

pared to affirm the judgment of the Lord Ordinary.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

The Court adhered.

Counsel for the Reclaimers—Kennedy—M'Lennan. Agent—D. Macaulay, S.S.C.

Counsel for the Respondents—Jameson—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Thursday, February 2.

FIRST DIVISION.

[Sheriff of Forfarshire.]

GUTHRIE, CRAIG, PETER, & COMPANY
V. MAGISTRATES OF BRECHIN.

(*Ante*, 12 R. 469, and 22 S.L.R. 343.)

Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101), sec. 77—Rivers Pollution Prevention Act 1876 (39 and 40 Vict. cap. 75), sec. 7—Drainage—Burgk.

A manufacturer whose works were within burgh, and who was liable for drainage assessment, presented a petition in the Sheriff Court, founding on the 77th section of the Public Health Act 1867, and the 7th section of the Rivers Pollution Act 1876, to have a local authority ordained to allow him to empty the drains containing the discharge from his works into the burgh sewers. The defenders, founding on the latter section, stated that the discharge in question would prejudicially affect the sewers and the quality of the sewage.

Held, upon a report by two men of skill, that the defenders' averments were not proved, and that therefore under the statutes they were bound to allow the pursuers to empty their drains into the burgh sewers.

Messrs Guthrie, Craig, Peter, & Company were the tenants and occupiers of the Brechin Paper Mill Manufacturing Works, within the burgh of Brechin, and as such were liable for sewerage or drainage assessment to the Magistrates and Town Council of the burgh, who were also the local authority under the Public Health (Scotland) Act 1867, and the Public Health (Scotland) Amendment Act 1871. Section 77 of the Public Health (Scotland) Act 1867, provides—“Any owner or occupier of premises within the district of a local authority, liable for general or special sewerage or drainage assessment, shall be entitled to cause his drains to empty into the sewers of such local authority on condition of his giving twenty days' previous notice of his intention so to do to the local authority, and of complying with their regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications.”

On 12th March 1883 Messrs Guthrie, Craig, Peter, & Company gave the Magistrates notice, in terms of the 77th section of the Public Health (Scotland) Act 1867, that they desired to cause the drains from their works to empty into the sewers within the burgh, and intimated their readiness to comply with the regulations as to the mode in which the communication should be made and otherwise.

The Magistrates replied agreeing to give facilities for enabling them to carry the liquids proceeding from their works into the public sewers, provided they were satisfied that this would not prejudicially affect the sewers or the sale of the sewage matter conveyed along the sewers.

Messrs Guthrie, Craig, Peter, & Company obtained a report from a chemical expert to this effect, but the Magistrates refused to allow any communication between the drains and the sewers to be made.

Messrs Guthrie, Craig, Peter, & Company accordingly presented a petition in the Sheriff Court of Forfarshire at Forfar, praying that the Magistrates should be ordained “to allow the pursuers to cause the drains of and containing the liquid flow from the Brechin Paper Mill Manufacturing Works, situate on the river South Esk, within the burgh of Brechin, tenanted and occupied by the pursuers, to empty into the sewers of the defenders in or near River Street within the said burgh of Brechin; and to find that the pursuers are entitled to make all proper communications between their said drains and the said sewers for the purpose aforesaid, on condition of the pursuers complying with the defenders' regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the defenders to superintend the making of such communication.”

Besides founding on the 77th section of the Public Health Act 1867 (above quoted), they set forth the 7th section of the Rivers Pollution Prevention Act 1876. That section provides—“Any sanitary or other authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers, provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers, or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise, be injurious in a sanitary point of view; provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, or where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority.”

The defenders stated in answer, that as part of a new drainage system which had recently come into operation, the sewage running through their drains which entered the river South Esk was now under a new scheme prevented from falling into the South Esk till it had been purified by passing through a sewage farm, and they averred that the discharge from the pursuers' drains would

prejudicially affect the sewers, and prejudice the quality of the sewage for the purpose or such application to land. It would also, they said, unduly increase the volume of the total discharge.

The Sheriff-Substitute (ROBERTSON), after proof, on 18th December 1884 pronounced this interlocutor—"Finds in fact that the liquids issuing from the pursuers' paper-works at Brechin, which are chemically objectionable and likely to injure sewage or vegetation, are three in number namely, 'black boil,' 'spent bleach,' and 'washings,': Finds that when these three liquids are mixed together and exposed to the action of the air in settling ponds the resultant fluid is harmless, and such as the defenders may safely allow to be introduced into the public sewer of Brechin: Finds that since the raising of the present action the pursuers have produced and brought under the notice of the defenders a plan, which forms No. 36 of process, showing how they are now prepared to form a series of settling ponds in which these three liquids will be thoroughly mixed and settled before the defenders will be called upon to receive the resultant fluid into their sewer: Finds in law, and under a sound construction of section 7 of the Rivers Pollution Act, and section 77 of the Public Health Act, that the defenders are bound to receive the resultant fluid issuing from said settling ponds into the public sewer of Brechin: Remits to Thomas Stevenson, civil engineer, Edinburgh, whom failing to Hugh Littlejohn, M.D., Edinburgh, to see the plan, No. 36 of process, carried out by the pursuers; and thereafter, and on the completion of said plan to the satisfaction of the reporter, Ordains the defenders to allow the pursuers to discharge the resultant fluid issuing from the said settling ponds into the public sewer of Brechin on condition of the pursuers complying with the defenders' regulations as to the mode in which the communication between the pursuers' premises and the public sewer is to be made: Finds the defenders entitled to expenses up to and including the first diet of proof in the case: Finds the defenders liable in expenses from and after that date, &c.

"*Note.*—The pursuers are ratepayers in the town of Brechin, and are as much entitled to the use of the public sewer as any other members of that community, always provided they are not seeking to introduce 'any liquid which would prejudicially affect such sewer, or sewage matter conveyed along such sewer.' In resisting the pursuers' demand that the liquids from their paper-works be introduced into the public sewer, the defenders must take their stand upon the 7th section of the Rivers Pollution Act, and must show that their sewer and sewage will be prejudicially affected by such liquids. The question becomes one for chemical experts. With one exception, the eminent chemists who have been examined in the case certify that if certain precautionary measures are taken the fluids from the pursuers' works become innocuous, and may safely be introduced into the public sewer. Their unanimity on this point renders any detailed analysis of the evidence unnecessary. Dr. Wallace of Glasgow, who is one of the defenders' own witnesses, explains how the caustic soda contained in the 'black boil,' the lime contained in the 'spent bleach,' and the acid contained in the 'washings,' neutralise each other when they are

mixed together and exposed to atmospheric influences. This can readily be done, and a harmless liquid obtained by a series of mixing and settling ponds, and the plan proposed to be carried out by the pursuers Dr Wallace considers to be quite satisfactory. The fact that the objectionable liquid must first pass into these settling ponds and there be neutralised by their chemical action on each other, and by the action of the air on them is a sufficient safeguard to the defenders. The safety of the sewer is not made to depend on the negligence or carelessness of the pursuers' work people. There is no danger of that sort. It is put out of the power of any careless workman to flood the sewer with a poisonous liquid. The only access to the sewer will be after these settling ponds have done their work. And when Dr Wallace was under examination I was very careful to bring this out. I think Dr Wallace's evidence is conclusive, backed up as he is by all the pursuers' own chemical witnesses. These include the public analyst for the city of Edinburgh, and the professor of chemistry in Dundee University College."

The Magistrates appealed to the Court of Session.

On 20th May 1885 the Court pronounced this interlocutor:—"The Lords having heard counsel, supersede consideration of the judgment appealed against, and in the meantime (1) allow the pursuers to construct the works delineated and described on the plan No. 36 of process, at the sight of Professor Alexander Crum Brown, and Robert Carstairs Reid, civil engineer; and (2) on the completion of the said works to the satisfaction of the reporters, ordain the appellants, at the sight of the reporters, to allow the pursuers, for the purpose of experiment, to discharge the resultant fluid issuing from the said works into the public sewers of Brechin, for such time and under such conditions as the reporters may consider necessary to enable them to report on the effect of such discharge, and appoint the reporters to report *quam primum* as to the character of the said resultant fluid, and its effect upon the respondents' sewer-pipes and sewage farm: *Quoad ultra* continue the cause."

On 28th January 1888 the reporters submitted their report, in which they stated, *inter alia*:—"At our various meetings on the ground we explained to the pursuers or their representatives then present that the incrustation in the pipe was due to the alkalinity of the effluent from their tanks, and that this could only be prevented by adding more acid so as to render it neutral or nearly so. The pursuers have always used a certain proportion of acid in the process of manufacturing the paper, but since our inspection in October 1886 they have used more acid in the paper-mill, with the result that the effluent has become practically neutral. Since this change in the way of working, by which the effluent is rendered practically neutral, we examined the sewer on the 15th April and 6th December 1887, and found that not only was there no increase of the incrustation but the former incrustation was disappearing, and had become so soft as to be removable by ordinary flushing. There is no reason to fear that the effluent from the pursuers' work will ever be sensibly acid, as that would imply a needless expenditure on their part, and

there is thus no risk of the pipes being injured by excess of acid. The sewer-pipe is of sufficient capacity to carry the whole discharge from the pursuers' works in addition to the ordinary sewage coming from the town, and indeed the additional flow will induce greater velocity, and thus assist in scouring the pipe and keeping it clear of ordinary deposit. We are therefore of opinion that the effluent from the pursuers' tanks may be admitted to the public sewers of Brechin without injury to the sewer-pipes by incrustation or otherwise so long as it remains in its present condition of practical neutrality. If the incrustation appears to grow again in the pipes it must be owing to this condition of practical neutrality not having been sufficiently maintained, and in such circumstances the defenders should have the right to call upon the pursuers to restore this condition of practical neutrality in the effluent." With regard to the effect of the additional fluid on the sewage farm of the defenders, the reporters stated:—"The flow of sewage in dry weather is equal to 20,000 gallons per day for each acre that has been properly prepared for irrigation, and fully 10,000 gallons per day for each acre of the whole farm, and when the paper-mill discharges are added the above figures will be nearly doubled. In the best types of sewage irrigation farms laid off similarly to that portion of this farm which has been properly prepared for sewage, not more than 8000 gallons per day are allowed for each acre on an average throughout the year, so that even if the whole farm of nearly 15 acres were properly laid out for irrigation it would barely be sufficient to purify the dry weather sewage of Brechin, not to speak of the much greater volume during wet weather. With only $7\frac{1}{2}$ acres properly prepared for irrigation, as at present, it is not to be expected therefore that complete purification can be effected; and indeed we found that the effluent from the farm was not completely purified even before the paper-mill discharges were let into the sewer. The effluent coming from the pursuers' tanks is much freer from polluting matter than the town sewage, and its addition therefore dilutes the sewage, but owing to the larger volume to be dealt with, the purification effected by the sewage farm cannot be so complete as when the polluting matter is concentrated in the smaller volume of dry weather sewage. . . . We found it necessary to continue the experiment over two seasons in order to judge of the effect of the addition of the effluent from the pursuers' tanks on the crops generally grown on the farm, and after careful examination we have come to the conclusion that it exercises no prejudicial effect upon them, unless the ground is overcharged, in which case the excess of water of itself would do mischief. We have therefore to report our opinion that the resultant fluid or effluent issuing from the pursuers' tanks into the public sewers of Brechin is not of such a character so long as it is maintained in its present condition of practical neutrality, as to produce any injurious effect on the sewer-pipes, or on the crops or soil of the sewage farm, but that the larger volume of liquid to be dealt with necessitates a different mode of working the sewage farm to effect proper purification of the combined discharges from the sewer before they reach the river South Esk."

On this report the appellants argued—This was a peculiar case, because the sewage from the mill would nearly double the existing volume passing through the sewers, while the pursuers only paid £8 assessment out of a total of £400. If the defenders were compelled to take the pursuer's sewage they would also be obliged to adopt a new system of disposing of the sewage, as not only would their present sewage farm be too small for the extra amount of sewage, but this extra amount would be deleterious to the farm.

Argued for the respondents—The Acts did not take into consideration the ultimate disposal of the sewage, but only the capacity of the sewers to carry it off, and the quality of the sewage from a sanitary and commercial point of view. The capability of the sewers to carry off the sewage had been proved by experiment, and the quality tested by analysts, and proved to be harmless.

At advising—

LORD PRESIDENT—I think if I had been called on to dispose of this case on the same grounds as the Sheriff-Substitute I should have been inclined to adopt the same view as he did. For it seems from the evidence that the town is under an obligation to dispose of the whole sewage of the district, including that of the mill in question. There is nothing whatever in the evidence to show the impossibility of their doing so, in fact everything rather points the other way.

When the case first came before us it was suggested that an experiment should be made as to how far the sewers were adequate for the reception of the sewage of the mill, and how far it could be disposed of by the town under the present arrangements. A remit was made to Professor Alexander Crum Brown and Robert Carstairs Reid, civil engineer, and the pursuers were allowed to construct works proper for the purpose at the sight of these two persons, and also, on the completion of the connection, to the satisfaction of the reporters, the defenders were ordained to allow the pursuers "to discharge the resultant fluid issuing from their works into the public sewers of Brechin for such time and under such conditions as the reporters may consider necessary to enable them to report on the effect of such discharge."

Now, all this has taken place. The connection between the paper-works and the public sewer has been made, and the discharge of the resultant fluid has gone on continually since October 1885, with the exception of a short break of three months, and it has been shown how far the discharge from the mills may be allowed without affecting the existing scheme of sewage for the town of Brechin. We have now to inquire to what extent the pursuers are entitled to the order for which they applied in the Sheriff Court, viz., "to ordain the defenders to allow the pursuers to discharge the resultant fluid issuing from their settling ponds into the public sewer of Brechin."

Their rights are founded on the 77th section of the Public Health Act, and the 7th section of the Rivers Pollution Act. It is necessary to observe that Brechin, like every other town and burgh, is under an obligation to drain their own town. And apart even from the common law on this point they are under a direct obligation by the 186th section of the General Police Act of

1862, which provides that Commissioners acting under the Act "shall from time to time cause to be made under the streets, public or private, or elsewhere, such main or other sewers as shall be necessary for the effectual draining of the burgh."

Thus there is a statutory obligation on the defenders to drain the town of Brechin. But the paper-mills are situated within the burgh of Brechin, and therefore the obligation comprehends the sewage of the paper-mills, unless some reason can be shown to the contrary.

By section 77 of the Public Health (Scotland) Act 1867 it is enacted that "any owner or occupier of premises within the district of a local authority, liable for general or special sewerage or drainage assessment, shall be entitled to cause his drains to empty into the sewers of such local authority on condition of his giving twenty days' previous notice of his intention so to do to the local authority, and of complying with their regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications." Now, this confers an absolute right on any owner or occupier of premises in the district to use the sewers, provided he be liable to assessment for sewage.

Again, the 7th section of the Rivers Pollution Act of 1876 provides that "every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers." Now, unless some reason can be shown to the contrary, the Public Health Act is made more distinctly imperative by the Rivers Pollution Act in the case of manufactories. Certain provisions are, however, appended to the 7th section of the Rivers Pollution Act, and the defenders plead that some of these apply to this case, and that therefore by the existing arrangements they are not obliged to receive the sewage from the paper-mills.

The first proviso is, that "this section shall not extend to compel any sanitary or local authority to admit into their sewers any liquid which would prejudicially affect such sewers." This was the first matter on which the reporters specially reported, and they have taken particular pains about this point, but they are satisfied that the sewers will not be prejudicially affected by the discharge from the mill. But to prevent a prejudicial effect means must be taken to see that a due admixture be made in the ponds so as to make the resultant fluids neutral, and to allow the acids and alkalis to cancel each other, as otherwise the fluid might do harm. It has been rightly suggested that if in our judgment matters should be allowed to continue as at present, then due attention must be paid to this fact.

The next proviso is, that the liquid shall not prejudicially affect "the disposal by sale, application to land, or otherwise of the sewage matter conveyed along such sewers." The meaning of this is that the sewage matter as conveyed into the sewers must not be destroyed as a subject of sale or as manure for land. That does not apply to every particular case, but means that generally the sewage shall not

be so spoiled as to be unfit for sale or for use as manure. I do not think it can be said here that the resultant fluid by passing into the sewers will bring about this result, and therefore this proviso does not apply.

The third proviso is, that the local authority shall not be required to admit into their sewers anything "which would from its temperature or otherwise be injurious in a sanitary point of view." This was not here alleged, and may therefore be passed over.

The fourth proviso is, "that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district." Now, if the sewers were not large enough to admit the fluid from the settling ponds in addition to the ordinary sewage of Brechin, then the defenders would not be under an obligation to receive it. But the measurement of capacity referred to in the Act is not the ability of the town to dispose of the sewage after it has passed through the pipes, but the capacity of the pipes to receive it. Now, it was not proved that the pipes were not large enough, and the only point is that they must be large enough to receive the fluid in addition to the ordinary sewage of the town.

The last proviso is, that "no sanitary authority shall be required to give such facilities as aforesaid . . . where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority." This is not alleged, and may be passed over.

Hence it appears that defenders have no proviso upon which they can rely in preventing the pursuers from having their sewage carried away by the pipes. Therefore, I think, we must give judgment in favour of the pursuers, and must ordain the town to allow the pursuers to use the sewers for their fluid.

The defenders seem to have difficulty as to the disposal of the sewage. This is not a question under the statute; they are bound by law to dispose of it. If they could empty it into the river so much the better for them, but they are not in a position to do this, for the proprietors of the salmon-fishing on the Esk have objected. They are, however, under an obligation to dispose of it in some way or other, and they have been doing so by means of a sewage farm. They say that their only difficulty is that the farm is not large enough to dispose of the sewage augmented by that of the paper-mill. Then they must find some other way of disposing of it for they are bound by law to get rid of the sewage. If I thought there was any hardship in the case we might have allowed them time to improve or amend their scheme. But we see from the report that the discharge from the paper-mill has gone on for two years, and no harm has been done by it. The defenders may be right in saying the farm is not large enough, but then they must enlarge it, or adopt some new method. But for the present there is no difficulty in going on as at present, for there have been no evil results up to now.

Therefore I think our judgment should be the same as that of the Sheriff, with this addition—that the discharge from the mill shall be so mixed and treated that the resultant fluid shall be neutral in the sense of the report.

LORD MURE concurred.

LORD ADAM—The pursuers are proprietors of property within the drainage district under the defenders' control, and having this property they pay assessment for drainage, which therefore entitles them to the use of the defenders' sewers.

I am of opinion that the defenders are bound to carry off the pursuers' sewage under certain limitations as to its character and the amount of its volume.

Under the Rivers Pollution Act the defenders are entitled to keep any liquid out of their drains which does not comply with the conditions contained in section 7 of the Rivers Pollution Act. The defenders aver that the liquid from the pursuers' mills is deleterious, but this difficulty has now been got over, for we are told that the incrustation it formed has disappeared when properly treated.

The next point is that the fluid must not prejudicially affect the other sewage for purposes of sale or application to land. No objection has been stated that the sewage will be affected for purposes of sale, but it has been argued that the fluid must not prejudicially affect land, and the question arises, whether the words of the Act apply to land in general or to a particular piece of land. If it means land in general, then it is the character of the sewage which must be taken into account. If it means a particular piece of land, then that involves a consideration not only of the quality but of the quantity of the sewage. I think we must read the Act as applying to land in general, *i.e.*, the damage done must arise from the noxious character of the sewage, and not from the amount of the sewage put on any particular piece of land which may be too limited for its reception. As I think this liquid is harmless in all senses of the Act, I consider the defenders are bound to take the sewage, and to dispose of it as best they can.

The Court pronounced this interlocutor:—

“Recal the interlocutor of the Sheriff-Substitute of 18th December 1884 appealed against: Find and declare that the appellants are bound to receive the resultant liquid issuing from the respondents' settling ponds into the public sewers of Brechin so long as the said liquid is such that it will not prejudicially affect such sewers, or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or is not injurious from its temperature or otherwise in a sanitary point of view: Decern and ordain the appellants to allow the respondents to discharge the resultant liquid issuing from the said settling ponds into the public sewers of Brechin so long as aforesaid: Reserving to the appellants their right to apply to any competent Court in the event of any change of circumstances: Find the appellants entitled to expenses up to and including the first diet of proof in the Sheriff Court, and the respondents entitled to the expenses of the subsequent procedure in the Sheriff Court: Find the respondents entitled to expenses since the date of the Sheriff-Substitute's said interlocutor, but subject to modification, and modify the same to three-fourths of the taxed amount thereof,” &c.

Counsel for the Appellants—Sol.-Gen. Robertson—R. Johnstone—C. S. Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—D.-F. Mackintosh—Guthrie. Agents—W. & J. Burness, W.S.

Wednesday, January 25.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CRUICKSHANK *v.* GOW & SONS.

Process—Misnomer in Summons—Interdict.

A small-debt decree was obtained against “William Cruickshanks” after personal service of the summons. A charge was given thereon and a poiding followed. The defender then brought an action to have the sale under the poiding interdicted, and to recover damages, on the ground that his name was William Vincent Cruickshank, that he was not the William Cruickshanks who was the pursuers' debtor, and that he had intimidated by letter when the summons was served that he knew nothing of the alleged debt. *Held* that he ought to have defended the action or obtained a re-hearing, and that the application for interdict came too late.

On 29th July 1886 J. Gow & Sons, 181 Trongate, Glasgow, raised an action in the Small-Debt Court at Glasgow against “William Cruickshanks, compositor, 78 Waddell Street, Glasgow,” for the price of furniture alleged to have been supplied to him, and obtained decree in absence. On 17th August “William Cruickshanks” was charged personally under this decree, and his goods and furniture were poided. On 18th August “William Vincent Cruickshank, 78 Waddell Street, Glasgow, brought an action in the Sheriff Court at Glasgow against J. Gow & Sons, concluding (*first*) to have the defenders interdicted from selling his furniture, and (*second*) for £25 as damages.

The complainer stated that on 13th July 1886, while he was confined to the house by illness, the defenders sent a messenger to him for payment of an alleged account; that he told the messenger that he had never bought any goods from the defenders, and owed them no account, and was then informed that the defenders had employed an officer of court to recover their account; that his wife called on the officer and explained that he owed the defenders nothing, and was promised that the matter would be inquired into and a letter of apology sent her for her trouble; that when the summons was served he sent a letter to the officer whose name was on the summons, saying that he had received it, but that he knew nothing of the alleged debt; that notwithstanding, the defenders, without inquiry, proceeded with their action, and took decree against the defender named in the summons, and thereafter wrongfully executed the poiding complained of. He further averred—“The said decree is not *ex facie* regular. The summons bears to be in name of ‘William Cruickshanks, 78 Waddell Street, while the relative account thereto annexed is in name of the same person