fact to be. The boy and his playmates, no doubt, intervened, and made the turntable revolve; but the omission of the defendant company to discharge the duty which on the above-mentioned assumption I think that they owed to the plaintiff—namely, to cause the machine to be made immovable by boys and children, and therefore a safe thing for them to play with—was not only the *causa sine qua non* but also the *causa causans* of the accident. It was of course for the jury to determine whether leave and licence had in fact been given. There was, I think, as I have already stated, evidence proper for their consideration on that question. In my opinion therefore the defendants were not entitled to the direction for which they asked at the trial, and as that is the only question raised for your Lordships' decision, I think that the appeal should be allowed, with the costs usual in such cases.

LORD COLLINS—This case has given rise to much difference as to the view taken by the Lord Chief-Justice, who tried the case, the Lord Chief-Baron and Johnson, J., being in favour of the plaintiff, and three Judges of the Court of Appeal and Kenny, J., in the Divisional Court in favour of the defendants. I am of opinion that there was evidence of actionable negligence fit for the consideration of a jury.—[*His Lordship commented on the evidence and continued*]—The Supreme Court of America has affirmed the liability of the railway company in a case as nearly as possible identical in its facts with that under appeal (*Railroad Company* v. *Stout*, 17 Wall. Sup. Ct. U.S. 657), and the principle of allurement in the case of children has been recognised in our own Court of Appeal (*Jewson* v. *Gatti*, 2 T.L.R. 441). With unfeigned respect for the Court of Appeal, I think that they have hardly given sufficient weight to the special considerations applicable in the case of young children as distinguished from adults.

LORD CHANCELLOR (LOREBURN)—I am content to act upon the opinion of Lord Macnaghten, having regard to the peculiar circumstances—namely, that this place on which the defendants had a machine, dangerous unless protected, was to the defendants' knowledge an habitual resort of children, accessible from the high road near thereto, as well as attractive to the youthful mind; and that the defendants took no steps either to prevent the children's presence or to prevent their playing on the machine, or to lock the machine so as to avoid accidents, though such locking was usual. I must add that I think that this case is near the line. The evidence is very weak, though I cannot say that there was none. It is the combination of the circumstances to which I have referred which alone enables me to acquiesce in the judgment proposed by Lord Macnaghten.

Judgment appealed from reversed.

Counsel for Appellant—Solicitor-General for Ireland (Barry, K.C.)—Dudley White (of the Irish Bar)—M. Stebbing. Agent—Herbert Z. Deane, for W. D. Sullivan, Navan.

Counsel for Respondent—S. Ronan, K.C.—Fetherstonhaugh, K.C.—Piers Butler (all of the Irish Bar). Agents—Martin & Company, for John Kilkelly, Dublin.

HOUSE OF LORDS.

Friday, March 5, 1909.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lords Ashbourne, Macnaghten, and James of Hereford.)

REFUGE ASSURANCE COMPANY, LIMITED *v.* KETTLEWELL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Principal and Agent—Fraud of Agent—Principal Retaining Proceeds—Insurance—Fraud of Insurance Agent—Repayment of Paid Premiums.

A person holding a policy of life insurance intended to give it up. An agent of the company informed her falsely that by paying for four years more she would become entitled to a fully paid-up policy. On the faith of this she continued paying premiums. At the end of the time the company refused to grant a free policy but retained her premiums.

Held that she was entitled to be repaid the premiums paid by her for the four years.

The facts of the case sufficiently appear from the rubric. Judgment in favour of the policy-holder was affirmed by the Court of Appeal (LORD ALVERSTONE, C.J., SIR J. GORELL BARNES, P., and BUCKLEY, L.J.), reported [1908] 1 K.B. 545. The Insurance Company appealed.

At the conclusion of the argument for the appellants, their Lordships, without stating reasons, affirmed the judgment appealed against.

Appeal dismissed.

Counsel for Appellants—Manisty, K.C.—W. H. Owen—Nield—E. A. Hitchens. Agents—Hopwood & Sons, for C. M. Beaumont, Manchester.

Counsel for Respondent—Giveen. Agents—Clarkson, Greenwell, & Co., for John Barker, Grimsby.