Common Law III

The assignment for Monday, March 18 is:

1) Reread the common law cases assigned so far: Levy v. Langridge, Winterbottom v Wright, and Thomas v Winchester.

2) Review the Questions in Common Law I and Common Law II that we have not yet discussed in class. This means review Questions 6, 7 and 8 about Winterbottom and all the questions about Thomas v Winchester. If you did not already turn in answers to these questions, you will earn extra credit for turning in answers to these questions before class on Monday, March 18.

3) Read the cases in this handout.

4) Everyone should be prepared to discuss all the questions on the last page of this handout.

Mandatory writing:

Group 5. Qs 1 & 5

Group 6. Qs 2 & 6

Group 7. Qs 3 & 7

Group 8. Qs 4 & 8

Optional writing -- All questions that are not mandatory

5) Have a relaxing vacation.

Loop v. Litchfield, 42 N.Y. 351 (1870)

[Loop was killed by a cast-iron fly wheel defectively manufactured by Litchfield. Litchfield sold the wheel to Collister. Before selling the wheel to Collister, Litchfield claims to have pointed out the defect, but that Collister bought it anyway because the price was low. Collister leased the wheel to Loop. The jury was instructed to hold Litchfield liable, if Litchfield had negligently manufactured the defective wheel. The judge refused to instruct the jury that plaintiff cannot recover if Collister warned Litchfield about the defect. The jury found for the plaintiff, and the defendant appealed.]

HUNT, J.

A piece of machinery already made and on hand, having defects which weaken it, is sold by the manufacturer to one who buys it for his own use. The defects are pointed out to the purchaser and are fully understood by him. This piece of machinery is used by the buyer for five years, and is then taken into the possession of a neighbor, who uses it for his own purposes. While so in use, it flies apart by reason of its original defects, and the person using it is killed. Is the seller, upon this state of facts, liable to the representatives of the deceased party? I omit at this stage of the inquiry the elements, that the deceased had no authority to use the machine; that he knew of the defects and that he did not exercise proper care in the management of the machine. Under the circumstances I have stated, does a liability exist, supposing that the use was careful, and that it was by permission of the owner of the machine?

To maintain this liability, the appellants rely upon the case of Thomas v. Winchester (6 N. Y., 2 Seld., 397). In that case, the defendant was engaged in the manufacture and sale of vegetable extracts for medicinal purposes…. It was conceded by the counsel in that case and held by the court, that there was no privity of contract between Winchester and Thomas, and that there could be no recovery upon that ground. The court illustrate the argument by the case of a wagon built by A, who sells it to B, who hires it to C, who, in consequence of negligence in the building, is overturned and injured. C cannot recover against A, the builder. It is added: "Misfortune to third persons, not parties to the contract, would not be a natural and necessary consequence of the builder's negligence, and such negligence is not an act imminently dangerous to human life." So, if a horse, defectively shod, is hired to another, and by reason of the negligent shoeing, the horse stumbles, the rider is thrown and injured, no action lies against the smith. In these and numerous other cases put in the books, the answer to the action is, that there is no contract with the party injured, and no duty arising to him by the party guilty of negligence. "But," the learned judge says "the case in hand stands on a different ground. The defendant was a dealer in poisonous drugs. Gilbert was his agent in preparing them for market. The death or great bodily harm of some person was the natural and almost inevitable consequence of the sale of belladonna by means of the false label." "The defendant's neglect puts human life in imminent danger. Can it be said that there was no duty on the part of the defendant to avoid the creation of that danger by the exercise of greater caution?"

The appellants recognize the principle of this decision, and seek to bring their case within it, by asserting that the fly wheel in question was a dangerous instrument. Poison is a dangerous subject. Gunpowder is the same. A torpedo is a dangerous instrument, as is a spring gun, a loaded

rifle or the like. They are instruments and articles in their nature calculated to do injury to mankind, and generally intended to accomplish that purpose. They are essentially, and in their elements, instruments of danger. Not so, however, an iron wheel, a few feet in diameter and a few inches in thickness, although one part may be weaker than another. If the article is abused by too long use, or by applying too much weight or speed, an injury may occur, as it may from an ordinary carriage wheel, a wagon axle, or the common chair in which we sit. There is scarcely an object in art or nature, from which an injury may not occur under such circumstances. Yet they are not in their nature sources of danger, nor can they, with any regard to the accurate use of language, be called dangerous instruments. That an injury actually occurred by the breaking of a carriage axle, the failure of the carriage body, the falling to pieces of a chair or sofa, or the bursting of a fly wheel, does not in the least alter its character.

It is suggested that it is no more dangerous or illegal to label a deadly poison as a harmless medicine than to conceal a defect in a machine and paint it over so that it will appear sound. Waiving the point that there was no concealment, but the defect was fully explained to the purchaser, I answer, that the decision in Thomas v. Winchester was based upon the idea that the negligent sale of poisons is both at common law and by statute an indictable offence. If the act in that case had been done by the defendant instead of his agent, and the death of Mrs. Thomas had ensued, the defendant would have been guilty of manslaughter, as held by the court. The injury in that case was a natural result of the act. It was just what was to have been expected from putting falsely labeled poisons in the market, to be used by whoever should need the true articles. It was in its nature an act imminently dangerous to the lives of others. Not so here. The bursting of the wheel and the injury to human life was not the natural result or the expected consequence of the manufacture and sale of the wheel. Every use of the counterfeit medicines would be necessarily injurious, while this wheel was in fact used with safety for five years.

Upon the facts as stated, assuming that the deceased had no knowledge of the defects complained of, and assuming that he was in the rightful and lawful use of the machine, I am of the opinion that the verdict cannot be sustained. The facts constitute no cause of action.

Devlin v. Smith, 89 N.Y. 470 (1882)

[Smith, a painter, contracted with Stevenson to build scafflolding. The scaffolding collapsed killing Devlin. Devlin's representative sued Smith and Stevenson, alleging that the scaffolding was erected negligently. The trial court found that neither Smith nor Stevenson was liable. Smith was not liable, because he was not negligent in relying on Stevenson, and Stevenson was not liable to Devlin because there was no privity of contract between Stevenson and Devlin. Devlin appealed.]

RAPALLO, J.

If any person was at fault in the matter it was the defendant Stevenson. It is contended, however, that even if through his negligence the scaffold was defective, he is not liable in this action because there was no privity between him and the deceased, and he owed no duty to the deceased, his obligation and duty being only to Smith, with whom he contracted.

As a general rule the builder of a structure for another party, under a contract with him, or one who sells an article of his own manufacture, is not liable to an action by a third party who uses the same with the consent of the owner or purchaser, for injuries resulting from a defect therein, caused by negligence. The liability of the builder or manufacturer for such defects is, in general, only to the person with whom he contracted. But, notwithstanding this rule, liability to third parties has been held to exist when the defect is such as to render the article in itself imminently dangerous, and serious injury to any person using it is a natural and probable consequence of its use. As where a dealer in drugs carelessly labeled a deadly poison as a harmless medicine, it was held that he was liable not merely to the person to whom he sold it, but to the person who ultimately used it, though it had passed through many hands. This liability was held to rest, not upon any contract or direct privity between him and the party injured, but upon the duty which the law imposes on every one to avoid acts in their nature dangerous to the lives of others. (Thomas v. Winchester, 6 N. Y. 397.) In that case [the judge discusses the] case of one who builds a carriage carelessly and of defective materials, and sells it, and the purchaser lends it to a friend, and the carriage, by reason of its original defect, breaks down and the friend is injured, and the question is put, can he recover against the maker? The comments of RUGGLES, Ch. J., upon this supposititious case, in Thomas v. Winchester, and the ground upon which he answers the question in the negative, show clearly the distinction between the two classes of cases. He says that in the case supposed, the obligation of the maker to build faithfully arises only out of his contract with the purchaser. The public have nothing to do with it. Misfortune to third persons, not parties to the contract, would not be a natural and necessary consequence of the builder's negligence, and such negligence is not an act imminently dangerous to human life.

Applying these tests to the question now before us, the solution is not difficult. Stevenson undertook to build a scaffold ninety feet in height, for the express purpose of enabling the workmen of Smith to stand upon it to paint the interior of the dome. Any defect or negligence in its construction, which should cause it to give way, would naturally result in these men being precipitated from that great height. A stronger case where misfortune to third persons not parties to the contract would be a natural and necessary consequence of the builder's negligence, can hardly be supposed, nor is it easy to imagine a more apt illustration of a case where such negligence

would be an act imminently dangerous to human life. These circumstances seem to us to bring the case fairly within the principle of Thomas v. Winchester.

Loop v. Litchfield (42 N. Y. 351; 1 Am. Rep. 543) was decided upon the ground that the wheel which caused the injury was not in itself a dangerous instrument, and that the injury was not a natural consequence of the defect, or one reasonably to be anticipated. Losee v. Clute (51 N. Y. 494; 10 Am. Rep. 638) was distinguished from Thomas v. Winchester, upon the authority of Loop v. Litchfield.

The judgment should be affirmed, with costs, as to the defendant Smith, and reversed as to the defendant Stevenson, and a new trial ordered as to him, costs to abide the event.

ANDREWS, Ch. J., DANFORTH and FINCH, JJ., concur; EARL, J., concurs as to defendant Smith, and dissents as to defendant Stevenson. MILLER, J., absent; TRACY, J., not sitting.

Judgment accordingly.

Questions

1. What is the holding of Loop v Litchfield? What is the holding of Devlin v Smith?

2. What does Judge Hunt in Loop v Litchfield say was the holding of Thomas v. Winchester? Judge Rapallo sees Devlin v Smith as an easy application of "the principle of Thomas v. Winchester." By "principle of Thomas v. Winchester," Judge Rapallo means its holding. What does Judge Rapallo think the holding of Thomas v. Winchester was? Does he agree with Judge Hunt's interpretation the holding of Thomas v Winchester in Loop v Litchfield? Do either agree with your interpretation of the holding in Thomas v Winchester? Which formulation of the holding of Thomas v Winchester is best?

3. Would the outcome of Loop v Litchfield be any different if it were proved that Litchfield did not warn Collister of the defect in the fly wheel?

4. How does Judge Rapallo deal with the fact that Loop v Litchfield decided that the seller in that case was not liable?

5. Is a defective scaffold more like belladonna, a defective carriage, a defective gun, or a defective fly wheel?

6. If a manufacturer sold a defective handgun to a retailer, and the retailer sold the gun to a consumer, and the handgun exploded and injured the consumer, would the manufacturer be liable to the consumer? Would arguments based on Loop v Litchfield give a different answer than arguments based on Devlin v Smith?

7. If a manufacturer sold a defective car to a dealer, and the dealer sold the car to a consumer, and the car exploded and injured the consumer, would the manufacturer be liable to the consumer? Would arguments based on Loop v Litchfield give a different answer than arguments based on Devlin v Smith?

8. What do you think makes the most sense in the situations described in Questions 7 and 8? Should the manufacturer be liable in neither case? Both cases? One case but not the other?