

ance contract. The instant case, therefore, is in conflict with *Underwood v. Fortune*. It clearly adopts the Rhode Island rule, not heretofore followed in Missouri. Perhaps the equitable viewpoint and sound public policy recognized in recent cases between vendor and purchaser¹⁵ are preferable. At any rate the supreme court of this state must now determine whether the Massachusetts or Rhode Island doctrine shall prevail. S. R. S.

MUNICIPAL CORPORATIONS—BANKRUPTCY—CONSTITUTIONAL LAW—[Federal].—The National Municipal Bankruptcy Act of 1937¹ has, unlike the Act of 1934, been upheld.² The new Act, like the old, permits municipalities to institute voluntary proceedings in courts of bankruptcy. The Lindsay-Strathmore Irrigation District filed a voluntary petition under the Act, sufficiently alleging insolvency and other requisite matters. The district court, feeling bound by *Ashton v. Cameron County District*,³ which had declared the Act of 1934⁴ to be invalid, dismissed the petition and declared the new statute also to be unconstitutional. The United States Supreme Court in reversing the lower court held the new Act to be neither violative of the Fifth Amendment nor an unconstitutional interference with the essential sovereignty of the states.

The two acts differ in few respects. The machinery provided in them is essentially similar. The original Act lumped political subdivisions together with non-political ones, while the new Act lists them separately. The *Ashton* case had declared the earlier Act to be unconstitutional because the statute applied to political districts and therefore interfered with the political powers of the State. It was thought by some that separate listing of the various subdivisions of the state to which the new Act would apply would allow the courts to circumvent the *Ashton* case by making use of the separability clause and thereby declaring the new Act constitutional as to the non-political subdivisions.⁵ But the Supreme Court did not distinguish between the new statute's applicability to political and to non-political subdivisions. It should be noted further that the Lindsay-Strathmore Irrigation District had once been held to be a political subdivision by the Supreme Court of California,⁶ and federal courts are required to adopt that interpretation of the district's status.⁷ The only other substantial

15. *Mahan v. The Home Insurance Co. of N. Y.* (1920) 205 Mo. App. 592, 226 S. W. 593; *Standard Oil Co. v. Dye* (1929) 223 Mo. App. 926, 20 S. W. (2d) 946.

1. (1937) 50 Stat. 653, (1937) 11 U. S. C. A. secs. 401-404.

2. *United States v. Bekins* (1938) 58 S. Ct. 811, 82 L. ed. 751.

3. (1936) 298 U. S. 513, 56 S. Ct. 892, 80 L. ed. 1309.

4. (1934) 48 Stat. 798, (1937) 11 U. S. C. A. secs. 301-303.

5. Black, *Has Congress Circumvented the Ashton Decision?* (1937) 23 A. B. A. J. 683.

6. *Lindsay-Strathmore Irrigation Dist. v. Superior Ct.* (1920) 182 Cal. 315, 187 Pac. 1056.

7. *Claiborne County v. Brooks* (1884) 111 U. S. 400, 4 S. Ct. 489, 28 L. ed 470; *Railroad Commission v. Los Angeles R. Corp.* (1929) 280 U. S. 145, 50 S. Ct. 71, 74 L. ed. 234.

difference between the two laws is that the unconstitutional one provided for "readjustment," while the valid law spoke of "composition," thereby emphasizing the voluntary or consent aspect of the law. But the Supreme Court went out of its way to say that consent by the state has nothing to do with the law's validity.

In view of the fact that the Court did not place its holding in the instant case on either of the two grounds of difference between the statutes, it would seem that the Court has reversed itself and, in effect, adopted the view of Mr. Justice Cardozo in the *Ashton* case. A new emphasis upon the need for relieving the states of the burden of their obligations and the changed composition of the Court would seem to account for the changed attitude.

W. B. M.

TORTS—NEGLIGENCE—LIABILITY OF AUTOMOBILE DEALER FOR DEFECTS IN DEMONSTRATOR CAR—[Missouri].—Defendant automobile dealer lent a car to a prospective purchaser for the purpose of a demonstration. While the latter was taking his wife for a drive, an accident occurred in which the wife was injured. She sued the dealer, alleging that the accident was due to defective brakes, caused by the seepage of grease from the wheel bearings on to the brake lining. *Held*, plaintiff could not recover, there being no evidence that the dealer had not made a reasonable inspection.¹

In reaching its decision the court adopted the rule as to the liability of a vendor of a chattel, seemingly on the assumption that there was a sale.² In general, the vendor of a chattel is under no duty to test articles manufactured or packed by others for the purpose of discovering latent defects and is not liable for injuries resulting from such defects unless he has actual knowledge thereof.³ The rule has been qualified by two exceptions in which the vendor is under a duty to make a reasonable inspection: (1) where there is something which reasonably tends to call attention to possible defects;⁴ and (2) where the article being sold is such as becomes dangerous through defects.⁵ The court in the instant case held that the dealer owed some duty of inspection to the plaintiff because the article being sold was unusually complicated, thus in effect placing the instant case within the second exception noted.

1. *Shroder v. Baron Dady Motor Co.* (Mo. 1937) 111 S. W. (2d) 66.

2. See also *Tourte v. Horton Mfg. Co.* (1930) 99 Cal. App. 795, 290 Pac. 919, where the court applied the sale theory in determining the vendor's duty toward a prospective purchaser of a washing machine.

3. *Tourte v. Horton Mfg. Co.* (1930) 99 Cal. App. 795, 290 Pac. 919; *Craig v. Baker & Holmes Co.* (1923) 85 Fla. 373, 96 So. 93; *Segal v. Carrol Furniture Co.* (1935) 51 Ga. App. 191, 179 S. E. 775; *Peaslee-Gaulbert Co. v. McMath's Adm'r* (1912) 148 Ky. 265, 146 S. W. 770, 39 L. R. A. (N. S.) 465, Ann. Cases 1913E 392; *Simons v. Sun Ray Motor Co.* (Sup. Ct. 1917) 162 N. Y. S. 968.

4. *King Hardware Co. v. Ennis* (1929) 39 Ga. App. 355, 147 S. E. 1190; see *Restatement, Torts* (1934) sec. 402.

5. *King Hardware Co. v. Ennis* (1929) 39 Ga. App. 355, 147 S. E. 1190; *Peaslee-Gaulbert Co. v. McMath's Adm'r* (1912) 148 Ky. 265, 146 S. W. 770, 39 L. R. A. (N. S.) 465, Ann. Cases 1913E 392.