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Breach of Warranty—Recovery Allowed by Third Party in the Absence of Privity—Scope of Liability Extended by Uniform Commercial Code.—B. F. Goodrich Co. v. Hammond.

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to this section stating that § 9-310 meant to provide liens for work done to enhance or preserve the value of collateral. The act of leasing the premises could hardly be thought to bear this relation to the value of the goods situated thereon.

In so construing § 9-310 the Court may have been influenced by the revised text of this section as it appears in the enacted laws of the four other states having adopted the UCC at this time.[7] Under this, it is specifically provided that the goods for which services and materials are furnished must be in the *possession* of such person before his lien interest will take priority over a Code security interest. It is quite clear, therefore, that the service rendered by the landlord in leasing the premises could not be covered by this section in any state having enacted the revised text. The Court properly gave to the language of § 9-310 its natural construction and refused to give to it a strained meaning.

J. LAURENCE MCCARTY

Breach of Warranty—Recovery Allowed by Third Party in the Absence of Privity—Scope of Liability Extended by Uniform Commercial Code. —***B. F. Goodrich Co. v. Hammond.***[1]—Decedent husband and wife were killed in their automobile as a result of a "blow-out" of a "blow-out proof" tire purchased by the husband from defendant manufacturer's retail outlet. Suit for wrongful death[2] predicated upon claims of breach of express warranty, implied warranty, and negligence in manufacture was brought by the administratrix of both decedents in the U. S. District Court for the District of Kansas. Judgment was rendered for the plaintiff on the basis of breach of an express warranty. Affirmed by the U. S. Court of Appeals for the Tenth Circuit. HELD: Although breach of express warranty was a proper ground of decision on the claim of the decedent purchaser, that of the wife should have been based upon breach of implied warranty of fitness, which arises in Kansas by operation of law despite the lack of privity of contract.

The decision is not only in accord with recent Kansas cases,[3] but also with those of other common law states which have not enacted the USA.[4] The theory of the case is that when a manufacturer advertises and intro-

[7] § 9-310 of the UCC as enacted in Massachusetts, Kentucky, Connecticut and New Hampshire states: When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods *in the possession of such person* given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

[1] 269 F.2d 501 (10th Cir. 1959).

[2] Kan. Gen. Stat. Ann. § 60-3203.

[3] Graham v. Bottenfield's, Inc., 176 Kan. 68, 269 P.2d 413 (1954); Nichols v. Nold, 174 Kan. 613, 258 P.2d 317 (1953); Swengel v. F.&E. Wholesale Grocery Co., 147 Kan. 555, 77 P.2d 930 (1938).

[4] Worley v. Procter & Gamble Mfg. Co., 241 Mo. App. 1114, 253 S.W.2d 532 (1952), and cases cited therein; Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409 (1932).

duces into the channels of trade goods which will be dangerous to life if defective, his representations induce ultimate consumers to use them and as a matter of public policy liability for breach of implied warranty arises by operation of law rather than by contractual undertakings.[5] The common law courts recognize the general principle that privity is normally essential to an action based upon breach of warranty; however, exceptions have necessarily been carved from the general rule when food was the cause of injury.[6] The instant decision is merely an extension of the doctrine applied in food cases to those involving defective products dangerous to life or property.[7]

The USA codifies the common law warranties which arise from the sale of goods,[8] but the Act is silent concerning privity. Under the Act the orthodox majority view denies recovery where third persons who lack privity seek relief against a vendor or manufacturer;[9] however, in the majority of states privity is not required where the sale of food is involved.[10] The privity problem is often circumvented by statute or by the requirement that the action sound in tort rather than contract.[11] When the defective article is dangerous to life or property, it appears to be the modern trend to impose liability in the absence of privity.[12]

In contrast with the Sales Act, the UCC provides that: "A seller's warranty, whether express or implied, extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty."[13] The Code draftsmen state that this section was not intended to enlarge or restrict developing case-law with respect to consumers other than members of the household or guests.[14]

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5 Worley v. Procter & Gamble Mfg. Co., supra note 4.

6 Swengel v. F.&E. Wholesale Grocery Co., supra note 3.

7 In Graham v. Bottenfield's, Inc., supra note 3, at 417 the court said that consistency requires an extension of the food doctrine to cases involving hair dyes. The court cited with approval the Nichols Case, supra note 3, wherein liability was imposed upon a manufacturer for injuries sustained due to cuts from an explosive soda bottle, although privity was lacking.

8 USA §§ 11-16.

9 In Lombardi v. Calif. Packing Sales Co., 83 R.I. 51, 112 A.2d 701 (1955), the court denied relief where food was involved on the grounds that a mere consumer is not a "buyer" or "seller" within the provisions of the Sales Act. See also Kennedy v. Brockleman Bros., Inc., 334 Mass. 225, 134 N.E.2d 747 (1956). In Duart v. Axton Cross Co., 19 Conn. Supp. 188, 110 A.2d 647 (C.P. 1954), the plaintiff dishwasher at a college was denied recovery for lack of privity, since her failure to sleep at said college prevented her from becoming a member of the household within the purview of a statute obviously enacted to supplement the USA.

10 Patargias v. Coca-Cola Bottling Co. of Chicago, Inc., 332 Ill. App. 117, 74 N.E.2d 162 (1st Dist. 1947); Klein v. Duchess Sandwich Co., Ltd., 14 Cal. 2d 272, 93 P.2d 799 (1939).

11 Carter v. Yardley & Co., 319 Mass. 92, 64 N.E.2d 693 (1946); MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

12 Rogers v. Toni Home Permanent Co., 167 Ohio St. 244, 147 N.E.2d 612 (1958); see also cases cited, supra note 4.

13 UCC § 2-318.

14 Id. at comment 3.

On the facts of the principal case, relief would have been afforded in "enlightened" Sales Act states and in UCC states. In this area there appears to be a common thread or jurisprudential theme running through the modern decisions, whether under the common law, USA, or UCC. Many reasons such as public policy, public interest, difficulty of proving negligence, etc., are given to sustain liability for breach of warranty in the absence of privity, whereas, in reality, "fairness" seems to be the underlying conception. Ultimate consumers are entitled to maximum protection from defective products, and the party usually best able to absorb the risk of loss and insurance coverage is the manufacturer or producer through cost diversification. In order to obtain equitable results many courts are forced to adopt fictions such as that "warranties run with the goods" or that "consumers are third party beneficiaries." Perhaps such rationalizations are necessary in jurisdictions which impose liability upon a manufacturer only in a tort action, since allegations of negligence are difficult to prove even by invoking res ipsa loquitur. Regardless of the reasons which a particular court uses to establish liability, it is submitted that in the interests of fairness and necessity, a wider class of persons than purchasers should be afforded protection from defective products. The Uniform Commercial Code has made a positive step in the right direction.

BRUCE N. SACHAR

Bankruptcy—Summary Jurisdiction—Rights of Transferees—*Kohn v. Myers & Teleprompter Corp.*[1]—Subsequent to the filing of a final amended petition, but prior to the final bankruptcy adjudication, a competitor and his attorney purchased from the bankrupt certain of his accounts receivable. Thereafter the plaintiff, the trustee in bankruptcy, sought to set aside the transfers under § 70d(1) and (5) of the Bankruptcy Act.[2] The referee in bankruptcy having decided that the bankruptcy court had summary jurisdiction of the controversy, issued an order requiring the defendants to turn over all monies collected from the accounts receivable and to reassign to the trustee the uncollected accounts. Upon the defendants' petition for review, the district court affirmed the referee's order both as to summary jurisdiction and the propriety of the turnover order.[3]

On appeal the United States Court of Appeals for the Sixth Circuit held that all the assets in the actual or constructive ownership of the bankrupt at the filing of the initial petition are subject to summary jurisdiction.[4] Also the defendants did not come under the statutory exception which permits one having a reasonable belief that the petition is not well founded to deal with the bankrupt.

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1 266 F.2d 353 (2d Cir. 1959).

2 Bankruptcy Act § 70d, 52 Stat. 879 as amended, 11 U.S.C. § 110d (1958).

3 In The Matter of Autocue Sales and Distributing Corp., 162 F. Supp. 17 (S.D.N.Y. 1958).

4 The court summarily dismissed this point on page 355 of the opinion.