The Pharmacist and the Law

LIABILITY FOR BOTTLE EXPLOSION. PRIVITY OF CONTRACT.

In an action for injuries caused by the bursting of a soda-pop bottle, the defendants were engaged in manufacturing and selling soda-pop, and the plaintiff and her husband sold soft drinks. They bought from the defendants a case of their goods, and, after it was delivered, the plaintiff lifted one of the bottles from the case and was carrying it to the ice box when the bottle exploded, so injuring her eye that it had to be removed. The trial court directed a verdict for the defendants. On appeal it was held that there was sufficient privity between the plaintiff and the defendants for her to maintain an action for her injuries, though she was not a partner with her husband, and was merely acting under his direction. If, it was said, the vendor is to be held liable at all for his negligence in cases of this character, there is no reason for limiting that liability in favor of the vendee individually, who may never personally be exposed to the danger resulting from this negligence.

Actionable negligence, has been defined as a breach of duty resulting in injury to some person to whom that duty is legally owing, and the duty here was not merely to so charge a bottle as that its contents might not be wasted, but also to exercise that care which an ordinarily prudent person would use, to avoid the infliction of an injury which might reasonably be expected to follow the failure to use this care; and that duty was owing, not only to the vendee, but also to his employes, who performed the service which the parties must have contemplated as necessary to be performed when the sale was made.

The court cited the case of O'Neill v. James, 138 Mich. 367, 101, N. W. 828, 68 L. R. A. 342. 110 Am. St. Rep. 321, 5 Ann. Cas. 177, as one where the facts are strikingly similar to the facts in the present case, except that the party injured by the explosion of the bottle was an employe of the owner of the business, and there was no proof of knowledge upon the part of the defendant that the bottle which exploded had been improperly charged with the gas. In that case the plaintiff has recovered a substantial judgment, which was reversed on appeal because of the insufficiency of the evidence to sustain the allegations of the complaint. It was held that a manufacturer of champagne cider, which is ordinarily not dangerous, is a common article of commerce, and is manufactured by him by proper machinery, and not excessively charged, is not liable for injuries to an employe of his customer through the explosion of a bottle, unless he knows that for some reason such bottle is peculiarly liable to explode. The court distinguished that case from the present, because there was proof in the latter, tending to show that the bottle was improperly charged, and that the defendants were aware of that fact, or were at least in possession of such knowledge and information on that subject as would impute knowledge to them of that fact. The ordinary law of principal and agent would charge the defendants with any knowledge possessed by their employes who were actually engaged in charging the bottles.

The evidence presented no issue for submission to the jury upon the question of the use of defective bottles, as the proof showed the bottles were purchased from a manufacturer whose bottles were of standard grade and quality, and the only theory upon which a recovery could be sustained, was that the defendants were guilty of negligence in charging the bottle, and that this negligence was the proximate cause of the injury. On the ground that the latter issue should have been submitted to the jury, the judgment for the defendants was reversed.

Colyar v. Little Rock Bottling Works,
Arkansas Supreme Court, 100 S. W. 810.

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IMPLIED WARRANTY OF FITNESS FOR PURPOSE—KNOWLEDGE OF BUYER.

In an action for the purchase-price of a secret chemical preparation known as "dinamine" for killing grass and weeds, the defense was an implied warranty that one application was sufficient, whereas two applications were required. It was held that where a manufacturer sells an article for a particular purpose, so that the buyer necessarily trusts to his judgment, the law implies a promise that the article is reasonable, fit and proper for such purpose; but such implied

promise is conditioned and dependent upon the use of the article in the manner, quantity, and under the conditions prescribed by the manufacturer, and, when not so used, then such promise is not implied. It appeared that the defendant railway company's general manager had been informed before the contract was made that the seller claimed that two applications were necessary. It was held that there was no implied warranty that one application would suffice, and the fact that the defendant's other representatives, those to whose judgment and discretion the purchase of the "dinamine" was committed, did not have this information imparted to them by the general manager did not alter the situation. Evidence, therefore, that such representatives were not so informed, and would not have made the purchase had they known that two applications were necessary, was not material. Judgment for the plaintiff was affirmed.

Missouri, K. & T. Ry. Co. of Texas v. Interstate Chemical Co., Texas Civil Appeals, 169 S. W. 1120.

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