

Torts: Negligence: Manufacturer's Liability

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Over Persons and Property, § 205 (1928). The effect is to make the exclusive nature of the right conditional. It is time that, in the United States, the public as a whole be given an *immediate right* to share in the benefits to be derived from the advance of science. To compel them to await the expiration of the term of the grant or to subject themselves to a course of litigation in which they face the risk that courts will adhere to the strict letter of the law and enjoin the use rather than decide on the basis of the public interest (as the court did in the instant case) is plainly unsocial.

GERRIT D. FOSTER.

TORTS—NEGLIGENCE—MANUFACTURER'S LIABILITY.—The defendant manufactured and sold a ladder to plaintiff's employer. A defective rung broke, causing the plaintiff to fall thirty feet. The defect in the rung was not ascertainable by ordinary inspection. The defendant made some tests of the wood and of the finished ladders. Experts testified that the defendant could have made tests which might have led more readily to a discovery of the defect in the ladder. The defendant's witnesses showed that no such tests were applied in the ordinary manufacturing plant like that of the defendant. The trial court permitted the jury to find that the defendant in the exercise of due care, should have applied the tests suggested by the experts. A judgment was entered on a verdict for the plaintiff. *Held*, judgment affirmed, *Kalash v. Los Angeles Ladder Co.*, (Cal. 1933) 28 P. (2d) 29.

The instant case is in conformity with the trend of modern decisions extending the manufacturer's responsibility to others than the original purchaser. See *MacPherson v. Buick Motor Car Co.*, 217 N.Y. 382, 111 N.E. 1050 (1916). It is frequently said that the general rule is that a manufacturer is not responsible to persons other than the immediate purchasers, because there is no contractual relationship between them. *Kerwin v. Chippewa Shoe Mfg. Co.*, 163 Wis. 428, 157 N.W. 1101 (1916), *Beznor v. Howell*, 203 Wis. 1, 233 N.W. 758 (1932). But the liability is held to extend to others than immediate purchasers when the defect is such as to render the article itself imminently dangerous, and serious injury to any person using it is a natural and probable consequence. *Bright v. The Barnett and Record Co.*, 88 Wis. 299, 60 N.W. 418 (1894). Although this holding was ignored in *Zieman v. Kieckhefer Elev. Mfg. Co.*, 90 Wis. 97, 63 N.W. 1021 (1895), and in *Miller v. Mead-Morrison Co.*, 166 Wis. 536, 166 N.W. 315 (1918). Later Wisconsin cases have extended the responsibility by holding a manufacturer liable for injuries caused by negligent construction of articles which could not be regarded as *inherently* dangerous even when negligently constructed. *Coakley v. Prentiss Wabers Stove Co.*, 196 Wis. 196, 218 N.W. 855 (1928).

The more recent Wisconsin cases demand a higher degree of care than the older cases. Recklessness and bad faith, or knowledge that the defective construction would result in the particular injury, was once necessary to recover where there was no contractual relation. *Zieman v. Kieckhefer Elev. Mfg. Co.*, supra. The defendants were held to the standard of care required of other manufacturers in similar businesses and circumstances. *Guinard v. Knapp-Stout & Co.*, 95 Wis. 482, 70 N.W. 671 (1897). Now the degree of care is much higher. In *Marsh Wood Products Co. v. Babcock & Wilcox Co.*, 207 Wis. 209, 240 N.W. 392 (1932), the jury found the defendant negligent in not inspecting steel and steel tubes by microscopic examinations. No other manufacturer required such an examination of steel which was to be used in the manufacture of boiler tubes. In cases like the instant case it is often difficult for the plaintiff to secure evi-

dence of the negligence of the defendant. This difficulty makes the court depend upon salient facts in order to form an opinion. In *Galst v. American Ladder Co.*, 165 Wis. 307, 311, 162 N.W. 319 (1917), the plaintiff was injured by the collapse of a ladder and sued the manufacturer. The defect in the ladder was a loose staple. The court denied recovery on the ground that there was no showing that the ladder was defective when shipped by the defendant, but said: "The situation here is quite different than it would be if the defect were a knot, cross-grained, or dozy material, or other defects of a similar kind." A large knot in a plank used in a scaffold seemed to be enough to find negligence on defendant's part in *Bright v. The Barnett and Record Co.*, (supra). Because of the difficulty plaintiffs experience in proving manufacturers negligent, the evidence being largely in the manufacturer's possession, the doctrine of *res ipsa loquitur* may well be applied.

HUGH F. GWIN.

BOOK REVIEWS

Cases on Public Utility Regulations, By Francis X. Welch, Legal Editor, Public Utilities Reports, Inc., 1932. One Volume. Public Utilities Reports, Inc., Washington, D. C.

A practical treatment of the ever-growing field of public utility law is found in this excellent collection of cases by Mr. Welch. In the past too much stress has been laid upon the academic aspect of the public calling field. The older books on the subject fail to treat it with the problem viewpoint found in this new book. The student should be made aware of the importance in this field of law of the rulings and opinions of commissioners as well as of the adjudicated cases. Welch's book ably takes care of this problem by citing many commission cases.

Another departure from the older casebook is found in the concentration upon cases dealing with electric, gas, water, motor transportation, and telephone utilities. This alone indicates the editor's appreciation of the economic developments of recent years.

The casebook is not over-sized. There is a welcome absence of over-numerous annotations and an equally welcome addition of short, well-stated, pithy notes at proper places in the book. A carefully prepared subject index should make the book of use to the attorney in practice.

The rapid changes in this field of law are followed by means of a cumulative supplement which may be placed in a pocket-flap on the inside of the back cover. For teachers of the subject, the Teacher's Manual, which is furnished, is of great aid.

In short, Mr. Welch has made a valuable contribution to the field of public utility law.

J. WALTER MCKENNA.