

Winter 1946

## Implied Warranty of Fitness

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### Recommended Citation

(1946) "Implied Warranty of Fitness," *Indiana Law Journal*: Vol. 21 : Iss. 2 , Article 8.

Available at: <https://www.repository.law.indiana.edu/ilj/vol21/iss2/8>

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## Implied Warranty of Fitness

Cover Page Footnote

Notes and Comments: Sales

# SALES

## IMPLIED WARRANTY OF FITNESS

Plaintiff, after making examination as a texture, color, style and design, purchased a chenille lounging robe in defendant's department store. Undisputed testimony disclosed that on the third or fourth time the robe was worn, plaintiff waved or "fanned" a match after lighting a cigarette, the robe instantly caught fire, and plaintiff was badly burned. Plaintiff seeks damages, alleging breach of implied warranty. From a directed verdict for defendant, plaintiff appeals. *Held*: reversed. Lower court erred in failing to instruct the jury that, if the robe caught fire and burned as the witness testified, there was a breach of defendant's implied warranty of fitness.<sup>1</sup> *Deffebach v. Lansburgh & Bro.* (D.C. 1945), 150 F. (2d) 591.

Implied warranty in the sale of goods was unknown to the common law prior to the nineteenth century,<sup>2</sup> but in 1815 the need for legal recognition of such warranties was realized in sales in which the buyer had no opportunity to inspect his purchases.<sup>3</sup> During the years to follow the courts gradually enlarged their recognition of implied warranties until, prior to the adoption of the Uniform Sales Act, it had become well settled that manufacturers and producers impliedly

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and credit clause to enforce even the judgment of another state, in contravention of its own statutes or policy." (p. 546) ". . . the conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, . . . but by appraising the governmental interests of each jurisdiction, and turning the scale of decisions according to their weight." (p. 547). "The interest of Alaska is not shown to be superior to that of California. No persuasive reason is shown for denying to California the right to enforce its own laws in its own courts, and in the circumstances the full faith and credit clause does not require that the statute of Alaska be given that effect." (p. 550).

1. District of Columbia Code, like §§15(1) and 15(3), Uniform Sales Act, provides that, "Where the buyer, 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. \* \* \* \* If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed." 50 Stat. 33 (1937), D.C. Code (1940) tit. 28, §1115. Thirty-seven states, including Indiana, have adopted similar statutes. *Cf.* IND. STAT. ANN. (Burns 1933) §58-115. Restatement, "Uniform Revised Sales Act" (Proposed Final Draft, 1944) §§39 and 41(2)(a), and the English Sale of Goods Act, 1893, 56 & 57 Vict., c. 71, §14(1) contain similar provisions.
2. None but express warranties were recognized in the early decisions. *Chandeler v. Lopus*, Cro. Jac. 4 (1606-1607); Ames, "History of Assumpsit" (1888) 2 Harv. L. Rev. 1, 8.
3. *Gardner v. Gray*, 4 Campb. 144 (N.P. 1815); Williston, "Sales" (2d ed. 1924) §228.

warranted the fitness of their goods for particular purposes, provided the buyer had informed the manufacturer of the purpose for which the goods were to be used,<sup>4</sup> and provided the buyer relied upon the skill and judgment of the manufacturer.<sup>5</sup> Some jurisdictions refused to imply such a warranty to a dealer,<sup>6</sup> and required of him only fair dealing and good faith.<sup>7</sup> However, since the adoption of the Uniform Sales Act, the ordinary vendor has been placed in the same position as the manufacturer in jurisdictions which had previously made this distinction.<sup>8</sup>

Under the Uniform Sales Act, as was also true at Common law, the fundamental basis of liability under an implied warranty of fitness for a particular purpose is the buyer's justifiable reliance upon the seller's skill or judgment.<sup>9</sup> Where the buyer inspects the goods purchased,<sup>10</sup> or had an opportunity to adequately inspect them,<sup>11</sup> there is no implied warranty against defects which a reasonable inspection should have disclosed. However, where the buyer has examined goods,<sup>12</sup>

4. Where an article is adopted to a single purpose, the mere fact of the sale may acquaint the seller with the buyer's intended use thereof. *Kennan v. Cherry*, 47 R.I. 125, 131, Atl. 309 (1925).
5. *Kellogg Bridge Co. v. Hamilton*, 110 U.S. 108 (1883); *Cleveland Linseed Oil Co. v. A. P. Buchanan & Sons*, 120 Fed. 906 (C.C.A. 2d, 1903), and cases cited; *Poland v. Miller et al.*, 95 Ind. 287 (1883); *Robinson Machine Works v. Chandler*, 56 Ind. 575 (1877); *Merchants Nat. Bank of Massillon, Ohio v. Nees*, 62 Ind. App. 290, 110 N.E. 73, 112 N.E. 904 (1916); *Edwards Mfg. Co. v. Stoops*, 54 Ind. App. 361, 102 N.E. 980 (1913).
6. *Fuchs & Lang Mfg. Co. v. Kittredge & Co.*, 242 Ill. 88, 89 N.E. 723 (1909); *Merriam Paper Co. v. N.Y. Market Gardener's Association*, 58 Misc. 236, 103 N.Y. Supp. 1038 (Sup. Ct. 1908). See *Cram v. Gas Engine Co.*, 75 Hun. 316, 26 N.Y. Supp. 1069, 1072 (Sup. Ct. 1894), in which it was said that authority goes no further than to hold manufacturers liable for implied warranties of fitness for a particular purpose.
7. *Hurley-Mason Co. v. Stebbins*, 79 Wash. 366, 140 Pac. 381 (1914).
8. *Davenport Ladder Co. v. Edward Hines Lumber Co.*, 43 F. (2d) 63 (C.C.A. 8th, 1930); *G. B. Shearer Co. v. Kakoulis*, 144 N.Y. Supp. 1077 (Otsego County Ct. 1913); *Wasserstrom v. Cohen, Frank & Co.*, 150 N.Y. Supp. 638, 640 (Sup. Ct. 1914), wherein the court said, "This amendment reverses the rule which formerly obtained in this state, which recognized implied warranties of fitness upon sales by manufacturers, but not against mere dealers, and brings our law into harmony with that prevailing in England and in many of the states in this country."
9. See 4 Williston, "Contracts" (Rev. ed. 1936) §988, p. 2721; *Keenan v. Cherry & Webb*, 47 R.I. 125, 130, 131 Atl. 309, 311 (1925).
10. *Carleton v. Jenks*, 80 Fed. 937 (C.C.A. 6th, 1897); *Colchord Machinery Co. v. Loy-Wilson Foundry & Machine Co.*, 131 Mo. App. 540, 110 S.W. 630 (1908). Cf. IND. STAT. ANN. (Burns 1933) §58-115(3).
11. Williston, "Sales" (2d ed. 1924) §§232, 233 and 234.
12. It has been suggested that §15(3) of the Uniform Sales Act which provides that, "If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed," does not apply where the buyer has not exercised an opportunity to examine. Williston, "Sales" (2d ed. 1924) §248; *Vold*, "Sales" (1931) §146. But see *Weber Iron & Steel Co. v.*

prior to purchase, which contain latent<sup>13</sup> defects, the modern trend of decisions is to enlarge the responsibility of the seller and to imply a warranty on his part from acts and circumstances, wherever they are relied upon by the buyer<sup>14</sup> and it is unnecessary to show the seller's knowledge of unfitness in action against him for breach of implied warranty of fitness.<sup>15</sup>

It is submitted that the instant case follows the general trend of recent decisions in finding seller's liability under breach of implied warranty of fitness.<sup>16</sup> However, it is believed that a jury instruction such as that prescribed by the court in the principal case to the effect that there was a breach of defendant's implied warranty of fitness "if the robe caught fire and burned as the witness testified"<sup>17</sup> is undesirable. Such instruction would preclude from the jury's consideration the following important question of fact upon which liability must be based: Did the buyer actually and justifiably rely upon the skill and judgment of the seller?<sup>18</sup>

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Wright, 14 Tenn. App. 451 (1932) which holds §15(3) of the Uniform Sales Act applicable where the buyer had an opportunity to inspect goods, but did not do so.

13. See *Miller & Co. v. Moore, Sims & Co.*, 83 Ga. 684, 692, 10 S.E. 360, 361 (1889).
14. See *Davenport Ladder Co. v. Edward Hines Lumber Co.*, 43 F. (2d) 63, 67 (C.C.A. 8th, 1930); *Bekkevoldt v. Potts*, 173 Minn. 87, 216 N.W. 790 (1927), and cases discussed therein showing the extent to which courts have gone to find implied warranty of fitness even where the parties have included in a written contract the following provision: "No warranties have been made \* \* \* by the seller to the buyer unless expressly written hereon at the date of purchase."
15. *Bianchi v. Denholm & McKay Co.*, 302 Mass. 469, 19 N.E. (2d) 697 (1939).
16. *Cf. Oil Well Supply Co. v. Watson*, 168 Ind. 603, 80 N.E. 157 (1907); *J. F. Darmody Co. v. Moss*, 86 Ind. App. 426, 158 N.E. 489 (1927); *Kurriess v. Conrad & Co.*, 312 Mass. 670, 46 N.E. (2d) 12 (1942); *Bianchi v. Denholm & McKay Co.*, 302 Mass. 469, 19 N.E. (2d) 697, 121 A.L.R. 460 (1939); *Zirpola v. Adams Hat Stores*, 122 N.J.L. 21, 4 A. (2d) 73 (1939). *Contra*, *State ex rel. Jones Store Co. v. Shain*, 630 Mo. Rep. 352, 179 S.W. (2d) 19 (1944), which holds that purchase of a woman's blouse from a retailer to be worn is not such a purchase for a particular purpose as to give rise to an implied warranty that the blouse will be free from latent defects which might cause serious injury to the buyer. In connection with this case, however, it may be noted that Missouri has not adopted the Uniform Sales Act.
17. *Deffebach v. Lansburgh & Bro.* 150 F. (2d) 591, 592 (1945).
18. *Flynn v. Bedell Co.*, 242 Mass. 450, 136 N.E. 252, 27 A.L.R. 1504 (1922) in which it was held that whether a buyer, who examined a garment containing a latent defect, relied on the seller's skill and judgment that it was suitable for the purpose for which it was required, was properly a question for the jury. *Cf. Keenan v. Cherry & Webb*, 47 R.I. 125, 130, 131 Atl. 309, 311 (1925) in which the Uniform Sales Act is interpreted to treat reliance as a question of fact.