

and improperly delivered to plaintiff, as C. and B.'s casks, certain other casks not belonging to C. and B., and which had contained turpentine; that plaintiff not knowing, or having reasonable means of knowing, that the empty casks delivered were not C. and B.'s, filled them with ketchup which was spoiled.

*Held* (affirming the judgment of Cave and Day, JJ.), on demurrer, that the statement of claim showed no duty on the part of the defendants which could give rise to a cause of action, and therefore they were not liable.

A quotation from the judgment of Brett, M.R., showing how he applies the principle of the last case to these circumstances, is given:—"In the statement of claim there is an allegation of negligence, and therefore the question is, whether there are sufficient circumstances disclosed to raise a duty on the part of defendants to use reasonable care towards the plaintiff in respect of the negligence charged. Now, I myself am prepared to say that, wherever the circumstances disclosed are such that, if the person charged with negligence thought of what he was about to do, or to omit to do, he must see that, unless he uses reasonable care, there must be at least a great probability of injury to the person charging negligence against him, either as to his person or property, then there is a duty shown to use reasonable care. The question, therefore, comes to this: Are the circumstances stated sufficient to show that, if the defendants had thought about the delivery of the casks, they must have at once seen that, unless they used reasonable care in that particular, there must, in all probability, be injury to the plaintiff's property? . . . The breach of duty of which the defendants are supposed to have been guilty is at the moment of the delivery of the casks to the plaintiff. Now, is it true to say then that if they had thought at all they would have thought this: 'If we deliver turpentine casks there must in all human probability be injury to property'; can anyone affirm that proposition? In order to do so you must affirm this—that if they had thought at all they were bound to think that the plaintiff would use the casks with-