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TORTS - NEGLIGENCE - LIABILITY OF MANUFACTURER TO REMOTE VENDEE

William H. Buchanan S.Ed.
University of Michigan Law School

TORTS — NEGLIGENCE — LIABILITY OF MANUFACTURER TO REMOTE VENDEE—Plaintiff purchased at a retail shop some perfume manufactured by defendant. Plaintiff suffered a second-degree burn when she applied the perfume

to her skin, and brought suit against the manufacturer. The lower court entered a judgment for the defendant after the jury had brought in a verdict for the plaintiff. *Held*, reversed, and lower court ordered to render its judgment in favor of plaintiff upon verdict returned by jury; the manufacturer was liable for negligence to the plaintiff even though there was no privity of contract between them. *Carter v. Yardley & Co., Limited*, (Mass. 1946) 64 N.E. (2d) 693.

The decision in the principal case, bringing Massachusetts into line with the ever-increasing number of jurisdictions following the rule laid down in *McPherson v. Buick Motor Car Co.*,[1] would appear to have the effect of extending a manufacturer's liability for negligence to remote third persons. The *McPherson* rule has been construed so liberally that there is practically no limit to what will be held to be an "imminently dangerous" [2] article in future litigation. Although the rule originally covered articles[3] which would be likely to cause serious injury if negligently manufactured, it has since been applied in cases involving such articles as coffee urns [4] and woolen underwear.[5] It is to be noted that the Massachusetts court, which had refused to adopt the *McPherson* rule for thirty years,[6] has changed its views and has applied the rule in a situation where individual allergy might be a most important factor in an alleged injury.[7] However, the tendency has been to whittle away the manufacturer's immunity to negligence actions by remote vendees, and it appears that the general rule that a manufacturer of an article is not liable for negligence in its manufacture to a third person with whom he has no contractual relations [8] may soon be an exception [9] to a rule that the manufacturer *is* liable to remote vendees for such negligence.

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[1] 217 N.Y. 382, 111 N.E. 1050 (1916) (where an article, if negligently manufactured, is likely to cause injury to remote vendees, the manufacturer is liable to a remote vendee injured as a result of the collapse of the defective article).

[2] That is, one which will be unreasonably dangerous if negligently made.

[3] In the McPherson case, ibid., the article was a defective automobile wheel.

[4] Hoenig v. Central Stamping Co., 247 App. Div. 895, 287 N.Y.S. 118 (1936).

[5] Grant v. Australian Knitting Mills, Inc., [1936] A.C. 85. In this case the defendant manufacturer testified that he had treated, by a certain chemical process, some 4,737,600 garments, and the complaint by the plaintiff was the only one he had received. See 105 A.L.R. 1502 (1936).

[6] ". . . the case nevertheless falls within the class of cases which hold that a manufacturer of an article is not liable for negligence in its manufacture to a third person with whom he has no contractual relation; . . . and is not within any exceptions to the general rule which is recognized in this Commonwealth." Christensen v. Bremer, 263 Mass. 129, 136, 160 N.E. 410 (1928). In that case the defendant built machinery for use in a gravel pit. The supporting posts of part of the machinery collapsed and the machinery fell and killed a person standing beneath it.

[7] In the principal case the plaintiff was careful to prepare for such an objection by having three witnesses apply the perfume to their skin and having them testify that they suffered injury as a result. See principal case at 694.

[8] 45 C. J., Negligence, § 326, p. 887.

[9] "The time has come for us to recognize that that asserted general rule no longer exists. In principle it was unsound. It tended to produce unjust results. . . . We now abandon it in this Commonwealth." Principal case at 700.