Negligence: Liability of Manufacturer, Wholesalers

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to her husband’s bankruptcy. “To compel the wife of a bankrupt under examination as a witness in bankruptcy proceeding to disclose confidential communications made to her by her husband in regard to his property or income, would be contrary to the fourth amendment to the constitution of the United States prohibiting unreasonable search and seizure.”

GEORGE J. LAIKIN.

Negligence: Liability of Manufacturers, Wholesalers

A seven and one-half year old plaintiff was given a Fourth of July “sparkler” by one Howell, who, however, warned her that the “sparkler” wire would become red hot. Howell had purchased the “sparklers” from Weimann Mask & Novelty Co., wholesalers, who had secured them from Rutter & Lechler, manufacturers; all were joined as defendants in an action for damages resulting from the “sparkler” wire coming in contact with plaintiff’s dress, igniting it, and injuring the plaintiff. Conceded that the sparks from such fireworks are harmless, but that the wire become red hot; it is not claimed that the particular “sparkler” was defective or different from ordinary product. There was a nonsuit in favor of wholesaler and manufacturer; upon trial Howell was found by the jury to have exercised ordinary care under the circumstances. Judgment for the defendant. HELD: In the absence of negligent preparation for market or of defective construction or of concealed defects, such “sparkler” is not an inherently dangerous instrument. Judgment affirmed. Beznor v. Howell et al., 233 N.W. 758. Dec. 9, 1930.

In the decision two cases were cited in which “sparklers” were directly considered:

Schmidt v. Capital Candy Co., 139 Minn. 378, 166 N.W. 502 * * *
A seven old plaintiff was burned by “Clark Electric Sparkler Sucker.” The Minnesota court held that although “The law requires of him who deals in articles inherently dangerous in the use for which they are intended to refrain from placing the same in the hands of a child of tender years,” nonetheless, “we do not think the article sold in the instant case so inherently dangerous as to render the seller liable, without proof of knowledge on his part of some ocncealed danger, not apparent from mere inspection.”

Henry v. Crook, 202 App. Div. 19, 195 N.Y.S. 642 * * * The jury found that the defendant was negligent in offering the “sparkler for sale for use by children. In sustaining this verdict the court quoted the legal principle, “ * * * Such manufacturer is liable to one with whom it has no contractual relation, if such article was put out in a defective condition, which defect ought to have been discovered or
remedied by the use of ordinary care." The court held, "Duty rests upon the manufacturer of such article (one with danger of injury) intended for use of children to give a reasonable warning of these dangers * * * which a person of ordinary sense and understanding would apprehend as likely to follow the use of the article for fireworks." The court felt that the jury was justified in finding that the legend on the package reading "Do not touch the glowing wire," was not sufficient warning to children or parents.

(Wisconsin decision remarks that since "no lack of care and skill" in preparing sparklers for market or no defect was shown and since the court held that the "sparklers" are "not more dangerous in themselves than small firecrackers or an ordinary match," the general principle was not correctly applied by the New York court.

In the Wisconsin case the circuit court judge's instruction that a "'Sparkler' of the type introduced in evidence is not an inherently dangerous instrument" was, the plaintiff alleged, prejudicial because a 'sparkler' is inherently dangerous as it affects children of tender years and because it was the duty of the manufacturer and wholesaler to give the necessary instructions as to their use and warning as to their inherent dangers.

The court held that it is the general rule ("well recognized and needs no citation of authorities") that manufacturers are not liable for damages to persons with whom they have no contractual relations for personal injuries sustained by such persons because of the negligent manufacture of their product. Under this rule plaintiff could have no claim against manufacturer or wholesaler unless the exceptions to the general rule are such as, under the circumstances in this case, permit a recovery.

The exception to this rule is well stated by Justice Owen in Flies v. Fox Bros. Buick Co., 196 Wis. 196, 218 N.W. 855, "To this an exception has long been recognized with reference to products which are inherently and normally dangerous, such as poisons, contaminated foods, weapons, explosives, and the like—products which are normally destructive in their nature." Similar rulings in Coakley v. Prentiss-Wabers Stove Co., 182 Wis. 94, 195 N.W. 388, and Huset v. J. I. Case Threshing Machine Co., 120 F. 865.

Also, in Hasbrouck v. Armour & Co., 139 Wis. 357 N.W. 157, the court outlines three exceptions by which a manufacturer is held liable in tort, 1. Where he puts out an article not inherently dangerous which invites a certain use, but which he knows to be imminently dangerous to life and limb by reason of negligent construction, 2. where he markets articles inherently dangerous, such as explosives, without effectual notice to others of their dangerous qualities, 3. manufacturer
making and selling an article intended to preserve or affect human life who is negligent in the preparing, compounding, or labeling of such article.

In the case under discussion the court held that the "exceptions are not sufficiently broad to permit holding that a manufacturer of "sparklers" can be held liable for injuries resulting from their use, in the absence of a showing of defective manufacture or construction or of a hidden or concealed defect therein."

ROBERT W. HANSEN.