

It is found that he was afflicted with a constitutional complaint which may lie dormant for a time and be awakened into activity by such an accident as that which the respondent sustained. And it is described in the other passages as an obscure constitutional disease. Accordingly one is not surprised that the workman should not realise the nature of the injury which he had sustained in the same way as he would realise the nature of the injury if it was a case of a broken bone, or something which did not consist in the exciting of a dormant cause which was due to some obscure ailment. It is in these circumstances that we must deal with the findings in fact. I take as a crucial finding in fact that the serious nature of the injury did not fully appear until the month of March. One is entitled, consistently with the other findings in the case, to convert that proposition into this, that until the month of March the workman was entitled to consider that the injury was not of a serious nature, and I say that bearing in mind fully the able argument of Mr Horne to the contrary—that it was impossible for a man to remain in that mental attitude after he ceased to work, and that he ceased to work in the end of February. I think the answer to that is this, that a man may be incapacitated from his work and yet really honestly believe that his incapacity may only be of a short duration, and I think it is possible to take that view consistently with the whole findings in the case. His view may have been that until he consulted Dr Anderson in March he had not even begun to regard that there was a possibility of his injury being serious. Dr Anderson advised him to go to the infirmary. He went into the infirmary, and it was while he was there that the serious nature of the injury fully appeared, while the finding which is contained in 3 (b) of the additional findings does not exclude the idea that it was not until the last week of March that he became convinced that his injury was of a serious nature. Then one turns to the first additional findings, sub-head (h), and finds “that about the second week of April the respondent spoke to his wife about obtaining compensation, and asked her to instruct a lawyer,” and in sub-head (a) “that the respondent is illiterate, being unable to read or write.”

It is in these circumstances that we are asked to say that there was no evidence to entitle the arbitrator to reach the conclusion he did. It is not for us to say that we would have reached the same conclusion. Unless there is no evidence to enable him to reach that conclusion we cannot disturb his finding. For my part I cannot say that there is no evidence, and accordingly I think that the conclusion to which the arbitrator has come must stand.

LORD SKERRINGTON concurred.

The Court answered the first question of law in the negative, the second in the affirmative, and returned no answer to the third.

Counsel for the Appellants—Horne, K.C.—Lippe. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondent—Crabb Watt, K.C.—Gentles. Agents—Dove, Lockhart, & Smart, S.S.C.

Wednesday, March 17.

SECOND DIVISION.

[Sheriff Court at Fort-William.]

MACDONALD v. DAVID MACBRAYNE, LIMITED.

Reparation—Negligence—Carrier—Contributory Negligence—Misdelivery of Goods—Failure of Consignee to Notice Error.

The servants of the consignee of two barrels of paraffin received along with them from the carrier a barrel of naphtha which had not been ordered, and which, without examination and without ascertaining what their master had ordered, they placed in his store beside the barrels of paraffin. The consignee was subsequently asked to pay the freight to the carriers for the two barrels of paraffin, and before doing so went into his store and ascertained that the two barrels were there. On the end of each of the barrels a description of its contents was stencilled, but neither the consignee nor his servants noticed this. About three weeks after delivery one of the consignee's servants, in the belief that the barrel of naphtha contained paraffin, drew off part of its contents by the light of a candle, and an explosion ensuing, the store and its contents were destroyed by fire. *Held* in an action of damages at the instance of the consignee against the carriers that the consignee was entitled to recover from the carriers the loss he had thus sustained, and that he was not guilty of contributory negligence in respect of his failure to conduct his business so that the error was discovered.

Reparation—Negligence—Remoteness—Injuries Incurred in Voluntary Endeavour to Stop Loss Caused by Another's Negligence.

Held that a merchant whose store had been burned down through the negligence of others was not entitled to recover damages from them for personal injuries which he had sustained through falling from the roof of an adjoining building in endeavouring to put out the fire, the injuries in question being too remote.

Simon Macdonald, grocer and general merchant, Fort-William, *pursuer*, brought an action in the Sheriff Court at Fort-William against David MacBrayne, Limited, steamship owners, Glasgow and Fort-William, *defenders*, for payment of (1) £50 sterling, the value of a store belonging to the pursuer, which had been destroyed by fire on

26th September 1913, through, as he averred, the fault or negligence of the defenders or their servants in misdelivering to him along with two barrels of paraffin, which he had ordered, a barrel of naphtha, which in ignorance of the error and of its contents his servants placed in the store beside the barrels of paraffin; (2) £75, the value of the goods in the store thus destroyed; (3) £11, 5s., the amount of loss of profits on the goods; (4) £5, the amount of loss of profits suffered by the pursuer until the store was rebuilt; (5) £25, the value of joiners and masons' tools belonging to the pursuer and deposited in the store at the time of the fire; (6) £8, the value of a carrier bicycle belonging to the pursuer used in connection with his business and destroyed by the fire; (7) £5, the value of a sunshade and fittings for the pursuer's shop and destroyed by the fire; (8) £200 solatium for personal injuries sustained by the pursuer in consequence of the fire. The pursuer's injuries were occasioned by his falling from an adjoining roof on to which he had climbed in order to put out the fire with a hose.

The defenders pleaded, *inter alia*—“(2) The pursuer not having suffered loss, injury, and damage through the fault and negligence of the defenders or those for whom they are responsible, the defenders should be assoilzied, with expenses. (4) *Separatim*—The accident referred to having been caused, or materially contributed to, by the negligence of the pursuer, or those for whom he is responsible, the defenders should be assoilzied, with expenses. (5) *Separatim*—The damages sued for not being the direct and natural result of any actings of the defenders or their servants, are too remote, and the defenders should be assoilzied, with expenses.”

On 8th January 1914 the Sheriff-Substitute (MALCOLM) allowed a proof.

The facts of the case and the import of the proof appear from the interlocutor of the Sheriff-Substitute of 9th April 1914 (see also Lord Justice-Clerk's opinion), which was in the following terms:—“*Finds in law* (1) that on 27th August 1913 the defenders accepted in Glasgow from the Pumpherston Oil Company a barrel of naphtha for delivery to Mr Andrew Stewart, Fort-William; and that on 29th August 1913 they accepted in Glasgow from said company two barrels of paraffin for delivery to pursuer in Fort-William; (2) that the names and addresses of the consignees of said barrels were entered in the ship's manifest; (3) that on 1st September 1913, through the fault of a servant of the defenders, said barrel of naphtha was, along with said two barrels of paraffin, delivered to pursuer and was placed in his store; (4) that the pursuer was unaware that said barrel of naphtha had been delivered to him; (5) that about 7 p.m. on 26th September 1913 one of the pursuer's assistants, in the belief that said barrel of naphtha belonged to pursuer and contained paraffin, drew off a quantity of its contents by the light of a candle, in consequence of which an explosion took place and the said store and its contents were destroyed by fire;

(6) that said explosion and fire were caused by the fault of defenders' servant in delivering said barrel of naphtha to pursuer, and that it is not proved there was contributory negligence on the part of the pursuer or his servants: *Finds in law* that the defenders are liable in damages under heads 1 to 7 of the pursuer's claim for the loss sustained by him in consequence of said fire, but not under head 8; assesses said damages at the sum of £86, 5s. 2d., for which sum decerns against the defenders. . . .”

The pursuer appealed to the Sheriff (MACKENZIE), who on 29th May 1914 recalled the interlocutor of the Sheriff-Substitute. He *found in fact* “(1) that in August 1913 the pursuer ordered two barrels of paraffin oil from the Pumpherston Oil Company, and on 29th August that company delivered two barrels of paraffin oil to the defenders in Glasgow for conveyance to the pursuer; (2) that on 1st September, through the negligence of a servant of the defenders, a barrel of naphtha consigned to a different party in Fort-William was delivered along with said two barrels of paraffin to the pursuer, and was accepted by the pursuer's servant and placed in his store; (3) that about 7 p.m. on 26th September one of the pursuer's servants, in the belief that said barrel of naphtha belonged to the pursuer and contained paraffin, drew off part of its contents by the light of a candle, in consequence whereof an explosion took place and the pursuer's store with its contents was destroyed by fire; (4) that on the end of each of said three barrels a description of its contents was clearly stencilled in large letters, but neither the pursuer nor his servants discovered until after the fire that a barrel of naphtha which had not been ordered by the pursuer had been delivered to him; (5) that if the pursuer had exercised reasonable care to safeguard his own interests, the fact that a barrel of naphtha which he had not ordered had been delivered to him would have been discovered before the occurrence of the fire, and the failure of the pursuer to take such reasonable care directly conducted to the accident which subsequently occurred.” He *found in law* that in these circumstances the pursuer was not entitled to recover damages from the defenders for the loss sustained by him through the fire, and assoilzied the defenders from the conclusions of the petition.

Note.—“I agree with the learned Sheriff-Substitute in so far as he finds that the defenders' servant was in fault in delivering the barrel of naphtha to the pursuer, and apart from the question of contributory negligence I should also agree with him that the defenders were responsible for the loss occasioned to the pursuer by the fire which followed. But I differ from the Sheriff-Substitute in thinking that the pursuer's own negligence directly contributed to the accident which occurred.

“In my opinion the pursuer was bound in his own interests to take reasonable care to prevent goods which he had not ordered being accepted by his servants and placed in his store, and I think it would only have been reasonable care on his part to keep

his servants informed what goods he had ordered and when he expected to receive them, and to require them to inform him of the arrival of goods without undue delay. It is clear, however, from the pursuer's own evidence that he did not take either of these precautions before the occurrence of the fire. In cross-examination he says—'The only instructions I gave to my assistants were to be very careful to sign only for the exact packages received. If there was any shortage they reported to me. Sometimes they would tell me when the last barrel of paraffin was reached. I myself would order the new stuff. I would not inform my assistants that I had ordered a particular quantity.' And further on he says—'I would not say that my employees were negligent because they did not report to me that the barrels had arrived. I did not expect them to report to me the arrival of goods.' These passages from the pursuer's evidence amply bear out the statement I have just made that the pursuer did not take either of the precautions which I have held to be reasonable precautions in his own interest.

"If that be so, the only remaining question is whether the pursuer's failure to take these precautions directly conduced to the occurrence of the fire, and that question must I think be answered in the affirmative, for it does not seem to be open to question that if either of the suggested precautions had been taken, the fact that one barrel in excess of the number ordered from the oil company had been delivered by the defenders on 1st September would have been promptly discovered, and that discovery would have inevitably led to an examination of the barrels and the detection of the barrel of naphtha. Accordingly, but for the pursuer's own neglect of reasonable precautions the misfortune which he sustained would not have happened.

"In these circumstances I am of opinion that the pursuer's own negligence directly contributed to the outbreak of fire in his premises, and that he is consequently not entitled to recover damages from the defenders.

"It was argued that the pursuer's servant who signed the carter's book was negligent in failing to examine the barrels at the time of delivery in order to make sure that they were, as represented, barrels of paraffin consigned to the pursuer. It was pointed out that a cursory examination would have discovered the presence of the barrel of naphtha, as on the end of each barrel words descriptive of its contents were stencilled in large letters. There appears to me to be some force in this contention, but I do not find it necessary to express any definite opinion upon it, as I think contributory negligence proved on other grounds."

The pursuer appealed to the Court of Session, and argued—The defenders were liable unless they could show that the pursuer had been guilty of contributory negligence. But to establish such negligence they must show that there was a duty on the pursuer to conduct his business in such a way that there should be no mistakes in delivery to him.

To hold, however, that the pursuer was under any such duty would be contrary to the tests of contributory negligence set forth in the authorities, and more particularly in the series of cases dealing with traps on premises and on defective plant and machinery, in all of which it was held that the best method was not required, and that the duty to take care was to be measured by circumstances—*Bevan on Negligence* (3rd ed.), p. 51; *Glegg on Reparation* (2nd ed.), pp. 9 and 10. There was in the present case no obvious danger to be guarded against, such as would impose a duty on the pursuer to take care—*Mackintosh v. Mackintosh*, July 15, 1864, 2 Macph. 1357; *Cramb v. Caledonian Railway Company*, July 19, 1892, 19 R. 1054, 29 S.L.R. 869; *Galloway v. King*, July 11, 1872, 10 Macph. 788, 9 S.L.R. 500. There was a difference between the duty of one who was charged with the receipt of a dangerous thing and one who was not, and in the present case the defenders had been charged with the care of a dangerous object, and their duty was accordingly more strict—*Dominion Natural Gas Company, Limited v. Collins & Perkins*, [1909] A.C. 640, per Lord Dunedin at p. 646; *Campbell v. Ord & Maddison*, November 5, 1873, 1 R. 149, 11 S.L.R. 54; *M'Gregor v. Ross & Marshall*, March 2, 1883, 10 R. 725, 20 S.L.R. 462; *Heaven v. Pender*, 1883, 11 Q.B.D. 503; *Glegg on Reparation* (2nd ed.), pp. 308 and 309. In any event, if the pursuer was in fault, his fault was one of omission and not of commission, and the defenders must therefore show that he neglected to do something which was commonly done by other persons in like circumstances, or that it was such an obvious precaution that it would be folly to neglect it, and they could show neither here—*Morton v. William Dixon, Limited*, 1909 S.C. 807, 46 S.L.R. 549. In addition to the pecuniary loss sustained by him the pursuer was entitled to damages for personal injury—*Wilkinson v. Kinneil Cannel and Coking Company*, July 1, 1897, 24 R. 1001, 34 S.L.R. 533. The present was a *fortiori* of that case, because the pursuer ran no great personal risk such as was incurred there.

Argued for the defenders—The defenders admitted their own negligence, but that would not entitle the pursuer to succeed if, as was the case here, he also had been guilty of negligence contributing to the accident. Such negligence had been proved in his failure to look up the manifest, and in the absence of a business system which would have enabled him to discover the barrel before the fire. The defenders were entitled to assume that there was such a system. No person was entitled to be the passive recipient of goods of which he was not the legal consignee if the means of knowledge existed of discovering the error. Here the means of knowledge did exist. The pursuer's duty in these circumstances was, not to hold the goods till the error was discovered but to write to the consignor. His failure to do so amounted to contributory negligence. The duty in question was not necessarily a duty owed by the pursuer to the defenders, but owed by him to himself in his own interests—*Bevan on Negligence*

(3rd ed.), p. 155. In any event the chain of causation between the defenders' negligence and the accident was not complete and unbroken. There was an intervening cause, viz., the defective system of the pursuer, which was the *causa proxima* of the accident. Viewed in this light the accident was the result of the joint act of the parties. The defenders could not have anticipated that the fire would be a reasonable consequence of their negligence. The results were too remote, especially when the lapse of time was considered—Glegg on Reparation (2nd ed.), p. 37; *Scott's Trustees v. Moss*, November 6, 1889, 17 R. 32, 27 S.L.R. 30; *Wilson v. Carmichael & Sons*, March 20, 1894, 21 R. 732, 31 S.L.R. 634; *Lynch v. Mudin*, 1841, 1 Ad. & El. (n.s.) 29. In any event the pursuer's personal injuries were due to his own voluntary act, and the defenders were not liable therefor.

LORD JUSTICE-CLERK—The facts in this case are certainly peculiar. It appears that the pursuer ordered two barrels of paraffin oil, which were conveyed to Fort-William by MacBrayne's steamer. When the barrels were unloaded on the quay at Fort-William the first mistake occurred, and it was a mistake on the part of the defenders. Their carter took up the two barrels of paraffin and with them a third barrel, which did not contain paraffin, but which he delivered as paraffin at the pursuer's premises, and accordingly in his book there is a receipt for three barrels of paraffin. That mistake could easily have been checked by the defenders, because the delivery by the carter was not in accordance with the manifest which was in their hands; and if they had first looked at the manifest they would have seen that what, according to the manifest, was to go to the pursuer was two and not three barrels. But they did nothing. The assistant at the pursuer's store received the three barrels, not knowing what the order was that his master had given, and in the pursuer's absence the three barrels were rolled into the store.

The defenders intimated to Mr Macdonald that they had delivered two barrels of paraffin to him and asked him to pay the freight, but only on two barrels. That was the first occasion on which the pursuer's attention seems to have been directed to these barrels. Going to his store he gave a kick to one barrel for the purpose, as he said, of ascertaining that it was full, and he gave a kick to the other to ascertain if it was also full. He had no other purpose in going to his store except to ascertain whether the two barrels were full, and being satisfied as to this he paid the freight for the two barrels.

While matters were in that position the third cask was put upon the gaunties in order that the paraffin which it was supposed to contain might be drawn off. A candle stuck in a bottle was used to light the place, and when the contents were drawn off the volatile motor spirit which it contained caught fire, and there was a violent explosion and the store was practically burned down.

In these circumstances it is not disputed, and cannot be disputed, that the primary blame attached to the Messrs MacBrayne, who could have found out perfectly well the mistake that had been made if they had been attending to their business. There is therefore a *prima facie* case against them. But they meet that with the plea that the pursuer himself was to blame because he ought to have ascertained not only that three barrels had been delivered but that one of them contained motor spirit.

That is a question which depends very much upon circumstances, and I must say that the circumstances here do not suggest that there was anything to lead the pursuer to make such an inquiry. It is said to be a fault that his men who took the barrels into his store did not inform him of the fact that there were three barrels. But can that be held to be contributory negligence looking to the pursuer's knowledge? He was in the belief that he received two barrels, whereas in point of fact there were three, and that nothing had been delivered to him except paraffin, whereas a barrel of dangerous motor spirit was delivered to him. It is really very much a jury question whether there was contributory negligence; and treating it as a jury question I have come to the conclusion that the Sheriff-Substitute was right in holding that such a case had not been made out. The Sheriff's fifth finding is that "if the pursuer had exercised reasonable care to safeguard his own interests, the fact that a barrel of naphtha which he had not ordered had been delivered to him would have been discovered before the occurrence of the fire, and the failure of the pursuer to take such reasonable care directly conduced to the accident which subsequently occurred." I am unable to agree with that finding, nor am I able to agree with what he says in his note—that but for the pursuer's own neglect of reasonable precautions the misfortune which he sustained would not have happened. I have said already, and I repeat, that most undoubtedly but for the defenders' own neglect of reasonable precautions the misfortune would not have occurred. I do not think there is sufficient ground—and I understand your Lordships entertain the same view—for differing from the Sheriff-Substitute, who, primarily disposing of the case, was justified in holding that the pursuer had made out his case on the two points in which he found in his favour.

There remains only the question of damages as it arises under head 8 of the pursuer's claim which Mr Hamilton asked us to sustain. I cannot see how it could possibly be held that the pursuer could competently claim damages in respect that when the fire occurred he climbed to the top of a fourteen feet wall for the purpose of trying to put it out with a hose and fell from an adjoining roof. I cannot say that that was a natural consequence of what took place. It was his own act. I do not go the length of saying that he should have kept his hands in his pockets and sent for the fire brigade, but he ought not to

have exposed himself to that risk, as there was no call upon him to do so.

Upon the whole matter I am for recalling the Sheriff's interlocutor and reverting to that of the Sheriff-Substitute, both as to the findings in fact and as to the damages.

LORD DUNDAS—I also think that we ought to revert to the judgment of the Sheriff-Substitute. I was at first impressed by the counter view expressed briefly but precisely in the Sheriff's interlocutor and note. I thought, and I still think, that if the pursuer and his assistants had kept each other better informed as to what was ordered on the one hand by the pursuer, and what was received at the shop on the other hand, this regrettable accident could hardly have occurred. When three barrels were tendered at the shop the assistant would at once have been placed on his guard and put on his inquiry as to why three and not two barrels arrived. Again when the freight notice was brought for two barrels the pursuer would have been in the position at once to say, "Oh! but we have got three," and again inquiry would have resulted.

I find it difficult to believe that a business of this size and character could not have been conducted on some such principles as these. But however this may be, it would be a very different matter to hold that an imperfect system ought to be treated as negligence on the part of the pursuer in a question between him and the defenders, who have admittedly been in fault in the matter. No authority at all importing such a result was cited to us, and I think it would be to take a very harsh view against the trader if we were to hold such an imperfect system to be negligence. Short of so holding I do not see how the pursuer or his assistants were put upon their inquiry in the matter, or had really any reason to suspect or anticipate the presence of any danger. Three casks were brought to the shop—to the assistant who was ignorant of what the order had been—and the delivery book showed three barrels of paraffin oil. I am not prepared to hold that it was negligence on the part of the assistant to take in the three barrels, conform to the delivery book, and to put them in the store, or even not to report what had happened to his master when he returned.

Then again when the freight was asked for on two casks the pursuer knew that he had ordered two. He went down to his store and he says that he satisfied himself, certainly on rather a cursory examination, that he had two barrels. There again I am not prepared to hold that it was contributory negligence on his part to assume that all was right without making special inquiry from his assistants as to what had actually arrived. The stencilling on the bottom of the cask on which the respondents found cannot, I think, be pressed far. I do not think that the fact of the non-observance of the stencilling can be imputed as sufficient ground for contributory negligence. Therefore, although it is a pity that this business should have been

conducted in a somewhat loose and unsatisfactory style, I think that falls distinctly short of anything that can be held in law to be contributory negligence on the part of the pursuer.

There was a separate argument—if it be a separate argument—for the defenders based on the alleged remoteness of the damage. It was said that the defenders' fault, which was admitted, was not the *causa proxima* of the misfortune, and that the defenders were not liable. I cannot agree with that view. What happened seems to me to have followed as a natural and not improbable result of the defenders' negligence. I see here no case of abnormal or violent interruption of the chain of causation in the facts which followed upon the misdelivery. I therefore think that the Sheriff-Substitute was right upon the question of liability. The damages awarded by him under heads one to seven are accepted by both parties; and as regards the appeal by Mr Hamilton for an award under head eight, I agree that we should not allow anything under that claim. On these grounds I am for recalling the interlocutor of the Sheriff and reverting to that of the Sheriff-Substitute.

LORD SALVESEN—I agree on both points. The case is a very interesting one in its facts, because one may say that it could scarcely be anticipated that the misdelivery of a barrel of naphtha should eventually have caused the destruction of the store into which it was put.

But the mistake which the defenders made was a very serious one. They were entrusted for the purpose of carriage with two barrels of paraffin for delivery to one customer and with one barrel of naphtha for delivery to another, and the latter barrel was labelled at the time when it came into their custody with a label to the effect that the contents were highly inflammable, giving off inflammable vapour at a temperature of less than 73 degrees Fahr. In these circumstances one would have thought that very special care would have been taken to see that the goods were not mixed up, and that the naphtha was not delivered to a person for whom it was not intended. The goods were properly entered on the manifest, but at the time they arrived the clerk who was in charge did not take the trouble to check them by means of the manifest. For no better reason than that the three barrels were similar, and that one was labelled as for the pursuer, all three were assumed to be for him, and not merely so, but they were all assumed to have the same contents without any examination having been made of the barrels, although if this had been done the mistake could not have been made.

That was a grave mistake, and *prima facie* it is not unreasonable to suppose that an ordinary and natural consequence of the delivery of naphtha to a person who does not know that it is highly inflammable, and is at the same time informed that it is paraffin, might well be to give rise to a fire in the premises of the receiver, as in fact happened.

All that being admitted, the only case for the defenders is that the pursuer is disentitled to recover compensation for the loss that he has suffered through their mistake because he did not take due care to prevent such mistakes occurring. I think that here one must distinguish between obligations arising out of contract and obligations arising out of delict. It may well be that the knowledge of the servant in the former class of case must be imputed to the employer, but it does not seem to me to follow in the least that when you are dealing with a question of negligence the knowledge of the servant is to be imputed to the employer, so as to make him guilty of negligence, as he would have been if the knowledge had been actually his.

Here it is perfectly true that if the servant who received delivery of these goods as paraffin had communicated to his employer that he had received three barrels instead of the two, which the employer alone knew he had ordered, the mistake might have been discovered and the accident prevented. But I cannot see how it can be said to be negligence on the part of the pursuer, which shall bar him from an otherwise valid claim, that he did not conduct his business in such a way that mistakes of this kind should always be discovered when made or rectified within a very short time after they were made. If he had knowledge or reason to believe that a barrel of highly inflammable material which he had not ordered had been put into his cellar, it certainly would have been negligence on his part if he took no means of protecting his property against the possible consequences of such inflammable material being in his cellar, but it would be stretching the doctrine of contributory negligence to a point that it has never reached yet if we were to hold that because the pursuer's assistant knew that there were three barrels which were said to contain paraffin, and the pursuer knew that he had only ordered two barrels of paraffin, the knowledge of these two persons is to be combined so as to make the pursuer responsible on the footing that he possessed knowledge that neither he nor his servant actually had. No authority was quoted to us which in the remotest degree supported that proposition, and I am not in favour of so extending the doctrine of contributory negligence.

On the question of damages I agree with your Lordships in the view that it was not a natural or necessary result of the initial negligence of the defenders that the pursuer should suffer injuries by falling off a roof in the way he did. If he had been in the store at the time and had been singed, that would have been a totally different thing. But that was not so. He volunteered to try to put out the fire, primarily in his own interests, because he was uninsured, but he thereby exposed himself to a risk which he was under no obligation to incur, and which he was not entitled to incur, at the expense of the defenders. However meritorious his efforts may have been, the injury which he suffered was not the natural consequence of their negligence.

LORD GUTHRIE—I am of the same opinion. The defenders have supported the judgment of the Sheriff on both the grounds relied on by him—first, that the pursuer was guilty of contributory negligence, and second, that what took place was not a consequence which the defenders were bound to anticipate. On the second point I think with your Lordships that there is sufficient sequence of causation to warrant us in holding that what took place was a natural consequence of the defenders' initial fault.

The Sheriff's judgment on the matter of contributory negligence proceeds on the proposition which he thus states—"In my opinion the pursuer was bound in his own interests to take reasonable care to prevent goods which he had not ordered being accepted by his servants and placed in his store, and I think it would only have been reasonable care on his part to keep his servants informed what goods he had ordered and when he expected to receive them, and to require them to inform him of the arrival of goods without undue delay."

In a sense that is, in ordinary circumstances and apart from the accidents which will occur in the best regulated business, an obviously sound proposition, because it is a mere statement of the method according to which business is ordinarily conducted by efficient business people. But the Sheriff uses it in a special sense—namely, that breach of the duty stated by him will in all circumstances amount to contributory negligence, and bar a claim for damages for admitted or proved negligence. Moreover, the Sheriff states the proposition without referring to the element which introduces very special considerations—namely, that the goods in question were of a dangerous and inflammable nature.

It seems to me the Sheriff rather assumes another question which the circumstances as I read them do not raise, and which may be a difficult one, viz., whether a person getting goods known to him not to have been ordered and known to him to be dangerous, and retaining these goods for a lengthened period, without taking any steps either to return them to the person from whom the goods were got or to take such precautions as would prevent the dangerous material from doing injury, might not, in those circumstances, be barred from a claim of damages for admitted or proved negligence. It seems to me that the circumstances of this case do not raise that question, because I have assumed in that question knowledge and want of precaution which the circumstances here show do not exist.

I am satisfied with the way in which the Sheriff-Substitute has dealt with the questions which are truly raised in the case. The result is that I am unable to agree with the fifth finding of the Sheriff—namely, "that if the pursuer had exercised reasonable care to safeguard his own interests, the fact that a barrel of naphtha which he had not ordered had been delivered to him would have been discovered before the occurrence of the fire, and the failure of the pursuer to take such reasonable care directly con-

duced to the accident which subsequently occurred."

The Court recalled the interlocutor of the Sheriff, reverted to and affirmed the interlocutor of the Sheriff-Substitute, found in fact and in law in terms of the findings in said last-mentioned interlocutor, and of new decerned against the defenders for payment to the pursuer of the sum of £86, 5s. 2d.

Counsel for the Pursuer and Appellant—Hamilton. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Defenders and Respondents—Macmillan, K.C.—T. G. Robertson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Thursday, March 18.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

[Lord Cullen, Ordinary.]

LORD ADVOCATE v. D. & J. NICOL.

Licensing Laws—Ship—Passenger Vessel's Licence—Licence in Name of Steward of Vessel Prohibiting Sale on Sunday—Sale on Sunday by Servants of Owners when Steward not on Board—The Passenger Vessels Licences Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 66), sec. 1—Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), First Schedule D—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 50 (3).

The owners of a passenger steamer nominated the ship's steward as the holder of a licence to sell liquor on board the steamer. The licence was endorsed with a condition against selling liquor during a voyage which began and ended on the same Sunday. On such a voyage liquor was sold by servants of the owners when the steward was not on board and had not authorised anyone to act for him. In an action against the owners of the vessel to recover penalties under the Finance (1909-10) Act 1910, section 50 (3), held that the sales had been made by the owners without a licence, not by the steward in breach of his licence, and that the owners were liable in penalties.

Licensing Laws—Sale of Liquor without Licence—Penalty—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 50 (3).

The owners of a passenger steamer were proved to have sold without a licence, during a day's trip by their steamer, liquors for the sale of which a licence was required. The evidence showed that several sales had been made at different times during the day to the same individual.

Held (1) that a separate offence had been committed, and a separate penalty incurred, in respect of each sale; and (2) that the Court had no power to

modify the penalties imposed by the Finance (1909-10) Act 1910, section 50 (3).

Evidence—Licensing Laws—Sale of Liquor without Licence—One Witness—The Excise Management Act 1827 (7 and 8 Geo. IV, cap. 53), sec. 65—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), secs. 50 (3) and 92.

Held that to prove an offence under the Finance (1909-10) Act 1910, section 50 (3), the evidence of one credible witness was sufficient.

The Excise Management Act 1827 (7 and 8 Geo. IV, cap. 53) enacts—Section 65—" . . . For the recovery of any penalty imposed by this Act, or any other Act or Acts of Parliament relating to the revenue of excise, and incurred for or by reason of any offence committed against this Act, or the said other Acts, or any of them, . . . the information thereupon may be exhibited before any one or more of His Majesty's Justices of the Peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, . . . and such information shall and may be heard, adjudged, and determined by any two or more of His Majesty's Justices of the Peace for the said county, shire, division, city, town, or place, . . . and any two or more of such Justices of the Peace . . . shall, and they are hereby . . . authorised and required . . . to proceed to the examination of the fact or facts in such information alleged, and to give judgment . . . for any such penalty or penalties which upon the due examination of one or more credible witness or witnesses on oath . . . shall be found to have been incurred. . . ." Section 78—" . . . It shall be lawful for the . . . Justices of the Peace . . . when they shall see cause, except in cases where there is or shall be any provision that no mitigation shall be made by the Justices of the Peace, and they are hereby . . . authorised and empowered to mitigate any penalty incurred for any offence committed against this Act, or any other Act or Acts of Parliament relating to the revenue of excise. . . ."

The Passenger Vessels Licences Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 66), enacts—Section 1—"It shall be lawful for the Commissioners of Inland Revenue, or for any officer duly authorised by them, to grant licences for the retail of intoxicating liquors on board packets, boats, and other vessels employed for the carriage of passengers from one part of Scotland to another, or going from and returning to the same place in Scotland on the same day, in terms of the recited Acts, to indorse on such licences a condition that no intoxicating liquor shall be sold, retailed, bartered, or supplied on board such vessels during any voyage commenced and terminated on the same Sunday."

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), enacts—Section 53—"Every certificate to be granted under the authority of this Act shall be and be held on the terms, provisions, and conditions therein contained; and in case any person holding