

this respect did not arise out of the defendant's contract of sale to Aspinwall. The wrong done by the defendant was in putting the poison, mislabeled, into the hands of Aspinwall as an article of merchandise to be sold and afterwards used as the extract of dandelion by some person then unknown."

In the recent case of *Huset v. J. I. Case Threshing Machine Co.*,<sup>(n)</sup> which leaves but little to be said on the subject, and which contains an admirable collection and review of the authorities, the plaintiff was an employee of an owner of a threshing machine manufactured by the defendant. The owner of the machine, bought it of another who purchased it directly from the defendant. The injuries, to recover for which the plaintiff sued, was sustained by him by falling through an insecure piece of sheet iron into a revolving cylinder. The machine as thus constructed was imminently and necessarily dangerous. The circuit court sustained a demurrer to the complaint containing these allegations. The Court of Appeals, in holding that the demurrer was erroneously sustained, Sanborn, Cir. J., speaking for the court, said: "Actions for negligence are for breaches of duty. Actions on contracts are for breaches of agreements. Hence the limits of liability for negligence are not the limits of liability for breaches of contracts, and actions for negligence often accrue where actions upon contracts do not arise, and vice versa. It is a rational and fair deduction from the rules to which brief reference has been made, that one who makes or sells a machine, a building, a tool or an article of merchandise, designated and fitted for a specific use, is liable to the person who, in the natural course of events, uses it for the purpose for which it was made or sold, for an injury which is the natural and probable consequence of the negligence of the manufacturer or vendor in its construction or sale."

Thus, this rule has been held to apply to an action against a builder of a scaffold for his negligence in its construction, whereby a servant of the one for whom it was built was injured by its falling (*o*); to an action against a refiner of oil below the legal fire

<sup>(n)</sup> *Huset v. J. I. Case Threshing Machine Co.*, 120 Fed. Rep. 865, 57 C.C.A. 237, 61 L.R.A. 393.

<sup>(c)</sup> *Devlin v. Smith*, 89 N.Y. 470; *Coughtry v. Globe Woolen Co.*, 56 N.Y. 124, 15 Am. Rep. 387; *Bright v. Barnett & Record Co.*, 88 Wis. 299, 60 N.W. Rep. 418.