Donoghue v Stevenson

Donoghue v Stevenson [1932] AC 562 was a foundational decision in Scots delict law and English tort law by the House of Lords. It created the modern concept of negligence, by setting out general principles whereby one person would owe a duty of care to another person .
Also known as the "Paisley snail"[5][6] or "snail in the bottle" case, the facts involved Mrs Donoghue drinking a bottle of ginger beer in a café in Paisley, Renfrewshire. A dead snail was in the bottle. She fell ill, and she sued the ginger beer manufacturer, Mr Stevenson. The House of Lords held that the manufacturer owed a duty of care to her, which was breached, because it was reasonably foreseeable that failure to ensure the product's safety would lead to harm of consumers.

Legal background

Injuries resulting from defective products were normally claimed on the basis of a contract of sale between the seller and the consumer.[3] However, Donoghue had no contractual relationship with Minghella as she had not purchased the ginger beer; while her friend did have a contract through having placed the order, she had not suffered any injury. Moreover, neither had a contract with Stevenson, the manufacturer.[9] Donoghue was therefore required to claim damages for negligence.[3]
Ansell v Waterhouse[14] had established in 1817 that legal liability could arise for an act or omission "contrary to the duty which the law casts on him in the particular case" (i.e. negligence).[15]:105–106 However, there was no general duty of care and therefore no general liability for negligent behaviour. Only limited exceptions to this rule were made in which duties were found in specific circumstances, most of which had a contractual background.[4]:643[15]:109[16]:86
The most difficult precedent for Donoghue was Mullen v AG Barr & Co Ltd, a recent Court of Session case. In Mullen, two children, John and Francis Mullen, and Jeanie Oribine had separately found dead mice in their bottles of ginger beer, manufactured by AG Barr & Co Ltd, and claimed to have become ill through drinking the tainted liquid. In separate hearings in Glasgow and Greenock Sheriff Court respectively, Orbine was successful in claiming compensation while the Mullens were not. The losing parties of both cases appealed to the Court of Session.[7]:16–17
At the Court of Session, the claimants argued that although there was no direct evidence that the manufacturer had been negligent in preparing the ginger beer, negligence could be presumed (res ipsa loquitur) from the mere presence of dead mice in ginger beer bottles. However, the court ruled against the claimants.[7]:16–17 The majority held that on a factual basis AG Barr & Co Ltd had rebutted a presumption of negligence and that on a legal basis product manufacturers only owed a duty of care to the ultimate consumers if there was a contractual relationship between the parties; if the dangerousness of the product was intentionally withheld from the consumer (in which case there might also be a claim for fraud); or if there was no warning of the intrinsic dangerousness of certain products, such as explosives.[3][7]:17–18
Only Lord Hunter dissented, finding that negligence to be inferred and that the fact that the bottle contents could not be examined (because of the dark glass) gave rise to a specific duty of care that would allow consumers to claim for damages.[7]:18–19
However, neither of the circumstances in which negligence could be found in product liability cases applied to Donoghue: ginger beer is not intrinsically dangerous, nor did Stevenson intentionally misrepresent the threat it posed. Nevertheless, Donoghue's counsel argued that manufacturers also owed a duty of care to their ultimate consumers if it was not possible to examine the goods before they were used, an exception that would apply to Donoghue.[9]
Court of Session

The first interlocutory action was heard on the Court of Session on 21 May 1929 in front of Lord Moncrieff. After an adjournment, Minghella was added as a defender on 5 June; however, the claim against him was abandoned on 19 November, likely due to his lack of contractual relationship with Donoghue (Donoghue's friend had purchased the ginger beer) and his inability to examine the contents of the dark glass bottle. On 12 December, Minghella and Stevenson were awarded a combined costs claim of £108 6s 3d against Donoghue for this abandoned strand of litigation. However, it was recorded on 20 December that Donoghue did not pay the costs awarded to Minghella.[7]:23–25

Majority

The majority consisted of Lord Atkin, Lord Thankerton and Lord Macmillan.[8]:562

Lord Atkin

Lord Atkin commented that he did "not think a more important problem has occupied your Lordships in your judicial capacity, important both because of its bearing on public health and because of the practical test which it applies to the system under which it arises".[12]:43 He agreed with counsel, based on his own research, that Scots and English law

were identical in requiring a duty of care for negligence to be found and explained his general neighbour principle on when that duty of care arises.[7]:40–41

"At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa," is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot, in a practical world, be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."[12]:44

He supported this broad test by citing Heaven v Pender[20] and rejected the cases in favour a narrower interpretation of a duty of care with the example of negligently poisoned food, for which there had been no claim against the manufacturer. "If this were the result of the authorities, I should consider the result a grave defect in the law, and so contrary to principle that I should hesitate long before following any decision to that effect which had not the authority of this House".[7]:41[12]:44–46 He went on to suggest that there should be a duty of care owed by all manufacturers of "articles of common household use", listing medicine, soap and cleaning products as examples. "I do not think so ill of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilized society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong."[7]:42[12]:46

Lord Atkin then rejected cases that did not support his approach and cited Benjamin N. Cardozo in MacPherson v. Buick Motor Co.[21] in favour of his view.[7]:42[12]:46–56

He concluded:

"If your Lordships accept the view that this pleading discloses a relevant cause of action, you will be affirming the proposition that by Scots and English law alike a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him, with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."

It is a proposition which I venture to say no one in Scotland or England who was not a lawyer would for one moment doubt. It will be an advantage to make it clear that the law in this matter, as in most others, is in accordance with sound common sense. I think that this appeal should be allowed.[12]:57

Lord Thankerton

Lord Thankerton ruled that Donoghue had no contract with Stevenson, nor that her case was covered by one of the scenarios in which a duty of care had previously been found. However, he held that where goods could not be examined or interfered with, the manufacturer had "of his own accord, brought himself into direct relationship with the consumer, with the result that the consumer [was] entitled to rely upon the exercise of diligence by the manufacturer to secure that the article shall not be harmful to the consumer", an exception to the general nonexistence of a duty of care that applied to Donoghue.[7]:51[12]:59–60

Lord Thankerton further argued that it was impossible "to catalogue finally, amid the ever-varying types of human relationships, those relationships in which a duty to exercise care arises apart from contract" and commented that he "should be sorry to think that the meticulous care of the manufacturer to exclude interference or inspection by the [seller] should relieve the [seller] of any responsibility to the consumer without any corresponding assumption of duty by the manufacturer".[7]:51–52[12]:60

Lord Macmillan

Lord Macmillan examined previous cases[12]:65–70 and held that "the law takes no cognizance of carelessness in the abstract. It concerns itself with carelessness only where there is a duty to take care and where failure in that duty has caused damage".[7]:46–47[12]:70 Whether there was a duty and breach would be examined by the standard of the reasonable person. These circumstances "must adjust and adapt itself to the changing circumstances of life. The categories of negligence are never closed".[7]:47[12]:70 Lord Macmillan held that, according to this standard, Stevenson had demonstrated carelessness by leaving bottles where snails could access them; that he owed Donoghue a duty of care as commercial manufacturer of food and drink; and that Donoghue's injury was reasonably foreseeable. He therefore found that Donoghue had a cause of action and commented that he was "happy to think that in ... relation to the practical problem of everyday life which this appeal presents ... the principles of [English and Scots law] are

sufficiently consonant with justice and common sense to admit of the claim which the appellant seeks to establish."[7]:47–48[12]:71–72
Minority

The minority consisted of Lord Buckmaster and Lord Tomlin, .[8]:562

Lord Buckmaster

Lord Buckmaster focused on precedent, and commenced by warning that "although [common law] principles are capable of application to meet new conditions not contemplated when the law was laid down, these principles cannot be changed nor can additions be made to them because any particular meritorious case seems outside their ambit".[12]:35 He held that there were only the two recognised exceptions to the finding of a duty of care and supported Baron Alderson's judgment in Winterbottom v Wright that "the only safe rule is to confine the right to recover to those who enter into the contract; if we go one step beyond that, there is no reason why we should not go fifty".[7]:43–44[12]:36
Lord Buckmaster dismissed George v Skivington,[22] opining that "few cases can have lived so dangerously and lived so long",[12]:37 and rejected Heaven as a tabula in naufragio (Latin: literally "plank in a shipwreck") that was unrelated to Donoghue's case; both "should be buried so securely that their perturbed spirits shall no longer vex the law".[12]:42 He concluded that there was no common law support for Donoghue's claim and supported Lord Anderson's judgment in Mullen.[7]:44–46
"In a case like the present, where the goods of the defenders are widely distributed throughout Scotland, it would seem little short of outrageous to make them responsible to members of the public for the condition of the contents of every bottle which issues from their works. It is obvious that, if such responsibility attached to the defenders, they might be called on to meet claims of damages which they could not possibly investigate or insure."[12]:43

Lord Tomlin

Lord Tomlin concurred with Lord Buckmaster. While he agreed with Lord Atkin that the duty of care a manufacturer owed to its consumers was the same regardless of the product they produced, he held that no general duty of care existed and that the fact the product was in a sealed container made no difference to the finding of a such duty.[7]:50[12]:57–58 He further endorsed concerns that Lord Atkin's broader test of liability would have allowed everyone injured in the Versailles rail accident to be able to claim compensation from the manufacturer of the axle that broke and caused the crash.[3][12]:57

Ratio decidendi

The suggested ratio decidendi (Latin: the reason for the decision) of the case has varied from the narrowest, jokingly suggested by Julius Stone, that there was merely a duty "not to sell opaque bottles of beverage containing dead snails to Scots widows",[24] to the widest, suggested by Lord Normand, who had been one of Stevenson's counsel, that Lord Atkin's neighbour principle was the ratio.[25]:756–757[1]:7
Although the neighbour principle was a critical part of Lord Atkin's reasoning, and was therefore part of the ratio of his judgment, neither of the other judges in the majority expressly endorsed the principle.[1]:7–8 Robert Heuston therefore suggests that case only supports the claims there can be duties in tort even if there is a contract; that manufacturers owe a duty of care to the ultimate consumers of their goods; and possibly that negligence is a separate tort. "No amount of posthumous citation can of itself transfer with retrospective effect a proposition from the status of obiter dictum [passing comments] to that of ratio decidendi."[1]:9
Subsequent events

The legal basis for the claim now settled, the case was returned to the Court of Session for a hearing scheduled for January 1933. In the hearing, Donoghue would have to prove the factual elements of the case that she had claimed, including that there had been a snail in the ginger beer as a result of Stevenson's negligence and that this snail had caused her illness.[7]:170 However, Stevenson died on 12 November 1932, aged 69.[7]:7 One year later, Stevenson's executors were listed as third-party defenders to the case. However, the claim was settled out of court in December 1934[15]:115 for, according to Leechman's son, £200 of the £500 originally claimed.[Note 6][3][7]:171–173
Donoghue had moved to 101 Maitland Street with her son, Henry, around February 1931; he moved out when he married in 1937, after which she moved to 156 Jamieson Street. She continued to work as a shop assistant. In February 1945, Donoghue divorced her husband, from whom she had separated in 1928 and who now had two sons by another woman, and reverted to using her maiden name.[7]:5–6[26]:7 She died of a heart attack on 19 March 1958, at the age of 59, in Gartloch Mental Hospital, where she had probably been staying for a short period of time as a result of mental illness.[26]:8 Although she is listed on her death certificate as May McAllister, she was by then commonly known as Mabel Hannah, having adopted her mother's maiden name and the first name of her daughter, who had died when she was eleven days old.[2][26]:5,8[27]:2

Stevenson's business was taken over by his widow, Mary, and his son, the third David Stevenson in the family. It became a limited company (David Stevenson (Beers and Minerals) Limited) on 1 July 1950; the family sold their shares in 1956. The Glen Lane manufacturing plant was demolished in the 1960s.[7]:7
The Wellmeadow Café, where the snail had been found, closed around 1931; the building was demolished in 1959. Minghella, its owner, subsequently became a labourer; he died on 20 March 1970.[7]:2–3

Neighbour principle

A stained glass window
Lord Atkin's neighbour principle, that people must take reasonable care not to injure others who could foreseeably be affected by their action or inaction, was a response to a question a lawyer posed to Jesus: it is required that someone wanting to inherit eternal life must love their neighbour as themselves, but who is a person's neighbour? Jesus responded with the Parable of the Good Samaritan.[28]:212–213
"And Jesus answering said, A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead. And by chance there came down a certain priest that way: and when he saw him, he passed by on the other side. And likewise a Levite, when he was at the place, came and looked on him, and passed by on the other side. But a certain Samaritan, as he journeyed, came where he was: and when he saw him, he had compassion on him, and went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him. And on the morrow when he departed, he took out two pence, and gave them to the host, and said unto him, Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee."
"Which now of these three, thinkest thou, was neighbour unto him that fell among the thieves? And he [the lawyer] said, He that shewed mercy on him. Then said Jesus unto him, Go, and do thou likewise."[29]
The neighbour principle itself was first mentioned in relation to law by Francis Buller[Note 7] in An Introduction to the Law relative to Trials at Nisi Prius, which was printed in 1768.[28]:212
"Of Injuries arising from Negligence or Folly. Every man ought to take reasonable care that he does not injure his neighbour; therefore, wherever a man receives any hurt through the default of another, though the same were not wilful, yet if it be occasioned by negligence or folly, the law gives him an action to recover damages for the injury so sustained."[30]
In precedent, there was an obiter suggestion by Lord Esher in Heaven v Pender that "whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense ... would at once recognise that if he did not use ordinary care and skill in his own conduct ... he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger".[20]:509 However, this approach had been rejected by the two other judges in the Court of Appeal.[15]:107–108 Lord Esher's attempt to reintroduce the principle in further obiter remarks in Le Lievre v Gould,[31] in which he stated that Heaven only established that there may be a duty even if there is no contract and that this duty arose if there was proximity between the parties, was also unsuccessful.[15]:108–109[31]:497
Two cases from the New York Court of Appeals, Thomas v. Winchester[32] and MacPherson v. Buick Motor Co., were also influential in the formation of the neighbour principle.[7]:102 In Thomas, Thomas had purchased and administered belladonna to his wife after it was mislabelled by Winchester, the dealer, although not the seller, of the treatment as extract of dandelion. Thomas' wife became seriously ill as a consequence and Thomas successfully claimed in negligence; Winchester's behaviour had created an imminent danger which justified a finding of a duty of care.[7]:102–103
This principle was relied on in MacPherson, in which a car wheel collapsed, injuring MacPherson. The manufacturer was sued in negligence and the court held that manufacturers could owe their ultimate consumers a duty of care in limited circumstances.[7]:104–106[33]:414
"If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully ... If he is negligent, where danger is to be foreseen, a liability will follow."[21]:389–390
Lord Atkin used the concept of legal neighbours in an address to the University of Birmingham's Holdsworth Club in 9 May 1930, in which he commented that "the man who swears unto his neighbour and disappointeth him not is a person commended by the law of morality, and the Law enforces that by an action for breach of contract".[7]:111 In 28 October 1931, just over one month before he heard Donoghue, Lord Atkin also used the principle in relation to defamation, perjury, fraud and negligence in a lecture at King's College London.[28]:211
"[A man] is not to injure his neighbour by acts of negligence; and that certainly covers a very large field of the law. I doubt whether the whole law of tort could not be comprised in the golden maxim to do unto your neighbour as you would that he should do unto you."[Note 8][35]:30

Existence of the snail

In a speech scheduled to be delivered in May 1942 (although delayed by the Second World War), Lord Justice MacKinnon jokingly suggested that it had been proven that Donoghue did not find a snail in the bottle.

"To be quite candid, I detest that snail ... I think that [Lord Normand] did not reveal to you that when the law had been settled by the House of Lords, the case went back to Edinburgh to be tried on the facts. And at that trial it was found that there never was a snail in the bottle at all. That intruding gastropod was as much a legal fiction as the Casual Ejector."[7]:170–171

This allegation, suggests Chapman, established itself as a legal myth;[7]:172 it was repeated by Lord Justice Jenkins in a 1954 Court of Appeal practice note.[36]:1483 However, both MacKinnon and Jenkins were unaware that the trial had not gone ahead because of Stevenson's death – the events following the case were only published in response to the practice note.[37] As Donoghue's factual claims were therefore never tested in court, it is generally held that what happened in the Wellmeadow Café is not proven and will not be known for certain.[1]:2[3][4]:643[7]:172