OCTOBER 21ST, 1901.

DIVISIONAL COURT.

HOLMAN v. TIMES PRINTING CO.

Master and Servant — Injury to Servant—Infant—Negligence of Foreman in Requiring Machine to Run at High Speed.

Motion by plaintiff to set aside judgment of nonsuit of MACMAHON, J., and for a new trial, in action for damages for injuries sustained by infant plaintiff, a boy 16 years old, while employed by defendants working at a Colt's Universal or Armory printing press, printing coupon railway tickets. The infant plaintiff's right hand was caught between the moving plate and stationary frame, crushed, and had to be amputated. In giving his evidence the infant plaintiff stated that "it may be that while my right hand was holding one of these coupons flat against the plate, I was working my left to throw off the impression, and owing to the difficulty I found in doing this, my whole attention may have been taken up with my left hand, and I forgot where my right was." The trial Judge held that the infant plaintiff was thus the author of his own wrong, and that the accident was not, therefore, as alleged, due to the action of the defendants' foreman, who insisted on having the boy run the machine at second instead of first speed, and nonsuited, following Roberts v. Taylor, 31 O. R. 10.

D'Arcy Tate, Hamilton, for plaintiff.

John Crerar, K.C., for defendants.

The judgment of the Court (BOYD, C., FERGUSON, J.) was delivered by

BOYD, C.—The learned Judge who tried this case says that he would have let it go before the jury upon the evidence given for the plaintiff, had it not been for an expression used by the plaintiff at p. 9 of book, that the accident happened because he must have forgotten that his hand was on the press as it moved.

In my opinion, this is putting too much emphasis upon the words of the boy, as if there was some negligence admitted by him in not withdrawing his hand. There must have been some inadvertence, owing to the rapid action of the press, and the overworked condition of the lad, which detracted from his normal state of alertness, but I think it would be deciding contrary to the views expressed in Scriver v. Low, 32 O. R. 290 (not cited at the trial), to hold that the case is thereby to be concluded by the Judge against the plaintiff.

See also Robinson v. Toronto Railway Co., 2 O. L. R. 18.