

test, put upon the market for sale for illuminating purposes, by a purchaser from one to whom it was sold by the refiner, to recover for injuries which he sustained by an explosion thereof (*p*); and probably would apply to a caterer who dispenses unwholesome food to one not in contractual relations with him (*q*).

So, for the violation of a duty imposed by statute with reference to dangerous articles, there may be a recovery by any one injured because of a breach thereof, without fault on his part (*r*).

*The Doctrine of implied invitation.*—In many cases the courts have applied the doctrine of implied invitation to fasten upon the manufacturer a liability for injury to third persons resulting from defects in negligently manufactured articles (*s*). In the case of *Bright v. Barnett Record Co.*, a scaffold case,—an action against a contractor by a servant of one for whom the contractor built a scaffold in such a negligent manner as to cause it to fall and injure the servant, the court, in holding that the defendant could be held liable on the ground of an implied invitation, said: "The first position taken by the learned counsel of the appellant in their brief is that the appellant owed the deceased no legal duty arising from contract or otherwise. This is no doubt the general rule. 'The liability of the builder or manufacturer for such a defect is in general only to the person with whom he contracted.' But this case belongs with a class of cases that can be sustained outside of this general principle, and may rest on two well-established principles of law. The defendant, in furnishing this staging for the use of the employees of the fire extinguishing company, on which they might stand or walk in doing their work, had, in effect, invited and induced the deceased to walk on it while doing his work, and was liable to him if he suffered an injury from its defective condition, caused by the negligence of its construction. The case may rest on this simple implied invitation."

*Fraud and bad faith.*—In some cases the liability of the manufacturer or seller is put upon the ground of fraud and deceit

(*p*) *Elkins v. McKean*, 79 Pa. St. 493; *Wellington v. Oil Co.*, 104 Mass. 64.

(*q*) *Bishopp v. Weber*, 139 Mass. 411, 1 N.E. Rep. 154, 52 Am. Rep. 154.

(*r*) *Ives v. Welden*, 114 Ia. 576, 87 N.W. Rep. 408, 54 L.R.A. 854.

(*s*) *Heaven v. Pender*, L.R. 11 Q.B. Div. 503; *Pickard v. Smith*, 10 C.B. (N.S.) 470; *Mulchey v. Society*, 123 Mass. 487; *Gilbert v. Nagle*, 118 Mass. 278; *Bright v. Barnett & Record Co.*, 88 Wis. 299, 60 N.W. Rep. 418, 26 L.R.A. 524; *Coughtry v. Globe Woolen Co.*, 56 N.Y. 124, 15 Am. Rep. 387.