

# Wheeler v New Merton Board Mills Ltd [1993]

## Evidence

An employee who was eighteen years old was working at a cardboard cutting tool. It had spinning knives. The machine cut his hand off while he was gathering flakes. Since this tool was a dangerous one, there had to be a kind of protective barrier around it. Otherwise, there had to be extra protection according to the Factory Workshop Act 1901. But the employer did not follow this regulation. It was stated that the worker knew a cutting machine could be stopped with the help of a rod to gather shavings to avoid danger. But for some reason, he did not use a safe approach to work and consequently, did not act in this way.

## Problematics

The main question of the issue is whether the defendant was liable for the personal injury, if to take into consideration the facts that the defendant violated the doctrine of *volenti non fit injuria* and that the claimant did not take any safety measures to avoid the risk while working with a dangerous tool.

## Resolution

The Court stated that the doctrine of *volenti non fit injuria* can not prevent the claimant from suing the defendant and serve as an obstacle to this based on the fact that the defendant violated his responsibilities and neglected the issue of professional safety at the working place. The Court of Appeal claimed that *volenti non fit injuria* was not previously accepted by binding jurisdiction, since the defendant broke the rules of safe working conditions. Taking into account the facts of the case, the employer left a dangerous tool without the needed protective barrier and with no special supervision. Thus, he was accused of breaking the conditions of the Factory Workshop Act 1901. Since the defendant was aware of the possible danger that could be caused by the machine, he was responsible for the consequences connected with using it. As a result, the defendant was charged for the accident and the injury the claimant received.

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