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PILLARS v. R. J. REYNOLDS TOBACCO CO. ET AL.

[NO NUMBER IN ORIGINAL]

SUPREME COURT OF MISSISSIPPI, DIVISION B

117 Miss. 490; 78 So. 365; 1918 Miss. LEXIS 194

March, 1918, Decided

PRIOR HISTORY: [***1] APPEAL from the circuit court of Hinds county.

HON. W. H. POTTER, Judge.

Suit by Bryson Pillars against R. J. Reynolds Tobacco Company and another. From a judgment for defendant, plaintiff appeals.

The facts are fully stated in the opinion of the court.

DISPOSITION: Judgment reversed in part and affirmed in part.

[attorneys' arguments omitted]

JUDGES: COOK, P. J.

OPINION BY: COOK

OPINION

[**365] [*497] COOK, P. J., delivered the opinion of the court.

The appellant sued the Corr-Williams Tobacco Company, distributors, and R. J. Reynolds Tobacco Company, manufacturer, of "Brown Mule Chewing Tobacco," for damages resulting to the appellant from chewing a piece of Brown Mule tobacco in which was concealed a decomposed human toe. The evidence disclosed [*498] that R. J. Reynolds Tobacco Company was the sole manufacturer of the tobacco, and that this company manufactured the identical plug which contained [***12] the rotten toe; the tobacco in question was sold by the manufacturer to the other defendant, the Corr-Williams Company, and resold by the latter company to a retailer in Jackson, and was bought by appellant from the retailer. It seems that appellant consumed one plug of his purchase, which [**366] measured up to representations, that it was tobacco unmixed with human flesh, but when appellant tackled the second plug it made him sick, but, not suspecting the tobacco, he tried another chew, and still another, until he bit into some foreign substance, which crumbled like dry bread, and caused him to foam at the mouth, while he was getting "sicker and sicker." Finally, his teeth struck something hard; he could not bite through it. After an examination he discovered a human toe, with flesh and nail intact. We refrain from detailing the further harrowing and nauseating details. The appellant consulted a physician, who testified that appellant exhibited all of the characteristic symptoms of ptomaine poison. The physician examined the toe and identified it as a human toe in a state of putrefaction, and said, in effect, that his condition was caused by the poison generated by the rotten [***13] toe. At the close of the evidence for plaintiff the trial judge, at the request of the defendants, directed a verdict for the defendants, and from a judgment responsive to this instruction, an appeal is prosecuted to this court.

Generally speaking, the rule is that the manufacturer is not liable to the ultimate consumer for damages resulting from the defects and impurities of the manufactured article. This rule is generally based upon the theory that there is no contractual relations existing between the ultimate consumer and the manufacturer. From time to time, the courts have made exceptions to the rule. The manufacturers of food, beverages, drugs, [*499] condiments, and confections have been held liable to ultimate consumers for damages resulting from the negligent preparation of their products. The contention of the defendants here is that the limit has been reached by the courts, and that the facts of this case do not

warrant an exception in favor of the plaintiff, and this view was adopted by the learned trial court. The exceptions already made were for the protection of the health of the people, and to insure a scrupulous care in the preparation of those articles of commerce [***14] so as to reduce to a minimum all danger to those using them.

If poisons are concealed in food, or in beverages, or in confections or in drugs, death or the impairment of health will be the probable consequence. We know that chewing tobacco is taken into the mouth, that a certain proportion will be absorbed by the mucous membrane of the mouth, and that some, at least, of the juice or pulp will and does find its way into the alimentary canal, there to be digested and ultimately to become a part of the blood. Tobacco may be relatively harmless, but decaying flesh, we are advised, develops poisonous ptomaines, which are certainly dangerous and often fatal. Anything taken into the mouth there to be masticated should be free of those elements which may endanger the life or health of the user. No one would be so bold as to contend that the manufacturer would be free from liability if it should appear that he purposely mixed human flesh with chewing tobacco, or chewing gum. If the manufacturer would be liable for intentionally feeding putrid human flesh to any and all consumers of chewing tobacco, does it not logically follow that he would be liable for negligently bringing about the same [***15] result? It seems to us that this question must be answered in the affirmative.

Liggett & Myers Co. v. *Cannon,* 132 Tenn. 419, 178 S.W. 1009, L.R.A. 1916A 940, Ann. Cas. 1917A 179, is not controlling. The supreme court of Tennessee held in that case that tobacco was not food and that we are [*500] ready to admit, and it may be that the decision of that case was correct, but we are inclined to the opinion that the court of appeals of Tennessee had the best of the argument in that case.

We have read with care the very able and instructive brief for the appellee, in which he argues and we think proves that tobacco is not food for human beings at least, no matter how much tobacco worms or the town goat may relish it, but we are of opinion that we are not restricted to this narrow question, nor have we reached the limit when we admit that tobacco is not a beverage, or a condiment, or a drug.

The fact that the courts have at this time made only the exceptions mentioned to the general rule does not prevent a step forward for the health and life of the public. The principles announced in the cases which recognize the exceptions, in our opinion, apply, with equal [***16] force, to this case.

We believe that the way the tobacco is to be used furnishes the reason for great care in its preparation. If we eat food or drink beverages containing substances which under certain conditions may endanger our lives, for obvious reasons, he who prepares the food or drink should be required to exercise great care to prevent the dangerous conditions. It appears sufficiently certain that chewing tobacco with poisonous ptomaines hidden in it is dangerous to the consumer, as was proven in this case.

We can imagine no reason why, with ordinary care human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless.

We will reverse the judgment of the lower court as to the manufacturer and affirm the judgment as to the distributor. The distributor could not have suspected that human toes were concealed in the plug, and was not negligent in not discovering the noxious contents of the plug.

Reversed in part and affirmed in part.