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Commercial Law--Implied Warranties--Passage of Title

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the court reached its verdict because the instrumentality was a bottle? If so, it is another application of the court’s “integrity of the bottle” doctrine, thus perpetuating a manifestly unjust line of authority.

Wayne T Bunch

COMMERCIAL LAW—IMPLIED WARRANTIES—PASSAGE OF TITLE.—Defendant dairy delivered bottles of milk to the home of plaintiff who received severe injuries when one of the bottles collapsed in his hand. Plaintiff alleged: (1) that the defendant dairy was negligent in its manufacturing processes; and (2) that an implied warranty of fitness or merchantability extended to the bottle, that this warranty was breached, and that the defendant was liable for special damages. This comment discusses the holding and reasoning of the court on the warranty issue; the negligence issue, i.e., res ipsa loquitur, is discussed supra p. 771.

Evidence at the trial tended to show that the object for sale between plaintiff and defendant was milk and that the bottle was merely lent to plaintiff as an incidental service in connection with the sale. The trial court directed a verdict for the defendant. Held: Affirmed. Since there is no sale of the bottle no warranty of fitness or merchantability extends to it. Rowe v. Oscar Ewing Distributing Co., 357 S.W. 2d 882 (Ky. 1962).

As plaintiff's injuries occurred in 1959, this case is governed by the Uniform Sales Act,1 which was replaced in 1960 by the Uniform Commercial Code.2 Plaintiff relied on section 15 of the Sales Act which provides in part:

(1) Where the buyers, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment there is an implied warranty that the goods shall be reasonably fit for such purpose.

(2) Where the goods are bought by description from a seller who deals in goods of that description there is an implied warranty that the goods shall be of merchantable quality.3

It seems that if plaintiff had received injuries from impurities in the milk itself, either of the above subsections, taken with the special damages section of the Sales Act,4 would have given plaintiff a basis

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2 Ky. Rev. Stat. ch. 355 (1960) [Hereinafter cited as KRS] [The Uniform Commercial Code is hereinafter referred to as Code in the text].
recent cases:

for taking the case to the jury.\(^5\) In the principal case, however, the 1 (2) of the Sales Act which reads:

A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.\(^6\)

The court felt that in a transaction where the bottles are returnable for cash, as in the principal case, the above requirements for a sale are not satisfied. Since the consumer may always recover the sum he gave to the dealer by returning the bottle, it is illogical to think of the original transaction as including the sale of the bottle. The recoverable sum is considered to be a deposit which cannot reasonably be called consideration. The court was correct in saying there was no sale of the bottle within the meaning of the Uniform Sales Act section 1 (2). Significantly, the Uniform Commercial Code definition of "sale" is substantially the same as that found in the Sales Act.\(^7\)

Was the court correct in assuming that the sections on implied warranties were inapplicable after it had determined that title to the bottle did not pass? There was undeniably a sale by description of the milk since the defendant selected the particular goods and delivered them to the home of the plaintiff. By the terms of the Sales Act an implied warranty of merchantability extends to goods sold by description.\(^8\) The term "merchantability" is not defined in the Sales Act, but is defined in the Uniform Commercial Code.\(^9\) One of the elements of merchantability, as stated in the Code, is that the goods shall be adequately contained, packaged, and labeled as the agreement may require. This definition of merchantability is intended to clarify rather than change existing law.\(^10\) At the time the principal case was decided the Code was available to the court as secondary authority and the Code definitely raises the possibility that the warranty of merchantability may extend beyond the actual article for sale.

*Hadley v. Hillcrest Dairy,\(^11\) a 1961 Massachusetts case with facts similar to those in the principal case, was decided under identical circumstances. The Code had been passed in Massachusetts, but the case was governed by the Sales Act. Also, the plaintiff received injuries from a collapsing milk bottle delivered by the defendant

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\(^7\) KRS 355.2-106 (1960) provides that "a sale consists in the passing of title from the seller to the buyer for a price."

\(^8\) Ky. Acts ch. 148, at 487 (1928).

\(^9\) KRS 355.2-314 (1960).

\(^10\) Uniform Commercial Code §2-314, comment 6 (1958); Hawkland, Sales and Bulk Sales 42 (1958); Vold, Law of Sales 437 (2d ed. 1959).

dairy. The court, in overruling a directed verdict for the defendant, held that it was immaterial whether title to the bottle passed to the buyer. The court reasoned: there was a contract for the sale of goods—milk; it was necessary that the goods be delivered in a container; therefore there was a contract for the sale of goods in a container; and, since the container was necessary for the completion of the contract, the warranty of fitness or merchantability extends to the container. This reasoning seems to capture the intent of warranty law that a seller should be responsible for his product.

The result in the principal case could lead to decisions which would be arbitrary and unfair when related to the circumstances of the contract for sale. A person buying beer, for example, has a choice of buying in returnable or non-returnable bottles. Applying the principal case, an implied warranty of merchantability would extend to the non-returnable bottles but not to the returnable bottles. The returnable bottles may explode or collapse with impunity without subjecting the seller to liability—at least on warranty grounds. Such a distinction seems totally unrelated to the everyday business of buying and selling which warranty law is intended to govern. The Hadley case reached the commercially sound result, i.e., a buyer, when a product in a container is placed in his hands by a seller, may assume the whole to be sound without regard to the title of the container.

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