

disposition and settlement of the said William Sinclair, but without charging interest on the sums so advanced, such sums to be deducted from the first portion of the share of capital and accumulations of income to be paid or set aside for these beneficiaries; and decern."

Counsel for Petitioners—Maitland. Agents—Murray, Beith, & Murray, W.S.

Thursday, March 10.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'FADYEN v. WHITE.

Reparation—Negligence—Property—Relevancy—Brawl in Public-house—Liability of Licencee for Injury to Customer Entering Premises while Brawl in Progress and Struck by Tumbler Thrown by One of Customers.

A member of the public brought an action of damages against the licencee of a public-house for personal injury received by him while entering the premises for the purpose of obtaining refreshment. He averred that some time before he entered several of the customers in the public-house had become intoxicated and that fighting ensued, that the defender's servants who were in charge, and who were well aware of the danger to persons entering the premises while the tumult was in progress, took no steps to deal with the situation either in the way of quietening the combatants or having them expelled, or of safeguarding customers who were about to enter. The pursuer further averred that a similar disturbance had taken place on a previous occasion shortly before, and that on each of these occasions the defender had been guilty of a breach of the certificate granted under the Licensing (Scotland) Acts. Held that the pursuer's averments were relevant, and issue allowed.

John M'Fadyen, plater's helper, Glasgow, pursuer, brought an action in the Sheriff Court at Glasgow against Mrs Margaret Smith Miller or White, licencee of the public-house situated at 284 Nuneaton Street and 294 Baltic Street, Glasgow, defender, for £500 damages for personal injuries.

The pursuer averred—“(Cond. 3) On the evening of 13th December 1919, about 7:55 p.m., the pursuer entered the said public-house for the purpose of obtaining refreshment, and just after he had done so he was struck a severe blow in the left eye with a tumbler thrown by someone from among the customers who were present in the said public-house at the time. The pursuer's left eye was very seriously injured as the result of the said blow, and the sight thereof has been all but entirely destroyed. The pursuer had no reason to anticipate that he was exposing himself to danger by entering the defender's public-house on the said date, and

in any event he was entitled to assume that so long as the defender kept the said public-house open it was reasonably safe for him to enter, unless the defender or her servants warned intending customers that it was dangerous for them to enter. (Cond. 4) The injuries sustained by the pursuer were the natural and probable result of the failure in duty, as hereinafter set forth, on the part of the defender's servants, who were in charge of the said public-house and for whom the defender is responsible, and were thus due to the fault of the defender. The defender's public-house was on the said occasion well filled with customers, and some time before the pursuer entered the premises several of these customers had become intoxicated and had become violent and quarrelsome. Fighting ensued, in which several customers took part, and in which several were more or less injured. This riotous conduct had lasted for some considerable time before the pursuer entered the said public-house. The defender's servants, who were in charge of the premises, took no steps to deal with the situation either in the way of quietening the combatants or of having them expelled, or in the way of safeguarding customers who were on the premises or intending customers who were about to enter. The defender's servants were well aware of the danger to any person entering the premises during the continuance of the tumult, and knew or ought to have known that there was very great danger of customers or intending customers sustaining injuries. It was the duty of the defender or of her said servants to have taken the following precautions for the safety of her customers:—(a) To have pacified the combatants and so ended the danger which had arisen; (b) failing to succeed in that effort, to have called in the police for that purpose, or for the purpose of having those guilty of the breach of the peace removed; (c) while the tumult and fighting were going on, and whether or not the police had been summoned, either to have closed the doors of the premises and so have prevented the entry of intending customers, or to have issued a warning to intending customers about to enter the premises that it was unsafe to do so, and that any persons entering would do so at their own peril. Neither the defender nor her said servants did any of these things, with the result that the pursuer, quite unaware of the danger, entered the premises and was struck as aforementioned. If the defender or her said servants had taken any of the said precautions, and so had either rendered the premises safe or had prevented the entry of the pursuer therein, the pursuer would not have sustained the said injuries, and for her or their failure to take these precautions or any of them the defender is responsible. The defender was all the more negligent in her said failure in respect that a similarly dangerous situation arose in her premises on 6th December 1919, on this occasion causing alarm to customers therein through the threatening attitude of certain men who had been allowed while on the premises to get into a state of intoxication. On each of the said occasions the defender conducted

the premises in breach of the certificate granted to her in terms of the Licensing (Scotland) Acts 1903 to 1913."

The defender pleaded, *inter alia*—" (1) The action is irrelevant."

On 25th January 1921 the Sheriff-Substitute (LYELL) allowed the parties a proof before answer.

Note.—"I think that the pursuer has set forth a case on record which entitles him to have an inquiry into the facts. He says that on the evening labelled he entered the public-house of the defender as a customer and immediately afterwards was severely injured by a tumbler thrown by someone amongst a crowd of quarrelsome, intoxicated, and violent customers already in the shop. Now the pursuer says, quite reasonably, that he was entitled to assume that so long as the public-house was kept open it was safe for him to enter. 'Everyone has a right to suppose that a crime will not be committed and to act on that belief.'—*Baxendale v. Bennet*, 3 Q.B.D., *per* Bramwell, L.J., at p. 530. But then the defender was equally entitled to rely on the same assumption. The mere fact that the pursuer was injured by a drunken man in the defender's public-house will not render her liable in damages, but if the defender was guilty of some unlawful or negligent act which caused or permitted the third party to do the thing that injured the pursuer—in other words, if the injury to the pursuer was the natural and probable result of the defender's wrongdoing—then the defender will be liable. On this subject the pursuer makes pointed averments. In the first place he says that on the occasion in question the defender knowingly permitted breach of the peace, drunkenness, and riotous and disorderly conduct within the premises in breach of her certificate (Licensing (Scotland) Act 1903, 6th schedule). He says that for some time before his entrance fighting had been going on in which several customers had been injured, and that those in charge of the public-house had taken no steps to deal with the situation either by way of 'pacifying' the combatants, expelling them, or calling the police. No warning was given to intending customers to keep out while the danger lasted. Further, the pursuer says that the defender should have been on the alert as similar conduct had occurred in the public-house on the previous week. All this, he says, amounts to 'knowingly permitting' drunkenness, breach of the peace, and rioting within the meaning of the statute, and he avers that the throwing of the tumbler in the melee and his consequent injury was the natural and probable result of the defender's knowingly permitting the breach of her certificate. In these circumstances I think it hardly to the point for the defender to argue that the pursuer might have been injured by someone throwing a tumbler at him even had there been no breach of the certificate as alleged. That is quite true, and in such circumstances the defender would not have been liable. What the pursuer here alleges amounts to this—(1) that it was the duty of the defender to refrain from permitting

rioting and drunkenness in the public-house; (2) that she was in breach of that duty in respect that although warned by a previous experience she was not prepared to do anything, and as a matter of fact did nothing, to prevent or put an end to the riotous conduct; (3) that his injury was occasioned by the conduct of one of the disorderly rioters; and (4) that it was the natural and probable consequence of the defender's breach of duty—a consequence the probability of which she ought to have foreseen and guarded against. I have read the cases quoted to me. It appears to me that the law on the subject is correctly and usefully epitomised in *Bevan on Negligence*, 3rd ed., p. 77—'Again, one person may be negligent, and by the negligent or wilful act of another the negligent act of the first may cause injury to a third. Then a distinction is to be taken. If the first negligent act is not in its nature such that the second might be looked for as a natural and probable sequence, then the first negligent person is not responsible. If the subsequent negligence is likely to follow from the antecedent negligence, then the first negligent person is liable, and the question must be left to the jury whether the first wrongdoer's act was the proximate cause of the plaintiff's injury.' Here the pursuer alleges that the defender was negligent in permitting a riot in the public-house, that it was probable that in such a riot one or other of the rowdy customers would throw tumblers about, and he therefore claims that the subsequent throwing of the tumbler by one of these persons, being the natural sequence of the defender's negligence in allowing the riot, infers liability against the defender, the original wrongdoer. In these circumstances I shall allow a proof before answer."

The pursuer appealed to the Court of Session for jury trial and lodged an issue in the following terms—"Whether on or about 13th December 1919, and in or about the defender's public-house having entrances at 284 Nuneaton Street and 294 Baltic Street, both in Bridgeton, Glasgow, the pursuer was injured in his person through the fault of the defender or of her servants for whom she is responsible, to his loss, injury, and damage."

The defender objected to the relevancy, and argued—(1) There was no relevant averment of any breach of duty on the part of the keeper of the public-house. A public-house had none of the characteristics which could attach to it the special duties of an innkeeper. The law of innkeeper accordingly did not apply. The keeper of a public-house had no higher duty than the ordinary duty of a shopkeeper to invitees. On the law of invitation the shopkeeper was bound to have his premises reasonably safe, *i.e.*, to see that they contained no hidden danger or trap. But his duty did not extend to protecting his customers against the wilful act or negligence of another customer—*Pounder v. North Eastern Railway Company*, [1892] 1 Q.B. 385, and *per* A. L. Smith, J., at p. 388, and *Mathew, J.*, at p. 390; *Cannon v. Midland Great Western Railway (Ireland) Company*, 1880, 6 Ir. R. 199; *Cox v. Coulson*,

[1916] 2 K.B. 177; *M'Gregor v. Ross & Marshall*, 1883, 10 R. 725, per Lord Young at p. 729, 20 S.L.R. 462. It was not averred that the defender was responsible for the tumult, and the danger was just as obvious to the customer as to the shopkeeper. The duty of the defender under the licensing laws was quite a different question from the present one and was not a relevant ground of fault in a civil action. (2) The injury was not a reasonable and probable consequence of the disturbance, and accordingly the defender was not liable—*Hadley v. Baxendale*, 1878, 3 Q.B.D. 525. That, no doubt, was a case of contract, and the law there laid down extended to such acts as the present. If the defender were liable here he would also be liable if an intoxicated customer went out into the street and injured someone there.

Argued for the pursuer—The duty of a person who kept a public-house or an inn amounted to a warranty to customers not only as regards structural defects but as regards an assault by one customer on another—*Bevan on Negligence*, p. 857; *Maclenan v. Segar*, [1917] 2 K.B. 325. The only qualification to this rule was that there must be knowledge in the case of assault that a danger was threatening the guest—*Brannigan v. Harrington*, 1921, 37 T.L.R. 349. In the cases of *Pounder v. North Eastern Railway Company, cit. sup.*, and *Cannon v. Midland Great Western Railway Company, cit. sup.*, no reasonable precautions could have been taken. [The Lord Justice-Clerk referred to *Scott v. Shepherd*, 1773, 1 Smith's Leading Cases, 2 W.B. 892]. In the present case riotous conduct had been going on for some time before the pursuer entered. It was, therefore, the duty of the defender to take some precaution to prevent people entering, or at any rate to call in the police. A member of the public was entitled to assume that business would be conducted in terms of the certificate—*Bevan on Negligence*, p. 858. In the present case the liability of the defender arose under common law.

LORD JUSTICE-CLERK—In this case the Sheriff-Substitute allowed a proof, and the pursuer has had the case remitted for jury trial. If an issue is to be allowed at all, no objection is taken to the issue proposed. The defenders, however, maintain that the statements of the pursuer are irrelevant. I confess I do not think that this is a case that should be disposed of on relevancy, to the effect of excluding inquiry. I think that the facts must be inquired into. If so, the tribunal to investigate the facts must, it appears to me, be a jury. It seems, therefore, to me that we must approve of the issue and remit the case for trial by a jury. Difficult questions of fact and of law may arise, but these are questions to be decided by the jury and the judge.

LORD DUNDAS—I have considerable difficulty in this case. I confess I am not easy in my mind about sending it to a jury. It seems to me typically a case that should be disposed of by proof before answer. That, however, we could not do without the con-

sent of the pursuer, which was withheld. In the circumstances I do not think we could throw the action out upon the pleadings as being irrelevant. Therefore, but with very little goodwill on my part, it must go to a jury.

LORD ORMIDALE—I concur with your Lordships.

LORD SALVESEN did not hear the case.

The Court approved of the issue for the trial of the cause.

Counsel for the Pursuer and Appellant—Morton, K.C.—Crawford. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Defender and Respondent—Constable, K.C.—Keith. Agent—Peter Clark, S.S.C.

Friday, March 11.

SECOND DIVISION.

[Sheriff Court at Lanark.]

COLTNESS IRON COMPANY, LIMITED
v. BAILLIE.

Master and Servant—Workmen's Compensation—“Arising out of and in the Course of the Employment”—Breach of Statutory Rule—Added Peril—Workmen's Compensation Act 1906 (6 Edu. VII, cap. 58), sec. 1 (1)—Explosives in Coal Mines Order, dated 1st September 1913, sec. 3 (a).

Paragraph 3 (a) of the Explosives in Coal Mines Order of 1st September 1913 provides—“If a shot misses fire the person firing the shot shall not approach or allow anyone to approach the shot-hole until an interval has elapsed of not less than ten minutes in the case of shots fired by electricity or by a squib, and not less than an hour in the case of shots fired by other means.”

In a mine to which the above regulation applied a shot missed fire and a miner who was not the person who had lit the fuse returned to the working face for the purposes of his work within the time prohibited by the Order and was injured in consequence of the shot then going off. Held that the prohibition did not apply to him in respect that he was not the person firing the shot, and that in so returning he had not added a peril so as to take him outside the sphere of his employment.

In an arbitration under the Workmen's Compensation Act 1906 in the Sheriff Court at Lanark between John Baillie, miner, Douglas Water, respondent, and Coltness Iron Company, Limited, appellants, the Sheriff-Substitute (HARVEY), sitting as arbiter, found the company liable in compensation, and at their request stated a case for appeal.

The Case stated—“The following facts were established, viz.—1. On 5th April 1920, and for a number of years prior thereto, the