

SALE OF GOODS—IMPLIED CONDITION—POISONOUS INGREDIENT—BREACH—
MEASURE OF DAMAGES—SALE OF GOODS ACT 1893 (56 & 57 VICT. C. 71)
SS. 11, 13, 14, SUB-S. 2, 53, SUB-S. 2.

Bostock v. Nicholson (1904) 1 K.B. 725. In the year 1900 it may be remembered that a number of persons were made seriously ill and some of them died from drinking beer, which on investigation proved to have been contaminated with arsenic. Litigation took place against the vendors of the beer, and the present was an action brought by the plaintiffs, who were manufacturers of brewing sugar, against the defendants who supplied them with sulphuric acid which was used by plaintiffs in the manufacture of brewing sugar. The plaintiffs did not make known to the defendants nor did the defendants know the purpose for which the acid was to be used, but according to the description in the contract the acid was to be commercially free from arsenic. The defendants at first delivered acid in accordance with the contract, free from arsenic, but subsequently without notice to the plaintiffs delivered acid not commercially free from arsenic. The plaintiffs might by the exercise of ordinary care have discovered the presence of arsenic in the acid, but they did not do so and used it in the manufacture of brewing sugar, which they sold to brewers with the result before referred to. The brewers suffered loss in respect of which the plaintiffs were liable to them. The plaintiffs also lost the price of the acid and the value of the goods spoilt through being mixed with the acid; and the goodwill of their business was also injured. Bruce, J., who tried the action, found that there was a valid sale of goods according to the description within s. 13 of the Sale of Goods Act 1893, and that there had been a breach of the implied condition that the goods delivered should correspond with the description, and on the question of damages he held that the plaintiffs were entitled to recover damages, the measure of which was governed by s. 53, sub-s. 2, of the Act, viz., the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty; and applying that rule, he held the plaintiffs entitled to recover (1) the price paid by the plaintiffs for the acid; and (2) the value of the goods rendered useless by being mixed with the poisonous acid. But he considered that they were not entitled to recover anything for the injury to the goodwill of their business which arose, in his opinion, not from the defendant's act in selling the impure acid, but from the plaintiffs own act in selling the impure sugar to brewers for use in brewing beer.