurd Clark — In the special circumstances of this case I am of the same opinion.

Lord Justice-Clerk—I concur.

Lord Craighill was absent.

The Court sustained the appeal, found that the pursuer had been injured through the fault of the defender, and assessed the damages at £120.

Counsel for Appellant — Kennedy. Agent—Alexander Clark, S.S.C.

Counsel for Respondent—Mackintosh—Dickson. Agents—J. & A. Peddie & Ivory, W.S.