



A SNAIL IN A BOTTLE

WHAT HAPPENED NEXT

Richard Ward

This article explores the unusual case of “A Snail in a Bottle” through House of Lords Judicial Office records. For centuries the House of Lords performed a range of judicial functions which included hearing appeals from lower courts. It’s role as the highest court in the land lasted until 2009 when it was superseded by the Supreme Court. Its decisions bound all the courts below. The UK Parliamentary Archives are the custodians of over 500 years of Parliamentary history. The archives are publicly accessible until June 2024, when this service will be closed in preparation for the transfer to the UK National Archives which will be completed by the summer of 2025.

— Penny McMahon

ALMOST TOO SURREAL is the strange consequence of a snail in a bottle. Not a *Goon Show* sketch, this was a Year Zero moment for negligence courtesy of the highest court in the land, the House of Lords Judiciary.

Here are ten things you need to know about this legal wrangle.

Richard Ward is an Assistant Archives Officer and Penny McMahon is a Senior Outreach Archivist, both in the United Kingdom’s Parliamentary Archives. This article first appeared as a post on the “Parliamentary Archives: Inside the Act Room” blog on May 5, 2023. See archives.blog.parliament.uk/2023/05/05/a-snail-in-a-bottle-what-happened-next/. It is reproduced here by kind permission of the Parliamentary Archives, London, with only slight changes — some Americanization of style and punctuation, a bit of formatting, a few other non-substantive tweaks, and a different picture of Baron Macmillan.

1. EASTENDER

The name which resonates most throughout this infamous episode is that of May Donoghue (née McAlister). A thirty-year-old shop assistant living in the poverty-stricken Calton district of Glasgow's East End, shadowed by the vast Parkhead Stadium home to Celtic Football Club. Originally from Lanarkshire, she resided just off the busy London Road thoroughfare with a family member, in an area that was regarded by the city aldermen as one the city's most socially deprived.

August 1928 saw the annual Trades Holiday take place across the country. This allowed the working classes an opportunity to enjoy a brief restorative break from their arduous daily lives. For Donoghue, the burden of retail employment was coupled with the demands of being a single mother after permanently separating from her husband. She opted to use this downtime to make a leisurely seven-mile journey to spend the afternoon in the pleasant environs of provincial Paisley.

2. CAFÉ SOCIETY

Italian migration had seen thousands of emigrés arrive in Scotland. Many set up ice cream parlours that soon became popular as community hubs for young and old, away from the prying eyes and ears of overly cramped tenement blocks. Paisley's Wellmeadow Café had been owned by Francis Minghella for a year when May Donoghue entered the premises and fatefully was bought a ginger ale ice cream float by a friend.

As was the culinary method for the request, you poured out the fizzy liquid to combine with the sweet dessert. Donoghue's companion sociably decided to do this for the second helping and on this gesture a decomposed snail plopped out of the opaque bottle, landing in the tumbler. Subsequently in her claimant statement, she described the fabled moment as a "nauseating sight" due to the noxious stench of the shelled mollusc. This health and safety breach didn't end there.

3. IN DENIAL

A few days passed before Donoghue consulted a doctor, concerned by the sickness and nausea she'd suffered since the Wellmeadow incident. This worsened further on admittance to the Glasgow Royal Infirmary for

A Snail in a Bottle

In the House of Lords

Not Reported.

[Negligence — Whether duty owed to person injured—Duty of manufacturer of article to ultimate consumer —Bottle of ginger-beer bought from retailer — Bottle containing dead snail—Consumer injured by drinking contents—Liability of manufacturer to consumer

From the Second Division of the Court of Session in Scotland

MRS MAY M'ALISTER or DONOGHUE,
formerly residing care of M'Alister, 49 Kent
Street, off London Road, Glasgow, and
now residing at 101 Maitland Street,
Cowcaddens, Glasgow (*PAUPER*)..... } *Appellant*

DAVID STEVENSON, Aerated-Water
Manufacturer, 8 Glen Lane, Paisley..... } *Respondent*

THE APPELLANT'S CASE

CHAPMAN, WATSON & CO., LAW PRINTERS, 21 HANOVER STREET, EDINBURGH

© Parliamentary Archives

Donoghue v Stevenson Appellant Case (1932).
Parliamentary Archives, London, HL/PO/JU/4/3/873.

treatment relating to severe shock afflicting her to such an extent that she

was unable to work. Minghella remained in denial, pleading his innocence on the basis that his business didn't produce the suspect beverage.

Thus, blame shifted to the title inscribed on the receptacle that read "D STEVENSON, GLEN LANE, PAISLEY." David Stevenson was a sixty-five-year-old entrepreneur whose success in the trade accumulated sufficient profits to buy shares in the local St. Mirren Football Club. Inheriting the firm from his father, he'd ridden the early-20th-century soft drink boom, expanding the operation into lemonade production. Allegations of this nature had to be rebuffed. However, he couldn't have predicted the matter going as far as it did.

4. TO THE RESCUE

If Donoghue was to achieve some modicum of justice, she'd need a helping hand – step forward Walter Leechman. The Glasgow-based solicitor was something of a maverick, compelled to assist the less fortunate in specialized reparation briefs. This beekeeping enthusiast endeavoured to stir the hornet's nest of existing contract law by challenging the manufacturer upon the condition of "duty of care" to favour his beleaguered client. He raised the action for a £500 compensation package, also including an additional £50 expenses charge.

"Pro bono" means professional services provided at no or little cost. In this instance Leechman worked under that auspice as Donoghue hadn't the funds to afford standard representation. In an affidavit that followed she stated, "I am very poor and not worth in all the world the sum of five pounds." Publicly declaring herself a "pauper" left Donoghue open to accusations of creating a scam for financial gain.

5. MADE FROM GIRDERS

Leechman had previous form in this compensatory battlefield representing Francis Mullen, a Coatbridge ironworker who discovered a dead mouse in a ginger ale bottle he'd purchased for his son. This branded item was a product of the powerful Barr Group, renowned for its *Irn Bru* concoction that was later promoted by the tagline "Made from Girders." The Sheriff Court dismissed his claim seeking £75 damages, and a hopeful petition to the House of Lords fell asunder.

appeals against the same to your Lordships' Right Honourable House, and in support of her Appeal she respectfully submits the following Statement and Reasons :—

Appellant's Case

A INTERLOCUTORS
and
PROCEDURE

SUPPLEMENTARY STATEMENT.

B
SUPPLEMENTARY
STATEMENT

In this case the Appellant, who is a shop assistant, seeks to recover damages from the Respondent, who is a manufacturer of aerated waters, for injuries she suffered as a result of consuming part of the contents of a bottle of ginger-beer which had been manufactured by the Respondent, and which it transpired contained the decomposed remains of a snail. The said bottle of ginger-beer was purchased for the Appellant by a friend in the Wellmeadow Café, Paisley, which was occupied by Francis Minchella. The bottle was made of dark opaque glass, and the Appellant had no reason to suspect that it contained anything but pure ginger-beer. The said Francis Minchella poured some of the ginger-beer out into a tumbler, and the Appellant drank some of the contents of the tumbler. Her friend was then proceeding to pour the remainder of the contents of the bottle into the tumbler when a snail, which was in a state of decomposition, floated out of the bottle. As a result of the nauseating sight of the snail in such circumstances, and in consequence of the impurities in the ginger-beer which she had already consumed, the Appellant suffered from shock and severe gastroenteritis.

The Appellant avers that the ginger-beer was manufactured by the Respondent to be sold as a drink to the public (including the Appellant). It was bottled by the Respondent and labelled by him with a label bearing his name; the bottles were thereafter sealed with a metal cap by the Respondent.

It is, too, common knowledge that manufacturers such as the Respondent invite by advertisement and otherwise members of the public to purchase their products

© Parliamentary Archives

Donoghue v Stevenson Supplementary Statement (1932).
Parliamentary Archives, London, HL/PO/JU/4/3/873.

418a

FRANCIS MULLEN Appellant

A.G. BARR & COMPANY
LIMITED Respondents

I, FRANCIS MULLEN, Iron Worker, 25 Carrick Street,
Costbridge, As tutor and administrator-in-law of my pupil
children John Mullen and Francis Mullen, both residing with
me, make oath and say that on or about the _____ day of
April, Nineteen hundred and twenty nine, I intend to offer
for presentation to the House of Lords a Petition of Appeal
complaining of an Interlocutor of the Second Division of the
Court of Session in Scotland, dated at Edinburgh the Twentieth
day of March, Nineteen hundred and twenty nine;

That I am very poor, and am not worth in all the world
the sum of Five Pounds, my wearing apparel and the subject
matter of the said Appeal only excepted, and am, by reason
of such my poverty, unable to prosecute the said Appeal.

Francis Mullen

Sworn at Costbridge this 09 day of March
Nineteen hundred and twenty nine, before me, one of His
Majesty's Justices of the Peace for the County of
Lanarkshire

Thomas Main D.R.

We /

© Parliamentary Archives

Mullen v Barr Petition Leave to Appeal (1929).
Parliamentary Archives, London, HL/PO/JO/10/10/913.

A Snail in a Bottle

Incredibly, Barr's counsel suggested that a culture of returning "empties" to the factory for recycling led to this unsanitary discovery. The company insisted they used "nothing but the best ingredients," though try telling Jeanie Oribine this after the quenching of her thirst was rudely interrupted by another pickled rodent. Finally, spare a thought for Mr. Bates, who in 1913 sought recompense as a result of a defective aerated bottled container bursting in his face.

6. GELIGNITE = DANGEROUS

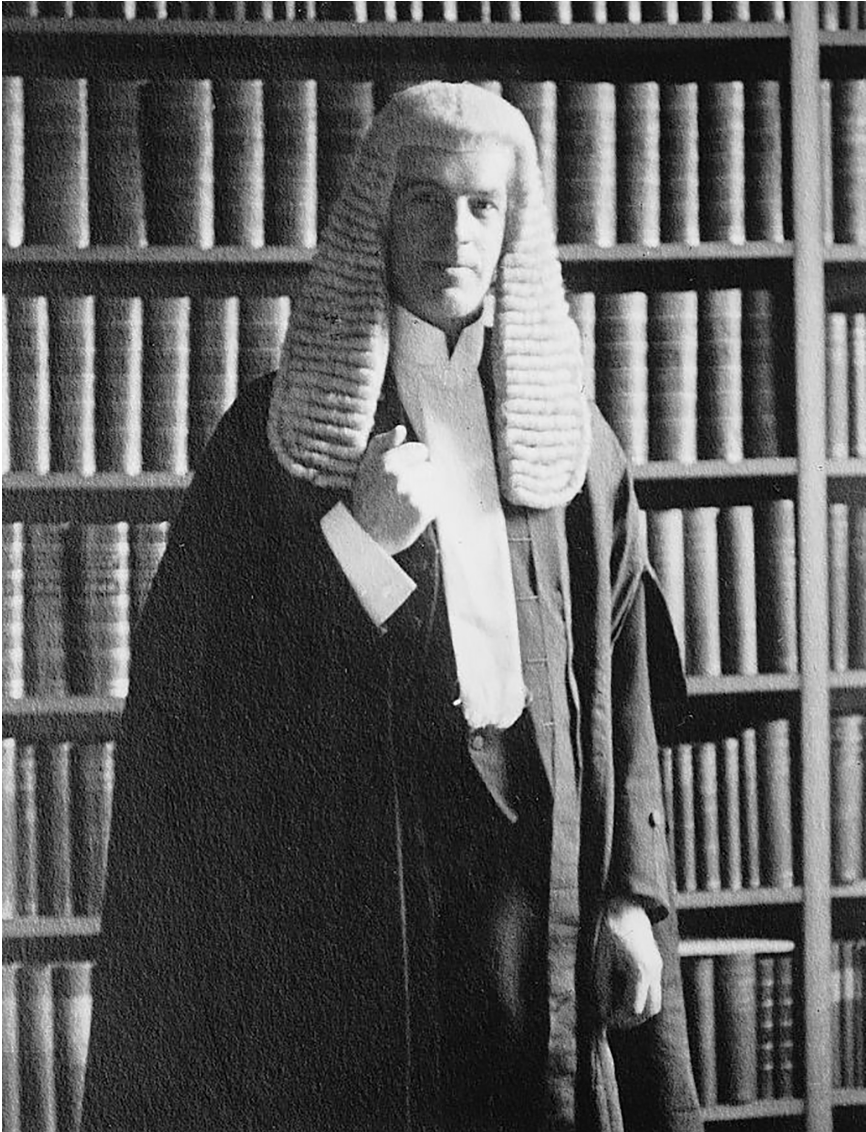
Parliament House was situated in a courtyard adjacent to Edinburgh's Royal Mile, and there sat Scotland's Court of Session. A collegiate setting suited to luminaries like Lord Alexander Moncrieff. Descended from a distinguished line of lawyers, away from the Bar he enjoyed poetry and other artistic pursuits. Moncrieff and Donoghue came from different worlds, yet he was receptive to the case-study placed in front of him. Still, the semblance of mixed facts deterred him from committing fully to a breach of contract summation.

Proceedings dragged on for 19 months, dominated by considerations defining various aspects of "active danger." While Moncrieff assessed the scenario from all angles, his colleague Lord Hunter maintained a contrasting viewpoint. Noting that in the dangerous stakes a darkened bottle could not be confused with a lighted stick of gelignite, Hunter's unwavering dissent conclusively shut the door on a Scottish resolution and all roads led to London.

7. CELTIC MAJORITY

Granted leave to appeal at the House of Lords, Donoghue had surpassed Mullen's similar judicial plea at the same place. Meeting in 1931, a few weeks shy of Christmas, the five wise Law Lords would, she hoped, come bearing monetary gifts. Devoid of any pomp and circumstance they gathered in an unassuming Palace of Westminster committee room and the tenets of consumer "duty of care" were turned on their heads.

Reports on the deliberations focused mainly on a bullish offensive demonstrated by the panel's "Celtic Majority." The fab three of Atkin, Macmillan, and Thankerton seized the initiative over the unconvinced



*Hugh Pattison Macmillan (Lord Macmillan).
Library of Congress, Washington, DC, LC-DIG-ggbain-36934.*

Tomlin and Buckmaster. Targeting the grey area of negligent sale, Macmillan took a stand against its distinct lack of cover, highlighting that:

To descend from . . . generalities to the circumstances of the present case, I do not think that any reasonable man, or any twelve reasonable men, would hesitate to hold that, if [Donoghue] establishes her allegation, [Stevenson] has exhibited carelessness in the conduct of his business.

If Macmillan kept strictly to the here and now Atkin felt inspired to go back to biblical times.

8. GOOD SAMARITAN

Referencing the classics or delving into the scriptures had the potential to elevate a liability case to a higher literary level. Metaphor and law were perfectly compatible bedfellows if combined correctly. To steer Donoghue's cause out of choppy waters, Lord Atkin drew heavily from the "Parable of the Good Samaritan." Applying a New Testament analogy to a thoroughly modern dilemma was an ambitious game changer that captured the imagination, transcending its final judgment into a canonised category.

Atkin's ingenious "neighbouring principle" relayed the maxim of "do unto your neighbour as you would that he should do unto you." At the so-called "Court of the Last Resort" anything was possible, and Atkin had pulled the proverbial rabbit out of the hat by showcasing this universal compassion tale as the foundation stone for future guidelines on moral responsibility. Despite the clear misgivings of Lord Buckmaster, there was no stopping this golden rule.

9. FOR THE LOVE OF TORT

No records or memoirs are available to ascertain if May Donoghue celebrated the victorious May 1932 final judgment by playfully partaking in an ironic ice cream/ginger beer float. Nowadays this random tale would have pricked tabloid journalists' ears to cover the intriguing course of events. Instead, the following day *The Times* published a daily court dispatches piece on the historic verdict that was rather on the dry side.

M'ALISTER or DONOGHUE (Pauper)

v.

STEVENSON.

Lord Atkin.

My LORDS,

Lord
Buck-
master.
Lord
Atkin.
Lord
Tomlin.
Lord
Thank-
ton.
Lord
Macmillan.

The sole question for determination in this case is legal: do the averments made by the pursuer in her pleading if true disclose a cause of action? I need not restate the particular facts. The question is whether the manufacturer of an article of drink sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect is under any legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health. I do 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 of law under which it arises. The case has to be determined in accordance with Scots Law: but it has been a matter of agreement between the experienced counsel who argued this case, and it appears to be the basis of the judgments of the learned judges of the Court of Session that for the purposes of determining this problem the law of Scotland and of England are the same. I speak with little authority on this point, but my own research such as it is satisfies me that the principles of the law of Scotland on such a question as the present are identical with those of English law: and I discuss the issue on that footing. The law of both countries appears to be that in order to support an action for damages for negligence the complainant has to show that he has been injured by the breach of a duty owed to him in the circumstances by the defendant to take reasonable care to avoid such injury. In the present case we are not concerned with the breach of the duty; if a duty exists that would be a question of fact which is sufficiently averred and for present purposes must be assumed. We are solely concerned with the question whether as a matter of law in the circumstances alleged the defender owed any duty to the pursuer to take care.

It is remarkable how difficult it is to find in the English authorities statements of general application defining the relations between parties that give rise to the duty. The courts are concerned with the particular relations which come before them in actual litigation, and it is sufficient to say whether the duty exists in those circumstances. The result is that the courts have been engaged upon an elaborate classification of duties as they exist in respect of property whether real or personal with further divisions as to ownership, occupation or control, and distinctions based on the particular relations of the one side or the other whether manufacturer, salesman or landlord, customer, tenant, stranger and so on. In this way it can be ascertained at any time whether the law recognises a duty, but only where the case can be referred to some particular species which has been examined and classified. And yet the duty which is common to all the cases where liability is established must logically be based upon some element common to the cases where it is found to exist. To seek a complete logical defini-

© Parliamentary Archives

Lord Atkin Judgment (1932).

Parliamentary Archives, London, HL/PO/JU/4/3/873.

A Snail in a Bottle

The case's legacy was a slow burner nurtured in university halls around the globe as law undergraduate courses included *Donoghue v Stevenson* as a quirky side-show to enliven lectures on the all-encompassing tort precedent that originated in the United States. By the 1950s, a myth had grown that there was no snail in the bottle in the first place and Lord Justice McKinnion, via the *Law Quarterly Review* with tongue firmly in cheek, remarked that he quite detested this "intruding gastropod of legal fiction."

10. AN UNLIKELY ICON

Assembling outside the hotel to begin the climax of *The Pilgrimage to Paisley* conference, the Canadian Law Association delegates accompanied by Highland pipers symbolically walked to the site of the long-gone Wellmeadow Café in a much-publicized homage to the "snail in a bottle" that attracted the regional evening news bulletin cameras. To coincide with the event, the association released in September 1990 a corresponding documentary featuring the former Master of the Rolls, Lord Denning, who as a budding legal eagle observed the *Donoghue* ruling. He stated that it is best "applied by bold spirits."

"Gie's a slug" was a mainstay of old-fashioned West of Scotland vernacular. This term for a sip of a drink is derived from the *Donoghue* story. A folklore tribute that probably on occasion tickled May Donoghue when heard on the streets of Clyde where she quietly resided in a corporation flat till she died in March 1958 with little fanfare or recognition.

SOURCES

The Snail and the Ginger Beer – The Singular Case of Donoghue v Stevenson, by Matthew Chapman (London: Wildy, Simmonds & Hill, 2010)

The Judicial House of Lords 1876-2009, by Louis Blom-Cooper et al. (Oxford: Oxford Univ. Press 2009)

Donoghue v Stevenson – In Retrospect, by R.F.V Heuston – *Modern Law Review*, January 1957

Donoghue v Stevenson – The Not So Golden Anniversary, by J.C. Smith and Peter Burns – *Modern Law Review*, March 1983

Lord Macmillan Speech: Donoghue v Stevenson, by Alan Rodger – *Law Quarterly Review*, 2000

The Slug that Changed the World – Stephanie Todd, BBC News, 18 August 2003