

where the defect could not have been discovered without special skill and knowledge, which the seller possesses and the purchaser lacks. Transactions presenting this feature occur whenever a manufacturer sells machinery or a chemist sells drugs. As a general rule, the customers would be justified in assuming that the articles bought were in such a condition that they may be safely used, although they might have latent defects of which the vendors should have been aware (e). Whenever that assumption is justified, it is clear that, if a stranger, such as a servant of the purchaser, suffers injury from the defective quality of the article purchased, the effect of the present rule will be that he cannot claim an indemnity from the manufacturer because there is no contract between them, nor from the purchaser because he has not been wanting in due care. The injustice of denying a remedy under these circumstances against the only person who has been guilty of negligence is not disguised by the use of the convenient expression, *damnum absque injuria* (f). The supposed situation, in fact, whatever gratification it may afford to a connoisseur of disagreeable logical dilemmas, is simply shocking to common sense. That modern judges, with a few exceptions, should still refuse to admit that there is anything incongruous or unsatisfactory in the doctrines which lead up to it, shews how far even the most robust intellects may, under our system of case law, be carried away from a scientific theory of liability by following precedents which, when analysed, seem to rest ultimately on no more solid basis than doubtful inferences from the mere technicalities of pleading and equally doubtful considerations of social and economic expediency. Additional support for these doctrines, it may be, can be found in some of those secondary principles with which the accidents of historical development have so richly endowed our law. But it is difficult to admit that these can furnish an adequate warrant for a situation so repugnant to elementary physical and

(e) See the comments of Brett, M. R., in *Cunnington v. The Eastern R. Co.* (1883) 49 L. T. N. S. 392, on *George v. Skivington* (1869) L.R. 5 Exch. 1. The doctrine stated in the text is clearly a necessary corollary from the principles which define the relations between an independent contractor and his employer, and is so treated by the American courts in the cases which have established the right of a purchaser to rely to a very great extent on the quality of an article bought from a reputable manufacturer. See *Carlson v. Phoenix Bridge Co.* (1892) 132 N.Y. 273; *Reynolds v. Merchants Woollen Co.* (1897) 168 Mass. 301.

(f) See the opinion of Rolfe, B., in *Winterbottom v. Wright* (1842) 10 M. & W. 109.