

consisting in selling an article known to be dangerous, the defect in which is concealed. Conspicuous in this group of cases is the case of *Schubert v. J. R. Clark Co. (t)*. The facts in that case, as stated by the court, are substantially as follows: The plaintiff, a house painter, was in the service of one Phelps. He was engaged in the work of painting the interior of a certain building. His employer, Phelps, as a purchaser, ordered from a retail merchant a new 10 foot stepladder, directing it to be delivered to the plaintiff at the place where he was at work. The merchant, not having such a ladder in his stock of goods, ordered the defendant corporation to deliver such a step-ladder to the plaintiff for his use. The defendant delivered a ladder to the plaintiff pursuant to that order. This we construe to have been a purchase by the merchant from the defendant. The defendant was a manufacturer of such goods and the ladder so delivered had therefore been manufactured by it, "to be sold for the purpose of being used." It was made of poor, cross-grained and decayed lumber, and "was so insufficient in strength as to be dangerous to the life and limb of this plaintiff and whoever might use the same." It was alleged that the defendant knew or ought to have known of such defects and insufficiency. Neither the plaintiff nor his employer nor the merchant from whom the latter ordered the ladder knew of such defects and it was so varnished, oiled and painted that they could not discover them. The plaintiff, supposing the ladder to have been made of good material, and of sufficient strength, proceeded to use it in the performance of his work and while standing on it, seven feet above the floor, it broke, without his fault causing him to fall and he was thereby injured. The court, by Dickson, J., said: "If the defendant knowingly delivered such an article for the plaintiff's use, it was its duty to warn him of the danger by disclosing the hidden defects; and neglect of that duty would constitute actionable negligence. Every one may be supposed to understand that such articles are manufactured, sold or disposed of with a view to their being used. They are valuable and salable only because of their supposed fitness for use. One who procures such an article, either from a manufacturer or from a retail dealer, would ordinarily assume, without inquiry, and without any express

---

(t) *Schubert v. J. R. Clarke Co.*, 49 Minn. 321, 51 N.W. Rep. 1103, 32 Am. St. Rep. 559, 15 L.R.A. 818.