by Lawrence Savell

The Most Important Car Case Of The 20th Century

MacPherson vs. Buick Motor Company

For this special 20th century edition of *Car Collector*, Editor-in-Chief Dennis Adler asked me to identify and devote an expanded version of my "Old Cars In Law" column to a discussion of the most significant automotive court opinion of the 20th century. A number came to mind, including some like the Selden patent case which this column has already explored. Although, as we say in the legal business, reasonable people may vary, in this attorney's eyes, one decision stood above the rest. It is a case that every law student studies his or her first year in Torts class, that constituted a massive change in the law, and that still has enormous effect to this day. It is the New York Court of Appeals' landmark 1916 decision in *MacPherson vs. Buick Motor Co.*

The facts of the case were relatively straightforward. Buick manufactured and sold a new 1911 Runabout to Close Brothers, an independent retail dealer in Saratoga Springs, New York. The car had front seating for two, a rumble seat for one, and four-cylinders of 22 horsepower. In May 1911, the dealer resold the car to Donald C. MacPherson. That July, while MacPherson ironically was driving a neighbor to the hospital, one of the wheels suddenly collapsed. MacPherson was thrown out and injured.

MacPherson alleged that the wheel had been made of defective wood, and its spokes had crumbled into fragments. The wheel had not been made by Buick, but had been bought by Buick from another manufacturer. There was evidence, however, that its defects could have been discovered by reasonable inspection, and that Buick had omitted such inspection. MacPherson sued Buick. Not a surprising thing to do, you might think. But it was at the time. And the reason for that was a legal doctrine known as "privity."

It had traditionally been essential in order for an injured person to sue an allegedly negligent person that there be "privity of contract" between the plaintiff and the defendant. In other words, the parties to the lawsuit had first to have been parties to the contract upon which the lawsuit was based. A defendant's duty of reasonable care arose only from the contract, and only a party to that contract could sue for its breach. Without that original connection or relationship, the action generally could not be maintained. As a result, a negligent manufacturer who sold a product to a retailer, which was then sold to the consumer, was basically insulated from liability. And since the retailer generally had not been negligent, the consumer had no claim.

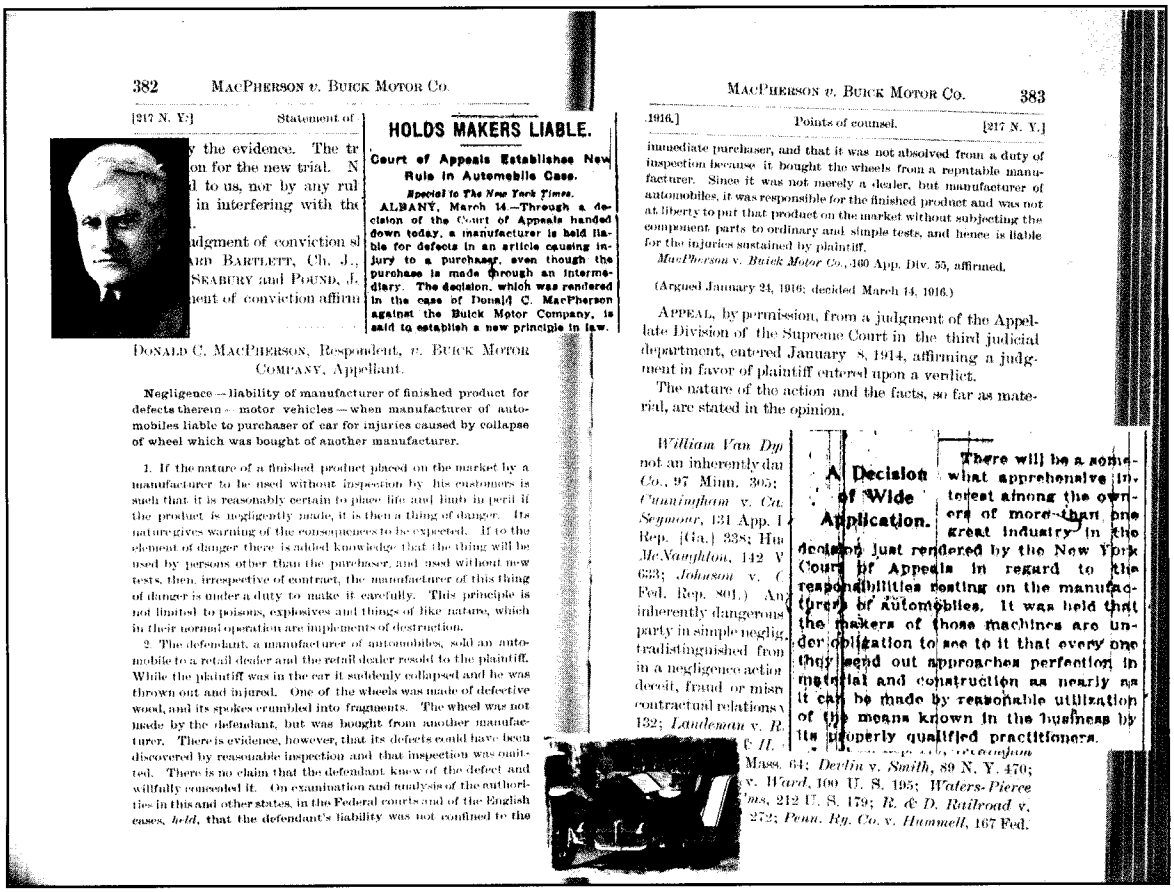
MacPherson nevertheless prevailed at the trial court. Buick appealed to the Appellate Division, New York's intermediate appeals court, which affirmed the ruling for MacPherson. Buick appealed again, and New York's highest court, the Court of Appeals, agreed to hear the case.

In an opinion written by legendary Justice Benjamin N. Cardozo, the Court of Appeals again ruled in MacPherson's favor.

Cardozo began by noting "[t]he question to be determined is; whether the defendant owed a duty of care and vigilance to any one but the immediate purchaser."

Cardozo focused on an exception to the requirement of privity, which courts had developed, allowing a suit to proceed in its absence where the product involved was inherently or imminently dangerous to human life or health. As will be seen, the Court broadened the scope of such products such that, as the legal scholar William Prosser put it, "the exception swallowed the rule," and the privity requirement was effectively abolished.

The Court reviewed prior New York decisions, beginning with *Thomas vs. Winchester*, where a "poison was



382 MACPHERSON v. BUICK MOTOR CO.

[217 N. Y.] Statement of

v the evidence. The tr
on for the new trial. N
d to us, nor by any rul
in interfering with the
.
dgment of conviction sl
ARD BARTLETT, Ch. J.,
SEABURY and POUND, J.
ent of conviction affirm

DONALD C. MACPHERSON, Respondent, v. BUICK MOTOR COMPANY, Appellant.

Negligence — liability of manufacturer of finished product for defects therein — motor vehicles — when manufacturer of automobiles liable to purchaser of car for injuries caused by collapse of wheel which was bought of another manufacturer.

1. If the nature of a finished product placed on the market by a manufacturer to be used without inspection by his customers is such that it is reasonably certain to place life and limb in peril if the product is negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. This principle is not limited to poisons, explosives and things of like nature, which in their normal operation are implements of destruction.

2. The defendant, a manufacturer of automobiles, sold an automobile to a retail dealer and the retail dealer resold to the plaintiff. While the plaintiff was in the car it suddenly collapsed and he was thrown out and injured. One of the wheels was made of defective wood, and its spokes crumbled into fragments. The wheel was not made by the defendant, but was bought from another manufacturer. There is evidence, however, that its defects could have been discovered by reasonable inspection and that inspection was omitted. There is no claim that the defendant knew of the defect and wilfully concealed it. On examination and analysis of the authorities in this and other states, in the Federal courts and of the English cases, *held*, that the defendant's liability was not confined to the

HOLDS MAKERS LIABLE.

Court of Appeals Establishes New Rule in Automobile Case.

Special to The New York Times.

ALBANY, March 14.—Through a decision of the Court of Appeals handed down today, a manufacturer is held liable for defects in an article causing injury to a purchaser, even though the purchase is made through an intermediary. The decision, which was rendered in the case of Donald C. MacPherson against the Buick Motor Company, is said to establish a new principle in law.

MACPHERSON v. BUICK MOTOR CO. 383

1916.] Points of counsel. [217 N. Y.]

immediate purchaser, and that it was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. Since it was not merely a dealer, but manufacturer of automobiles, it was responsible for the finished product and was not at liberty to put that product on the market without subjecting the component parts to ordinary and simple tests, and hence is liable for the injuries sustained by plaintiff.

MacPherson v. Buick Motor Co., 160 App. Div. 55, affirmed.

(Argued January 24, 1916; decided March 14, 1916.)

APPEAL, by permission, from a judgment of the Appellate Division of the Supreme Court in the third judicial department, entered January 8, 1914, affirming a judgment in favor of plaintiff entered upon a verdict.

The nature of the action and the facts, so far as material, are stated in the opinion.

William Van Dyn
not an inherently dan
Co., 97 Minn. 305;
Cunningham v. Ca
Seymour, 131 App. I
Rep. (Ga.) 338; Hin
McNaughton, 142 V
633; *Johnson v. C*
Fed. Rep. 801.) An
inherently dangerous
party in simple negli
tradistinguished fron
in a negligence action
deceit, fraud or misr
contractual relations)
132; *Lauderman v. R.*
& H.
Mass. 64; *Devlin v. Smith*, 89 N. Y. 470;
v. *Ward*, 100 U. S. 195; *Waters-Pierce*
ms, 212 U. S. 179; *R. & D. Railroad v.*
272; *Penn. Rg. Co. v. Hummell*, 167 Fed.

A Decision of Wide Application.

There will be a somewhat apprehensive interest among the owners of more than one great industry in the decision just rendered by the New York Court of Appeals in regard to the responsibilities resting on the manufacturers of automobiles. It was held that the makers of those machines are under obligation to see to it that every one that they send out approaches perfection in material and construction as nearly as it can be made by reasonable utilization of the means known in the business by its properly qualified practitioners.

falsely labeled. The sale was made to a druggist, who in turn sold to a customer. The customer recovered damages from the seller who affixed the label. The defendant's negligence, it was said, 'put human life in imminent danger.' A poison falsely labeled is likely to injure anyone who gets it. Because the danger is to be foreseen, there is a duty to avoid the injury."

A subsequent case involved "a defect in a small balance wheel used on a circular saw. The manufacturer pointed out the defect to the buyer, who wished a cheap article and was ready to assume the risk. The risk can hardly have been an imminent one, for the wheel lasted five years before it broke. In the meanwhile the buyer had made a lease of the machinery. It was held that the manufacturer was not answerable to the lessee." Similarly, "the case of the explosion of a steam boiler...was decided upon the ground that the risk of injury was too remote. The buyer in that case had not only accepted the boiler but had tested it. The manufacturer knew that his own test was not the final one. The finali-

ty of the test has a bearing on the measure of diligence owing to persons other than the purchaser..."

"These early cases suggest a narrow construction of the rule. Later cases, however, evince a more liberal spirit." In one, "[t]he defendant, a contractor, built a scaffold for a painter. The painter's servants were injured. The contractor was held liable. He knew that the scaffold, if improperly constructed, was a most dangerous trap. He knew that it was to be used by the workmen. He was building it for that very purpose. Building it for their use, he owed them a duty, irrespective of his contract with their master, to build it with care."

In a subsequent case, "[t]he defendant manufactured a large coffee urn. It was installed in a restaurant. When heated, the urn exploded and injured the plaintiff. We held that the manufacturer was liable. We said that the urn 'was of such a character inherently that, when applied to the purposes for which it was designed, it was liable to become a source of great danger to many people if not carefully and properly constructed.'"

Cardozo concluded that the more recent cases "have extended the rule of *Thomas vs. Winchester.* If so, this court is committed to the extension. The defendant argues that things imminently dangerous to life are poisons, explosives, and deadly weapons—things whose normal function it is to injure or destroy. Whatever the rule in *Thomas vs. Winchester* may once have been, it has no longer that restricted meaning. A scaffold...is not inherently a destructive instrument. It becomes destructive only if imperfectly constructed. A large coffee urn...may have within itself, if negligently made, the potency of danger, yet no one thinks of it as an implement whose normal function is destruction."

"We hold, then, that the principle of *Thomas vs. Winchester* is not limited to poisons, explosives, and things of like nature to things which in their normal operation are implements of destruction. If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequence to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully. That is as far as we need to go for the decision of this case. There must be knowledge of a danger, not merely possible but probable. It is possible to use almost anything in a way that will make it dangerous if defective. That is not enough to charge the manufacturer with a duty independent of his contract. Whether a given thing is dangerous may be sometimes a question for the court and sometimes a question for the jury. There must also be knowledge that in the usual course of events others than the buyer will share the danger. Such knowledge may often be inferred from the nature of the transaction. But it is possible that even knowledge of the danger and of the use will not always be enough. The proximity or remoteness of the relation is a factor to be considered. We are dealing now with the liability of the manufacturer of the finished prod-

uct who puts it on the market to be used without inspection by his customers. If he is negligent, where danger is to be foreseen, a liability will follow....There is no break in the chain of cause and effect. In such circumstances, the presence of a known danger, attendant upon a known use, makes vigilance a duty. We have put aside the notion that the duty to safeguard life and limb, whenever consequences of negligence may be foreseen, grows out of contract and nothing else. We have put the source of obligation where it ought to be. We have put its source in the law."

"From this survey of the decisions, there thus emerges a definition of the duty of a manufacturer which enables us to measure this defendant's liability. Beyond all question, the nature of an automobile gives warning of probable danger if its construction is defective. This automobile was designed to go fifty miles. Unless its wheels were sound and strong injury was almost certain. It was as much a thing of danger as a defective engine for a railroad. The defendant knew the danger. It knew also that persons other than the buyer would use the car. This was apparent from its size; there were seats for three persons. It was apparent also from the fact that the buyer was a dealer in cars, who bought to resell. The maker of this car supplied it for the use of purchasers from the dealer as plainly as the contractor...supplied the scaffold for use by the servants of the owner. The dealer was indeed the one person of whom it might be said with some approach to certainty that he would not use the car. Yet the defendant would have us say that he was the one person whom it was under a legal duty to protect. The law does not lead us to so inconsequent a conclusion. Precedents drawn from the days of travel by stagecoach do not fit the conditions of travel today. The principle that the danger must be imminent does not change, but the things subject to the principle do change. They are whatever the developing civilization require them to be."

"There is nothing anomalous in a rule which imposes upon A who has contracted with B a duty to C and D and others according as he knows or does not know that the subject-matter of the contract is intended for their use."

"We think the defendant was not absolved from a duty of inspection because it bought the wheels from a reputable manufacturer. It was not merely a dealer in automobiles. It was a manufacturer of automobiles. It was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the component parts to ordinary and simple tests....The obligation to inspect must vary with the nature of the thing to be inspected. The more probable the danger, the greater the need of caution."

The day after the ruling was issued, *The New York Times* ran a story on the case, with the headline: "HOLDS MAKERS LIABLE: Court of Appeals Establishes New Rule in Automobile Case." Its lead paragraph reported: "Through a decision of the Court of Appeals handed down [yester]day, a manufacturer is being held liable for defects in an article causing injury to a purchaser, even though the purchase is made through an intermediary. The decision...is said to establish a new principle in law."

The next day, the *Times* commented on the impact of the case in an editorial titled "A Decision of Wide Application." It stated: "There will be a somewhat apprehensive interest among the owners of more than one great industry in the decision just rendered by the New York Court of Appeals in regard to the responsibilities resting on the manufacturers of automobiles....The rule thus laid down is evidently of wide applicability....This is a further protection for the general public, but it does not relieve its members of their obligation to use a reasonable amount of care in making their purchases, nor does it authorize them to subject their purchases to greater strains than they are intended to bear."

In the years that followed, Justice Cardozo went on to even greater professional heights, being appointed by President Hoover to fill Oliver Wendell Holmes' seat on the United States Supreme Court. And the MacPherson decision, according to Prosser, "found immediate acceptance" by other courts, and "is universal law in the United States...." To this day, over 80 years after its delivery, the opinion continues to be cited frequently by courts and commentators in cases involving a broad range of products. The case stands as a seminal step in the development of modern products liability law, keeping subsequent generations of plaintiff and defense counsel—the latter including this writer—busy handling litigation and advising clients on such challenging issues.

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior Old Cars In Law *articles can be found online at www.lawrencesavell.com*