(5) of 1977

IN THE PRIVY COUNCIL No. 9 of 1975

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

BETWEEN :-

RITA BENNETT — Appellant (Plaintiff)

- AND -

PARAMOUNT DRY CLEANERS LIMITED — Respondent (Defendant)

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL No. 9 of 1975

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B E T W E E N :

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AND

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INDEX OF REFERENCE

IN THE PRIVY COUNCIL — No.9 of 1975

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B E T W E E N :

RITA BENNETT — Appellant (Plaintiff)

- and -

PARAMOUNT DRY CLEANERS LTD. — Respondent (Defendant)

RECORD OF PROCEEDINGS

No. 1

In the Supreme Court

No. 1

Statement of Claim
7th October 1970

10. STATEMENT OF CLAIM

SUIT NO. C.L. 1054 of 1970

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

COMMON LAW

B E T W E E N	RITA BENNETT	Plaintiff
AND	PARAMOUNT DRY CLEANERS LTD.	Defendant

1. The Plaintiff was at all material times a Laundress employed by the Defendant Company, which is a Limited Company carrying on a Dry Cleaning and
20 Laundry business at 95½, Molynes Road, Kingston 10, in the Parish of Saint Andrew.

22 On the 12th day of May, 1970, the Plaintiff was employed, along with Ida Griffiths, another of the Defendant Company's servants, in the operation of power steam-pressing machines on the said premises.

In the Supreme Court

No. 1

Statement of Claim
7th October 1970
(continued)

3. The Defendant Company, as employers, impliedly agreed that the Plaintiff, or , alternatively, it was the duty of the said Company as employers, to provide a safe system of work and effective supervision of the said operation of the power steam pressing machines. The Defendant Company or its servants or agents committed breaches of the said Agreement or were negligent in that the said Company :-

(a) failed to take any, or any proper precaution for the safety of the Plaintiff;

(b) employed a fellow-servant (the said Ida Griffiths) with the Plaintiff, which fellow-servant was incompetent and/or negligent in pressing a button on one of the machines being operated by the Plaintiff, thus causing the upper part of the said machine to descend on the right forearm of the Plaintiff while the Plaintiff was engaged in her work

The said Ida Griffiths was incompetent and unskilled in the operation of power steam pressing machines, a fact which Defendant Company well knew or ought to have known, but of which the Plaintiff was ignorant, and by the negligence and default of the said Company, the said Ida Griffiths was employed to work along with the Plaintiff.

4. By reason of the Defendant Company's Breaches of the said implied Agreement, or alternatively, the said Company's negligence aforesaid, the Plaintiff has been severely injured.

PARTICULARS OF INJURIES

The following are the injuries suffered by the Plaintiff :-

(a) second degree burns of posterior surface of right forearm, burnt area about 5 x 2¼ inches;

(b) second degree burns of posterior surface of right wrist and hand, burnt areas about 4 x 2 inches. (The burns had become septic)

(c) contusions, myositis, swelling and tenderness of posterior surfaces of right forearm wrist and hand;

(d) hyperaesthesia of posterior surfaces of right forearm, wrist and hand;

(e) stiffness and limitation of motion in Metacarpal-Phalangeal joint of index finger of right hand;

(f) stiffness and limitation of motion in Metacarpal-Phalangeal joint of middle finger of right hand.

5. By reason of the matters herein complained of, the Plaintiff has endured pain and suffering, and suffered loss, and been put to expense.

PARTICULARS OF SPECIAL DAMAGE

The following are the Special Damages sustained by the Plaintiff:-

(a)	Loss of earnings: 22 weeks from 12th May 1970, to 7th October, 1970, at $10.00 per week	$220.00
(b)	Medical Fees -	23.10
		$243.10

AND the Plaintiff claims DAMAGES.

DATED this 7th day of October, 1970

SETTLED:

(sgd) Eugene C.L.Parkinson
EUGENE C.L. PARKINSON, Q.C.

WILLIAMS & WILLIAMS
Per:
PLAINTIFF'S SOLICITORS

FILED by WILLIAMS & WILLIAMS of No.64 East Street, Kingston, Solicitors for and on behalf of the Plaintiff herein.

In the Supreme Court

No. 2

Defence
6th July
1971

No. 2

D E F E N C E

SUIT NO. C.L. 1084 of 1970

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW

BETWEEN	RITA BENNETT	PLAINTIFF
A N D	PARAMOUNT DRY CLEANERS LTD.	DEFENDANT

1. Save that the Defendant says that the Plaintiff was a presser and not a laundress. Paragraph 1 of the Statement of Claim is admitted.

2. The Defendant denies that they employed on the 12th day of May 1970 one Ida Griffiths as alleged.

3. The Defendant admits that on the 12th day of May 1970 the Plaintiff was employed by the Defendant in the operation of two power steam-pressing machines and say that Ida Griffiths, another employee of the Defendant was also employed in the operation of two separate steam-pressing machines.

4. The Defendant makes no admission as to paragraphs 3 and 4 of the Statement of Claim.

5. The Defendant Company provided a safe system of work and effective supervision of the operation of the said power steam-pressing machines.

6. The Defendant admits that on the 12th day of May 1970 at its dry cleaning establishment, 95½ Molynes Road in the parish of St. Andrew, the Plaintiff's hand was burnt by a steam-pressing machine, but denies that it was guilty of negligence as alleged in the Statement of Claim or at all and each and every allegation of negligence contained in paragraph 3 of the Statement of Claim is denied as fully as if the same were herein separately set out and traversed seriatim

7. Without prejudice to the generality of the foregoing, the Defendant denies that the said Ida Griffiths was incompetent and/or negligent in pressing a button on one of the machines being operated by the Plaintiff as alleged and says:-

(a) The said Ida Griffiths did not press any button on any machine being operated by the Plaintiff.

(b) The said Ida Griffiths operated her own two machines and the Plaintiff operated her own two machines.

(c) The Plaintiff's hand was burnt on one of Ida Griffith's machines and not on her own machine as alleged.

(d) The Plaintiff had no cause or reason to place her hand in the vicinity of the machine operated by Ida Griffiths nor was it any part of the system of work for her hand to be so placed.

(e) The said Ida Griffiths was at all material times a highly experienced skilled, competent and efficient power steam press machine operator.

8. The accident was solely caused or alternatively contributed to by the negligence of the Plaintiff.

PARTICULARS OF PLAINTIFF'S NEGLIGENCE

(i) Placing her hand on or near to a machine operated by another person in direct contravention of the Defendant Company's rules and regulations.

(ii) Allowing her hand to be so close to the machine operated by the said Ida Griffiths as to be caught or trapped by the closing of the top of the said machine.

(iii) Failing to take any or any sufficient care for her own safety and protection.

9. The Defendant makes no admissions as to the nature and extent of the Plaintiff's injuries, loss and damage set out in the Statement of Claim and puts the Plaintiff to proof thereof.

In the Supreme Court

No. 2

Defence 6th July 1971 (continued)

10. Save as is hereinbefore expressly admitted the Defendant denies each and every allegation contained in the Statement of Claim as if the same were herein separately set out and traversed seriatim.

DATED this 6th day of July, 1971.

LIVINGSTON, ALEXANDER & LEVY

PER: (Sgd) Paul Levy

SOLICITORS FOR THE DEFENDANT

TO: The abovenamed Plaintiff
or her Solicitors,
Messrs. Williams & Williams,
64 East Street,
Kingston.

This DEFENCE is filed and delivered on the 6th day of July, 1971 by Messrs. Livingston, Alexander & Levy of No. 20 Duke Street, Kingston, Solicitors for the Defendant.

In the Supreme Court

No. 3

Notes of Evidence and Findings of fact. 7th and 8th December 1972

No. 3

NOTES OF EVIDENCE AND FINDINGS OF FACT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE HIGH COURT OF JUSTICE

IN COMMON LAW 1054/70.

BETWEEN	RITA BENNETT	Plaintiff
A N D	PARAMOUNT DRY CLEANERS LTD.	Defendant

Mr. Parkinson Q.C., for Plaintiff

Mr. Henriques and Peter Rickards for Defendant.

Mr. Parkinson :-

Plaintiff injured in course of Employment. Statement of Claim (read) Applies to amend (a) of Special damages to read for 12th May 1970 up to Judgment.

Defence (Read)

Evidence is, on 12th May, 1970 Plaintiff engaged sic in operating 2 machines, smaller than other 2 two. Four (4) in all. Plaintiff was regarded as most competent operator. Four (4) years experience at Nubels. Mr. Chin manager was rushing employees to get out large pile of skirts by 12 o'clock. All employees including Griffiths hurrying. Chin quite near to Plaintiff pressing on one machine operated by Plaintiff. Plaintiff working one of her small machines and one of larger machine which was normally operated by absent employee. Plaintiff pressed part of shirt on her small machine and then took shirt to larger machine to complete pressing. Process was part pressed on small machine and t hen large machine. Large machine can take two (2) shirts at a time. Plaintiff took part-finished shirt to larger machine. At same time, Griffiths also put shirt on same large machine for completion. Plaintiff was operating that machine and Griffiths had no right on that machine. Whilst Plaintiff was (spraying) both shirts before bringing down top part of machine. Before she was finished Griffiths pressed the button which brought down machine on Plaintiff's hand. Griffiths bawled out "LORD ME GOD" and release top of machine by pressing another button. Chin spoke to Griffiths who said "ME NEVER SEE MISS BENNETT HAND STILL ON THE MACHINE". Chin sent Plaintiff off to Dr. Chin I believe. Plaintiff subsequently went to Dr. Foster as not getting any better.

Wilson and Clyde Coal Co.Ltd. v English (1937) 3 All England Report 638 (Basing) Claim strictly at Common Law.

Lord Tankerton at page 630.

Lord Wright at page 644.

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No. 3

Notes of Evidence and Findings of fact.
7th and 8th December 1972
(continued)

Mr. Rickards :- Oppose amendment on ground that Plaintiff came back to work with the Defendants for a few weeks. We would need medical evidence on our part to repeat allegation of permanent disability.

Mr. Parkinson :- It is correct Plaintiff went back for short while and tried to work to operate machines but couldn't. Because she couldn't operate machine she was fired. It is normal practice in all these cases that Counsel applies to amend.

Amendment granted as prayed.

Mr. Rickards applies for adjournment with costs. We say Plaintiff first went to Dr. Lodenquai who is now off the Island for today for a week.

Mr. Parkinson :- Plaintiff did go to Defendant's Dr. and our instructions is it was Dr. Chin. They should have known that that Dr. would be needed. Known case coming up today and should have arranged for Dr. to be present. Willing to have Plaintiff examined by any Dr.

Mr. Rickards :- We are willing to go along with a joint Medical examination but still foresee that until we have result of joint Medical examination if done today I could not complete any cross-examination of Plaintiff. Appears there will be adjournment at same stage although not necessarily at this time.

Matter adjourned Sine Die with costs to the Defendant.

Mr. Parkinson :- Will abandon amendment prayed so that case may go on.

Mr. Rickards :- Not opposing

above orders for amendment and adjourned vacated.

Amos Foster Sworn Registered Medical Practitioner Plaintiff Rita Bennett attended on one on 26/5/70 at my office 177 Orange Street. I examined her. She had :-

(1) Second degree burns of posterior surface of right forearm. Burnt area measuring about

5" x 2½"

(2) Second degree burns of posterior surface of right wrist and hand about 4" x 2". (The burns were partly healed. Burns were partly septic).

(3) Contusions, Myositis, swelling and tenderness of posterior surfaces of right forearm, wrist and hand myositis is inflammation of muscles or muscles in a part of the body.

(4) Hyperaesthesia of posterior surfaces of right forearm, wrist and hand.

(5) Stiffness and limitation of motion in metacarpal Phalangeal joint of index finger of right hand. Shows between Metacarpal bones (shows metacarpal bone and beyond is phalangeal first joint) second degree amount of stiffness three sic degress stiffness). First when finger can't bend except forcibly with other hand. Then second is when one can bend it by itself but only slightly.

(6) Stiffness and limitation of motion in Metacarpal Phalangeal joint of middle finger of right hand. Plaintiff came to me four (4) times all together for treatments the last being 10/6/70. Plaintiff would be able to resume for normal work after about (6) weeks. I wouldn't cut off her ability or inability to do her normal work after six (6) weeks unless I had seen her after the six (6) week expired. The six week would start from the day I first saw Plaintiff on 10/6/70 I saw Plaintiff for her last treatment. I might have seen her afterwards but I have no record of it. When I wrote certificate for Plaintiff I was of opinion she could resume normal work in six weeks. Short adjournment of 10 minutes for Dr. to examine Plaintiff.

Examination Continued :-

During adjournment, I examined Plaintiff's right hand in presence of Defendant legal representative and you and Mr. Williams. Plaintiff will never be able to resume her normal work because she has developed extensive scarring of right forearm, wrist and hand. There is also a formation of extensive area of Keloid which has. There is no possibility of removing that. That would have to be removed before she can resume normal activity.

In the Supreme Court

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Notes of Evidence and Findings of fact.
7th and 8th December 1972
(continued)

She would have to have Plastic surgery but I would recommend it. I would take advice of Plastic Surgeon. Plaintiff paid me all told $12.10. The certificate was not fully paid for. Certificate was $12.60.

Cross-examined Mr. Rickards :-

There appears to be wasting of forearm itself but with the formation of the Keloid more tissues would be added to the part. I should have said more abnormal tissue. I did not find any limitation of movement of her wrist but movement caused a degree of discomfort. If wrist moved suddenly without her knowledge it would cause pain and discomfort. If she moved it herself she was going to take her time. Plaintiff would move her wrist almost through its full range without very much discomfort. The movement of the fingers were practically normal with the exception of the middle finger. I think. It did not appear from look ing at Plaintiff's hand that the hand has been used for sometime. She has been using the hand. She can't use the hand normally because the Keloid will get bigger an and bigger. That is not caused by use of the hand. Keloid not the size it is now when I saw it a year ago. Hypernaesthesia where a person feels pain where there is nothing to produce pain. The patient cannot tell the difference between changes of temperature because the nerves that control that either don't function or over function. I don't see any mention of Keloid in my notes. I wouldn't have seen only Keloid when I first examined Plaintiff. Difficult to say how long after burn like Plaintiff had that Keloid appear.l Some people would get no Keloid others would. During times I examined Plaintiff I saw no Keloid formation on her. From time I saw Plaintiff and estimated the six weeks to now the Plaintiff would not have been able to work. Plaintiff couldn't work because she has developed a condition which I didn't see. If it is the Keloid which is preventing her from normal work. It is one thing. Another is extensive scarring of right forearm. Keloid and scarring are two different things. If a wound heals it leaves a scar but not every wound forms a Keloid. I wouldn't regard Keloid.

I would regard Keloid as type of scarring. Plaintiff has scars from burns when I saw her on 10/6/72. At that time even with scarring my opinion was that she could resume work about second week of July. Keloid is main thing why Plaintiff can't use her hand. Keloid extends roughly from junction between upper 2/3 and lower 1/3 of forearm then it continues over the wrist and a part of the hand. Keloids pass over wrist joint only. No other joints. Keloid would stretch skin but it is not done overnight is it wouldn't stretch skin tight as the skin accommodates itself to the stretching. And Keloid might affect movement of the wrist. There is almost full movement of the wrist at this time. When the Keloid gets bigger the movement of the wrist stretches the Keloid and causes pain. Keloid would not affect any other joint unless it passes over unless it involves large blood vessels and the circulation of that part of the body might be affected. From my examination the Keloid does not affect movement of joints of fingers as opposed to the wrist at the present time. Keloid is not affecting movement of the wrist at the present time. Plaintiff's normal work involves extensive use of the whole arm and extremes of temperature would have to be taken into account why Plaintiff not able to do normal work

Re-examined :- I based opinion that Plaintiff cannot resume normal work from development of Keloid and extensive scarring. The nerves were infected.

Rita Bennett Sworn :-

I live at New High, Spanish Town. On 12/5/70 I was employed as presser to Defendant, had been working there about four months and three weeks before accident. Before that I worked as presser at Nubels at 166 Orange Street for four years and ten months. I had to press Police Tunic, khaki pants and shirts. I use power machine to press. I operate the machine. At about 9.15 a.m. I was operating machine on 12/5/70 four (4) machines there. Two (2) small and two large. I operate the two small ones. I pressed the top of shirts, shoulder and collar with small machine. I then passed the shirt to Ida Griffiths to complete pressing on the large machine that is normal thing. Ida also employed there as presser. She operated one of the large machines. Another lady who had just come on operated the other large machine.

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(continued)

On 12/5/70 Mr. Chin the owner of the Plaintiff said there was some rush work to be got through by 12 noon. Mr. Chin told myself and Ida. At 9.15 I was pressing the top of shirt on a small machine. Mr. Chin came and asked me to let him use machine and I gave it to him. So I had one small machine operating. The young lady was absent so I use her large machine to press the bottom of shirt. I put the shirt in large machine and meanwhile Ida put another shirt to the other end of the machine. Machine can take two shirts at a time. I was spraying both shirts with a spray gun with water. The spray gun hangs over head and I squeezed the bottom of the gun. I SAID TO IDA "MIND ME HAND. I DON'T LIKE ANYONE TO USE THE MACHINE THAT I AM USING". Ida TOUCH THE BUTTON on the machine. Machine top came down on my right hand. My right hand was right down on the Machine on the shirt. I should have been the person to press the button. Ida cried out "LORD ME GOD" and released the machine by pressing another button so it went off my hand. I saw pure darkness when machine on my hand. I then sat down on the clothes bin. When that happen Mr. Chin was at my left at my small machine operating it, turned and said to Ida "WHAT IS THAT MISS GRIFFITHS?" she said "I didn't know that Miss Bennett's hand still on the machine." Mr. Chin sent me off to the Dr. a Chinese Dr. in Cross Roads. I called him Dr. Chin. Dr. gave me tablets and nurse dressed the hand. I went back to that Dr. a second time and he treated me. When I went home the hand was bleeding through the bandage. I then went to Dr. Foster on advice. He treated me I paid Dr. Foster $21.10. I went to Dr. Foster around (4) times.

Adjourned at 12.50

Examination continued :-

I went back to work on 11/8/70. I got pay for six weeks after accident at $10.00 weekly. When I went back to work I was put on the large machine. I couldn't function as I used to before. I could press 30 shirts per hour before and after I went I could only press 10 shirts her hour. My hand wasn't fully well.

It was itching when the heat took it on releasing the machine i.e. raising machine. The hand also got swollen. I asked Mr. Chin to give me something light to do instead of working on the machine. I did something else, i.e. pick out laundry for two weeks. The third week Mr. Chin said that was not enough for me to do for the $10. It is either I continued working on the machine or I go home. He s aid when he heard from the Insurance Company he would give me a little money. I asked how much and he said $30.0.0. After that I was fired by Mr. Chin. He was in charge of the operation. My normal work was that of presser. I have since tried to get work as domestic but can't manage the washing. Across the w rist don't allow me to grip the clothes to wash. Wrist and right index finger pain me. I buy fruit and sell on the street. Since I left that job. I was actually holding the spraying gun. When machine came down on it. I was feeling real thirsty and wanted water but Dr. said I shouldn't drink so much. I felt nervous and the hand continued to burn me. I have a weak feeling in the joint of wrist. I can lift with right hand but not anything weighty.

Cross Examination Mr. Rickards :-

I didn't get 2/3 of my pay after the six weeks until I returned to work. When I went back to work I was on machine for about four weeks before going to lighter work and then at laundry for two weeks picking out. Right now I am selling fruits. I make about $7. or more a week profit off selling fruits. It is a rule that if a person is using a machine another person is not supposed to use it at the same time. On morning when I went to work I was working on the two smaller machine (toppers) Ida wasn't working on th · two large machines that morning. Ida was working on large machine that morning that is the one at the end. It was the other large machine in which my hand was burnt when Mr. Chin borrowed the small machine he didn't tell me to use the large one. My job was to do tops and Ida to do the bottoms. I went to large machine to do bottom because we were rushing to get off clothes by 12 noon. One can press two or one button to lower the top of the machine. One has to stand in front of the machine and press two buttons one on the left and other on the right

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when the machine is functioning properly. The buttons are not. When the machine is not functioning properly you press any one of the buttons the top slams down instead of coming down gently as it should. If machine functioning properly and you press one button the top will not come down. The machine wasn't working properly because when it came down it slammed and it was one button Ida had pressed. She didn't even realised she was pressing button because when the machine slammed down she jumped back beside me and bawled out. This was first for that day anyone was using that machine because the child was absent. The machine was used the day before, i.e. the Monday. Mr. Chin had worked on the machine the Monday I saw Mr. Chin finish work on the machine. It wasn't slamming then. I was holding spray gun and when machine slammed down spray gun beside my hand but I wasn't holding it. I tried to pull away my hand but machine held it down.

I smooth out shirt before I spray and not correct then the last thing is to smooth out shirt before bringing down top. Ida had smoothed out the shirt she had put down. Ida didn't spray shirt she had put down. I sprayed both. When I went to work there Ida already working there. The four machines are in sort of ½ circle. Normally when I am working at my two small machines Ida and I are back to back. Between both of us is the container with clothes to be pressed. Whilst one machine has something being pressed I either load or unload the other machine. Small machine can only do one top at a time. If one person operating two large machines it is done in same way I operate the small ones. One person operating two small machines does it quicker than if one person each to one of small machine. When Mr. Chin came to machine he brought a shirt which had already been pressed and he was taking it from the bin. Mr. Chin was operating small machine to my left. Don't agree one person operates two small machine and another the two large ones. The lady who operates large machine besides Ida cleans the office also and when she is not there either Ida or I used that machine. She uses that machine to press towels, sheets, and pillow cases. Mr. Chin did not quarrel with me about my work that morning. He was telling me

to speed up on my work to get off from 12 o'clock. Away and one hasn't got to stand right in front of the machine to press them. I can stand in front of one button and touch the other button also. Before accident my back was to Ida. I can say for sure that Ida had not used that machine that morning. Mr. Chin didn't demonstrate and show me how to use the small machine that morning. Mr. Chin was still straightening the shirt when the accident happened. I did say to Ida "I DON'T LIKE ANYONE USING MACHINE". They always call me miserable on account of that. When Ida first using number three machine that morning was when I had already spread out shirt. Ida said she didn't know my hand was still in the machine. Ida did say that not correct Ida had been using the machine already and I went and started using it. I was right in front of machine spraying. Ida standing beside me and to my right. I was right. I was standing nearer to the left hand button and Ida by the right hand button. I was dismissed because I was unable to do work not because of going to Lawyer. I was dismissed at end of the two weeks of light work.

Re-Examined :-

Mr. Chin never previously told me how to do the work. I got to know Mr. Chin from I was at Nubels when he used to bring clothes there. He said we girls would do well at his laundry. Mr. Chin was rushing the whole of us.

TO COURT:

I saw Ida touch her finger on the button. One can't lean against button to release top. You have to take your fingers and push it.

C A S E

Adjourned at 3.19

8/12/72

Mr. Henriques opens :-

Matter is ultimately one of fact for Court. Plaintiff not engaged in working on machine at which accident occurred. Plaintiff was operating

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Notes of Evidence and Findings of fact. 7th and 8th December 1972 (continued)

small machines (toppers) large machines called (LEGGINGS) a few minutes before Mr. Chin, Manager, spoke to Plaintiff that she was not doing work properly and demonstrated to Plaintiff how to operate.

Griffiths was operator to big machine. Plaintiff had no right to be pressing anything on that machine. Machine working properly at time and two buttons had to be pressed. Whilst Griffiths had pressed buttons and turned to other machine when she saw out corner of her eye the Plaintiff's hand caught in the machine. Griffiths pressed release buttons. Griffiths wouldn't be seeing Plaintiff according to how they stand when operating respective machines. Mr. Chin will say Plaintiff not allocated any work necessitating use of Griffiths machine.

Ida Griffiths Sworn :-

Examined Mr. Henriques :-

I live 90 Seawood Drive Kingston 11. I work with Defendant. In 1970 I was working with Defendants. Started working with Defendants from 1968. I knew Plaintiff. We worked together, she started working with Defendants after me but don't remember date. Don't remember exact hour but incident after 8 and before 12. That morning I was pressing skirt. I use two large machine and Plaintiff used two small ones. Plaintiff was pressing a shirt. Before Plaintiff pressing skirt she had been pressing shirt at time of accident. Plaintiff pressing a skirt. I first fix skirt on the padded part of machine. Whilst that machine is closed I move to the next machine and release it by pressing a different button from the other two. I look if garment is properly finished. If it is not I have to go over. If it is, I take it out and then reload the machine and close it again and go back first machine and release it. Plaintiff working about one yard from me. Little before accident Mr. Edward Chin the boss spoke to Plaintiff over some skirts. I continued working going to and fro. Plaintiff was not working on one of my machines that morning. I had just finished spreading out a shirt and sprayed it. I looked and locked it by pressing

both buttons. When I pressed both buttons the top comes down gradually. Shows length of machine (Court estimates four feet six inches 4'6".) (Mr. Parkinson about 3ft 6 ins.). At the time I was standing in front of the machine when I closed it. To close it I have to stand in front of it. I made one step to release the next machine. I glanced behind and saw something stretched out. At first didn't know it was a hand. I turned around fully and saw Plaintiff's hand in machine. I made a scream and release it. Plaintiff had not put a shirt in the machine before closed it. I had to press both buttons to close machine. If one button pressed the top still stay up. When I pressed buttons I didn't see Plaintiff, but through the argument was going on she was sideways (shows behind and to her left) I alone don't press whole shirt. I was pressing shirts for Berger Paints that morning. Things to be pressed and placed in bin between Plaintiff and myself. Machine in semi-circle. Plaintiff presses the top of shirts on small machines, then rests shirt on top of bin and then I take shirts and press the buttons.

There was no rush that morning. Berger is regular customer. Defendant press shirt and pants (uniforms) weekly for Berger. This was a Tuesday. The laundry for Berger would come in on a Monday. They usually go out to Berger on Thursday. That happened week after week. Not correct. Plaintiff had put shirts in my machine. She didn't spray my shirt and her shirt. Not correct pressed one button and top dropped down on Plaintiff's hand. Plaintiff had not completed the skirts and Mr. Chin was speaking to Plaintiff about it and showing her how it should be completed.

Before Mr. Chin came to speak to Plaintiff she had been pressing shirt. After accident Plaintiff left for some time. She came back to work but don't remember when. She didn't stay long when she came back.

Cross-Examined:

I spray and look at garment to see that no wrinkles etc. and then press buttons. I smooth out shirt and then spray. Smoothing does not always take out wrinkles. Even when pressed, wrinkles

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Notes of Evidence and Findings of fact.
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(continued)

still in it and one has to spray and press again. Sometimes I spray before shirt properly smooth out. Sometimes you spray and then smooth again. I look in the process of pressing the buttons. I looked before pressing the buttons. After I make sure wrinkles gone I press the buttons. I continue looking on the article in machine. I didn't see Plaintiff nearby with hand on the machine. I didn't see Plaintiff at all. It was when I turned around completely that I saw Plaintiff's hand in the machine. There is space between padding on the machines but one can't walk between that space. They don't touch against each other. Underneath padding enamel of each touch but not paddings. Four machines form semi circle. My machines can take two shirts at a time. Normally I always put on only one shirt. There was another girl employed there as presser. She operates one of the large machines for ½ day during the week and all day on Fridays she does that in afternoon. I use both machines in corner and girl uses machine Plaintiff uses. When girl not there I use both machines. Process of pressing goes on continuously. No piling up. On 12/5/70 that was system operating. I was about to release number four. I would have to take out that shirt and then look in box to see if any other shirt. On 12/5/70 same system in operation. There was a shirt pressing on number four. I was going to take out that shirt and put in another if any available. I did not take out shirt out number four machine. I did not see Plaintiff near to me just before accident. I did see Mr. Chin pressing a skirt that morning. I hesitated because I want to give a true answer. Chin pressing on small machine. While Mr. Chin pressing on small machine Plaintiff working on only one small machine and not number three also. Plaintiff then using small machine to press the skirt. I didn't know how long it took Chin to press skirt. Chin pressing a skirt whilst Plaintiff also pressing a skirt about the same time. Chin didn't tell us that morning to rush some work. There was a pile of shirt there to be done. The shirt were not to be got out by midday. Chin didn't say that. I was not rushing that morning. I have never press one button and top comes down. The top of machine

has never slam down. Never seen it. Top came down gradually. I was spraying with spray gun. One spray gun for two machines and it hangs between the machine. The spray gun is hanging one sprays and let it go and it swings back to its original position. Spray gun not on top of the pad after accident. Rubber of spray gun wasn't burnt. We don't press for anyone else besides Berger. We work in khaki section. There are other machines where other things are pressed on. We press only Berger shirt but other pants. Sheets press on number three other people press on these machines. Plaintiff and I press Berger shirts and pants and gowns and other khaki pants. Whilst Plaintiff working on one small machine Mr. Chin was also working on other small machine. Plaintiff not working on number three. I alone put shirt in number three. Not Plaintiff. Plaintiff didn't spray shirts on number three. Plaintiff didn't say "MINE ME HAND I DON'T LIKE OTHER PERSON USING SAME MACHINE AS I AM USING". Top didn't come down with slam. I was very frightened after accident. I BAWLED OUT DON'T REMEMBER CLEARLY WHAT I SAY. I released button, after I screamed. Mr. Chin might have called out as well as not, as I was so frightened. I don't remember saying "HE NEVER SEE that Miss Bennett's hand was on the machine". Plaintiff never taught me some of the pressing business. I learnt my business at the Defendants. Mr. Chin taught me. Chin show me a little time and then the other workers. Chin never told us to follow Plaintiff's example how she works. I have sic see any of the machine slam down. I have never see anyone repairing number three. Number three was working good for you have to press two buttons. It has never happen to me when I press one button that top slam down. I think name of other girl working on machine was Saunders. Can't say how long Saunders working there. She came after me.

Re-examined:

Plaintiff's back was to me when I turned around and saw her hand in machine. Plaintiff's hand was to edge number three near to small machine. Spring causes. I did not see the Plaintiff near to me just before accident. I didn't see Mr. Chin pressing a skirt that morning. I hesitated because I wanted to give a true answer. Chin pressing on

In the Supreme Court

No. 3

Notes of Evidence and Findings of fact.
7th and 8th December 1972
(continued)

small machine. While Mr. Chin pressing on small machine Plaintiff working on only one small machine and not number three also. Plaintiff then using small machine to press the skirt. I didn't know how long it took Chin to press skirt. Chin pressing a skirt whilst Plaintiff also pressing a skirt about the same time. Chin didn't tell us that morning to rush some work. There was pile of shirts there to be done. The shirts were not to be got out by midday. Chin didn't say that. I was not rushing that morning. I have never press one button and top comes down. Pan to swing after letting go. Saunders tidies the whole building and the branches before working on the machine. Space of about two feet six inches between the pads of number three and number two. When I stand in front of number three, number two is to my left.

Kingsley Chin Sworn :-

I live at 11 Hall Crescent, Kingston 8, Managing Director of Defendant. I know Plaintiff she was employed to Defendant in early 1970. I know Plaintiff she has worked with me over two years. We had fire in December 1970, and Griffiths wasn't working for me then. As a result of fire I went out of business. When I resumed business Griffiths has been working with me. She worked for about two years before Plaintiff started. On 12/5/70 I remember accident. Little before I spoke to Plaintiff. Plaintiff wasn't doing pressing properly. I went to show her how it should be done. Plaintiff working on bus conductress's skirts. and I went to show her how to do them. Skirts of cotton. I showed Plaintiff by laying out garment, spraying and pressing two buttons. Plaintiff was then to press the skirts she hadn't done properly. I had taken back skirts as I was not pleased with them and wouldn't pass them. I can't say what Plaintiff doing before I took back the skirts. I left Plaintiff to continue with skirts. Plaintiff was to use two small machines for skirts. Griffiths then working on two large machines. After showing Plaintiff I went away. I was about 15 to 20 feet away when I heard a scream. I turned round and investigated. I asked what has happened.

In Plaintiff's presence and hearing Griffiths said Miss Bennett burned her hand. I took Plaintiff to Dr. Lodenquai on Eureke Road. To close top of number three one has to press two switches which are about waist high and one on each side of operator. If one switch is pressed top of machine will not come down. When both buttons pressed top comes down at about 7 feet, ten feet per second. Top at no time slows down. Nothing at all wrong with the machine that afternoon. I had not worked on it the day before. Plaintiff had at no time on that morning or at any time worked on No. 3. Her main job is to operate small machine. Plaintiff stayed off work for about three months. After six (6) weeks Plaintiff's son came every Friday and I give the son 2/3 of Plaintiff's salary. Plaintiff eventually came back to work in August, 1970. She had got two thirds salary up to when she came back and started getting full salary again. Griffiths is a very reliable worker.

Cross-Examined:

Plaintiff applied to me for the job personally. I didn't know her before she came to work with me. Have been to Nubels a lot of times. Don't remember seeing Plaintiff there. Used to have things done by Nubels. The supervisor at Nubels left and came to work with me. Plaintiff gives trouble now and then. I wouldn't say Plaintiff was a good worker. I asked Plaintiff to come back to work in spite of being not a good worker. I can repair any machine in my establishment. I alone actually repaired machine from time to time. To release the top from the pad one has normally to press another two buttons, but pressing one can release it. Pressing one can't bring the top down because the air that powers the mechanism to close the head has to go through the two switches first. Depending on defect to machine it does not follow that defect would throw out whole mechanism. If one button is pressed top can come down if one of the two switches is bad. The top can only slam down if one of the two main spring at the back of the machine is broken but if it is one of the switches that is bad it would come down in the normal course. If main spring broken even if the two switches are pressed top will come down with a bang. If main spring only weak it will not bring down top with a bang. If spring very weak it is useless but spring has to

In the Supreme Court

No. 3

Notes of Evidence and Findings of fact. 7th and 8th December 1972 (continued)

be broken completely before top hangs down. To me when spring is useless it means it is still there and taken same amount of pressure.

To Court :-

A second before the accident I wasn't around. I was walking away from Plaintiff and so was not pressing a skirt. Plaintiff was not pressing on small machine whilst I was using the other pressing a skirt. I have never repaired number 3 machine. I have repaired a sleever which is different from any of these four. I have repaired a few machines. I installed all machines. I repaired bosom and body on one of small toppers and also one steam pressing machine. After scream I turned back. I just shouted general "What happen Griffiths? Miss Kelly burn her hand". She didn't say - "Me never see Miss Bennett's hand still on the machine." Spray gun used to spray garments. Each machine spray gun a little above head that come down. Nothing wrong with spray gun on number three. It was still in air. Not correct. Its rubber was burnt and it was on the machine. On that morning I didn't tell workers to hurry as clothes to be got out by midday. If Plaintiff was using small machine and I using number one small machine she could also use number three at same time. Large machine is 54" long that is the pad or back. The small 20" but length of table is 24". Large machine 74" long. About two feet between pads of number three and number two. Person using number two and number three machines would walk between four feet and five feet. Plaintiff's main job was to operate two small machines. In an emergency Plaintiff couldn't use larger machine.

If Plaintiff working number two small machine she can also operate number three and four can take three shirts at a time. Normally only one at a time put on. Never have rush in my establishment. Khaki shirts, Khaki pants, grill pants, anything of cotton. Conductress cotton skirt. Khaki shirt quite sure nothing else. It was a big pile of stuff.

Box was full. Berger's uniforms were being done. Can say that Plaintiff was doing when I left her. I am sure I had finished showing Plaintiff and had moved off 15 minutes to 20 minutes when I heard the scream and turned back. I paid 2/3 of Plaintiff's pay for about another 8 weeks. At one time I stopped paying Plaintiff. When Plaintiff came back she told me she couldn't use her hand properly on the machine. She asked me to give her something else to do except the machine. Plaintiff picked out the laundry afterwards. Something happened and I had to Plaintiff on shirt unit to press shirts. When Plaintiff came back she did light work first and then back to shirt machines. I got letter re her hand and paid her off until whole thing was settled.

No Re-Examined:

Adjourned to 2.15 to 2.22

Mr. Henriques addresses :-

Case Resolves

Primarily on facts. Attempt by Plaintiff to spell out a case and embellish it. Plaintiff's case is negligent alleged in paragraph 3.

Co-employee Griffiths incompetent and she negligently pressed button injury Plaintiff's forearm. Plaintiff building case more than facts.

Rush job so normal operation being departed from, Plaintiff there operate number three along with Griffiths in rush. Defective machine being alleged. One button would release top of machine.

Plaintiff really building case which did not happen.

Court ought to find for Defendant having regard to evidence given

In the Supreme Court

No. 3

Notes of Evidence and Findings of fact. 7th and 8th December 1972 (continued)

Case not fought on nearest of machine but on negligent of Co-employee and machine defective.

Mr. Parkinson Addresses:-

Defective machine not even known to us so we couldn't plead it. Court entitled to take cognizance of evidence given. Was Griffiths incompetent.

Ques: Ask Court to accept Plaintiff's case which is corroborated by Defendant.

Wilson Wright at 640

Facts Reviewed.

Griffiths say doesn't remember saying "ME NEVER SEE MISS BENNETT'S HAND ON THE MACHINE". Griffiths negligent even if Plaintiff not working at number three machine. Ask to accept that machine defective. Chin not truthful. Griffiths has not spoken truth on several matters but on crucial aspect whether Chin using small machine Griffiths truthful.

Cavanagh v. Ulster Etc. (1960) A.C. 145 Lord Keith

Sic. Parish B. Stepney B.C. (1957) A.C. 367.

That shows length and depth of responsibility of employee to workman.

Butler et al v. Fiffe Coal (1912) A.C. 149

Therefore submits three-fold duties are clear. In rresponsibility on employee to prove effective supervision - Ask to find that Defendant liable without shadow of doubt.

Dangers :- Kemp & Kemp Vol. 1 of third edition (1967) at p. 485.

Smith v.Joyce & Company Etc. (1965) C.A.

Hand deformed for life. Loss of future earning. Loss of amenities pains and suffering. Ask substantial damages.

Court finds :- Plaintiff's case grossly exaggerated. Court finds as facts that Chin showing Plaintiff how shirt to be pressed by small number one machine. Plaintiff then by or near number three machine. Reject Plaintiff's evidence of how accident happened. Satisfied Griffiths witness of truth when she says she alone operating number three.

Court finds :- Plaintiff's hand came to be under top of machine. Court rejects Plaintiff's evidence that she was operating number three machine and Griffiths had shirt also on number three and she Plaintiff was spraying back of shirts when Griffiths pressed button and brought down machine on hand. Court satisfied that Chin showing Plaintiff how to press skirt on number one machine. Plaintiff then had hand resting on pad of number three. Griffiths then operate number three and carelessly brought machine down on Plaintiff's hand. Not true Plaintiff spraying with spray in hand when machine brought down or then one would expect top of fingers to be part burnt and not back of hand as actually happens. Closeness of machines. Proximity of Plaintiff to Defendant. Griffiths ought to take care to see no one hand on machine before pressing buttons to bring down top of machine and she is there negligent. Plaintiff not taking care for her safety by putting hand on pad at time knowing Griffiths using number three. Therefore guilty of contributory negligence. No slamming down of machine as Plaintiff alleges. Accepts Chin's evidence machine in proper working order. Accept that Chin mistaken when he says he had moved off after speaking to Plaintiff.

In the Supreme Court

No. 3

Notes of Evidence and Findings of fact.
7th and 8th December 1972 (continued)

Court accepts Griffiths evidence on this point that Plaintiff and Chin somewhere behind here then proper apportionment 50% - 50%.

Damages :-

Plaintiff exaggerating.

Court accepts paid six (6) weeks full paid wages by Defendant and 2/3 wages until Plaintiff went back to work.

General Damages assessed at $ 3,000.

Medical expense $23.10; $13.50

Loss of wages $32 - $68.60

Final Judgment for Plaintiff $1,534.30 with costs to be agreed or taxed.

- Stay for execution for six (6) weeks.

No. 4

JUDGMENT

In the Supreme Court

No. 4.

Judgment 13th September 1972

SUIT NO. C.L. 1054 of 1970

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN RITA BENNETT PLAINTIFF

A N D PARAMOUNT DRY CLEANERS LTD. DEFENDANT

The 7th and 8th day of December, 1972.

This action having on the 7th and 8th days of December, 1972 been tried before the Honourable Mr. Justice Melville without a jury and the said Mr. Justice Melville having on the 8th day of December, 1972 found that the Defendant was 50% to blame for the accident and the Plaintiff 50% contributorily negligent therefor and ordered that judgment be entered for the Plaintiff for $1,534.30 with costs IT is this day ADJUDGED that the Plaintiff recover against the Defendant $1,534.30 and costs to be taxed.

LIVINGSTON, ALEXANDER & LEVY

(Sgd) Paul Levy
.....
DEFENDANT'S ATTORNEYS AT LAW

Entered 13/9/73 in Supreme Court
Judgment Book No. 673 at Folio 171.

NOTE: This Judgment is entered by Messrs. Livingston, Alexander & Levy of 20 Duke Street, Kingston, Attorneys-at-Law for the Defendant.

In the Court of Appeal

No. 5.

NOTICE AND GROUNDS OF APPEAL

No. 5

Notice and grounds of Appeal. 28th December 1972

IN THE COURT OF APPEAL

BETWEEN	PARAMOUNT DRY CLEANERS LTD.	DEFENDANT/ APPELLANT
A N D	RITA BENNETT	PLAINTIFF/ RESPONDENT

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the above named Defendant/Appellant on Appeal from the whole of the Judgment herein of the Honourable Mr. Justice Melville given at the trial of this action on the 8th day of December, 1972 whereby it was adjudged that the Defendant/Appellant was 50% to blame for the accident and the Plaintiff 50% contributorily negligent thereof and Judgment was given for the Plaintiff against the Defendant/ Appellant for $1,534.30 with costs to be agreed or taxed for an Order:

(a) That the Judgment directed to be entered for the Plaintiff/Respondent be set aside.

(b) That Judgment be entered for the Defendant/Appellant against the Plaintiff/Respondent with costs.

(c) Alternatively, that the apportionment of blame made by the Judge be varied and that the proportion of blame for the accident attributed to the Defendant/Appellant be reduced.

(d) In the further alternative that a new trial be ordered.

(e) That the Defendant/Appellant do pay the costs of and incident to this Appeal.

(f) That the Defendant/Appellant be granted such further or other relief as may be

just AND FURTHER TAKE NOTICE that the Grounds of Appeal are :-

1. That the Judgment of the Learned Trial Judge is unreasonable and cannot be supported having regard to the evidence.

2. The Learned Trial Judge erred when he found that the Plaintiff had her hand resting on the pad of the No. 3 machine and that the Defendant's servant and agent operated the No.3 machine carelessly and brought it down on the Plaintiff's hand as no such evidence was given in the case either by the Plaintiff and/or any of the Defendant's witnesses on which such a finding could be based.

3. The Learned Trial Judge erred when he gave Judgment in favour of the Plaintiff on the basis that the Plaintiff had her hand resting on the pad of the No.3 machine and that the Defendant's servant and agent carelessly brought down the machine on the Plaintiff's hand as this was not the case either pleaded by the Plaintiff or any evidence given by the Plaintiff to support such a finding.

4. The Learned Trial Judge having found as a fact that the Plaintiff was not operating the No.3 machine as pleaded or that the injury sustained by the Plaintiff happened in the manner alleged in the pleadings and having rejected the evidence of the Plaintiff as to how the accident happened it was manifestly unreasonable for the Judge to find that the Plaintiff had her hand on the No.3 machine and the Defendant's servant and agent did not take care to see that her hand was there before bringing the machine down on her hand as no such evidence was given by the Plaintiff or any of the Defendant's witnesses.

5. The Learned Trial Judge erred in law when he erroneously introduced facts as to how the accident happened and then proceeded to find in favour of the Plaintiff a Judgment based on such facts.

6. The Learned Trial Judge erred in law when he rationalised as to the way in which the accident could happen and then proceeded to base his Judgment in favour of the Plaintiff on such rationalization.

In the Court of Appeal

No. 5

Notice and grounds of Appeal. 28th December 1972 (Continued)

7. The Learned Trial Judge having rejected the Plaintiff's evidence as to how the accident happened and having accepted the evidence of the Defendant's witnesses it was unreasonable for the Learned Trial Judge in such circumstances to enter any Judgment in favour of the Plaintiff.

8. The Learned Trial Judge having rejected the Plaintiff's evidence as to how the accident happened it was manifestly unreasonable for him in such circumstances to hold that the Plaintiff was only guilty of 50% contributory negligence and should have found that the Plaintiff was mostly to blame for the accident and should have apportioned the Plaintiff's contributory negligence much higher than 50%.

9. The Learned Trial Judge having accepted the Defendant's witnesses as witnesses of truth it was manifestly unreasonable for him to make a finding contrary to the evidence of such witnesses.

The Defendant/Appellant craves the leave of this Honourable Court to amend and/or to add to this Grounds of Appeal with a copy of the Notes of Evidence taken at the trial becomes available.

SETTLED:

R.N.A. HENRIQUES
19th December, 1972

DATED this 28th day of December, 1972.

LIVINGSTON ALEXANDER & LEVY

Per: (Sgd) Paul Levy
.....

ATTORNEYS-AT-LAW for the above-named Appellant

TO: The above named Plaintiff/Respondent

AND TO: Her Attorneys,
Messrs. Williams & Williams,
64, East Street,
Kingston.

In the Court of Appeal

No. 5

Notice and grounds of Appeal. 28th December 1972 (Continued)

NOTE: THIS NOTICE AND GROUNDS OF APPEAL is filed by Messrs. Livingston, Alexander & Levy of No.20 Duke Street, Kingston, Attorneys-at-Law for the above named Defendant/Appellant.

In the Court of Appeal

No. 6

Judgment of Court of Appeal. 29th November 1974

No. 6

JUDGMENT OF COURT OF APPEAL

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 46/72

BEFORE: The Hon.Mr.Justice Graham-Perkins J.A.

The Hon.Mr. Justice Hercules, J.A.

The Hon. Mr.Justice Robinson J.A.

BETWEEN	PARAMOUNT DRY CLEANERS LTD.	DEFENDANT/ APPELLANT
AND	RITA BENNETT	PLAINTIFF/ RESPONDENT

R.N.A. Henriques for the Appellant

S.C.L. Parkinson, Q.C. for the Respondent.

NOVEMBER 27, 28, 29, 1974

GRAHAM-PERKINS, J.A.:

On May, 12, 1970, the Respondent suffered an unfortunate accident resulting in severe injuries to her right hand. As a consequence she sought to recover damages in an action of trial before Melville, J. without a jury.

At the material time the Respondent was a presser employed by the Appellant. Her job involved the operation of two power steam-pressing machines at the Appellant's laundry on Molynes Road, Kingston.

In paragraph 3 of her statement of claim the Respondent alleged that the Appellant had "impliedly agreed, or it was (its) duty, to provide a safe system of work and effective

supervision of the said operation of the power steam-pressing machines," and that it had committed breaches of its agreement, or were negligent in that it had (a) failed to take any proper precaution for her safety; (b) employed an incompetent fellow servant, who had negligently pressed a button on a machine operated by her thus causing the upper part of that machine to descend on her right forearm. She alleged, further, that the Appellant was negligent in employing an incompetent and unskilled fellow servant to "work along with" her.

In its defence the Appellant denied that it had failed to provide a safe system of work and effective supervision of the operation of the machine. It denied that it was guilty of negligence as alleged by the Respondent, or at all, In particular, it denied that the Respondent had suffered her injury in the manner alleged by her. The Respondent was the sole author of her misfortune.

In the result Melville, J. was called upon to resolve a relatively narrow issue as to the Appellant's liability. Put simply it was: Did the Respondent suffer her injury as the result either of the failure in the Appellant to provide a safe system of work and effective supervision of the machine or of the negligence of a fellow-servant?

In support of her claim the Respondent gave evidence in which she described the circumstances leading to her injury. There were 4 steam-pressing machines two small and two large, which were so placed as to describe a semi-circle. She was responsible for the operation of the two small machines. Her co-worker, Ida Griffiths, was concerned with the operation of one of the large machines (hereinafter called "the No.4 machine"). Another co-worker, one Saunders, operated the other large machine (hereinafter called "the No.3 machine"). Saunders was absent from work on May 12, 1970. Ordinarily, she (the Respondent) pressed the upper part of a shirt, that is, the collar and shoulders, on one or other of the small machines. Griffiths would thereafter press the lower part of that shirt on her larger machine. On May 12, however, there was a large quantity of shirts (or skirts) to

In the Court of Appeal

No. 6

Judgment of Court of Appeal. 29th November 1974. (Continued)

be pressed and delivered by 12 midday, and Mr.Chin the Appellant's manager, asked Griffiths and the Respondent to speed up their work. He started to use one of the small machines. In those circumstances the Respondent decided to use the other of the two large machines, the No.3 machine, to press the lower part of those shirts which she had pressed on her other small machine. The No.3 machine could accommodate two shirts at the same time. While using the machine on which she had placed a shirt, Griffiths placed another shirt on the machine. She then sprayed both shirts and said to Griffiths: "Ida, mind my hand. I don't like anyone to use the machine that I am using." Griffiths pressed a button causing the upper part of the machine "to slam down" on her right hand, resulting in severe second degree burns. It was she, and not Griffiths, who should have pressed the button. Her evidence disclosed some measure of uncertainty as to the precise position of her hand when Griffiths pressed the button. In the early part of her evidence she described her hand as being "right down on the machine on the shirt." In another part, she said "I was actually holding the spraying gun when the machine came down on it." That then was the case advanced by the Respondent.

Before turning to the evidence led by the Appellant, it is important to notice here certain allegations by the Respondent and certain counter-allegations by the Appellant concerning the No.3 machine. According to the Respondent, this machine was defective. Ordinarily, in order to cause the upper part, or head, to come down on to the pad on which an article was to be pressed, two buttons had to be depressed. The result of this was that the head - the heated part - descended gradually until it came into contact with the pad. But both buttons had to be depressed to secure this result. One of the buttons on this machine, however, was defective. It was possible, because of this defect, to cause the head of the machine to descend by depressing one button only. In this circumstance the head came down rapidly and not gradually as it did when the machine functioned properly.

In her evidence the Respondent said: "The

machine wasn't working properly because when it came d down it slammed and it was one button that I had pressed." She said, too, that Mr. Chin had worked on the machine the day before. When he had finished it was not "slamming". Significantly the Respondent did not in her evidence describe the machine as defective at any time prior to that moment of time, when as she claimed, Griffiths pressed the button.

Mr. Chin and Griffiths denied that the machine was defective in any way. He denied that he ever had occasion to repair that machine. The head could normally be brought down only by pressing two buttons if both were in order, If, however, one was defective the head could, nevertheless, be brought down, but it would come down gradually. The only way in which the head would "slam down" is if one of the two main springs at the rear of the machine was broken. These springs were not broken.

For the Appellant Ida Griffiths and Kingsley Chin gave evidence.

Griffiths said that on May 12, 1970, she was operating both large machines. The Respondent operated the two small ones. She described the method she adopted in the operation of the two large machines thus: She would place a garment on the pad of one of the large machines, and bring down the head so as to press the garment. Having done so she would move to the other large machine and repeat the exercise. Next she would go back to the first machine and release the head. If the garment here was properly pressed she would remove it and "reload" the machine. Thus she would "go to and fro" between the two large machines "unloading" and reloading each with a garment. Griffiths was clear that the Respondent did not, at any time on May 12, use any of the large machines, nor did she put a shirt in the No.3 machine. Sometime before the accident resulting in the Respondent's injury, Mr. Chin approached the Respondent and spoke to her about certain garments which he said had not been properly pressed. He began to use one of the Respondent's small machines. The Respondent at that time was standing to the left and rear of Griffiths. Although Griffiths says that she did not then see the Respondent she knew where she was "through the argument that was going on" between her and Chin.

In the Court of Appeal

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Judgment of Court of Appeal. 29th November 1974. (Continued)

While this "argument" was in progress Griffiths was "spreading out a shirt" on the pad of No.3 machine. She then sprayed it. She said "I looked and locked it by pressing both buttons. When I pressed both buttons the top comes down gradually." At this point she demonstrated the length of the machine estimated at 4' 6" by Melville, J. and 3' 6" by Mr. Parkinson. She continued: "At the time I was standing in front of the machine when I closed it. To close it I have to stand in front of it. I made one step to release the next machine. I glanced behind and saw something stretched out. At first I didn't know it was a hand. I turned around fully and saw (Respondent's) hand in machine. I made a scream and released it."

It is clear from Griffith's evidence that what she was saying was: (i) that at the moment of time when she pressed the buttons to cause the head of the machine to descend, the Respondent was standing to her left and to the rear; and (ii) that at that time the Respondent's hand was not on the pad or near it. Griffiths said further that the head did not "slam down"; it came down gradually. Chin had not told her or the Respondent to rush any work. There was a quantity of shirts to be done but these were not required "to be got out by midday."

Kingsley Chin said that shortly before the accident he had spoken to the Respondent because she had not done certain garments properly. He had with him some garments that she had pressed and with which he was not satisfied. He showed her how to lay out, spray and press two of them. While he was with the Respondent, he saw Griffiths working at the two large machines. After showing the Respondent how he wanted the garments pressed, he left her to press them again. He had moved off some 15 to 20' when he heard a scream. There was nothing wrong with the two large machines that were being used by Griffiths.

It will be seen that there was considerable conflict between the evidence given by the Respondent on the one hand and that given by Griffiths and Chin on the other. At the end of

the day the learned trial judge arrived at certain conclusions which he expressed as follows :-

"Plaintiff's case grossly exaggerated. Court finds as facts that Chin showing Plaintiff how shirt to be pressed by small number one machine. Plaintiff then by or near number three machine. Reject Plaintiff's evidence of how accident happened. Satisfied Griffiths witness of truth when she says she alone operating number three. Plaintiff's hand came to be under top of machine. Court rejects Plaintiff's evidence that she was operating number three machine and Griffiths had shirts when Griffiths pressed button and brought down machine on hand. Court satisfied that Chin showing Plaintiff how to press skirt on number one machine. Plaintiff then had hand resting on pad of number three. Griffiths then operate number three and carelessly brought machine down on Plaintiff's hand. Not true Plaintiff spraying with spray in hand when machine brought down or then one would expect top of fingers to be burnt and not back of hand as actually happens. Closeness of machines. Proximity of Plaintiff to Defendant. Griffiths ought to take care to see no one hand on machine before pressing buttons to bring down top of machine and she is there negligent. Plaintiff not taking care for her safety by putting hand on pad at time knowing Griffiths using number three. Therefore guilty of contributory negligence. No slamming down of machine as Plaintiff alleges. Accepts Chin's evidence machine in proper working order. Accept that Chin mistaken when he says he had moved off after speaking to Plaintiff. Court accepts Griffiths evidence on this point that Plaintiff and Chin somewhere behind her."

It cannot be open to dispute that of the foregoing findings the most critical are: (i) When Chin was showing the Respondent how to press a shirt on one of the smaller machines, the Respondent then had her hand resting on the pad of No.3 machine; (ii) Griffiths then pressed the buttons of that machine and caused the head to descend.

It is undoubtedly of some importance to notice that the learned trial judge accepted Griffith's

In the Court of Appeal

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Judgment of Court of Appeal. 29th November 1974. (Continued)

evidence that Chin and the Respondent "were somewhere behind her" at some point of time. The only evidence that Griffiths gave as to the Respondent being behind her, was with particular reference to the point of time at which she pressed the buttons on her machine. There is, therefore, a conflict between this finding based on an acceptance of Griffiths' evidence and the findings at (i) and (ii) above, that Griffiths pressed the buttons of No.3 machine when the Respondent's hand was resting on the pad. There is also apparent inconsistency between the finding that "Chin showing the Respondent how shirt to be pressed ... (Respondent) then by or near No.3 machine", and the later finding "Chin showing (the Respondent) how to press skirt ... Respondent then had hand resting on pad of No.3."

But there is a more funamental objection to the finding that Griffiths pressed the buttons of her machine when the Respondent's hand was resting on the pad of that machine and that Griffiths was negligent in so doing. The objection to that finding is that there was not a scintilla of evidence on which it could be based nor from which it could be inferred. When once the learned trial judge reached the conclusion that the Respondent was not, at the material time, operating the No.3 machine, and that the account advanced by her as to the circumstances in which she received her injury was to be rejected in toto, there ceased to be any evidential basis on which to found a conclusion that she had her hand resting on the pad of the No.3 machine when Griffiths pressed the buttons of that machine.

Indeed this theory as to the cause of the accident was not, at any time, adumbrated by anyone during the trial. It certainly was not suggested in the pleadings. It was readily conceded by Mr. Parkinson, that the theory advanced by the trial judge was untenable. He made no attempt to defend it.

In the result I would hold that the conclusion that Griffiths was negligent was not supported by the evidence and must, therefore, be set aside,

What Mr. Parkinson asked us to do, however, was to find that the Defendant was guilty of a breach of its duty to provide a safe system of work in relation to its employees, and more particularly to the Respondent. For this purpose he suggested that we should hold that the trial judge was wrong in rejecting the Respondent's evidence. He was also wrong in accepting the evidence of Griffiths and Chin wherever that evidence was in conflict with that given by the Respondent. Having done so we should then call in aid the doctrine of res ipsa loquitur. Let it suffice to say that no valid reason has been advanced why it sh ould be held that Melville, J. was in error in rejecting the Respondent's evidence, or in accepting the evidence of Griftiths.

In our view once the Respondent's evidence is rejected, and once the conclusion is reached that it was not open to the learned trial judge to assign a theory of his own as to the cause of the Respondent's injury, there can be no justification in the circumstances of this case, for any debate as to the failure in the Appellant to provide a safe system of work. In our opinion Mr. Parkinson is in error in thinking that it is open to this Court, in the state of the evidence led at the trial, to examine any such question.

In COLFAR V. COGGINS AND GRIFFITH LTD.,(1945) 1ALL.E.R. 326 Viscount Simon, L.C., dealing with a similar problem, said, at p. 328:

> "Such being the state of the law, the advisers of the Appellant realised that his claim (independently of the Workmen's Compensation Act) was bound to fail unless it could be established that the accident was due to the Respondent's failure to provide and maintain a proper system of work. To raise this issue, the statement of claim ought to be set out, so far as relevant, what the proper system of work was, and in what relevant respects it is alleged that it was not observed."

It is true that in GENERAL CLEANING CONTRACORS, LTD. V. CHRISTMAS (1952) 2ALL.E.R. 1110 Lord Oaksey, in commenting on the foregoing dictum said, at p.1115:

In the Court of Appeal

No. 6

Judgment of Court of Appeal. 29th November 1074. (Continued)

"In the course of the argument questions were raised as to the adequacy of the pleadings and attention was called to the dictum of Viscount Simon, L.C., in COLFAR V. COGGINS AND GRIFFITH LTD., that a plaintiff in such a case as the present must prove that the system adopted is not reasonably safe and also prove what system is safe, but, in my respectful opinion, what the noble and learned viscount was dealing with was the evidence which would go to show that the system adopted was unsafe, that is to say, by proving a possible safe system. It cannot, in my opinion, be that as a matter of law a plaintiff cannot succeed in such a case unless he proves a particular system in which the work can be performed."

Be it observed, however, that the point made by Lord Oaksey was that although a plaintiff was not required to prove a particular system, he was at least required to raise a live issue by leading evidence to show that the particular system adopted was unsafe. By so doing a plaintiff would almost always be able to show, inferentially, a possible safe system of work. Whether, therefore, the problem be looked at from the point of view of pleadings and evidence, or from the point of view of evidence alone, the result is necessarily the same, although it is not a little difficult to appreciate why a plaintiff who relies on the breach of an employer's common law duty to provide a safe system of work should not so plead.

In this case the Respondent did plead a failure in the Appellant to provide a safe system of work. She also particularized the two factors which, she alleged, constituted that failure. In the end, however, whatever evidence she gave as to the cause of her injury was totally rejected by the trial judge. There was no issue remaining as to the alleged failure in the Respondent. There was, therefore, no basis on which the trial judge could have found that the Respondent's injury was the result of a failure in the Appellant to provide a safe system of work. Nor can it, I think, be open to this Court to so find.

We would allow the appeal and set aside the judgment in favour of the Respondent. We would

enter judgment in favour of the Appellant with costs in the Court below, and of this appeal, to be agreed or taxed.

In the Court of Appeal

No. 6

Judgment of Court of Appeal. 29th November 1974. (Continued)

No. 7

ORDER GRANTING FORMAL LEAVE TO APPEAL TO HER MAJESTY IN COUNCIL

In the Court of Appeal

No. 7

Order granting final leave to Appeal to Her Majesty in Counsel. 28th February 1975.

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 46 of 1972

BETWEEN

PARAMOUNT DRY CLEANERS LTD. — DEFENDANT/APPELLANT

AND

RITA BENNETT — PLAINTIFF/RESPONDENT

BEFORE: The Honourable Mr.Justice Edun

The Honourable Mr. Justice Hercules

The Honourable Mr.Justice Zacca (Acting)

THE 28th DAY OF FEBRUARY, 1975.

UPON the Application of the Plaintiff/Respondent, Rita Bennett, for FINAL LEAVE TO APPEAL to Her Majesty in Council from the Judgment of the Court of Appeal of Jamaica dated November 27, 28, 29, 1974, coming on for hearing this day:

AND UPON HEARING Mr. Eugene C.L.Parkinson, Q.C., Attorney-at-Law for and on behalf of the

In the Court of Appeal

No. 7

Order granting final leave to Appeal to Her Majesty in Counsel. 28th February 1975. (Continued)

Applicant, Rita Bennett, and the Respondent, Paramount Dry Cleaners Ltd. not appearing or being represented, and on the application of Mr. Eugene C.L. Parkinson, Q.C.;

IT IS HEREBY ORDERED that the Application of Rita Bennett for FINAL LEAVE to Appeal to Her Majesty in Council be and the same is hereby granted, and that the costs of this Application shall be costs in the cause.

BY THE COURT.

(Sgd) C.A. Patterson

REGISTRAR

FILED BY EUGENE C.L. PARKINSON of 9 Duke Street, Kingston, Attorney-at-Law for and on behalf of the above-named Plaintiff/Respondent.

IN THE PRIVY COUNCIL No. 9 of 1975

O N A P P E A L

FROM THE COURT OF APPEAL OF JAMAICA

B E T W E E N :-

RITA BENNETT — Appellant (Plaintiff)

- AND -

PARAMOUNT DRY CLEANERS LIMITED — Respondent (Defendant)

RECORD OF PROCEEDINGS

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