

years old, small of his age, and of no experience with machinery, was taken by one of the defendants from the work he had been doing and put at work taking panels away from a sanding machine. Rolfe said to Worthley (the man in charge of the sander), "Here is a boy for you to work on the sander, look out for him," showed the boy how to take panels away, and then left. The panels came through scratched, and Worthley stopped the machine to clean the front top roll. The plaintiff supposed he must do the same, and got up on the machine and cleaned the rear roll. The panels continued to come through scratched, and Worthley began work on his top roll while the machine was in motion. The plaintiff again supposed it was his duty to follow his superior's example, and while he was attempting to clean the rear roll his hand was caught by the revolving sand-cylinder, which was located just below the roll. Up to the time of the accident he had never seen a sand-paper cylinder, and did not know there was any danger in doing the work as he attempted to do it.

*Mitchell, Foster & Lake and Martin & Howe*, for the plaintiff.

*Streeter & Hollis*, for the defendants.

PEASLEE, J. The case is not distinguishable in principle from *Bennett v. Warren*, 70 N. H. 564. The plaintiff was inexperienced, did not know of the concealed danger, and was in the performance of what he reasonably thought to be a part of his duty. It might well be found that it was negligence to set a child at this work without any instruction or warning. The motions for nonsuit and that a verdict be directed for the defendants were properly denied.

*Exceptions overruled.*

All concurred.

Coös, }  
Nov. 4, 1908. }

PETRUS v. BERLIN MILLS CO.

CASE, for personal injuries. Trial by jury. A nonsuit was ordered at the close of the plaintiff's evidence, and he excepted. Transferred from the December term, 1907, of the superior court by *Chamberlain, J.*

*William H. Paine*, for the plaintiff.

*Drew, Jordan, Shurtleff & Morris* and *Rich & Marble*, for the defendants.

YOUNG, J. There was evidence that the defendants either knew or ought to have known of the danger incident to the condition of their premises which caused the plaintiff's injury, in season to have removed the danger or to have warned him of it, and that he neither knew of the danger nor was in fault for not knowing of it. Consequently, the evidence should have been submitted to the jury.

*Exception sustained.*

All concurred.

---

Strafford, }  
Dec. 1, 1908. }

PALMER, *Adm'r*, v. BLANCHARD.

CASE, for negligently causing the death of the plaintiff's daughter. Trial by jury and verdict for the defendant. Transferred from the February term, 1908, of the superior court by *Stone, J.*

The defendant is a physician and treated the plaintiff's daughter for spasmodic croup. The plaintiff's evidence tended to prove that she died of membranous croup. Dr. Morgan, who was called to the child about two hours before her death, was a witness for the defendant and admitted on cross-examination that the plaintiff and his attorney, Scott, called on him at his office, but denied that he told them death resulted from membranous croup. The redirect examination took up the occurrences at his office and then proceeded as follows:

Q. "Did you see Colonel Scott later?" A. "Saw him on the street one day; that is all."

Q. "What talk did you have with Colonel Scott about it on the street?" The plaintiff's counsel objecting, the court said: "That is not evidence."

Defendant's counsel: "It was put in before, your honor. I don't think it is quite fair. I don't wish to criticise the court."

The court: "Any talk this man had with Colonel Scott on the street is not evidence."

Defendant's counsel: "They put it in before. I didn't know but they wanted to now." To this the plaintiff excepted.