

An action had been brought under the Employers' Liability Act by the plaintiff, a boy of thirteen, against the defendants, for damages for the crushing of one of his hands in a leather-pressing machine. The County Court Judge directed the jury to consider whether, in the first place, the boy was using the machine in the performance of his duty; and in the second, whether there was a defect in the machinery in not fencing it or covering the cogs. The jury found a verdict for the plaintiff for £195. From the facts proved at the trial it appeared that the machine in question consisted of rollers which were put in motion by cog-wheels at the side. The boy's duty was to feed the machine with leather, and to keep the leather straight as it passed between the rollers through the machine. The boy was put to the work after merely being told by another boy how to do it. Upon the day of the accident the leather became twisted in some way, and the boy, in endeavouring to straighten it, got his hand entangled in the cogs of the wheel at the side of the machine, and it was crushed. The wheel and cogs were not so fenced by wire-guard or otherwise as to render such an accident impossible, nor were they in any way covered or protected. An inspector of factories had, in 1885, warned the defendants against employing young persons to work the machine, for if the cogs of the wheel were not protected it was dangerous even to adults.

The contention on behalf of the appellant was, that the defect, for the purposes of the Act, must be a defect which prevents the machine doing properly the work it is required to do, that defect must apply to the machine itself, and so that danger was not a defect if the machine here in question was not otherwise defective for the purpose of rolling leather. What was the alleged defect? A part of the machine was wanting—that is, a fence to the cog-wheels; but, then, that would not have made it a better machine for pressing leather—so that, on the facts, the question was distinctly raised as to whether, however dangerous a machine may be, it can be defective if it is not defective for the purposes for which it is used. For instance, contended the plaintiff, a machine may be defective in the hands of a boy when it is not defective in the hands of a man; but, without necessarily going that length, the fact that here the machine could not perform its work without human skill and labour was, of itself, something that had to do with the "condition" of the machine. As Lord Esher put it: If its condition be such that the workman cannot do his part with safety, is that, or is it not, a defect in the condition of a machine the working of which is a necessary performance? However, no authority precisely in point was cited. *Heske v. Samuelson & Co.* (12 Q.B.D., 30) was rather the case of the misapplication of a perfect machine, defective in this, that all lifts for coke ought to have something in the way of a guard or fence to prevent the coke falling out; but, in a measure, the court there decided the principle which the court here were called on to lay down definitely. While, again, in *Walsh v. Whiteley* (21 Q.B.D., 37) it would rather seem to have been assumed that if the machine were dangerous to a workman, without any fault of his own, it came within the Act, the only doubt that existed in the minds of the two Lords Justices, who differed from the learned Master of the Rolls, being as to whether the defect had arisen from the