Thursday, January 12.

FIRST DIVISION.

[Lord Low, Ordinary.

GREENLEES *v.* THE ROYAL HOTEL, DUNDEE, LIMITED.

Reparation—Falling Down Well of Lift in Hotel—Relevancy of Averments of Fault—Want of Light—No Warning Given and Door Thrown Open—Contributory Negligence—Relevancy.

In an action of damages for the death of her son, who was fatally injured by falling into the well of a lift while staying in the defenders' hotel, the pursuer averred that the deceased arrived at the hotel in the evening; that he had not previously resided in the hotel, and was not acquainted with the premises; that about midnight he proceeded to the entrance to the lift on the first floor in order to be taken up to his bedroom; that a waiter unlocked and slid open the collapsible door at the entrance to the lift and pulled the elevating rope with the intention of raising the cage from the basement to the level of the floor; that there was no light in the well, and to one standing at the entrance to the lift the well was obscure; that the deceased received no warning from the waiter that the cage was not in position to receive passengers; that seeing the door thrown open he assumed, as he was entitled to do, that it had been opened to admit him to the cage; and that he accordingly stepped forward and fell downwards into the well and sustained the injuries from which he died.

The pursuer further averred that the defenders, or those for whom they were responsible, were in fault, in respect that the entrance to the lift was not sufficiently lighted; that the door to the lift should have been constructed so as to open only when the cage was opposite the entrance; that in order to reach the elevating rope in the lift the door had to be thrown wide open; that no proper attendants were employed for working the lift, which was attended to by the waiters and other persons unskilled in working it; and that the waiter by opening the door left the entrance to the well unguarded, and failed to warn the deceased man that the cage was not in proper position.

Held (*rev.* the judgment of Lord Low, Ordinary, who had dismissed the action on the ground that the pursuer's averments showed that the deceased had been guilty of contributory negligence) that the pursuer's averments were relevant, and that she was entitled to have the case sent to a jury.

This was an action at the instance of Mrs Flora Clark or Greenlees against the Royal Hotel, Dundee, Limited, carrying on business as hotelkeepers and proprietors of the Royal Hotel, Dundee, in which she claimed damages for the death of her son, who was fatally injured while staying in the hotel by falling into the well of a lift.

The lift, which was worked by hydraulic pressure, consisted of a cage which was worked by an attendant up and down a well extending from the basement to the upper storeys. Access to the lift was obtained through collapsible doors on each landing, which were kept locked, and which in order to be opened required to be slid from the right hand side of the lift (looking towards it) to the left. When not in use the cage was left at the bottom of the well, and had to be brought up to the floor at which it was required. This was done by pulling a rope running within the well on the left-hand side as one entered it. Before this rope could be reached by an attendant standing on any of the landings the collapsible door had to be thrown wide open. There was no light in the well, and an electric light, which was provided inside the cage, could only be switched on by the attendant after he had entered the cage. The defenders did not employ a regular attendant to work the lift. It was attended to by the boots and by the waiters in the hotel.

The pursuer averred—"(Cond. 4) The said deceased William Greenlees arrived at the defenders' hotel on the evening of Friday, 8th April 1904, and engaged a bedroom for the night. He had not previously resided in the hotel and was not acquainted with the premises. (Cond. 5) About midnight or shortly thereafter the said deceased William Greenlees proceeded to the entrance to the lift on the first floor in order that he might be taken up to his bedroom in one of the upper storeys. At his request to be taken up, a waiter named William Spill, who had a key for the lift, attended to him. Spill unlocked and slid open the collapsible door, and pulled the rope with the intention of raising the cage from the basement to the level of the floor on which they were standing. There was no light in the well, and to one standing at the entrance to the lift the well was obscure. Greenlees received no warning from Spill that the cage was not in position to receive passengers, and seeing the gate thrown back he assumed, as he was entitled to do, that it had been opened to admit him to the cage. He accordingly stepped forward and fell downwards into the well until he met the roof of the cage, which was but a few feet below the level of the floor on which he was standing. His right leg slipped over the front of the cage into the recess above described, and as the cage ascended it caught the leg at the knee and crushed it between the roof and the front wall of the well at the point where the wall projects at the top of the recess. The ascent of the lift did not stop until the top of the roof had reached a few inches above the level of the floor, by which time Greenlees had received very severe injuries. Some time elapsed before he was extricated from the lift. He was thereafter removed to the Dundee Royal Infirmary, where he died about 6·30 on the same morning, viz., Saturday, 9th April 1904. . . . (Cond. 6) The said accident, and

the consequent death of the said William Greenlees, were solely due to the culpable fault and negligence of the defenders or of those in their employment and for whom they are responsible . . . in respect that the said entrance to the lift was not sufficiently lighted. No light of any kind was provided in the interior of the lift, and the lighting of the hall near it was not sufficient to allow anyone, and specially one to whom the arrangements of the hotel were entirely novel and unknown, to observe that the lift was not in its place when he stepped into the well. . . . . (Cond. 7) Further, ... the rope in the well by which the lift was worked was on the left-hand side of the attendant as he stood facing the lift, and could not be reached by him without opening the gate, the effect of which was that before touching the rope he had to throw the gate wide open. It is the universal practice in all lifts to guard the entrance to them by a collapsible lattice door, which can be opened only when the cage is in position to receive passengers. Further, it is the universal practice in the construction of such lifts to place the elevating rope at the side from which the door opens so that the door may be kept so far closed as entirely to prevent the entrance of passengers until the cage is in place. Thus the deceased on the door being opened was entitled to rely on the cage being in position for him to step into with safety. . . . (Cond. 8) Further, it was the defenders' duty to have employed an attendant skilled in the working of lifts and the care of passengers travelling in them to work the said lift. . . . It was gross carelessness on the part of the said attendant to open the gate when the light was insufficient as aforesaid without warning the deceased that the lift was not in position, and his said carelessness caused the said William Greenlees' death. The said William Spill was a waiter in the defenders' employment and not a lift-attendant sufficiently skilled in working a lift and in the duty of looking after the safety of lift passengers. (Cond. 9) The said William Spill, for whom the defenders are responsible, was in fault (*a*) in opening the gate of the lift in such a manner as to leave the shaft unguarded, and (*b*) in failing to give the deceased warning when he opened said gate that the cage was not in its proper position. He gave no warning of any kind to the deceased. But for his negligence in not giving warning the accident would not have occurred."

The issue proposed was as follows:—"Whether at or about midnight of the 8th and 9th April 1904 the pursuer's son, William Greenlees, in or about the Royal Hotel, Dundee, sustained the injuries in consequence of which he died through the fault of the defenders, to the loss, injury, and damage of the pursuer? Damages laid at £1000."

The defenders denied that they were in fault, and pleaded contributory negligence.

On 17th November 1904 the Lord Ordinary (Low) disallowed the proposed issue and dismissed the action, holding that the pursuer's statements showed that the deceased had been guilty of contributory negligence.

The pursuer reclaimed, and argued—It was for the jury to say whether there had been contributory negligence on the part of the deceased. The fault alleged was a composite one, and the pursuer's averments must be read together and not singly. The accident was due to fault on the part of the defenders in several respects, all of which contributed to the accident.

Argued for the respondents—The pursuer's statements showed that the deceased met his death through his own fault. The deceased simply stepped into the darkness and ought not to have done so. There was no duty to light the well in the lift, it was not usual to do so. There was nothing wrong in the construction of the lift or the position of the rope. There was no duty on the part of the attendant to warn passengers. Passengers must exercise ordinary care.

The following authorities were cited during the discussion—*Cairns* v. *Boyd*, June 5, 1879, 6 R. 1004; *Forsyth* v. *Ramage & Ferguson*, October 25, 1890, 18 R. 21, 28 S.L.R. 26; *Jamieson* v. *Russell & Company*, June 18, 1892, 19 R. 898, 29 S.L.R. 790; *Fleming* v. *Eadie & Sons*, January 29, 1898, 25 R. 500, 35 S.L.R. 422; *Driscoll* v. *Commissioners of Partick*, January 10, 1900, 2 F. 368, 37 S.L.R. 274.

LORD ADAM—This is a reclaiming note against an interlocutor of Lord Low in which he has found, in a case of damages for death caused by an accident, that the pursuer has set forth no issuable matter, and has dismissed the action. The action is brought by the mother of a Mr Greenlees, a commercial traveller, who was a guest at the Royal Hotel, Dundee on 8th April 1904. He arrived at the hotel in the evening, and had never been there before. He was given a bedroom in the upper part of the house, and on returning to the hotel about midnight desired to go up in the lift. It appears that there is no regular lift-attendant but the work is shared by several servants, but no point is made by the pursuer of this fact. It appears that there was no light in the well of the lift, and as the lift itself was not in constant use there was no permanent light in the cage, but after the lift had been brought to the floor when it was required the attendant, in order to switch on the light in the cage, had to throw the door of the opening to the lift wide open. It is also said that the light in the well was not sufficient to allow Mr Greenlees to see clearly the entrance to the lift. On the occasion in question one of the hotel servants, named Spill, accompanied Mr Greenlees to the lift and threw the door wide open in order to reach the rope to bring up the lift, and when the lift was within a few feet of the floor level Mr Greenlees stepped forward and fell down on to the top of the cage, which was then in motion, and was so injured between the cage and the walls of the well that he died. The question is whether these averments infer any negligence on the part of the defenders.

Perhaps the most material averment is in Cond. 5, where it is stated—"Spill unlocked and slid open the collapsible door, and pulled the rope with the intention of raising the cage from the basement to the level of the floor on which they were standing. There was no light in the well, and to one standing at the entrance to the lift the well was obscure. Greenlees received no warning from Spill that the cage was not in position to receive passengers, and seeing the gate thrown back he assumed, as he was entitled to do, that it had been opened to admit him to the cage." The case put forward is therefore one of a stranger who, wanting to use the lift, and seeing the door thrown open without any warning from the attendant, steps forward and falls down the well. That appears to me to be a case which should go to a jury. I think the interlocutor of the Lord Ordinary is wrong, and that we should allow an issue.

LORD M'LAREN—I gathered from the arguments of counsel that the Lord Ordinary in disallowing an issue and dismissing the action proceeded upon the ground that sufficient facts were admitted on the part of the pursuer to show that the deceased met his death through his own negligence or contributory negligence. The interlocutor of the Lord Ordinary has, however, been supported before us on the ground that no relevant averment of negligence on the part of the defenders is contained in the record. I need say no more on the first question, except that I think the pursuer's averments strongly suggest that this traveller had not taken the usual precautions for his safety, but I do not think they can be construed as an admission of negligence on the part of the deceased.

As to the relevancy of the averments of negligence on the part of the proprietors of the hotel, the case raised on record is alternative. Either the lift, which appears to have been of old-fashioned construction, should have been provided with automatic arrangements for the safety of visitors to the hotel, or it was the duty of the attendant to warn visitors when the lift cage is not in position, because people who are accustomed to automatic arrangements are very apt to trust to them. I think the averments made are sufficient to entitle the pursuer to have the question as to whether there was negligence on the part of the proprietors submitted to a jury.

LORD STORMONTH DARLING—I concur with your Lordships. The case may be a difficult one for the pursuer to prove, particularly in view of the fact that the poor man is dead, but I think her averments are relevant. They are founded partly on the want of lighting, partly on the peculiar construction of the lift, and partly on the absence of any warning by the attendant. It is thus a competent case of fault, and I agree that it should go to a jury.

The Court recalled the Lord Ordinary's interlocutor, and approved of the proposed issue.

Counsel for the Pursuer and Reclaimer—Watt, K.C.—Ingram. Agents—Galloway & Davidson, S.S.C.

Counsel for Defenders and Respondents—Campbell, K.C.—Younger. Agent—W. Fulton Spiers, W.S.

Friday, January 13.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

MOYES *v.* WILLIAM DIXON, LIMITED.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub-sec.* (2), *First Schedule, sec.* 1 (*a*)—*Dependants—Parent and Child—Able-Bodied Daughter Keeping House for Her Father in Return for Board, Lodging, and Clothing.*

In an arbitration under the Workmen's Compensation Act 1897, in which the daughter of a workman, who had been killed in the course of his employment, claimed compensation from his employers, it was proved that the father of the claimant was accidentally killed on 11th August 1904 while in the employment of the respondents; that at the date of her father's death the claimant was about twenty-five years of age and in good health; that for some time prior to November 1899 (the date of her mother's death) she had been employed in a steam-laundry, earning 9s. a-week, and lived with her father and mother; that after her mother's death in November 1899 she ceased going to the laundry and remained at home keeping house for her father; that she received no money wages, but had board and lodging and clothing free.

Held that the claimant at the date of her father's death was a "dependant" within the meaning of the Act.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-sec. (2), *inter alia*, enacts—"'Dependants' means . . . (*b*) in Scotland such of the persons entitled, according to the law of Scotland, to sue the employers for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death."

This was an appeal upon a stated case from the Sheriff Court of Lanarkshire at Glasgow in an arbitration under the Workmen's Compensation Act 1897 between Lily Moyes, residing at 4 Govan Pit, Glasgow Road, Rutherglen, claimant and appellant, and William Dixon, Limited, iron and coal masters, 1 Dixon Street, Glasgow, respondents.

The case stated that the following facts were admitted or proved:—"(1) That James Moyes, the father of the appellant, was a waggoner in the employment of the re-