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# Discussion of Recent Decisions

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## DISCUSSION OF RECENT DECISIONS

RECOGNITION OF MEXICAN AND OTHER FOREIGN DIVORCES.—Observing the increasing number of Mexican divorces, one may well question the security of the position of those who have relied upon them. The fascination in these divorces lies in the fact that they are so very simple to obtain and are so very seldom attacked in collateral proceedings that it is worth while for the mate-weary spouse to take a chance. All in all the value or effect of these divorces is dubious, in spite of the assurances of Mexican divorce lawyers who mail literature to their American colleagues, assuring them that the Mexican mail-order-power-of-attorney divorce is good and valid in the United States by and because of the comity existing between the two nations.

The precise question arose in the case of *Reik* v. *Reik*.[1] The defendant had been a resident of Atlantic City, New Jersey, for a number of years. He had voted there and held a position as executive secretary of the New Jersey Medical Society. During his mid-winter vacation, without giving up his position with the society and without any interruption in his compensation therefrom, he went to Mexico for a rest and incidentally to determine whether he could comply with the Mexican divorce requirements.

1 109 N. J. Eq. 615, 158 Atl. 519 (1932).

He was admitted to Mexico on a tourists' passport, remaining about seven days, during which time he procured his divorce. Thereafter he returned to Atlantic City, his former place of residence, remarried and never went back to Mexico. Some three years prior to his divorce, his first wife had sued for and obtained an order for separate maintenance. To a petition by the first wife (filed after the Mexican divorce) to show cause why the allowance to her should not be increased, the husband answered setting up the Mexican divorce, the validity of which became the issue.

It is well settled that as between the states of the Union, there is a prima facie presumption that any decree rendered by the courts of any other state is valid in all respects. This presumption is based on the full faith and credit clause of the Constitution. As between friendly nations the same presumption is recognized, but here the presumption is sanctioned because of the comity between the nations. In spite of this presumption, however, the decrees of sister states in the United States are always open to attack on the ground of lack of jurisdiction, and the same is true of foreign judgments.

For a court to render a valid and binding decree it must have jurisdiction over the subject matter and the persons. Jurisdiction of the person may be obtained by the proper form of service, or the parties may appear and confer jurisdiction of their persons.

It might be well in passing to note that in cases of Mexican divorce obtained by a citizen of the United States on constructive service, the courts of the United States and all the states are uniform in holding that such decree is entitled to no extraterritorial effect because of lack of jurisdiction of the person by the court granting the decree. Perhaps it should be said that a foreign divorce obtained in any state outside of the state of the matrimonial domicile is subject to the same limitation. To that effect is the case of *Field* v. *Field*,[2] an Illinois case which held that a divorce obtained by the husband in another state upon constructive service will not be recognized in Illinois, when it appeared that the husband who procured it practiced fraud upon the court of the other state in respect of his residence in that state, and also in respect of his knowledge of the address of the defendant. That case involved fraud, but it is not at all necessary that fraud be an element to render a foreign decree obtained upon constructive service void and of no effect outside the state where it is rendered. The leading cases in support of this rule

[2] 215 Ill. 496.

are *Streitwolf* v. *Streitwolf*,[3] *and Bell* v. *Bell*.[4] To the same effect are the cases of *Snyder* v. *Buckeye State Building & Loan Co. et al.*,[5] and the case of *Hood* v. *State*.[6] The latter case even goes to the extent of holding invalid a divorce granted in Utah, in which state neither of the parties was domiciled or resided, notwithstanding that the Utah statute undertook to confer jurisdiction to grant divorces at the suit of persons who are not, but desire to become, residents of the territory. The divorce was granted upon constructive service upon the wife who did not appear.

Where the parties have appeared in court or where there has been personal service, jurisdiction over the person is well established. However, jurisdiction over the person does not give the court jurisdiction to render a valid decree if it does not have jurisdiction over the *res*. "Since the fact that neither party was domiciled at the divorce forum goes to the jurisdiction of the subject-matter, and not merely to the jurisdiction of the person in the particular suit, the jurisdictional defect is not cured by the appearance of the defendant at the divorce forum, so as to make the decree effective of its own force in another state, under the full faith and credit provision."[7] In some states there are statutes which attempt to control just such a situation by providing that a divorce obtained by a citizen of that state in a foreign state, for a cause occurring within the state of the domicile, is void for all purposes and under all circumstances. Such is the case in Massachusetts as shown in the case of *Langewald* v. *Langewald*.[8]

The courts of most states are unanimous in holding that an ex parte hearing on a divorce suit in a state other than that of the matrimonial domicile is never conclusive on the defendant, and may or may not be conclusive on the complainant, depending on whether or not there are circumstances which would create an estoppel against him. However, there are many states which hold that where the defendant appears and contests the granting of the divorce, the final decision is res judicata as to the question of jurisdiction and cannot subsequently be impeached on collateral attack.[9] Some courts base this on the theory that where

[3] 181 U. S. 179.

[4] 181 U. S. 175. See also L. R. A. 1917B 1032.

[5] 160 N. E. 37 (Ohio App. 1928).

[6] 56 Ind. 263.

[7] 39 A. L. R. 689, note III, and cases there cited.

[8] 234 Mass. 269.

[9] Richards v. Richards, 149 N. Y. S. 1028; Blakeslee v. Blakeslee, 213 Ill. App. 168.

defendant appears, he is precluded from contesting the jurisdiction of that court on the ground of estoppel.[10]

It will be found that estoppel is the ground advanced by most courts in refusing to molest decrees which were rendered by courts of states which were not the matrimonial domiciles of either of the parties. It is held almost uniformly that the spouse who obtained the decree, and those who claim under him are precluded from attacking it in any collateral proceeding.[11] The Minnesota Supreme Court in *Ellis's Appeal*[12] asked the question, "When, as between whom, and to what extent is the foreign divorce decree binding in the state in which the parties are in fact residents?" It then divided the cases in which the question might arise into three classes: First, proceedings between the state of the parties' actual residence and one of the parties; second, proceedings between the parties in the state of their residence, where the divorce in the other state was procured on the application of one of them, the other not appearing in the action; third, proceedings between the parties when both voluntarily appeared in the action in which the divorce was granted and consented to the jurisdiction, or that the court might determine the facts on which the jurisdiction depended. It was held that any party who had conferred jurisdiction upon the foreign court might be precluded from impeaching its decree in a collateral proceeding. In no case, therefore, could the state of the actual residence of the parties be precluded; in the second class, the party who did not submit to the jurisdiction would not be precluded; but in the second and third classes, the parties who did submit to the jurisdiction of the foreign court would not be heard to say that the decree was void.

In the case of *Langewald* v. *Langewald,*[13] the husband was estopped from attacking the decree which he himself had procured by collusion. In the case of *Kaufman* v. *Kaufman*[14] a husband was estopped from questioning the decree divorcing his wife from her first husband, when he himself had procured her to go to Nevada and get the divorce so that she might marry him. In the case of *Bruguiere* v. *Bruguiere,*[15] the wife was estopped from attacking the decree obtained by her husband on the ground that she had remarried since that time, even though

[10] Nichols v. Nichols, 25 N. J. Eq. 60; Fairchild v. Fairchild, 53 N. J. Eq. 678.

[11] Bledsoe v. Seaman, 77 Kan. 679. See annotations in 39 A. L. R. 624 and 695.

[12] 55 Minn. 401.

[13] 234 Mass. 269.

[14] 163 N. Y. S. 566.

[15] 172 Cal. 199.

she was ignorant that the decree was invalid. In the cases of *Ferry* v. *Troy Laundry*,[16] and *Elliott* v. *Wohlfrom*,[17] grantees of a spouse who had procured a foreign divorce through fraud were held to be precluded from contesting the decree as against the grantees of the innocent spouse, it being held that the respective grantees stood in the position of their grantors. Courts are also loath to disturb decrees after a long space of time has elapsed since the granting of the decree, and where the rights of many innocent persons would be prejudiced by declaring the decree invalid.

There are a few cases where courts will give effect to a foreign decree solely on the grounds of comity, although it is within their power to refuse effect to such decrees on the ground of lack of jurisdiction of the court granting the divorce. Such is often the case where to do so would injure no one and would contradict no public policy of the state of the forum. Such was the case in *Gould* v. *Gould*,[18] where a New York court gave effect to a French divorce decree, even though it appeared that the court which granted it had no jurisdiction.

Where the party is not estopped from contesting the validity of the decree he may always contest the jurisdiction of the court over the subject matter, even where jurisdiction over the person is established. Domicile, or residence, as it is stated in some statutes, is the prime factor to be considered in determining whether or not a foreign decree of divorce will be given any extraterritorial effect. Bishop[19] says: "The word in most of our jurisdictional statutes is 'residence,' or 'reside,' or sometimes 'live,' and not the technical 'domicile,' which is the word commonly used in expositions of the interstate jurisprudence. If, in interpretation, 'reside' or 'live' is satisfied by something less than a domicile, our divorces pronounced under command of the statutes are mere local affairs, or at least not prima facie complying with the interstate law. . . . In Divorce Law, which is a branch of the private law of nations, and in conformity with which it should therefore be interpreted, the statutory term 'reside' or 'residence,' including 'inhabitant,' as employed to denote jurisdiction for divorce, should be rendered to mean the same thing which 'domicile' does in the international law, unless the contrary is affirmatively manifest from the words of the statute. And so our courts commonly regard this question."

16 238 F. 867.

17 55 Cal. 384.

18 235 N. Y. 14.

19 New Commentaries on Marriage, Divorce, and Separation (1891), Vol. II, Ch. 4, secs. 106, 109.

Although this book was published in the year 1891, its statements are borne out by many later cases.[20] England and Canada take the same view of the situation, as evidenced by the decisions in the cases of *Rudd* v. *Rudd,*[21] and *Cox* v. *Cox.*[22]

Furthermore, in such cases where the domicile, or residence *animo manendi,* as some courts put it, is missing, such decree of divorce may be attacked in any proceeding, direct or collateral, in any state of the Union, and may be shown to defeat the jurisdiction of the court granting the divorce.[23] In this regard, the question of divorce does not differ from any other proceeding. Where the court rendering the decree had no jurisdiction of the cause in the first instance, the question of jurisdiction may always be raised on collateral attack, even in spite of a recital of jurisdiction in the decree.

In the case of *State of South Carolina* v. *William Westmoreland,*[24] the defendant was indicted, tried, and convicted of the crime of adultery. He set up a divorce obtained by him in Georgia, and contended that he could not, therefore, be guilty of the crime of adultery. The facts of the case show that the defendant left his wife, wrongfully, in the state of South Carolina; that he went to Georgia and got a divorce on the ground of willful and continued desertion for the space of three years. The state assailed the judgment on the ground that the Georgia court was without jurisdiction, and introduced evidence to show that the defendant, at the time he obtained his divorce, was a resident of South Carolina, not of Georgia. The court charged the jury that if the defendant went to Georgia for a mere temporary purpose, with no intent to become a resident, then the Georgia court was without jurisdiction, and its decree a nullity having no effect on the status of the defendant as a married man, and affording him no protection to this charge of adultery. The defendant excepted to the instruction on the ground that the trial court should not have allowed the record of the Georgia court, regular on its face, to be attacked by the introduction of parol evidence showing want of jurisdiction, and should not have submitted to the jury, under such evidence, the question of domicile,

20 Worthington v. District Court of Second Judicial Dist., 37 Nev. 212; Gildersleeve v. Gildersleeve, 88 Conn. 689; Walker v. Walker, 125 Md. 649; Cherry v. Chicago Life Ins. Co., 190 Ill. App. 70, affirmed in 244 U. S. 25; Anthoney v. Tarpley, 45 Cal. App. 72; Knill v. Knill, 195 N. Y. S. 398; Bonner v. Reandrew, 203 Iowa 1355.

21 L. R. [1924] Prob. 72.

22 13 Alberta L. R. 285, 40 D. L. R. 195.

23 Walker v. Walker, 125 Md. 649; Bonner v. Reandrew, 203 Iowa 1355; Benson v. Benson, 40 F. (2d) 159; State of South Carolina v. Westmoreland, 76 S. C. 145.

24 76 S. C. 145.

or residence of the defendant necessary to confer jurisdiction on the Georgia court, but on the contrary should have charged that the jurisdiction of the Georgia court was not subject to collateral attack, that the defendant must be considered legally divorced from his wife, and therefore entitled to an acquittal of the charge of living in adultery with another woman. The court, in ruling against him, said that the point had already been conclusively decided by the United States Supreme Court in the case of *Thompson* v. *Whitman.*[25] The court there held that neither the constitutional provision that full faith and credit should be given in each state, nor the act of Congress passed in pursuance thereof, prevents an inquiry into the jurisdiction of the court by which a judgment offered in evidence was rendered; that the record of a judgment rendered in another state may be contradicted as to the facts necessary to give the court jurisdiction; and if it be shown that such facts did not exist, the record will be a nullity, notwithstanding it may recite that they did exist. The leading cases of *Andrews* v. *Andrews,*[26] and *Haddock* v. *Haddock,*[27] support this statement.

Courts almost uniformly hold that a temporary departure from the state of the matrimonial domicile into another state does not constitute a bona fide change of domicile; that the *animus manendi* is lacking; and that the decree rendered in such other state or country is invalid extraterritorially, especially where the person seeking the divorce goes to the other state for that express purpose, and in order to evade the laws of his domicile.

The case of *Watkinson* v. *Watkinson*[28] holds that the temporary absence from the state will not be regarded a change of residence, unless the *animus manendi* concurs, and that a divorce granted during such absence in another state will not be recognized by the state of the domicile. To the same effect were the decisions in the cases of *Friedenwald* v. *Friendenwald,*[29] *State* v. *Cooke,*[30] *Fischer* v. *Fischer,*[31] and *Bruguiere* v. *Bruguiere,*[32] where the evidence bore out the fact that the complainants in the original divorce proceedings had all gone to another state for the express purpose of obtaining the divorce, and had then returned to the states of their domicile. In the case of *Knill* v. *Knill,*[33] the facts

25 18 Wall. 457.
26 188 U. S. 14.
27 201 U. S. 562.
28 68 N. J. Eq. 632.
29 16 F. (2d) 509.
30 110 Conn. 348.
31 254 N. Y. 463.
32 172 Cal. 199.
33 195 N. Y. S. 398.

show that the wife wilfully left the husband in New York and went to Connecticut; that he went to Nevada to obtain a divorce which he could not get in New York; that he started an action there for divorce; that the wife in a separate action in Connecticut admitted his residence in Nevada. Nevertheless the court in this case, which is a suit for annulment by a woman whom defendant subsequently married, held the divorce invalid and granted the annulment.

There are but few cases in the books concerning the validity of Mexican divorces, as distinguished from other foreign divorce, which have reached the highest courts of the states or of the United States. Among these are *Bonner* v. *Reandrew et al.*[34] and *Galloway* v. *Galloway.*[35] The case of *Bonner* v. *Reandrew et al.* was an Iowa suit for alienation of the affections of the plaintiff's husband. The gist of the defense was that there were no affections to alienate. The defendants set up in support thereof a Mexican divorce procured by the husband in Merida, Mexico. In this case, as in many others, there was nothing in the record to show domicile except the jurisdictional finding in the decree that "he is a resident of this place." The court in the Iowa case held that the Mexican decree was invalid for lack of jurisdiction, and that it was no defense to the present action.

*Galloway* v. *Galloway et al.* was a California suit wherein the wife was seeking separate maintenance. The husband set up a Mexican divorce, which was held a good defense only because there was no evidence of bad faith or lack of integrity. The court said that good faith of the husband in obtaining the decree in Mexico, and the integrity of the judgment of the foreign court is presumed in an attack on a foreign divorce. The court of the forum is not bound to suspect that a decree of a foreign court was rendered in bad faith. However, the court also said that a divorce obtained in another state through fraudulent residence simulated for that purpose and not in good faith is open to attack in the state of the true matrimonial domicile, intimating that had there been any evidence of bad faith in the establishment of a domicile in Mexico, or any fraud on the part of the husband, it would have held otherwise than it did.

In the case under discussion the court held the Mexican divorce invalid for want of jurisdiction over the *res,* because the complainant in the divorce proceeding had not established a bona fide residence in Mexico. In view of the fact that the first wife had not conferred jurisdiction of her person on the Mexican court, and was therefore not estopped to attack the decree, no other result could have been reached by the court.

[34] 203 Iowa 1355.
[35] 2 P. (2d) 842.

TORT-LIABILITY OF MANUFACTURER TO THIRD PARTIES FOR NEGLIGENCE.—Appellees, husband and wife, recovered a verdict against the appellant in the lower court for damages sustained through the alleged negligence of the appellant, caused by the explosion of a chemical disinfectant manufactured and alleged to have been sold to them by defendant. The proofs showed that when the wife picked up from a shelf the purchased bottle of defendant's disinfectant, it exploded and destroyed the sight of one of her eyes. After verdict the court refused a new trial. This appeal was taken on the ground that the court should have given binding instructions for the defendant to the effect that as a matter of law the appellant was free from liability to the appellees because the disinfectant was not sold direct by the defendant; also that it was error to allow proofs by persons in the neighborhood that this same disinfectant, bought by them about the same time and from the same vendor from whom the appellee's had purchased theirs, had exploded. The lower court's judgment was affirmed.[1]

As to the liability of manufacturers, contractors, or vendors to third persons who are not in privity of contract with them, the general rule is that there is no liability for negligence in the process of manufacturing.[2] Wharton[3] grounds the doctrine on the break in "the causal connection . . . by the sale or transfer from the maker or builder to the buyer or employer." The reasoning is sound if the sale actually breaks the causal connections of the injury.

However, where the article manufactured is one which is in its nature imminently dangerous, such as gunpowder or poison, the law imposes a duty on the manufacturer to exercise care in the process of manufacture—this despite the break in the causal relation.

A careful perusal of the cases indicate that almost all courts would hold one liable for injuries caused by dangerous instrumentalities. The confusion found is one of definition. What is a dangerous instrumentality? When is a thing imminently dangerous? What is the standard of diligence required? Let us look to the cases.

1 W. T. Rawleigh Co. v. Shoultz et ux., 56 F. (2d) 148 (1932).

2 Cooley on Torts (1907), p. 773; Huset v. J. I. Case Threshing Machine Co., 120 F. 865; Liggett & Myers Tobacco Co. v. Cannon, 132 Tenn. 419; Travis v. Rochester Bridge Co., 188 Ind. 79; Winterbottom v. Wright, 10 M. & W. 109; Marquardt v. Ball Engine Co., 122 F. 374; McCaffrey v. Mossberg & Granville Mfg. Co., 23 R. I. 381.

3 Negligence, (2d ed.) sec. 438.

Justice Cardozo puts the answers clearly.[4] "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, . . . then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. . . . There must be knowledge of a danger, not merely possible, but probable. It is possible to use almost anything in a way that will make it dangerous if defective. That is not enough to charge the manufacturer with a duty independent of his contract. Whether a given thing is dangerous may be sometimes a question for the court and sometimes a question for the jury. 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."

The producer ought, then, to be held liable for the results of negligent acts which he can readily foresee, but not where defective material, after passing through many hands, produces unlooked for ill effects. The iron manufacturer who fails to inspect a piece of iron cannot foresee that it will be used in a boiler and cause a ship to sink. But the meat packer who fails to inspect his products for poisonous parasites or ingredients knows that if anyone is to be poisoned through his neglect it will be the ultimate consumer and not the marketman with whom he contracts.[5]

Things imminently dangerous to life are not restricted to poisons, explosives, deadly weapons—things whose normal function it is to injure or destroy. As Justice Cardozo remarked,[6] "A scaffold[7] is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed. A large coffee urn[8] may have within itself, if negligently made, the potency of danger, yet no one thinks of it as an implement whose normal function is destructive." A bottle of aerated water or carbonated

[4] MacPherson v. Buick Motor Co., 217 N. Y. 382.

[5] Ketterer v. Armour & Co., 200 F. 322; Tomlinson v. Armour & Co., 75 N. J. L. 748.

[6] MacPherson v. Buick Motor Co., 217 N. Y. 382.

[7] Devlin v. Smith, 89 N. Y. 470.

[8] Statler v. Ray Mfg. Co., 195 N. Y. 478.

beverage,[9] a building,[10] an elevator,[11] a defective rope,[12] or chain,[13] have been held to be imminently dangerous when negligently made.

The earlier cases involving automobiles, tractors, etc., limited the manufacturer's liability to his immediate transferees.[14] They were held to be not imminently dangerous and therefore the manufacturer was not held liable for negligence in the absence of contractural relations. The MacPherson case[15] is the landmark of the newer doctrine as to automobiles. It led the Federal court to overrule its earlier decision in *Johnson* v. *Cadillac Motor Car Company,*[16] and its reasoning is followed in the more recent rulings.[17] The New Jersey court in *Heckel* v. *Ford Motor Com-*

[9] Torgeson v. Schultz, 192 N. Y. 156; Stolle v. Anheuser-Busch, Inc., 307 Mo. 520; Coca-Cola Bottling Works v. Shelton, 214 Ky. 118 (282 S. W. 778); Grant v. Graham Chero-Cola Bottling Co., 176 N. C. 256. In Bates v. Baley & Co., Ltd., L. R. [1913] 3 K. B. 351, it was found that a bottle of ginger beer was dangerous, because the bottle was defectively made, and that the bottler was negligent, because the defect could have been discovered, but judgment was given for the defendant, since he did not in fact know of the defect. This view, followed by some courts, bases the liability on deceit. See Heizer v. Kingsland & Douglass Mfg. Co., 110 Mo. 605 and Lebourdais v. Vitrified Wheel Co., 194 Mass. 341.

[10] Burke v. Ireland, 50 N. Y. S. 369.

[11] Kahner v. Otis Elevator Co., 89 N. Y. S. 105.

[12] Davies v. Pelham Hod Elevating Co., 20 N. Y. S. 523, affirmed in 146 N. Y. 363.

[13] Employers' Liability Assur. Corp., Ltd. v. Columbus McKinnon Chain Co., 13 F. (2d) 128.

[14] Automobiles: Burkett v. Studebaker, 126 Tenn. 467, (1912); Olds Motor Works v. Shaffer, 145 Ky. 616 (1911); Ford Motor Co. v. Liversay, 61 Okla. 231 (1916); Ford Motor Co. v. Meyers, 151 Miss. 73 (1928). Threshing Machine: Heizer v. Kingland & Co., 110 Mo. 105 (1892). Defective locomotive: Smith v. Onderdonk, 25 Ont. App. 271 (1898). Goods elevator: Zieman v. Kieckhofer, 90 Wis. 497 (1895).

[15] MacPherson v. Buick Motor Co., 217 N. Y. 382.

[16] The District Court for the Northern District of New York in Johnson v. Cadillac Motor Car Co., 194 F. 497, upheld liability. On appeal to the Circuit Court the case was reversed, because the court held that privity of contract was required to hold the manufacturer liable. Cadillac Motor Car Co. v. Johnson, 221 F. 801. The MacPherson Case was decided in 1916. In 1919, on a second appeal, the reasoning of the since decided MacPherson case so impressed the court that it adopted its doctrine. Johnson v. Cadillac Motor Car Co., 261 F. 878.

[17] Lajorie v. Roberts, 50 Que. Super. 395, 33 D. L. R. 577 (1917); Collette v. Page, 44 R. I. 26 (1921); Rotche v. Buick Motor Co., 267 Ill. App. 68 (1932); Goullon v. Ford Motor Co., 44 F. (2d) 310 (1930); Flies v. Fox Bros. Buick Co., 196 Wis. (1928); Ford v. Sturgis, 14 F. (2) 253 (1926).

*pany,*[18] indicate that "reasonable care in manufacture and reasonable care in applying reasonable tests" are required of an automobile manufacturer, but that "an automobile manufacturer is not an insurer that wheels purchased from reputable manufacturer are free from defects." The manufacturer has the duty of using reasonable care.[19]

In a recent Illinois appellate case,[20] although a dealer sold a new Ford truck with a defect which could have been discovered by a proper inspection, the dealer was held not liable for injuries to a bystander who was struck by a wheel when it became detached from the truck, because privity of contract between the plaintiff and dealer was lacking, and because such an injury was not thought to be foreseeable.

While the disinfectant in the principal case was not an article whose normal function it was to destroy (except germs), it was known to the manufacturer that unless care was exercised in the preparation of the ingredients to exclude pent-up gas, the gas was likely to accumulate and cause explosions. The liability of the manufacturer should not rest, as some courts seem to have indicated that it should, upon any misconduct of the manufacturer as a vendor, but rather it should rest, as the principal case suggests, upon the failure to exercise ordinary care in the process of manufacturing a product which might become dangerous if negligently made. Knowledge of the defect in any particular article, then, is immaterial if the defect might be discovered by the exercise of ordinary care in inspecting or testing.

[18] 101 N. J. L. 385.

[19] Martin v. Studebaker Corporation, 102 N. J. L. 612.

[20] Shepard v. Kensington Steel Co., 262 Ill. App. 117, petition for certiorari dismissed, 266 Ill. App. xxxvi.