this class of cases from the benefits of the contract, although there has been no definite statement that this alone will be sufficient to bar liability in all cases. *Gibbs v. Equitable Life Assurance Society of the U. S.* (1931) 256 N. Y. 208, 176 N. E. 144; *Blonski v. Bankers Life Co.* (1932) 209 Wis. 5, 243 N. W. 410.

It seems to be a fair inference in almost all of the cases that the clauses have been incorporated with the purpose in view of entirely eliminating responsibility for this type of accident. Especially is this true of policies written, as the present one was, before 1925; that is, before the time when the aviation industry became a major one and air travel a normal occurrence. At that time merely riding in aircraft was regarded as highly dangerous and the companies presumably had no desire to include it among the risks insured against. See *Gibbs v. Equitable Life Assurance Society of the U. S., supra; Reeder, Aircraft Clauses in Accident Policies* (1931) 2 Mo. Bar. Journ. (no. 8) 7. And although the Courts have argued that the insured might often be unaware of this intention, where "as passenger or otherwise" is added the words would seem to give him notice.

But the basic difficulty in this and other cases where it is used is the word "engaged." The insurors advance the contention that it is to be understood in the same way as engaging in automobiling, tobogganing or some other form of sport or entertainment, and so used a single act is included; while beneficiaries argue that its meaning is similar to engaged in railroading or the drama—some type of business or occupation implying sustained or multiple activity. The word clearly has two different meanings dependent upon the concept with which it is associated. That aviation is a business at the present time and more than a single trip would be necessary to render a person "engaged" in it is incontestable; but that it was so before 1925 is open to doubt. And if not the decision in the instant case has a sounder basis. In any event, the highly technical nature of the reasoning is apparent in all the cases, and in the absence of legislation it would seem that a uniform and more definite clause in the insurance policies would eliminate the necessity of much tortuous construction. T. S. M. '36.

NEGLIGENCE—LIABILITY OF MANUFACTURER TO THIRD PERSON FOR DAMAGE TO PROPERTY.—The defendant, a manufacturer of paints and varnishes, sold a secret preparation to a contracting company whose employee used it in waterproofing the interior of a tank belonging to a third person. The preparation, containing benzine and kerosene, exploded, destroying the tank and the barn in which it was placed. The insurers, subrogated to the rights of the owner, seek to recover from the defendant on grounds of negligence. The jury found negligence on the part of the defendant in failing to warn against the use of the preparation near fire. *Held:* The defendant, manufacturing a product imminently dangerous to life and property, is liable for damage caused to property by its negligence. *Genesee County Patrons Fire Relief Ass'n. v. L. Sonneborn Sons, Inc., et al.; Cooperative Fire Ins. Co. of Wyoming and Genesee Counties v. Same* (N. Y. App. 1934) 189 N. E. 551.

Ever since the case of *Winterbottom v. Wright* (1842) 10 M. & W. 109 it has been the recognized general rule that a manufacturer is not liable to third persons who have no contractural relations with him for negligence in the manufacture or sale of the article. *Huset v. J. I. Case Threshing Ma-*

chine Co. (C. C. A. 8, 1903) 120 F. 865, l. c. 868. But exceptions were early developed and in 1852 the New York Court of Appeals permitted recovery where the article manufactured was inherently and imminently dangerous to human life. *Thomas v. Winchester* (1852) 6 N. Y. (2 Seld.) 397. This exception is well recognized *notes* (1922) 17 A. L. R. 672; (1925) 39 A. L. R. 992; (1929) 63 A. L. R. 340. In 1916 the exception was extended in New York to attach liability to the manufacturer of an article which, when negligently made, would probably place persons in peril. *MacPherson v. Buick Motor Co.* (1916) 217 N. Y. 382, 111 N. E. 1050. This doctrine has found wide acceptance. *U. S. Radiator Corp. v. Henderson* (C. C. A. 10, 1933) 68 F. (2d) 87, l. c. 91.

The Buick case, however, left undecided the question whether the rule would apply to cases in which only property was damaged. The New York Court of Appeals, until the case under discussion, was not faced with that issue or expressly reserved it. *Pine Grove Poultry Farm Inc. v. Newton By-Products Mfg. Co.* (1928) 248 N. Y. 293, 162 N. E. 84.

Cases in point are difficult to reconcile. In Massachusetts the Courts have been rather consistent in denying recovery where the issue has beeen raised. Although in an earlier case, *Wellington v. Downer Kerosene Oil Co.* (1870) 104 Mass. 64, recovery was allowed, later cases show the opposite trend. In *Thompkins v. Quaker Oats Co.* (1921) 239 Mass. 147, 131 N. E. 456, the Court while regarding food for human consumption as inherently dangerous, refused so to regard poultry food and recovery for loss of chickens was denied. In *Windram Mfg. Co. v. Boston Blacking Co.* (1921) 239 Mass. 123, 131 N. E. 454 the plaintiff, engaged in pasting linings to fabrics, bought the defendant's cement from a dealer, and in using it with ordinary care damaged the fabrics. The defendants demurred to the plaintiff's petition which alleged negligence in the manufacture of the cement and also defendant's knowledge that the cement was to be used by the plaintiff. The demurrer was sustained, the Court saying, "No authority has been called to our attention which imposes a common law duty of care towards strangers to the contract upon the maker of an article which is not inherently dangerous, but is likely to cause a loss to property because of faulty preparation. These rulings of the Massachusetts Court are in line with their general attitude on the liability of vendors to third persons. *Giberti v. James Barrett Mfg. Co.* (1929) 263 Mass. 81, 165 N. E. 19; *Christensen v. Bremer et al.; Same v. New England Road Machinery Co.* (1928) 263 Mass. 129, 160 N. E. 410. It is true, of course, that both of these cases inferentially indicate that if the property damage had been caused by an article inherently and imminently dangerous to both life and property recovery might have been allowed.

Some Courts have been expressly faced with the issue and have permitted recovery. The New York Supreme Court, in *Quackenbush v. Ford Motor Co.* (1915) 167 App. Div. 433, 153 N. Y. S. 131 refused to limit the liability of a manufacturer of an automobile merely to personal injuries but definitely extended liability to include property damages. The Wisconsin Supreme Court in *Marsh Wood Products Co. v. Babcock & Wilcox Co.* (1932) 207 Wis. 209, 240 N. W. 392 said, "We think, however, that at least where the article if negligently manufactured will be imminently dangerous to human safety, the liability should extend to property damage in all cases where a causal connection can be established between the defect which constitute the article a menace and the property damage." Other cases follow

this ruling which seems to be the prevailing one. *Stowell v. Standard Oil Co.* (1905) 139 Mich. 18, 102 N. W. 227; *Skinn v. Reutter* (1903) 135 Mich. 57, 97 N. W. 152; *Mazetti v. Armour & Co.* (1913) 75 Wash. 622, 135 Pac. 633; *U. S. Radiator Co. v. Henderson et al., supra.*

One Court, however, allowed recovery where the article was not dangerous to human life but was dangerous only to property. *Ellis et al. v. Lindmark et al.* (1929) 177 Minn. 390, 225 N. W. 395. There the defendant was negligent in selling linseed oil as cod liver oil to be used for poultry food. And see *Murphy v. Sioux Falls Serum Co.* (1921) 44 S. D. 421, 184 N. W. 252; (1923) 47 S. D. 44, 195 N. W. 835. The instant case, however, confines its ruling "to cases in which the use of the product is imminently dangerous to life and property." A. J. G. '36.

WORKMEN'S COMPENSATION—INJURIES IN COURSE OF EMPLOYMENT—PERSONAL ACTIVITIES.—Employee, a traveling salesman whose expenses were borne by his employer, contracted typhoid fever while eating in a restaurant. This proceeding was under the Workmen's Compensation Law. *Held*, that the injury did not "arise out of and in the course of employment." Compensation denied. *Johnson v. Smith* (1933) 263 N. Y. 10, 188 N. E. 140.

This was a four to three decision, the majority holding this an exclusively personal activity and refusing to draw any distinction between these circumstances and those where the employee took a definite lunch period away from the place of employment and bought his own meal, in which case any injury clearly would not be compensable. *Clark v. Voorhees* (1921) 231 N. Y. 14, 131 N. E. 553. The dissenting opinion on the other hand, reasoned that "the employment was continuous from the time he left his employer's place of business, and his eating lunch was a necessary incident to his employment."

While unanimous in denying recovery for injuries sustained in the employee's personal pursuits, a clear conflict obtains as to whether eating and sleeping belong in this category. In *Wynn v. Southern Surety Co.* (Texas Civ. App. 1930) 26 S. W. (2d) 691, a traveling salesman, with expenses paid, was killed on his way to his hotel, having finished his evening meal. Compensation was denied on the ground that "a traveling salesman while eating his meal or sleeping at hotels, or attending church or theaters, or going on picnics or private errands for his own pleasure or profit, is not, within the contemplation of the Workmen's Compensation Act . . . an injury received in the course of his employment." But in the case of *Walker v. Speeder Corp.* (1932) 213 Iowa 1134, 240 N. W. 725, a traveling salesman with all expenses paid who was injured while on the way to get a meal furnished by the employer, received compensation on the ground that this was a necessary incident to his work. Recovery was also granted for poisoning by food, where the employee on a particular day was told to lunch at employer's expense, near the office so as to be more available for an expected emergency call. *Krause v. Swartwood* (1928) 174 Minn. 147, 218 N. W. 555. A strike breaking employee, housed by the employer near the plant and subject to call 24 hours a day, was injured while returning from his evening meal at a nearby restaurant. *Crippen v. Press Co., Inc.* (1930) 228 App. Div. 727, 239 N. Y. S. 102. And in *Hobson v. Dept. of Labor and Industries of Wash.* (Wash. 1934) 27 Pac. (2d) 1091, a nightwatchman on duty 24 hours a day was injured while returning from the place where he got his food and mail. Recovery was allowed in both instances.