MACPHERSON V. BUICK MOTOR CO.

217 NY. 382, 111 NE. 1060 (1916)
(Court of Appeals of New York)

CARDOZO, J. The defendant is a manufacturer of automobiles. It sold an automobile to a retail dealer. The retailer dealer resold to the plaintiff. While the plaintiff was in the car, it suddenly collapsed. He was 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 question to be determined is whether the defendant owed a duty of care and vigilance to anyone but the immediate purchaser.

The foundations of this branch of the law, at least in this state, were laid in Thomas v Winchester. 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 anyone who gets it. Because the danger is to be foreseen, there is a duty to avoid 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 anyone 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 today. 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. Loop v. Litchficld 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. . . Losee v. Clute, the case of the explosion of a steam boiler, 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....

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. 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.

. . . [Tlhe latest case in this court in which Thomas 'v Winchester was followed . . . is Statler v Ray Mfg. Co. The defendant 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 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 . . . is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed, A large coffee urn . . . 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. . . . We have mentioned only cases in this court. But the rule has received a like extension in our courts of intermediate appeal.

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 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. . . 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 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 not required at this time to say that it is legitimate to go back to the manufacturer of the finished product and hold the manufacturers of the component parts [liable]. . . . We leave that question open. We shall have to deal with it when it arises. . . .

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 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 today. 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. . . . 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 of the principle than in the principle itself. ... The English courts. . . agree with ours in holding that one who invites another to make use of an appliance is bound to the exercise of reasonable care.

. . . 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. . . .

. . . We may find an analogy in the law which measures the liability of landlords. If A leases to B a tumbledown house he [A] 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 duty to repair it. . . . 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 foreseen, and the foresight of the consequences involves the creation of a duty (Junkennann v. Tilyou R. Co. 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. . . . The judgment should be affirmed with costs.