

**Reports and Notes of Cases.  
Province of Nova Scotia.**

**SUPREME COURT.**

**DRYSDALE, J.]                      BUCKLEY v. MOTT. H                      [50 D.L.R. 408.**

**FOOD—MANUFACTURE OF CANDY—NEGLIGENCE—PURCHASE FROM MIDDLEMAN  
—INJURIES FROM EATING—DAMAGES—PRIVITY OF CONTRACT.**

A manufacturer of chocolate bars for use as a food and supplied to the public through retail dealers, owes a duty to the public not to put on sale a chocolate bar filled with powdered glass or other injurious substance and is liable in damages to a purchaser who is made ill through eating the bar although there is no privity of contract between the manufacturer and the purchaser.

*Brown, K.C., for plaintiff. Henry, K.C., for defendant.*

**ANNOTATION ON ABOVE FROM D.L.R.**

The interest in this case lies in the fact that it is the first of its kind to be tried in a Canadian Court.

A careful search has disclosed very few cases either in the English or American Courts on the specific branch of this general question of the liability of a packer or manufacturer of food to the ultimate consumer, who purchased the same from a middleman.

*Tomlinson v. Armour & Co.* (1908), 75 N.J.L.R. 748. Held that irrespective of the presence or absence of contractual obligations arising out of the dealings between manufacturer and retailer, and between retailer and consumer, the manufacturer of canned goods is under a duty to him who, in the ordinary course of trade, becomes the ultimate consumer to exercise care that the goods which he puts into cans and sells to retail dealers to the end that such dealers may sell the same to customers and patrons as food, are wholesome and fit for food, and not tainted with poison.

In *Salmon v. Libby*, 219 Ill. 421, reversing 114 Ill. App. 258, a declaration was held to be good which set out a statute permitting a recovery for the death of a person caused by the wrongful act or omission of another and which alleged that defendant negligently and improperly prepared and manufactured mince-meat so that the same became poisonous and destructive to human life when used as food, and that the plaintiff's testator while lawfully partaking of the same, was poisoned and died in consequence thereof; though it also shewed that the plaintiff's testator did not purchase the mince-meat directly from the defendant. The question of the liability of the packer to persons not in privity of contract with him was not discussed as the specific objection to the declaration was that it failed to state the particular negligence complained of. *Craft v. Parker W. & Co.*, 96 Mich. 245, is another case to the same effect. This was an action to recover damages for injuries caused by eating spoiled bacon sold by defendant to the plaintiff's brother. The Court held if the defendant was negligent in selling meats that were dangerous to those who ate them, he would be liable for the consequences of his act if he knew the meats to be dangerous or by proper care on his part could have