

The “Inherently Dangerous Rule”

A partial answer to the question, “what is my legal obligation to another?”. The standard answer is that under the privity of contract rule, there is no remote duty, unless the object is inherently dangerous. The culmination is Cardozo negating the privity requirement, because the “inherently dangerous” concept proved too arbitrary, esp. when confronted with cars, boilers, coffee urns and other innovations. Cardozo’s principle covers the preceding cases (inherently dangerous plus privity), and make more sense in terms of foreseeability. Drawn from *An introduction to legal reasoning* (Edward H. Levi, U. Chicago Press 1949) with court decisions provided by William Boardman, Professor Emeritus of Philosophy at Lawrence University

Dixon v. Bell — discharge of gun
(5 MS 198, 1816)

Gun owner sends 13~14 year old servant to fetch the loaded gun, instructs her to remove priming. Girl pretends to shoot the boy and it discharges, hitting son of plaintiff who lost an eye and 2 teeth. Plaintiff recovers damages: Ellenborough, CJ, simply describes the situation with the gun: “consequently, as by this want of care, the instrument was left in a state capable of doing mischief, the law will hold the defendant responsible” i.e. presumes that a loaded gun is dangerous, and notes the duty “The law requires of persons having in their custody instruments of danger, that they should keep them with the utmost care”

Asserts special status to dangerous objects, to create duty beyond contract. Plaintiff prevails.

Langridge v. Levy — exploding gun
(2 Meeson & Welsby 519, 1837)

Langridge’s father buys inferior gun from Levy, fraudulently misrepresented as sound. Gun eventually explodes, hurting L. Appeal on grounds “that no duty could result out of a mere private contract... and that the injury did not arise so immediately from the defendant’s act...”. Plaintiff invokes principle that “if any subject sustained a wrong by the unjustifiable act of another, he ought to have a remedy” (to overcome lack of contractual duty: the purchaser was the father). Dangerous object concept plays a role in this part of the argument:

“Where a party undertakes to furnish that which by his misconduct may become dangerous to another, he [p. 525:] is bound in law to take reasonable care that it is so supplied as not to be injurious. The law imposes such a duty though there may be no contract at all. It is analogous to the liability of a party who puts dangerous animals, knowing their disposition, into a place where they are likely to do injury; *Dixon v. Bell*, 5 M. & Sel. 198.”...

“The law imposes on all persons who deal in dangerous commodities or instruments, an obligation that they should use reasonable care, much more that they should not supply them knowing them to be likely to cause injury.”

Defense retorts “No doubt, whenever an instrument is immediately dangerous, and is so placed as to be likely to do an injury to any of the public, the party who places it there is liable for such injury. But here, for aught that appears, the gun was delivered to the father unloaded.” ...

“So, ferocious animals are immediately and necessarily dangerous.”... “The distinction is this: is the instrument or other thing immediately dangerous or mischievous by the act of the defendant, or is it such as may become so by some further act to be done to it?”

Parke, J rules for the plaintiff: the basis for the judgment was the fraud, but he refers to and implicitly rejects the “dangerous object” concept:

“We are not prepared to rest the case upon one of the grounds on which the learned counsel for the plaintiff sought to support his right of action, namely, that wherever a duty is imposed on a person by contract or otherwise, and that duty is violated, any one who is injured by the violation of it may have a remedy against the wrongdoer ...[we] should pause before we made a precedent by our decision which would be an authority for an action against the vendors, even of such instruments and articles as are dangerous in themselves, at the suit of any persons whomsoever into whose hands they might happen to pass, and who should be injured thereby. We do not feel it necessary to go to that length, and our judgment proceeds upon another ground. If the instrument in question, which is not of itself dangerous, but which requires an act to be done that is, to be loaded, in order to make it so, had been simply delivered by the defendant, without any contract or representation on his part, to the plaintiff, no action would have been maintainable for any subsequent damage which the plaintiff might have sustained by the use of it. But if it had been delivered by the defendant to the plaintiff, for the purpose of being so used by him, with an accompanying representation to him that he might safely so use it, and that representation had been false to the defendant's knowledge, and the plaintiff had acted upon the faith of its being true... action would have lain, upon the principle of a numerous class of cases, of which the leading one is that of *Pasley v. Freeman*, 3 T. R. 51... There is a false representation made by the defendant, with a view that the plaintiff should use the instrument in a dangerous way, and, unless the representation had been made, the dangerous act would never have been done.”

Note also the interesting clause that follows this: “If this view of the law be correct...”

“The defendant ... has knowingly made a false warranty that it might be safely done, in order to effect the sale: and the plaintiff, on the faith of that warranty, and believing it to be true, ... used the gun, and thereby sustained the damage which is the subject of this complaint. The warranty between these parties has not the effect of a contract; it is no more than a representation; but it is no less”

P advances analogy to dangerous animals, appeals to precedent of *Dixon v. Bell*; D distinguishes immediate danger vs. emergent danger. J identifies cause of extra duty as fraud plus knowledge of intended user, resists setting precedent for items “dangerous in themselves”. Plaintiff prevails.

Winterbottom v. Wright — Coach
(10 Meeson & Welsby 109, 1842)

Guy thrown from coach because of defect of manufacture. Found for the defendant on the basis of the absurdity of extending liability to such a remote case (Mfgr. contracted w/ Postmaster, who contracted with Atkinson, who contracted with Winterbottom). Defense argues w.r.t. Langridge v. Levy “There, moreover, fraud was alleged in the declaration, and found by the jury: and there, too, the cause of injury was a weapon of a dangerous nature, and the defendant was alleged to have had notice of the defect in its construction. Nothing of that sort appears upon this declaration”.

Plaintiff counters: “Here the defendant entered into a contract with a public officer to supply an article which, if imperfectly constructed, was necessarily dangerous” and on the fraud, “Here also there was fraud: the defendant represented the coach to be in a proper state for use, and whether he represented that which was false within his knowledge, or a fact as true which he did not know to be so, it was equally a fraud in point of law, for which he is responsible.”

Abinger, J holds “It is however contended, that this contract being made on the behalf of the public by the Postmaster-General, no action could be maintained against him, and therefore the plaintiff must have a remedy against the defendant. But that is by no means a necessary consequence--he may be remediless altogether.” Alderson, J concurs with the “contract ends with the PM” position: they do not touch the “dangerous item” arguments (also rejects the implication of fraud)

D distinguishes by lack of fraud (ref Langridge v. Levy) and “weapon of dangerous nature”; P reaffirms connection to contingent “necessarily dangerous” (“if imperfectly constructed”), and fraud of representing “a fact as true which he did not know to be so”, citing Langridge v. Levy. J again rejects remote duty, rejects implication of fraud (citing Langridge v. Levy), ignores “dangerous item” argument. Defendant prevails.

Longmeid v. Holliday — Exploding lamp
(6 Ex. 761, 1851)

Plaintiff argues “There is general duty on every shopkeeper who sells articles which are or may become dangerous, to take care that they are proper for use.”... “This case falls within the principle of the decision in Langridge v. Levy” (about fraud).

Defendant argues “It is conceded, on the authority of Langridge v. Levy, that where a person knowingly sells to another a dangerous article under a false representation of its safety being well aware that the article is to be used by a third person, the latter may maintain an action for the injury sustained by him in consequence of its defective construction. The principle of that decision is, that where damage results from a fraudulent representation, the party guilty of the fraud is responsible to the party injured. Here, however, the jury have negatived fraud, so that the action is not founded on a breach of duty, but depends simply on contract; and the contract was with the husband alone.”... “But no duty is imposed on a tradesman to furnish articles fit for the purpose of every individual into whose hands they may come. Such a doctrine would be productive of the greatest injustice. For instance, if an accident occurred to an omnibus or a steamboat in consequence of some latent defect in the construction, could every passenger injured maintain an action against the respective builders”.

Parke, J states, w.r.t. duty... “And it may be the same when any one delivers to another without notice an instrument in its nature dangerous or under particular circumstances, as a loaded gun which he himself loaded, and that other person to whom it is delivered is injured thereby, or if he places it in a situation easily accessible [p. 768:] to a third person, who sustains damage from it. A very strong case to that effect is *Dixon v. Bell*, 5 M. & Selw. 198. But it would be going much too far to say, that so much care is required in the ordinary intercourse of life between one individual and another, that, if a machine not in its nature dangerous,--a carriage for instance,--but which had become so by a latent defect entirely unknown, although discoverable by the exercise of ordinary care, should be lent or given by one person, even by the person who manufactured it, to another, the former should be answerable to the latter for a subsequent damage accruing by the use of it.”

P argues a duty on vendor of objects “which are or may become dangerous” from *Langridge v. Levy*. D reminds us that fraud is controlling principle, reminds of consequences of remote duty. J discards fraud given jury finding, distinguishes this from *Dixon v. Bell* in terms of “in its nature dangerous” vs. “not in its nature dangerous... which had become so by a latent defect entirely unknown”. Defendant prevails.

Thomas v. Winchester. — Belladonna
(6 N. Y. 397, 1852)

Court concludes “A dealer in drugs and medicines, who carelessly labels a deadly poison as a harmless medicine, and sends it so labeled into market, is liable to all persons, who, without fault on their part, are injured by using it as such medicine in consequence of the false label”... “The liability of the dealer in such case arises ... out of the duty which the law imposes upon him to avoid acts in their nature dangerous to the lives of others.” Rejects remote liability based on *Winterbottom v. Wright*, but:

“In *Longmeid v. Holliday*, (6 Law and Eq. Rep 562) the distinction is recognized between an act of negligence imminently dangerous to the lives of others, and one that is not so. In the former case, the party guilty of the negligence is liable to the party injured, whether there be a contract between them or not; in the latter, the negligent party is liable only to the party with whom he contracted, and on the ground that negligence is a breach of the contract.”

The defense theory is based on negligence by *Aspinwall* and *Foord* (intermediate druggists, the latter being the direct vendor). The decision is based on *Foord* having no obligation to mistrust the defendant’s label:

“The defendant, by affixing the label to the jar, represented its contents to be dandelion; and to have been “prepared” by his agent *Gilbert*. The word ‘prepared’ on the label, must be understood to mean that the article was manufactured by him, or that it had passed through some process under his hands, which would give him personal knowledge of its true name and quality.”

J rejects remote liability using *Winterbottom v. Wright*, refers to *Longmeid v. Holliday* in distinguishing “imminently dangerous” from not so. Plaintiff prevails.

George v. Skivington — Hair dye
5 Ex 32, 1869

The defendant argues: “It is not alleged that the defendant knew the compound he manufactured and sold was unsuitable for the purpose it was bought for; and the absence of this allegation distinguishes the case from *Langridge v. Levy*.”... “there is no duty cast upon the tradesman towards a stranger to the contract of sale, and he cannot be made liable at the suit of a stranger who has been injured by using the article sold, unless he knew that the article was deleterious: *Longmeid v. Holliday*”.

Kelly, CJ on ruling for plaintiff:

“There is, therefore, no question of warranty to be considered, but whether the defendant, a chemist, compounding the article sold for a particular purpose, and knowing of the purpose, for which it was bought, is liable in an action on the case for unskilfulness and negligence in the manufacture of it whereby the person who used it was injured. And I think that, quite apart from any question of warranty, express or implied, there was a duty on the defendant, the vendor, to use ordinary care in compounding this wash for the hair.”... Also Cleasby: “Substitute the word “negligence” for “fraud,” and the analogy between *Langridge v. Levy* and this case is complete”

D cites *Langridge v. Levy* for fraud (not alleged) and *Longmeid v. Holliday* for “known deleterious”. P not called. J tries to assimilate to fraud by word-substitution, appeals to duty (from where?) to use “ordinary caution”. Plaintiff prevails.

Loop v. Litchfield — Balance wheel
42 N. Y. 351 (1870)

Defect in the rim of a balance wheel for a saw, this was called to the purchaser’s attention (Collister) and patched; it flew apart under use after 4 years, killing Loop who was using the saw with permission. Up front statement “The vendor of an article of his own manufacture is not liable to one who uses the same, with the consent of the purchaser, for injuries resulting from a defect therein, unless such article is, in its nature, dangerous”

Hunt, J states, ruling for defendant:

“To maintain this liability, the appellants, rely upon the case of *Thomas v. Winchester*... It was conceded by the counsel in that case and by the court, that there was no privity of contract between *Winchester* and *Thomas*, and that there could be no recovery upon that ground ...[now citing *TvW*] ‘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 appellants recognize the principle of this decision, and seek to bring their case within it, by asserting that the fly- [p. 359:] 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 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”

P cites *Thomas v. Winchester*, *Longmeid v. Holliday*, *Dixon v. Bell* on negligence entailing liability; D cites *Thomas v. Winchester* on visibility of defect (P’s contributing negligence); J sets *Thomas v. Winchester* aside based on “instruments of danger” vs. other kinds. Defendant prevails.

Losee v. Clute — Boiler
51 N. Y. 494 (1873)

“It may be proper to refer to the case of *Thomas v. Winchester* (2 Selden, 397), cited by the appellant's counsel, and I deem it sufficient to say that the opinion of HUNT, J., in *Loop v. Litchfield* (42 N. Y., 351) clearly shows that the principle decided in that case has no application to this.”

J rules that boilers are not inherently dangerous (like wheels: *Loop v. Litchfield*), distinct from belladonna (*Thomas v. Winchester*). Defendant prevails.

Devlin v. Smith — Scaffolding
89 N. Y. 470 (1882)

(Devlin is painter working for Smith, Stephenson/Stevenson was scaffold-builder who contracted with Smith: note variable spelling within the decision! Original case dismissed by lower court. Dismissal of case against Smith upheld, new trial against Stephenson ordered).

Plaintiff argues on grounds of public duty, and “It is sufficient that he ought to have known, or could, by the exercise of reasonable care, have ascertained, its defective condition”. Rapallo, J states: “*Loop v. Litchfield* 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* was distinguished from *Thomas v. Winchester* upon the authority of *Loop v. Litchfield*.” Now the appeal to danger:

“But, notwithstanding this rule [against third party obligations], 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.)”

J distinguishes “not in itself a dangerous instrument” (Loop v. Litchfield), which is the authority for distinguishing Losee v. Clute from Thomas v. Winchester, cites the latter for “when the defect is such as to render the article in itself imminently dangerous” and invokes “the duty which the law imposes on every one to avoid acts in their nature dangerous to the lives of others”. Plaintiff prevails.

Heaven v. Pender — Ship scaffold
11 Q.B.D. 503 (1883)

Plaintiff’s argument primarily is “The plaintiff was in the defendant's dock on the business of the shipowner... There was therefore a duty on the defendant's part towards the plaintiff that the staging should be in a state of reasonable safety and fitness for the work.”

“Winterbottom v. Wright is distinguishable from the present case, as there the only duty was one which arose from contract, and as the plaintiff was not a party to the contract there was no privity between him and the defendant, and therefore no right to sue. There is nothing inconsistent between Winterbottom v. Wright and George v. Skivington ... George v. Skivington was an extension of Langridge v. Levy to a case of negligence in which the defendant knew by whom the article he supplied would be used... Longmeid v. Holliday is also distinguishable, as there was no negligence.”

Defendant’s argument: “As soon as the staging had been put up against the sides of the vessel it became, as it were, part of the vessel, and the defendant's liability in respect of it ceased, for he had no longer any control over it. The defendants' liability, if at all, could only arise out of the contract under which he supplied the staging with the use of the dock to the shipowner, and therefore no one who was not a party to that contract could sue the defendant. The case of Winterbottom v. Wright governs the present case. George v. Skivington is the first case in which a person who negligently supplied a defective article to a customer was liable to any one who might use it. There was no fraud in the present case... Langridge v. Levy was decided entirely on the ground that there was fraud there by the defendant, and the Court agreed that in the absence of fraud such an action would not lie. That was the case of a dangerous instrument, a loaded gun, which the defendant knew to be loaded. Collis v. Selden shews that the mere fact that the defendant knew that such a person as the plaintiff might probably use the staging would not amount to an invitation to him to use it. Unless the defendant knew of the dangerous condition of the staging, there was no duty he owed the plaintiff for the breach of which he could be liable”

Brett opines: “If a person contracts with another to use ordinary care or skill towards him or his property the obligation need not be considered in the light of a duty; it is an obligation of contract. It is undoubted, however, that there may be the obligation of such a duty from one person to another although there is no contract between them with regard to such duty.”... “So the owner or occupier of house or land who permits a person or persons to come to his house or land has no contract with such person or persons, but has a duty towards him or them”... By

opening a shop you do not really invite, you do not ask A. B. to come in to buy; you intimate to him that if it pleases him to come in he will find things which you are willing to sell.”

“And with regard to both these phrases, though each covers the circumstances to which it is particularly applied, yet it does not cover the other set of circumstances from which an exactly similar legal liability is inferred. It follows, as it seems to me, that there must be some larger proposition which involves and covers both sets of circumstances. The logic of inductive reasoning requires that where two major propositions lead to exactly similar minor premisses there must be a more remote and larger premiss which embraces both of the major propositions.”

“The proposition which these recognized cases suggest, and which is, therefore, to be deduced from them, is that whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognise that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger. Without displacing the other propositions to which allusion has been made as applicable to the particular circumstances in respect of which they have been enunciated, this proposition includes, I think, all the recognised cases of liability. It is the only proposition which covers them all. It may, therefore, safely be affirmed to be a true proposition, unless some obvious case can be stated in which the liability must be admitted to exist, and which yet is not within this proposition. There is no such case.”

“whenever one person supplies goods, or machinery, or the like, for the purpose of their being used by another person under such circumstances that every one of ordinary sense would, if he thought, recognise at once that unless he used ordinary care and skill with regard to the condition of the thing supplied or the mode of supplying it, there will be danger of injury to the person or property of him for whose use the thing is supplied, and who is to use it, a duty arises to use ordinary care and skill as to the condition or manner of supplying such thing.”

P invokes *Winterbottom v. Wright*, *George v. Skivington*, *Langridge v. Levy*, *Longmeid v. Holliday*, using negligence, (non)-existence of contract between parties as bases of similarities and differences. J tempers “not in owner’s control” argument by inserting requirement on user to prove non-negligence, decides on basis of D’s “interest” and that P “invited” D. Also acknowledges separate reason by Brett, but rejects Brett’s general principle as “unnecessary”. B: “whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognise that if he did not use ordinary care and skill in his own conduct with regard to those circumstances he would cause danger of injury to the person or property of the other, a duty arises to use ordinary care and skill to avoid such danger”. Plaintiff prevails

Torgesen v. Schultz — Soda bottle
192 N. Y. Rep. 156 (1908)

Insufficient test for safety of soda water bottle (originally dismissed: reversed)

J: “the defendant is sought to be held liable under the doctrine of *Thomas v. Winchester*, and similar cases based upon the duty of the vendor of an article dangerous in its nature, or likely to become so in the course of the ordinary usage to be contemplated by the vendor either to exercise due care to warn users of the danger or to take reasonable care to prevent the article sold from proving dangerous when subjected only to customary usage. The principle of law invoked is that which was well stated by Lord Justice COTTON in *Heaven v. Pender* (L. R. [11 Q. B. D.] 503), as follows: "Any one who leaves a dangerous instrument, as a gun, in such a way as to cause danger, or who without due warning supplies to others for use an instrument or thing which to his knowledge, from its construction or otherwise is in such a condition as to cause danger, not necessarily incident to the use of such an instrument or thing, is liable for injury caused to others by reason of his negligent act."

“A case in which the accident closely resembled that which happened to the plaintiff in the present action is *O'Neill v. James*” (exploding cider) “The decision reversing the judgment, therefore, was merely a recognition of the doctrine that there must be knowledge of the dangerous character before the defendant can be held liable.”

“Without questioning in the least the applicability of this doctrine to the case at bar I think there was sufficient evidence of the defendant's knowledge in this respect to require a [p. 161:] submission of the issues to a jury. The language of the defendant's circular tends to show that it was well aware that siphons charged under a pressure of 125 pounds to the square inch were liable to explode unless the bottles had been first subjected to an adequate test. This is plainly inferable from the statement: "We take all possible precautions to guard against accidents."

[J holds liable under *Thomas v. Winchester* regarding naturally dangerous articles and quotes Cotton in *Heaven v. Pender* on dangerous instruments inducing liability. Plaintiff prevails.](#)

Statler v. Ray — Coffee urn
195 N. Y. Rep. 498 (1909)

Rule stated: “In the case of an article of an inherently dangerous nature, a manufacturer may become liable to third parties having no contractual relation for a negligent construction which, when added to the inherent character of the appliance, makes it imminently dangerous and causes or contributes to a resulting injury not necessarily incident to the use of such an article if properly constructed, but naturally following from a defective construction,” citing *Thomas v. Winchester*, *Devlin v. Smith*, *Heaven v. Pender*, esp. *Torgesen v. Schultz* inter alii for authority, that “the action thus was based upon no contractual relation, but upon the ground of negligence”

[Reinforcement of rule regarding inherently dangerous objects but also repeats negligence as valid grounds. Plaintiff prevailed.](#)

Cadillac v. Johnson — Broken wheel
2nd Circ. 221 Federal Reporter 801

Ruling: “not liable to an injured person...for its negligent failure to discover that one of the wheels was defective, since while one who manufactures articles inherently dangerous is liable... one who manufactures articles dangerous only if defectively made is not liable to third parties for injuries, except in case of willful injury or fraud”... “One who manufactures articles inherently dangerous, e.g., poisons, dynamite, gunpowder, torpedoes, bottles of water under gas pressure, is liable in tort to third parties...”. Wheels are not inherently dangerous.

Repeat of pattern: distinguishes “inherently dangerous” from “dangerous if defective”, applies fraud and knowingly requirements. Authority based on *Thomas v. Winchester*, *Torgesen v. Schultz*, *Loop v. Litchfield*, *Losee v. Clute*. Defendant prevails.

MacPherson v. Buick — Broken wheel
217 N.Y. 382 (1916)

Rule stated: “If the nature of a finished product placed on the market by a manufacturer to be used without inspection by his customers is such that it is reasonably certain to place life and limb in peril if the product is 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, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. This principle is limited to poisons, explosives and things of like nature, which in their normal operation are implements of destruction....There is evidence, however, that its defects could have been discovered by reasonable inspection and that inspection was omitted....The defendant's liability was not confined to the immediate purchaser...It was responsible for the finished product and was not at liberty to put that product on the market without subjecting the component parts to ordinary and simple tests, and hence is liable...

D: automobile is not an inherently dangerous article. defendant was not liable to a third party in simple negligence. P: automobile, propelled by explosive gases, certified... to run at a speed of fifty miles an hour, ... is a machine inherently dangerous.

J. The charge is one, not of fraud, but of negligence. The question to be determined is; whether the defendant owed a duty of care and vigilance to any one but the immediate purchaser....The foundations ... were laid in *Thomas v. Winchester*. The defendant's negligence "put human life in imminent danger." ... Cases were cited ... in which manufacturers were not subject any duty irrespective of contract. The distinction was said to be that their conduct, though negligent, was not likely to result in injury to any one except the purchaser....*Thomas v. Winchester* became quickly a landmark of the law... There has never in this state been doubt or disavowal of the principle itself. The chief cases are... *Loop v. Litchfield* ... *Losee v. Clute* (51 N. Y. 404)... Later cases, however, evince a more liberal spirit. ...*Devlin v. Smith*...*Statler v. Ray*...

It may be that *Devlin v. Smith* and *Statler v. Ray Mfg. Co.* have extended the rule of *Thomas v. Winchester*. If so, this court is committed to the extension.... Whatever the rule in *Thomas v. Winchester* may once have been, it has no longer that restricted meaning. A scaffold

(Devlin v. Smith, supra) is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed. A large coffee urn (Statler v. Ray Mfg. Co., supra) may have within itself, if negligently made, the potency of danger, yet no one thinks of it as an implement whose normal function is destruction. What is true of the coffee urn is equally true of bottles of aerated water (Torgeson v. Schultz... We are not required at this time either to approve or to disapprove the application of the rule that was made in these cases. It is enough that they help to characterize the trend of judicial thought....

Devlin v. Smith was decided in 1882. A year later...Heaven v. Pender...in the opinion of BRETT, M.R... the same conception of a duty irrespective of contract imposed upon the manufacturer by the law itself: "Whenever one person supplies goods, or machinery... a duty arises to use ordinary care and skill as to the condition or manner of supplying such thing." He then points out that for a neglect of such ordinary care or skill whereby injury happens, the appropriate remedy is an action for negligence. The right to enforce this liability is not to be confined to the buyer. The right he says extends to the persons or class of persons for whose use the thing is supplied....

We hold, then, that the principle of Thomas v. Winchester is not limited to poisons, explosives, and things of like nature to things which in their normal operation are implements of destruction. 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 consequence 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, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we need to go for the decision of this case. 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. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered. We are dealing now with the liability of the manufacturer of the finished product who puts it on the market to be used without inspection by his customers. If he is negligent, where danger is to be foreseen, a liability will follow....

...there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant's liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective... The defendant knew the danger. ... The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the developing civilization require them to be.... It is true that the court told the jury that "an automobile is not an inherently dangerous vehicle." The meaning however, is made plain by the text. The meaning is that danger is not to be expected when the vehicle is well constructed. The court left it to the jury to say whether the defendant ought to have foreseen that the car, if negligently constructed, would become "imminently dangerous"...

We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests

New rule: "...a finished product...to be used without inspection ... is such that it is reasonably certain to place life and limb in peril if the product is negligently made, it is then a thing of danger. ...added knowledge that the thing will be used by persons other than the purchaser ... irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully."