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of the two lines of reasoning. An attempt to rationalize the two lines so as to reach a general rule seems to be futile.

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.1 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,2 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.3 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

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. Chandelor 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,4 and provided the buyer relied upon the
skill and judgment of the manufacturer.5 Some jurisdictions refused
to imply such a warranty to a dealer,6 and required of him only fair
dealing and good faith.7 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.8

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.9 Where the buyer inspects the goods pur-
chased,10 or had an opportunity to adequately inspect them,11 there
is no implied warranty against defects which a reasonable inspection
should have disclosed. However, where the buyer has examined goods,12

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, 1905), and cases cited; Poland v. Miller et al., 95 Ind. 287 (1894); Robinson Machine Works v. Chandler, 56 Ind. 575 (1877);
Stoops, 54 Ind. App. 361, 102 N.E. 980 (1913).
(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.
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. 1918); 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 ob-
tained 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."
10. Carleton v. Jenks, 80 Fed. 937 (C.C.A. 6th, 1897); Colchord Machi-

§58-115 (3).
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) §245; Vold, "Sales" (1931) §146. But see Weber Iron & Steel Co. v.
prior to purchase, which contain latent 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 and it is unnecessary to show the seller's
knowledge of unfitness in action against him for breach of implied war-
ranty of fitness. 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. 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" is undesir-
able. 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?

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.

360, 361 (1889).

(2d) 63, 67 (C.C.A. 8th, 1930); Bekkevoldt v. Pots, 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."

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); Kurriss 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, 131 A.L.R. 460 (1939); Zirpola v. Adams Hat Stores,
122 N.J.L. 21, 4 A. (2d) 73 (1939). See also, 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.


(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.