

NEW YORK COURT OF APPEALS

**MacPherson v. Buick Motor Co.**

111 N.E. 1050 (N.Y. 1916) · Decided March 14, 1916

---

OPINION

CARDOZO, J.

The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer. The retail dealer resold to the plaintiff. While the plaintiff was in the car, it suddenly collapsed. He was \*Page 385 thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments.

The wheel was not made by the defendant; it was bought from another manufacturer. There is evidence, however, that its defects could have been discovered by reasonable inspection, and that inspection was omitted. There is no claim that the defendant knew of the defect and willfully concealed it.

The case, in other words, is not brought within the rule of *Kuelling v. Lean Mfg. Co.* (183 N.Y. 78). The charge is one, not of fraud, but of negligence. The question to be determined is whether the defendant owed a duty of care and vigilance to any one but the immediate purchaser.

The foundations of this branch of the law, at least in this state, were laid in *Thomas v. Winchester* (6 N.Y. 397). A poison was falsely labeled. The sale was made to a druggist, who in turn sold to a customer. The customer recovered damages from the seller who affixed the label. "The defendant's negligence," it was said, "put human life in imminent danger."

A poison falsely labeled is likely to injure any one who gets it. Because the danger is to be foreseen, there is a duty to avoid the injury. Cases were cited by way of illustration in which manufacturers were not subject to any duty irrespective of contract.

The distinction was said to be that their conduct, though negligent, was not likely to result in injury to any one except the purchaser. We are not required to say whether the chance of injury was always as remote as the distinction assumes. Some of the illustrations might be rejected to-day. The principle of the distinction is for present purposes the important thing.

*Thomas v. Winchester* became quickly a landmark of the law. In the application of its principle there may at times have been uncertainty or even error. There has never in this state been doubt or disavowal of the principle itself.

The chief cases are well known, yet to recall \*Page 386 some of them will be helpful. *Loop v. Litchfield* (42 N.Y. 351) is the earliest. It was the case of a defect in a small balance wheel used on

a circular saw. The manufacturer pointed out the defect to the buyer, who wished a cheap article and was ready to assume the risk.

The risk can hardly have been an imminent one, for the wheel lasted five years before it broke. In the meanwhile the buyer had made a lease of the machinery. It was held that the manufacturer was not answerable to the lessee. *Loop v. Litchfield* was followed in *Losee v. Clute* (51 N.Y. 494), the case of the explosion of a steam boiler. That decision has been criticised (Thompson on Negligence, 233; Shearman Redfield on Negligence [6th ed.], § 117); but it must be confined to its special facts.

It was put upon the ground that the risk of injury was too remote. The buyer in that case had not only accepted the boiler, but had tested it. The manufacturer knew that his own test was not the final one. The finality of the test has a bearing on the measure of diligence owing to persons other than the purchaser (Beven, Negligence [3d ed.], pp. 50, 51, 54; Wharton, Negligence [2d ed.], § 134).

These early cases suggest a narrow construction of the rule. Later cases, however, evince a more liberal spirit. First in importance is *Devlin v. Smith* (89 N.Y. 470). The defendant, a contractor, built a scaffold for a painter.

The painter's servants were injured. The contractor was held liable. He knew that the scaffold, if improperly constructed, was a most dangerous trap. He knew that it was to be used by the workmen. He was building it for that very purpose. Building it for their use, he owed them a duty, irrespective of his contract with their master, to build it with care. From *Devlin v. Smith* we pass over intermediate cases and turn to the latest case in this court in which *Thomas v. Winchester* was followed.

That case is *Statler v. Ray Mfg. Co.* (195 N.Y. 478, 480). The defendant \*Page 387 manufactured a large coffee urn. It was installed in a restaurant. When heated, the urn exploded and injured the plaintiff. We held that the manufacturer was liable.

We said that the urn "was of such a character inherently that, when applied to the purposes for which it was designed, it was liable to become a source of great danger to many people if not carefully and properly constructed." It may be that *Devlin v. Smith* and *Statler v. Ray Mfg. Co.* have extended the rule of *Thomas v. Winchester*. If so, this court is committed to the extension.

The defendant argues that things imminently dangerous to life are poisons, explosives, deadly weapons — things whose normal function it is to injure or destroy. But whatever the rule in *Thomas v. Winchester* may once have been, it has no longer that restricted meaning. A scaffold (*Devlin v. Smith*, *supra*) is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed.

A large coffee urn (*Statler v. RayMfg. Co.*, *supra*) may have within itself, if negligently made, the potency of danger, yet no one thinks of it as an implement whose normal function is destruction. What is true of the coffee urn is equally true of bottles of aerated water (*Torgeson v. Schultz*, 192 N.Y. 156).

We have mentioned only cases in this court. But the rule has received a like extension in our courts of intermediate appeal. In *Burke v. Ireland* (26 App. Div. 487), in an opinion by CULLEN, J., it was applied to a builder who constructed a defective building; in *Kahner v. Otis Elevator Co.* (96 App. Div. 169) to the manufacturer of an elevator; in *Davies v. Pelham Hod Elevating Co.* (65 Hun, 573; affirmed in this court without opinion, 146 N.Y.

363) to a contractor who furnished a defective rope with knowledge of the purpose for which the rope was to be used. We are not required at this time either to approve or to disapprove the application of the rule that was made in these cases. It is enough that they help to characterize the trend of judicial thought. \*Page 388 *Devlin v. Smith* was decided in 1882.

A year later a very similar case came before the Court of Appeal in England (*Heaven v. Pender*, L.R. [11 Q.B.D.] 503). We find in the opinion of BRETT, M.R., afterwards Lord ESHER (p. 510), the same conception of a duty, irrespective of contract, imposed upon the manufacturer by the law itself: "Whenever one person supplies goods, or machinery, or the like, for the purpose of their being used by another person under such circumstances that every one of ordinary sense would, if he thought, recognize at once that unless he used ordinary care and skill with regard to the condition of the thing supplied or the mode of supplying it, there will be danger of injury to the person or property of him for whose use the thing is supplied, and who is to use it, a duty arises to use ordinary care and skill as to the condition or manner of supplying such thing."

He then points out that for a neglect of such ordinary care or skill whereby injury happens, the appropriate remedy is an action for negligence. The right to enforce this liability is not to be confined to the immediate buyer.

The right, he says, extends to the persons or class of persons for whose use the thing is supplied. It is enough that the goods "would in all probability be used at once \* \* \* before a reasonable opportunity for discovering any defect which might exist," and that the thing supplied is of such a nature "that a neglect of ordinary care or skill as to its condition or the manner of supplying it would probably cause danger to the person or property of the person for whose use it was supplied, and who was about to use it."

On the other hand, he would exclude a case "in which the goods are supplied under circumstances in which it would be a chance by whom they would be used or whether they would be used or not, or whether they would be used before there would probably be means of observing any defect," or where the goods are of such a nature that "a want of care or skill as to their condition or the

manner of supplying them would not probably \*Page 389 produce danger of injury to person or property."

What was said by Lord ESHER in that case did not command the full assent of his associates. His opinion has been criticised "as requiring every man to take affirmative precautions to protect his neighbors as well as to refrain from injuring them" (Bohlen, Affirmative Obligations in the Law of Torts, 44 Am. Law Reg. [N.S.] 341). It may not be an accurate exposition of the law of England.

Perhaps it may need some qualification even in our own state. Like most attempts at comprehensive definition, it may involve errors of inclusion and of exclusion. But its tests and standards, at least in their underlying principles, with whatever qualification may be called for as they are applied to varying conditions, are the tests and standards of our law.

We hold, then, that the principle of *Thomas v. Winchester* is not limited to poisons, explosives, and things of like nature, to things which in their normal operation are implements of destruction. If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected.

If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we are required to go for the decision of this case. There must be knowledge of a danger, not merely possible, but probable.

It is possible to use almost anything in a way that will make it dangerous if defective. That is not enough to charge the manufacturer with a duty independent of his contract. Whether a given thing is dangerous may be sometimes a question for the court and sometimes a question for the jury. There must also be knowledge that in the usual course of events the danger will be shared by others than the buyer.

Such knowledge may often be \*Page 390 inferred from the nature of the transaction. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered.

We are dealing now with the liability of the manufacturer of the finished product, who puts it on the market to be used without inspection by his customers. If he is negligent, where danger is to be foreseen, a liability will follow.

We are not required at this time to say that it is legitimate to go back of the manufacturer of the finished product and hold the manufacturers of the component parts. To make their negligence a cause of imminent danger, an independent cause must often intervene; the manufacturer of the finished product must also fail in his duty of inspection. It may be that in those circumstances the

negligence of the earlier members of the series is too remote to constitute, as to the ultimate user, an actionable wrong (Beven on Negligence [3d ed.], 50, 51, 54; Wharton on Negligence [2d ed.], § 134; Leeds v. N.Y.

Tel.Co., 178 N.Y. 118; Sweet v. Perkins, 196 N.Y. 482; Hayes v. Hyde Park, 153 Mass. 514, 516). We leave that question open. We shall have to deal with it when it arises. The difficulty which it suggests is not present in this case. There is here no break in the chain of cause and effect.

In such circumstances, the presence of a known danger, attendant upon a known use, makes vigilance a duty. We have put aside the notion that the duty to safeguard life and limb, when the consequences of negligence may be foreseen, grows out of contract and nothing else.

We have put the source of the obligation where it ought to be. We have put its source in the law. From this survey of the decisions, there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant's liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective.

This \*Page 391 automobile was designed to go fifty miles an hour. Unless its wheels were sound and strong, injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger. It knew also that the car would be used by persons other than the buyer. This was apparent from its size; there were seats for three persons.

It was apparent also from the fact that the buyer was a dealer in cars, who bought to resell. The maker of this car supplied it for the use of purchasers from the dealer just as plainly as the contractor in Devlin v. Smith supplied the scaffold for use by the servants of the owner.

The dealer was indeed the one person of whom it might be said with some approach to certainty that by him the car would not be used. Yet the defendant would have us say that he was the one person whom it was under a legal duty to protect.

The law does not lead us to so inconsequent a conclusion. Precedents drawn from the days of travel by stage coach do not fit the conditions of travel to-day. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be.

In reaching this conclusion, we do not ignore the decisions to the contrary in other jurisdictions. It was held in Cadillac M.C. Co. v. Johnson (221 Fed. Rep. 801) that an automobile is not within the rule of Thomas v. Winchester. There was, however, a vigorous dissent. Opposed to that decision is one of the Court of Appeals of Kentucky (Olds Motor Works v. Shaffer, 145 Ky. 616).

The earlier cases are summarized by Judge SANBORN in Huset v. J.I. Case Threshing Machine Co. (120 Fed. Rep. 865). Some of them, at first sight inconsistent with our conclusion, may be reconciled upon the ground that the negligence was too remote, and that another cause had

intervened. But even when they cannot be reconciled, the difference is rather in the application \*Page 392 of the principle than in the principle itself.

Judge SANBORN says, for example, that the contractor who builds a bridge, or the manufacturer who builds a car, cannot ordinarily foresee injury to other persons than the owner as the probable result (120 Fed. Rep. 865, at p. 867).

We take a different view. We think that injury to others is to be foreseen not merely as a possible, but as an almost inevitable result. (See the trenchant criticism in Bohlen, *supra*, at p. 351). Indeed, Judge SANBORN concedes that his view is not to be reconciled with our decision in *Devlin v. Smith* (*supra*).

The doctrine of that decision has now become the settled law of this state, and we have no desire to depart from it. In England the limits of the rule are still unsettled. *Winterbottom v. Wright* (10 M. W. 109) is often cited.

The defendant undertook to provide a mail coach to carry the mail bags. The coach broke down from latent defects in its construction. The defendant, however, was not the manufacturer. The court held that he was not liable for injuries to a passenger.

The case was decided on a demurrer to the declaration. Lord ESHER points out in *Heaven v. Pender* (*supra*, at p. 513) that the form of the declaration was subject to criticism. It did not fairly suggest the existence of a duty aside from the special contract which was the plaintiff's main reliance. (See the criticism of *Winterbottom v. Wright*, in Bohlen, *supra*, at pp. 281, 283).

At all events, in *Heaven v. Pender* (*supra*) the defendant, a dock owner, who put up a staging outside a ship, was held liable to the servants of the shipowner. In *Elliott v. Hall* (15 Q.B.D. 315) the defendant sent out a defective truck laden with goods which he had sold.

The buyer's servants unloaded it, and were injured because of the defects. It was held that the defendant was under a duty "not to be guilty of negligence with regard to the state and condition of the truck." There seems to have been a \*Page 393 return to the doctrine of *Winterbottom v. Wright* in *Earl v. Lubbock* (L.R.

[1905] 1 K.B. 253). In that case, however, as in the earlier one, the defendant was not the manufacturer. He had merely made a contract to keep the van in repair. A later case (*White v. Steadman*, L.R. [1913], 3 K.B. 340, 348) emphasizes that element. A livery stable keeper who sent out a vicious horse was held liable not merely to his customer but also to another occupant of the carriage, and *Thomas v. Winchester* was cited and followed (*White v. Steadman*, *supra*, at pp. 348, 349).

It was again cited and followed in *Dominion Natural Gas Co. v. Collins* (L.R. [1909] A.C. 640, 646). From these cases a consistent principle is with difficulty extracted. The English courts,

however, agree with ours in holding that one who invites another to make use of an appliance is bound to the exercise of reasonable care (*Caledonian Ry. Co. v. Mulholland*, L.R.

[1898] A.C. 216, 227; *Indermaur v. Dames*, L.R. [1 C.P.] 274). That at bottom is the underlying principle of *Devlin v. Smith*. The contractor who builds the scaffold invites the owner's workmen to use it. The manufacturer who sells the automobile to the retail dealer invites the dealer's customers to use it.

The invitation is addressed in the one case to determinate persons and in the other to an indeterminate class, but in each case it is equally plain, and in each its consequences must be the same. There is nothing anomalous in a rule which imposes upon A, who has contracted with B, a duty to C and D and others according as he knows or does not know that the subject-matter of the contract is intended for their use.

We may find an analogy in the law which measures the liability of landlords. If A leases to B a tumble-down house he is not liable, in the absence of fraud, to B's guests who enter it and are injured. This is because B is then under the duty to repair it, the lessor has the right to suppose that he will fulfill that duty, and, if he \*Page 394 omits to do so, his guests must look to him (*Bohlen*, supra, at p. 276).

But if A leases a building to be used by the lessee at once as a place of public entertainment, the rule is different. There injury to persons other than the lessee is to be foreseen, and foresight of the consequences involves the creation of a duty (*Junkermann v. Tilyou R. Co.*, 213 N.Y. 404, and cases there cited).

In this view of the defendant's liability there is nothing inconsistent with the theory of liability on which the case was tried. It is true that the court told the jury that "an automobile is not an inherently dangerous vehicle."

The meaning, however, is made plain by the context. The meaning is that danger is not to be expected when the vehicle is well constructed. The court left it to the jury to say whether the defendant ought to have foreseen that the car, if negligently constructed, would become "imminently dangerous." Subtle distinctions are drawn by the defendant between things inherently dangerous and things imminently dangerous, but the case does not turn upon these verbal niceties.

If danger was to be expected as reasonably certain, there was a duty of vigilance, and this whether you call the danger inherent or imminent. In varying forms that thought was put before the jury. We do not say that the court would not have been justified in ruling as a matter of law that the car was a dangerous thing. If there was any error, it was none of which the defendant can complain.

We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of

automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests (Richmond Danville R.R.

Co. v. Elliott, 149 U.S. 266, 272). Under the charge of the trial judge nothing more was \*Page 395 required of it. The obligation to inspect must vary with the nature of the thing to be inspected. The more probable the danger, the greater the need of caution. There is little analogy between this case and Carlson v. Phoenix Bridge Co. (132 N.Y. 273), where the defendant bought a tool for a servant's use.

The making of tools was not the business in which the master was engaged. Reliance on the skill of the manufacturer was proper and almost inevitable. But that is not the defendant's situation. Both by its relation to the work and by the nature of its business, it is charged with a stricter duty. Other rulings complained of have been considered, but no error has been found in them.

The judgment should be affirmed with costs.