

attack on Mr Sexton's habits of controversy the writer meant to insinuate that there were grounds for such an accusation respecting his habits as to sobriety as he argumentatively supposes.

It is no doubt true that the logic of the writer's argument requires that the hypothesis of drunken habits should be purely imaginary; but it is permissible to suppose that the writer of the letter preferred to be vindictive rather than logical, and that he might not care what became of his argument, provided he succeeded in creating an impression as to the insobriety of the person referred to. When I first read the letter I confess I formed the impression that the writer was putting a purely hypothetical case which could not be supposed to have any real application to Mr Sexton; but on reading the letter more carefully, and my attention having been called to certain expressions near the end of the letter of 15th July, I am not prepared to say that the letter is unambiguous, and I think it ought to be left to a jury to consider what is its true meaning.

I have here considered the case as if the question were, What is the meaning conveyed by the writer of the letter? But the real question is, What is the meaning of the proprietors of the *Scotsman* newspaper, or those for whom they are responsible, in circulating the letter through the medium of their newspaper? For the reasons given, I think this is a question for the jury.

I may now state in a single sentence why I think this opinion is consistent with the decision of the House of Lords in the case of *Henty*. I understand that in the opinion of their Lordships—and I refer particularly to the carefully-guarded expression of Lord Selborne—the language of Mr Henty's letter was unambiguous and incapable of sustaining the defamatory innuendo sought to be read into it. There was some evidence of extrinsic facts tending to support the innuendo, and nothing can more clearly illustrate the principle of their Lordships' decision than the circumstance that they disregarded these facts and rested their judgment entirely on the words of the letter, which according to their judgment were not susceptible, even with such light as could be collected from the evidence, of the alleged defamatory meaning.

The Court accordingly adhered to the Lord Ordinary's interlocutor allowing the issue.

Counsel for Pursuer and Respondent—D. F. Balfour, Q.C.—Shaw. Agent—R. Ainslie Brown, S.S.C.

Counsel for Defenders and Reclaimers—Lord Adv. Robertson, Q.C.—F. T. Cooper. Agents—Henderson & Clark, W.S.

Wednesday, March 19.

SECOND DIVISION.

SNODGRASS v. RITCHIE & LAMBERTON.

*Deposit—Duties of Storekeeper—Storage of Flour—Turning.*

A firm of storekeepers received 240 bags of flour which they stored in 3 tiers and allowed to stand untouched for more than a year. The flour deteriorated in quality. Held that such storing was improper unless the bags were turned from time to time, and that as this had not been done, the storekeepers were liable in damages to the owners of the flour.

Messrs Ritchie & Lamberton, storekeepers, 81 Lancefield Street, Glasgow, took delivery of 240 bags of flour, and undertook the storage of said goods in January 1888. Upon 19th January 1889, 40 of those bags were removed, but the remainder of the flour continued with the said storekeepers until July 1889, when it was sold.

In March 1889 Messrs J. & R. Snodgrass, Washington Street, Glasgow, the owners of the said bags, brought an action in the Sheriff Court at Glasgow against Ritchie & Lamberton for £60 for deterioration of the flour while in the defenders' possession.

The pursuers averred—"It has recently come to the pursuers' knowledge that the defenders have grossly and negligently failed to take the ordinary precautions usually taken by storekeepers for the safe keeping and preservation of flour, and, in particular, they heaped the bags up in too many tiers, and failed to change and turn them from time to time, whereby said flour has been greatly damaged and deteriorated in quality, the flour having become curdled and lumped, and bitter and musty tasted. They also failed to intimate that said flour was going out of condition. In this way the pursuers have suffered and will suffer damage, which they fairly estimate at the sum of £60."

The defenders answered—"Denied. It was the duty of the pursuers themselves to inspect their flour from time to time, and satisfy themselves of its condition, and they have at all times access to the defenders' store for that purpose."

The pursuers pleaded—"The pursuers having, by defenders' neglect of duty as storekeepers, suffered loss and damage to the amount sued for, decree should be granted, with interest and expenses as craved."

The defenders pleaded—" (4) No damage to or deterioration of pursuers' goods having been caused or brought about by or through any fault or negligence of defenders, they ought to be assolizied, with expenses."

A proof was allowed.

The evidence for the pursuers was, *inter alia*, as follows:—

Hugh Lamberton, defender—"Sometimes we do turn flour in sacks. I have been in

the habit of receiving flour in sacks all the time I have been a storeman. Sometimes I have turned it, and at other times I have been told by the merchant not to turn it. I turned it when I saw it was necessary. . . . I have never turned flour when it was only in for six months. I have turned flour that has been in for twelve months. I might turn it about eight or nine months after it came in. The flour in question was stored in the usual way, that is, by sitting the bags three on end. The flour remained just as we got it in, until this action was raised, in the same position. Nothing had been done in the way of turning it or otherwise between the time it came in and the time it was sold. It was never turned at all. . . . I examined this flour externally. (Q) Can you tell me how soon after the flour went in you examined it?—(A) I was going about the store every day. I did not make any special examination."

James Begg, produce and commission merchant—"It is part of a storekeeper's duty to see that the goods in his custody are kept in good order and condition, and that when necessary they should be turned. I don't know of any exception to that rule as regards flour in sacks. Early in January I was asked by Mr Snodgrass to look at the flour in question in defenders' store. It was in imperfect condition, lumpy, and musty tasted. I do not think that could possibly have happened to the flour we had sampled *ex* the 'Cynthia' if it had been taken proper care of. The bags were stored three on end one on the top of the other. I do not think that was a good way of preserving the condition of the flour. There was too much top weight, and there was not a free current of air round the flour. They should not have been more than two on end at the most, and that, I believe, is the ordinary thing."

John M'Dougall, corn and flour factor—" (Q) Do you think storing the bags three on end was good stowage?—(A) It depends on the season of the year, and also on the length of time they might be kept. If I was told they were remaining over a period of months in all the seasons, I would say that stowage was most objectionable. (Q) What would be usual in that state of matters?—(A) Our practice is—and I believe it is the practice through the whole trade in the spring months—to untop every sack of flour and lift it singly on to the floor, and turn it over during the summer as we think right to keep it in good order. We have a store ourselves, and it was our custom to take down the flour from the top."

George Dickson, storekeeper—"When a storekeeper receives flour and other goods it is part of his duty to see that the goods are kept in good order and condition. In connection with that we take such steps as are necessary to keep them in good order. We look at the goods from time to time, and if we think they are needing anything we let the merchant know. (Q) Is it usual to store bags three on end?—(A) I never do it, but you can put them as high as you like so long as you keep them in good

order. The higher you put it the more care it will need."

J. F. Snodgrass, pursuer—" (Q) Do you think there is any great mystery in telling whether flour is in good condition or is keeping in good condition?—(A) By opening the bags, or feeling them from the outside, or by smelling them, there is no great difficulty in that to a man who knows his business. A storekeeper, if he stores flour habitually, ought to know when flour is in good condition; we store flour because we think he has that knowledge."

The evidence of the defenders was, *inter alia*, as follows:—

William Dunlop, flour merchant—"When we put flour into other stores we don't give any instructions to the storekeeper. (Q) What are his duties regarding the flour?—(A) I could not say; I don't know the rules of storekeeping. I would not consider that flour piled three sacks high too high. We put them higher than that in our own store. We put them as high as we can get them. . . . (Q) Do you think it is incumbent upon a merchant to look after his goods when he puts them into store?—(A) I look after my own goods. I don't leave it to the storekeeper. If the flour required any manipulation I would order it to be done, and pay for it."

Peter Knox—"I personally have been seventeen years in the flour trade. Our firm has a store of their own, and at times they store in public stores. I know the defenders' stores; they are classed A1 so far as I know. I have been in them personally, and we have stored goods in them. I don't consider it is too high to store sacks of flour three high. We store them that height in our own store, and if pressed for room we store them higher. I have often seen our own goods stored in other stores that height. . . . A storekeeper would not see flour going wrong unless he had some technical knowledge and went into the inside of the bag. (Q) Would you think he was exceeding his duty in doing that?—(A) We put flour into public stores and we don't ask the storekeeper to open the bags and examine the contents; even supposing he was doing that I don't suppose he has a sufficient knowledge to detect whether anything was wrong. (Q) Might the merchant object to it being opened?—(A) I believe some merchants would object; I would object myself if it was done without my consent and permission. I never heard of a storekeeper being held liable for flour going out of condition in his store."

James Campbell—" (Q) Would you consider it any part of a storekeeper's duty to turn your flour?—(A) He has no right to turn my flour; he is just a storekeeper to receive goods and deliver them when they are sent for. He has no business to interfere with the merchants' goods in any shape or form."

The Sheriff-Substitute (GUTHRIE) thereafter on 1st August 1889 pronounced the following interlocutor:—"Finds that the pursuers were owners of 240 bags of flour, stored in good order and condition in the

defenders' store in January 1888: Finds that in January 1889 the pursuers took delivery of 40 bags thereof, and then found that the whole of the flour was out of condition and deteriorated in quality: Finds that this deterioration was due to the negligence of the defenders, and that they are liable for the loss sustained by the pursuers; assesses the damages at £48 sterling, for which decerns against the defenders: Finds the pursuers entitled to expenses, &c.

"*Note.*—The usage of the flour trade and of storekeepers affords the rule as to the obligations of the defenders in regard to the safe-keeping of flour in their store. On this matter the evidence is not uniform. I may almost say that it is conflicting. Trying to read it as I think an intelligent jury would do, I find (1) that while piling the bags three tiers high has generally been regarded as increasing the liability of flour to spoil, it is not at all unusual, and is not improper, because any greater risk of damage which it entails may be reduced, according to the general opinion of men of skill, by turning at proper times; (2) That there is no uniform usage inferring a duty on the storekeeper to turn bags of flour at stated periods, or when he finds it necessary from the state of the flour; on the contrary, there appears to be some unwillingness on the part of merchants to pay for this operation unless it has been ordered or permitted by themselves; (3) that it is the duty, as one would infer, apart from usage, of the storekeeper to keep a look-out as to the state of the flour, and if he finds it getting into bad order, to inform the merchant, or even himself to take measures to prevent it from taking further damage.

"The first and second of these findings negative two of the grounds on which the pursuers seek to fix liability on the defenders. The third ground is that the defenders failed to intimate that the flour was going out of order. Upon consideration I have come to think that the defenders were remiss in performing their duty in this respect. There is much diversity of opinion upon the question—how long flour will keep in good condition, and possibly there are differences in the quality and make of flour that will go far to account for this diversity. But there is little or no difference of opinion as to the practice of storekeepers to watch the condition of the flour in their custody, to examine it by smelling and by piercing, and sometimes by opening the bags. All this assumes on the part of the storekeeper sufficient knowledge to detect incipient deterioration, and the duty of keeping his customer informed. It is not seriously disputed that the flour in question was much depreciated in value by getting out of order in the defenders' store, and as there is no suggestion that this could have happened without being detected, if the defenders had regularly examined it, it seems to follow that the defenders have been negligent, and must be liable for the results of their negligence."

The defenders appealed to the Second Division of the Court of Session, and argued

—The Sheriff-Substitute had only found them liable in damages because they had failed to intimate the state of the flour to the pursuers. There was no duty on a storekeeper to know the state of flour stored with him. His sole duties were (1) to keep it safe, (2) to prevent it getting damp, (3) to protect it against vermin, and (4) to re-deliver it when required. If more were required of a storekeeper, it was necessary to make a special contract. Merchants objected to having their bags opened, and breaking bulk would prejudice the sale of the flour. Storekeepers were bound to attend to and report obvious defects, but they were not entitled to invade the sanctity of wrappings. Here the distinction, if there was any, could only have been detected by opening or piercing the bags and handling the contents—Bell's Prin. 155, 156; Bell's Comm. (7th ed.) 488; Story on Bailments, 444; Bevan on Negligence, 528; *Hadley v. Baxendale*, February 23, 1854, 9 Exch. 341; *Lilley v. Doubleday*, June 28, 1881, L.J., C.P. 310 (Justice Grove, p. 311) or L.R., 7 Q.B.D. 510.

The respondents argued—Besides the duties of a storekeeper enumerated by the appellants, there was the further duty of reasonable inspection which had been neglected here. Careful external examination by smelling and handling would probably have revealed the state of the flour without breaking the bulk. In this case the storekeeper had piled the bags too high, and was therefore bound to show special care and in particular to turn the bags. Turning was incidental to the proper treatment of stored grain or flour—*Gibson & Stewart v. Brown & Company*, January 13, 1876, 3 R. 328 (Lord President p. 330); *Allan & Pointer v. Williamson*, January 5, 1870, 14 Jour. of Jur. 119, and 7 S.L.R. 214; Addison on Contracts (8th ed.) 416.

At advising—

LORD RUTHERFURD CLARK—The defenders are storekeepers in Glasgow. In January 1888 a quantity of flour in bags was stored with them, and remained in their store for about fifteen months. During that period it sustained injury, and the pursuers as the owners of the flour sue the defenders for the damage. They alleged that the damage was due to improper storage, and to the defenders' failure to turn and change the bags from time to time.

We had an able and interesting argument on the obligations of storekeepers. I do not think that I shall have occasion to enter into that branch of the law with any detail, nor to examine the custom to which the pursuers have appealed. With reference to the latter point, it is sufficient to say that the pursuers have alleged no custom of trade which modifies the obligations of storekeepers, and though the proof is much occupied with the examination of witnesses on legal questions under the idea that this was the proper method of proving a custom, I do not think that any custom is proved.

It cannot be disputed that storekeepers are bound to store in a proper manner the

goods which they receive, and in the case of *Allan*, 7 S.L.R. 214, it was held that they were charged with the further duty of reasonable inspection, so as to see that the goods were not sustaining damage. Thus far the parties were agreed as to the law.

Let me examine how the facts stand. The bags were stored in three tiers. It is, I think, the fair import of the evidence that this was a proper manner of storage provided that the flour was turned from time to time, and that it was an improper manner of storage unless this was done. This is the inference which I draw after a careful perusal, and the verdict which a jury I return. It is certain that the flour was not turned during the whole time that it was in the store, and I think that it is proved that it was in consequence injured. The objection to that method of storage is, that there is too much weight in the bags. Hence the necessity of turning them from time to time, so as to prevent the lumping which in this case occurred. For these reasons, I think that the pursuers are entitled to recover. But I do not think that we should affirm the interlocutor of the Sheriff-Substitute as it stands, and I propose that we should pronounce this interlocutor—“Recal the interlocutor of 1st August 1889: Find in fact that the bags of flour libelled were received into the defenders' store in January 1888, and remained there till January 1889, when 40 bags were removed from said store, the rest of the flour remaining in store till July 1889, when it was sold: Find that the said bags were stored by the defenders in three tiers, and remained so stored during the whole time that they were in the defenders' store: Find that this was an improper manner of storage unless the bags were from time to time turned: Find that they were not so turned, and that in consequence the flour was injured to the extent of £48: Find in law that the defenders are responsible for said injury: Therefore ordain the defenders to make payment of the said sum to the pursuers: Find the defenders liable in expenses in both Courts.”

LORD LEE—I concur.

LORD JUSTICE-CLERK—I am not prepared to concur in the Sheriff-Substitute's judgment upon the grounds stated by him, but I entirely concur in the interlocutor suggested by Lord Rutherford Clark.

LORD YOUNG was absent at the hearing of the case,

The Court refused the appeal and found in terms of the above interlocutor.

Counsel for Pursuers and Respondents—Sir Charles Pearson—Dickson. Agents—J. & J. Ross, W. S.

Counsel for Defenders and Appellants—D.-F. Balfour, Q.C.—M'Kechnie. Agents—Smith & Mason, S.S.C.

Wednesday, March 19.

SECOND DIVISION.

[Sheriff of Forfarshire.

FARQUHAR v. NEISH.

*Reparation—Slander—Domestic Servant Dismissed for Drinking—Privilege—Malice—Relevancy.*

A mistress dismissed a domestic servant for having been incapable and unfit to take orders from drinking, and wrote to the keeper of the servants' register office from whom the servant had been hired, stating the grounds of her dismissal and refusing to give her a character.

The servant raised an action of damages against the mistress and alleged—“The statements regarding the pursuer contained in the said letter were not made in answer to any inquiry, but were wholly gratuitous and unsolicited. The said statements were, moreover, false and calumnious, and were made by the defender wrongfully, maliciously, and without probable cause, and with the intention of injuring the pursuer in her character and prospects; and the pursuer has been greatly injured thereby in her feelings and reputation, and has also been prevented from obtaining employment.”

Held (1) that in view of the relation in which the keeper of the register office stood to both parties, the defender's communication was privileged, and (2) that as the pursuer had alleged nothing to suggest any private ill feeling on the part of the defender, or other cause of displeasure than the conduct of the pursuer for which she had been dismissed, and which was referred to in the letter, there was no relevant averment of malice, and the action dismissed.

This was an action by Jane Ann Farquhar, domestic cook, against Miss J. Neish, Tannadice House, Forfar, concluding for damages for alleged slander. In the summer of 1888 the defender engaged the pursuer as cook at Tannadice House, through the Register Office of Chivas Brothers, merchants, Aberdeen. The pursuer alleged that on 19th October the defender complained that the pursuer had been drinking, and ordered her to leave next morning. On the morning of 20th October the defender paid the pursuer her wages to that date and informed her that she refused to give her a character, and would write to Miss Mitchell who took charge of the register of Messrs Chivas. The letter was in these terms—“Miss Neish encloses postal order to Miss Mitchell for 2s., fee for engaging servant. Miss Neish regrets to inform Miss Mitchell she has found J. Farquhar a most unsatisfactory servant, and she is leaving to-day. Yesterday morning she was quite incapable, and unfit to take orders. Miss Neish declines to give anyone Farquhar's character without mentioning her failing.”