

Saturday, July 7.

SECOND DIVISION.

[Sheriff of Renfrew and Bute.

HENDERSON v. MUNN.

Landlord and Tenant—Reparation—Defective Drainage—Relevancy.

The tenant of a house which was taken at Whitsunday 1883 on a yearly tenancy, brought an action of damages against her landlord in 1888, in which she averred that she and her family experienced in August 1887 most disagreeable smells in the house, and that the sanitary arrangements and drains were defective; that intimation of this was made to the defender, but after repeated complaints he did nothing to remedy the defects complained of; that the pursuer had lodged a complaint with the sanitary authorities, which was intimated to the defender, but that he paid no, or at least insufficient attention to these complaints, and that through the effects of the insanitary condition of the house the pursuer and her family had suffered in health, and that two of the children had died of diphtheria in January 1888. There was no specification either of the particular defects in the drainage, or of the nature of the complaint made to the landlord. *Held* that there was no relevant ground of action against the defender.

In March 1888 Mrs Helen Street Stewart or Henderson brought in the Sheriff Court at Rothesay an action against William Munn for £1000 damages. The pursuer and her deceased husband Mr W. D. Henderson had been tenants from year to year of a house belonging to the defender in Demerara Place, 32 Ardbeg Road, Rothesay, from Whitsunday 1883. After her husband's death, which took place on 11th November 1887, the pursuer continued to be tenant of the said house under the defender, her landlord.

The parties having been allowed to revise their pleadings, the pursuer averred—"It was a special or implied condition of the occupancy of said house by the late W. Dunlop Henderson and the pursuer that it was habitable, and that the drains and general condition of the house as regards sanitary arrangements were satisfactory and unobjectionable. In or about the month of August 1887 the pursuer and her family experienced most disagreeable smells in the house, and it was discovered that the sanitary arrangements and drains were defective. Intimation of this was at once made to the defender, who was several times called upon to have the matter remedied, but notwithstanding of the repeated complaints by the pursuer defender maintained that there was nothing requiring attention, and he did nothing to remedy the defects complained of. The said deceased W. D. Henderson had occasion more than a year ago to complain to the defender of the condition of the house, and the defender pretended to the said deceased and the pursuer that he had made the drains good and sufficient, and pursuer was thereby induced to remain in possession. As the disagreeable smells still continued, and defender having refused, or at least failed, to get

the same properly looked after and attended to, the pursuer in the month of September 1887 lodged a complaint with the sanitary authorities in Rothesay, and the complaint was intimated to defender. Pursuer believes and avers that defender paid no, or at least insufficient attention to these complaints—suggestions of the authorities, and of other tradesmen, as to what was necessary to put said drains in proper condition, having been altogether disregarded. Through the effects of the insanitary condition of said house the pursuer and family suffered in health, and her three children became ill of diphtheria, whereof two of them died. The pursuer specially took the house in question for the purpose of adding to her own income by letting out the same with attendance, and she did so for her own interest, and on her own behalf, but some of the families to whom pursuer had let her apartments for the summer months of 1887 had to leave the house. The pursuer has also been deprived of the use of the house, and has been under the necessity of removing from it. This was all directly caused by and attributable to the insanitary state of said house. From the effects of the insanitary condition of said house as before mentioned the pursuer has suffered loss and damage in doctor's bills, medicines, want of boarders, and expenses of removing, &c., and *solatium* for the loss of her two children, to the extent of at least £1000."

The pursuer pleaded—" (1) The defender not having fulfilled the terms of said let, and thereby committed a breach of contract, the pursuer is entitled to decree as craved, with costs. (2) The pursuer, by defender's breach of duty and negligence in failing to have and keep said house in a sanitary condition, having suffered loss and damage to the amount sued for, decree ought to be granted as craved, with interest and expenses. (3) The deaths of the pursuer's children and the loss mentioned on record having been caused by the fault of the defender, all as condescended on, the pursuer is entitled to *solatium* and reparation, and to decree as concluded for."

The defender pleaded—" (2) Defender not being responsible for the alleged loss and damage and expenses and *solatium*, or any of these, and these not being due in any part to the condition of his said house, or to his fault, he is entitled to absolvitor, with expenses. (3) Defender having paid punctual attention to every complaint, and promptly done everything in his power to put and keep the drainage and premises in proper sanitary order, is not liable in loss or damage alleged. In any case the pursuer's claim is excessive."

Upon 3rd May 1888 the Sheriff-Substitute (ORR), at Rothesay, allowed parties a proof of their averments.

The pursuer appealed for jury trial, and proposed the following issue:—"Whether the defender, in breach or wrongful neglect of his obligations as landlord of a house in Demerara Place, 32 Ardbeg Road, Rothesay, for the year from Whitsunday 1887 to Whitsunday 1888, failed to keep the sanitary arrangements and drains of said house in proper order and repair, to the loss, injury, and damage of the pursuer? Damages laid at £1000."

The defender objected to the relevancy, in respect the nature of the defects in the drainage

and of the complaints to the landlord were not set forth. The pursuer should have left the house and sued for damages.

Authorities—*Fraser v. Hood*, December 16, 1887, 15 R. 187; *Scottish Heritable Security Company (Limited) v. Granger*, January 28, 1881, 8 R. 459.

The pursuer maintained that there was sufficient specification. She had been induced to stay on in the house owing to the representations of the defender that the drains would be put right.

At advising—

LORD JUSTICE-CLERK—I am of opinion that the statements of the pursuer in this record are not relevant, and that there should be no inquiry in this case.

The substance of the case is this—the pursuer is the widow of a person who was the tenant of the house owned by the defender, in which the pursuer lives, and to which the complaint applies. This house had been occupied by the pursuer and her husband from year to year since June 1883, and the statement is that in 1887 the drains of the house had become defective, and that unpleasant smells were thus caused, and then the complaint ends with this statement, that two of the pursuer's children died of diphtheria, and a demand for damages to the amount of £1000 is made.

I think that the whole statement of the pursuer is entirely and absolutely defective. It is not alleged what was the fault in the drains, nor indeed that any fault in them produced the disagreeable odours and other results complained of. There is an averment that a complaint was made to the local authority as to the state of the drains, but it is not stated what the local authority did, or whether they thought it necessary to do anything, or what reply was given to the complaint. It is assumed that because these two children died from diphtheria it must have been communicated to them from defects in the drainage. It is plain that the whole statement is defective as a complaint on which to found a claim of damages, and the last item of damage, the deaths of the children, clearly cannot be allowed to go to proof.

LORD YOUNG—I am of the same opinion, and from the beginning I was clearly of opinion that the record was utterly defective in its statements, and proceeded upon an entirely erroneous idea. This is a small flat of the value, we were told, of £300, and an action is brought by the tenant against the landlord for damages to the extent of £1000, three times the value of the house. I never heard of such a thing. She says she felt a bad smell in the house, and the landlord was told that there was something the matter with the drains. Then two of her children die of diphtheria, and this action is brought against the landlord on the principle apparently that a landlord insures the lives of his tenant and their whole family against the evil consequences of continuing to live in a house after they believe it to be in an insanitary condition. I know of no principle for such a proceeding, nor any precedent. I am clearly of opinion that neither *ex contractu* nor *ex delicto* nor *quasi ex delicto* can this action be sustained.

LORD RUTHERFURD CLARK—I am also of opinion that this action is not relevant.

LORD CRAIGHILL was absent.

The Court pronounced this interlocutor:—

“The Lords having heard counsel for the parties on the appeal, Sustain the same; recall the interlocutor of the Sheriff-Substitute appealed against; sustain the defences; assolvie the defender from the conclusions of the action: Find the defender entitled to expenses in the Inferior Court and in this Court,” &c.

Counsel for the Pursuer—Shaw—W. C. Steele.
Agent—A. B. Cartwright Wood, W.S.

Counsel for the Defender—A. S. D. Thomson.
Agent—John Latta, S.S.C.

Wednesday, July 11.

SECOND DIVISION.

[Sheriff of Ayrshire.

SHAW V. MORGAN.

Reparation—Slander—Privilege.

At a meeting of the police commissioners of a burgh a member moved that in lieu of the system of issuing summary warrants for the recovery of arrears of water rates, which had been placed in the hands of a certain sheriff-officer, a collector should be appointed for their recovery. In speaking in support of the motion, he said—“What could be more repulsive than to demand rates from a dying woman. . . . Sheriff-officers were not always worshippers of the sober deity.” On the provost of the burgh, who presided, saying, “For myself, I think the sheriff-officer now acting a competent man,” the mover replied—“A man who is drunk cannot be competent. . . . I would rather let loose a wild beast upon the community than a drunk man.”

In an action of damages by the sheriff-officer referred to, the Court found in fact that the defender made use of the language complained of in the course of his duty, and that it was not proved that he willingly spoke falsely or was actuated by malice, and held that, in these circumstances, as the defender so expressed himself while *versans in officio*, the statements were privileged, and that he should be *assolvied*.

This action of damages for alleged slander was brought in the Sheriff Court at Ayr, the pursuer being John Shaw, a sheriff-officer at Ayr, the defender being Arthur Morgan, bookseller and stationer, Ayr, a member of the Town Council and Police Commission of the burgh, and also of a committee called the “Arrears of Rates Committee.” On 8th December 1886 this committee met and agreed to employ the pursuer for the recovery by summary warrant of arrears of water rates which had become due and payable on 8th November previous. This appointment was approved of by the Town Council