

such person was to use the chattel (c), or it was apparent that, in the nature of the case, he would use it (d).

(H). It seems that one who lends gratuitously a chattel to be used for a specific purpose is liable for injuries received by the bailee's servants, where it is in an unfit condition for use owing to defects which the lender was aware of and failed to disclose to the bailee (e). But in any event the lender does not owe such servants the duty of examining the chattel in order to ascertain whether it is defective (f).

The second of these propositions is not stated in positive terms, for the reason that the plaintiff in the three cases cited was, as a matter of fact, denied recovery on the ground that the defendant

(c) *George v. Skivington* (1869) L.R. 5 Exch. 1, where a hairwash which proved deleterious was bought for the plaintiff by her husband. In the case next cited Lord Esher stated the effect of the case as follows: If a tradesman supplies an article under such circumstances that he must or ought to have known, if he had thought about it, that the article would be used by other persons besides the purchaser, he owes a duty to those other persons, by reason of his knowledge that they will probably use it.

(d) *Hopkins v. Great Eastern R. Co.* (C.A. 1896) 60 J.P. 86, where the servant of one who had hired a coal-shoot was injured by using it. All the judges argued upon the assumption that it was their duty to use care in seeing that the shoot was in good condition at the time it was transferred to the hirer, inasmuch as its use by the workmen must have been contemplated. Lord Esher expressly assimilates the situation to that presented in *George v. Skivington* supra. Kay, L.J. thought the case came under the principle of *Heaven v. Pender*, (see X, ante), the effect of which he conceived to be "that, where a dock-owner supplies a ship-owner with staging which, in the nature of things, will be used by third persons, there is a duty on the part of the person who supplies the staging towards such persons to see that the staging is, at the time it was supplied, fit for the purpose for which it was intended, but not that it shall remain in that condition." This comment indicates clearly enough the standpoint of the court, though it seems to ascribe a much greater importance to the defendant's contemplation of the plaintiff's use of the scaffold, as a probable event, than the opinion of Cotton, L.J. warrants. It is, however, interesting to note, in view of the direction which this judge's reasoning took in his opinion, that according to the report of the case in 52 L.J. Q.B. p. 704, he put this question during the argument of counsel: "Does not the principle by which a man is liable to a person who is injured by a public nuisance apply to cases in which an improperly constructed article causes damage to a limited class of persons to whom it is supplied?" Compare also *Elliott v. Hall*, 15 Q.B.D. 315. The statement recently made by a member of the Ontario Court of Appeal in *Smith v. Onderdonk* (1893) 25 Ont. App. 17, that the only grounds on which the bailor could be made liable in a case of this type were misrepresentation or fraudulent suppression is clearly quite inconsistent not only with the *Hopkins Case* which they did not cite, but with *Heaven v. Pender* which was discussed. The decision itself, refusing to allow the servant of a sub-contractor to recover damages from the principal contractor for an injury caused by a defective locomotive supplied to the plaintiff's master for construction work, can scarcely be justified, in view of the fact that the accident happened on the same day as the locomotive was transferred to the bailee. It is somewhat unfortunate that the *Hopkins Case* was not called to the attention of the court.

(e) *Blakemore v. Bristol &c. R. Co.* (1858) 8 El. & Bl. 1035 J., followed in *MacCarthy v. Young* (1861) 6 H. & N. 329, and in *Coughlin v. Gillison* (1899) 1 Q.B. (C.A.) 145.

(f) *Coughlin v. Gillison*, ubi cit. *Caledonian R. Co. v. Mulholland* (1898) A.C. 215, referred to in X, ante, seems to be another case in which this principle, though not relied upon, is necessarily implied.