DePaul Law Review

Volume 9
Issue 2 *Spring-Summer 1960*

Article 10

"Caveat Manufacturer": Advertisements as Constituting Express Warranties

DePaul College of Law

remedy for private persons against state officials who deprived them of due process. However, the courts have indulged in mental gymnastics to deprive such persons of a congressionally enacted remedy. There exists the curious situation that a plaintiff may prepare a sufficient complaint in the Fifth Circuit,[47] if he alleges an unreasonable search and seizure, but upon the same facts he cannot prepare a sufficient complaint in the Seventh Circuit.[48] The Fourth Circuit requires a wilful intent greater than that required under the criminal counterpart of the civil action.[49] This situation certainly does not create an impression of uniform enforcement of federal legislation.

The Seventh Circuit has consistently pointed out that the plaintiff is not without remedy in the state courts.[50] However, this is not the problem at issue. The Ninth Circuit has pointed out that the existence of a state remedy under the same facts would not be a bar to the suit under the Civil Rights Act.[51] At best, the situation is in a state of great confusion.

As this paper is being written, *Monroe* is under petition for a writ of certiorari.[52] If certiorari is granted Justice Frankfurter will finally have the opportunity to completely clarify the intermediate finding in *Wolf*, and give the district courts a concrete guide to determine the sufficiency of complaints under the Civil Rights Act.

[47] Davis v. Turner, 197 F.2d 847 (C.A.5th, 1952).

[48] Monroe v. Pape, 272 F.2d 365 (C.A.7th, 1959); Jennings v. Nester 217 F.2d 153 (C.A.7th, 1954)), cert. den. 349 U.S. 958 (1955).

[49] Dye v. Cox, 125 F. Supp. 714 (E.D. Va., 1954).

[50] Egan v. Aurora, No. 12738 (C.A.7th, 1960); Monroe v. Pape, 272 F.2d 365 (C.A.7th, 1959); Jennings v. Nester, 217 F.2d 153 (C.A.7th, 1954).

[51] Romero v. Weakley, 226 F.2d 399 (C.A.9th, 1955); See United States v. Raines, —— U.S. ——, 28 Law Week 4147 (1960).

[52] 28 Law Week 3247 (February 17, 1960) (Docket No. 712).

"CAVEAT MANUFACTURER": ADVERTISEMENTS AS CONSTITUTING EXPRESS WARRANTIES

"Caveat *manufacturer*" may relegate the revered "caveat *emptor*" saw to legal limbo if the holding in a recent case receives approval. The implications of the *Cobb v. American Motors Corp.*[1] decision to big manu-

[1] 19th Judicial District Court, Louisiana, Parish of East Baton Rouge, No. 63,643, Division C (June 10, 1959), appeal pending Supreme Court of Louisiana. It will be noted that the *Cobb* case is the holding of a Louisiana court of first instance; it is being appealed to the Supreme Court of Louisiana, where it probably will be heard at some time late this year. Since the case is unreported and was orally argued without briefs, there is very little written data of an official nature available. Thanks chiefly, however, to an article in Advertising Age (see text and n. 2, infra), and materials furnished by the plaintiff, including his "Trial Memorandum," and notes taken by him and his counsel concerning the judge's reasoning for the decision, the writer was able to com-

facturers are manifested by the front-page article devoted to the holding in *Advertising Age*, under the headline: "American Motors Appeals 'Express Warranty' Ad Case."[2] The *Cobb* opinion would seem to make manufacturers liable to ultimate consumers for representations made in their advertisements on the theory of express warranty. As the article in *Advertising Age* puts it, this "Louisiana litigation . . . has awesome implications for the legal weight of ad copy."[3]

AN EXAMINATION OF THE COBB CASE

Arthur J. Cobb, the plaintiff (and, it is interesting to note, a lawyer), purchased a 1957 six-cylinder Rambler station wagon from defendant Capitol Nash Co. in reliance upon American Motors Corp. ads that the Rambler had given 32 miles per gallon of gas in the 1956 NASCAR test run from New York to Los Angeles. Mr. Cobb's car did not, however, run 32 miles on a gallon of gas; rather, tests by two independent agencies showed that it would deliver only eight to ten miles per gallon at 65-75 m.p.h., and twenty-four miles per gallon at 30 m.p.h. Cobb sued American Motors, joining the Nash dealer, in an action in redhibition, which he later changed to an action for the reduction of price.[4] In addition to the claim for breach of warranty as to gas mileage, however, Cobb also alleged various mechanical defects in the car, and set out a cause of action on the basis of negligence in manufacturing. Plaintiff also introduced the theory of implied warranty into his case, saying that "[t]he Louisiana action in redhibition or the action for the reduction of price might be

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pile what are believed to be the essentials of the case. The help of Mr. Ralph Brewer (of Cobb and Brewer), counsel for plaintiff, and the courtesy of Mr. Victor Sachse III (of Breazeale, Sachse, Wilson and Hebert), counsel for defendant American Motors Corp., are hereby gratefully acknowledged.

[2] Advertising Age, p. 1, col. 2 (Nov. 30, 1959).

[3] Ibid.

[4] Attention is called to the fact that because Louisiana is a Civil Law state, the action here was brought under the appropriate articles of the Louisiana Civil Code. Article 2520 deals with "redhibition," and says that it "is the avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice." La. Stat. Ann. art. 2520 (1951). As to the action for reduction in price, plaintiff's Trial Memorandum (at p. 3) refers to two applicable sections of the Code, articles 2544 and 2547. Civil Code Article 2544 states: "The action for a reduction of price is subject to the same rules and to the same limitations as the redhibitory action." La. Stat. Ann. art. 2544 (1951). And Article 2547 explains: "A declaration made by the seller, that the thing sold possesses some quality which he knows it does not possess, comes within the definition of fraud." This article also states: "It may, according to circumstances, give rise to the redhibition, or to a reduction of the price, and to damages in favor of the buyer." La. Stat. Ann. art. 2547 (1951).

also termed an action for the breach of the implied warranty of fitness and merchantability."[5]

As to the opinion in the case, there seems to be some discrepancy between the article in *Advertising Age* and the notes taken by plaintiff and his counsel as to the judge's reasoning for his decision. The article would lead one to believe that the decision favorable to plaintiff was given chiefly on the basis of breach of an express warranty made via advertisements, and that the claim of mechanical defects was merely annexed thereto. Specifically the *Advertising Age* story states:

> Judge Jess Johnson ruled in a state court last June that AMC ads telling of the gas consumption record achieved by a Rambler in the NASCAR test race constituted *an expressed warranty* without reservations that a Rambler buyer could expect to achieve the same performance.[6]

And then it goes on to mention that "the case . . . initially involved only gasoline mileage, but later involved functioning of the car's transmission."[7]

On the other hand, the notes of plaintiff and his counsel indicate that the reasoning of the judge involved a sort of hybrid of express warranty in advertisements, implied warranty of fitness for human use, and negligence in manufacture. In regard to the AMC advertisements, the plaintiff's notes contain the following observation by the judge:

> [T]he warranty that plaintiff is suing on was in the advertisements. Nowhere in the advertising were there any reservations or limitations. The Rambler is depicted in the advertisements as the last word in mechanical perfection and the plaintiff testified that he relied on the advertisements and on such recommendations.[8]

But the notes reveal that the judge also drew a comparison between the instant case and a case involving a food product wherein there was implied a warranty of fitness for human consumption. Finding no distinction between that and the *Cobb* case, he said that "Coca-Cola was held liable because the product was unfit for human consumption, here the product is unfit for human use."[9] He further observed that "[o]n the question of warranty, as to the consumer, there is no line of demarcation between quality for consumption or for human use."[10]

It would seem that the judge also had in mind that American Motors

[5] Trial Memorandum of Plaintiff, Arthur J. Cobb at 4, Cobb v. American Motors Corp., 19th Judicial District Court, Louisiana, Parish of East Baton Rouge, No. 63,643, Division C (June 10, 1959), appeal pending Supreme Court of Louisiana.

[6] Advertising Age, p. 1, col. 2 (Nov. 30, 1959) (emphasis supplied).

[7] Ibid.

[8] Notes taken by plaintiff and his counsel at the trial of *Cobb v. American Motors Corp.*, indicating, as they recall it, the reasoning behind the judgment, at 1.

[9] Ibid. [10] Ibid.

was liable on the basis of negligence, since he refers to the applicability of the landmark case of *Mac Pherson v. Buick*,[11] in which a manufacturer was held answerable to the ultimate consumer for negligence in manufacturing.

Even if the holding in *Cobb v. American Motors* was founded on more than an express warranty, however, the fact remains that that basis for liability was still a part of the rationale behind the decision—and probably the most important part in the eyes of manufacturers.

THE COBB DEPARTURE FROM A PRECEDENT OF PRIVITY

But why is *Cobb v. American Motors Corp.* a departure from existing case law in this area of manufacturer's liability? The answer to this question lies in the history of actions brought by remote purchasers against manufacturers. Williston relates that originally an action for breach of warranty was considered an action in tort; later, however, it came to be viewed as an action in contract.[12] He says that "it is probable that to-day most persons instinctively think of a warranty as a contract or promise."[13] Since an action for breach of warranty is considered contractual in nature, it follows that only one who is a *party* to the contract can recover for breach of the promise made by the other party; in other words, *privity of contract* is required to recover in such a suit.[14] The departure in *Cobb v. American Motors*, therefore, consists in the fact that the purchaser was allowed to recover on the theory of express warranty in the absence of privity with the manufacturer.

Perhaps the landmark case enunciating the necessity of privity to sue a manufacturer is *Winterbottom v. Wright*.[15] There, defendant had contracted with the Postmaster-General to supply a mail-coach and keep it in a safe condition. Another party was to supply horses and a mail-coach-

[11] 217 N.Y. 382, 111 N.E. 1050 (1916).

[12] 1 Williston, Sales § 195 (ref. ed., 1948) (Supp., 1959).

[13] Ibid., at p. 502.

[14] Two explanations of the origin of the contractual nature of warranty suits are worthy of mention. In one explanation, the writer states that actions for breach of warranty became contractual as the result of allowing plaintiffs to declare them in assumpsit as a matter of convenience; he explains that this practice led the courts to consider the action as one truly in contract, and therefore requiring privity as an essential. Jeanblanc, Manufacturers' Liability to Persons Other than Their Immediate Vendees, 24 Va. L. Rev. 134 (1937–38). In the other explanation, the source of the privity requirement is said to be the conditions of life when actions were first brought by a purchaser against the maker of a chattel: Ordinarily, there was no middleman, and consequently privity of contract was the usual thing. As the writer of this view says: "Even coffins were made to order. . . . There was direct dealing, i.e., privity between maker and prospective user." Feezer, Manufacturer's Liability for Injuries Caused by His Products: Defective Automobiles. 37 Mich. L. Rev. 1 (1939).

[15] 10 M. & W. *109 (Ex. 1842).

man; plaintiff took the job of coachman (with knowledge of defendant's contract with the Postmaster), and was injured when the coach broke down through defendant's failure to keep it safe. Plaintiff sued defendant for breach of his contract with the Postmaster, but the court announced that "it is a general rule, that wherever a wrong arises merely out of the breach of a contract, . . . the party who made the contract alone can sue."[16] And the cases show that privity in breach of warranty suits has been adhered to modernly.[17] A recent example is a 1959 case where the court proclaimed with finality: "[T]he rule is fundamental that no recovery may be had for breach of warranty in the absence of privity."[18]

It might be noted in passing that the Uniform Sales Act has no application to suits by an ultimate consumer against a manufacturer for breach of warranty. Section 12 of the Act, which defines "express warranty,"[19] speaks only in terms of "buyer" and "seller," so that one suing under this section would necessarily have to be in direct privity with the warrantor.[20]

CIRCUMVENTION OF PRIVITY IN THE FOOD AND DRUG CASES

Of course, if it can be shown that a manufacturer is guilty of negligence in the production of his wares, he might be held liable to the consumer on the authority of *Mac Pherson v. Buick*.[21] But, absent proof of negligence, what are the prospects of an ultimate user who sues on a breach of warranty theory? From a study of the cases it would seem that he has an excellent chance to recover if the product involved in the litigation is in the nature of food or drugs; a number of courts have made an exception to the privity rule in these cases.[22] In establishing the exception

[16] Ibid., at *110–111.

[17] E.g., Atwell v. Pepsi-Cola Bottling Co., 152 A.2d 196 (Mun. Ct., App. D.C., 1959); Shoopak v. United States Rubber Co., 183 N.Y.S.2d 112 (1959); Alexander v. Inland Steel Co., 263 F.2d 314 (C.A.8th, 1958); Duart v. Axton-Cross Co., 19 Conn. Supp. 188, 110 A.2d 647 (1954).

[18] Shoopak v. United States Rubber Co., 183 N.Y.S.2d 112, 114 (1959).

[19] "Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon."

[20] Accord: La Hue v. Coca-Cola Bottling Inc., 50 Wash.2d 645, 314 P.2d 421 (1957). In this case defendant claimed that plaintiff could not recover because of failure to give defendant notice of the breach of warranty, as required by U.S.A. § 49. The court said, however: "This is not an action by a *buyer* against a *seller*. . . . RCW 63.04.500 [U.S.A. § 49] does not apply." Ibid., at 647, 422.

[21] 217 N.Y. 382, 111 N.E. 1050 (1916).

[22] E.g., Coca-Cola Bottling Co. v. Negron Torres, 255 F.2d 149 (C.A.1st, 1958). In this case, the court made the point that "a number, although perhaps still a minority, of courts have for years recognized an exception to the general doctrine [requiring privity of contract] in the case of medicines and food stuffs and held that the manufacturer warrants to the ultimate consumer that his article is fit for human consumption." Ibid., at 151.

in food and drug suits, the courts have used various theories to evade the staunch requirement of privity of contract. One theory had its origin in the 1892 English decision of *Carlill v. Carbolic Smoke Ball Co.*,[23] which involved a "home remedy." The court established privity between manufacturer and user on the theory that the advertisement of the manufacturer constituted an *offer for a unilateral contract* which the plaintiff accepted by performing the act therein required. In part the ad read:

> 100£ reward will be paid by the Carbolic Smoke Ball Company to any person who contacts the increasing epidemic influenza colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks, according to the printed directions supplied with each ball.[24]

In effect, this was an *express* warranty which said: "You will not get flu, etc., if you use the Smoke Ball as directed; but if you do use it and still take ill, we will pay you 100 £." Normally, however, the privity evasion devices in food and drug cases are found in suits for breach of an *implied*, rather than an express warranty, as is illustrated by the cases that follow.

A method of privity evasion involving the law of *agency*, is exemplified by a comparatively recent case. The decision, though not involving the true manufacturer-consumer relationship under consideration, illustrates the agency theory at least by way of analogy. The facts in essence were that a husband bought some ground meat from a supermarket, and as a result of eating it, he and his wife contracted trichinosis.[25] The court's justification for recovery by the husband was that in selling the meat the store had made an implied warranty of fitness for human consumption to him as purchaser; the court then said, in effect, that the wife, though not the direct purchaser, could recover as an *undisclosed principal* on the warranty of a contract made in *her behalf*.

The *third party beneficiary* concept was employed by one court to allow recovery for breach of an implied warranty.[26] A needle entered plaintiff's system through his tongue when he ate a portion of a packaged cake purchased in a grocery store. The court held that: "Whatever implied warranty arises in favor of the groceryman, who established the contractual relationship with the Baking Company, is for the benefit of this third party, namely the ultimate consumer."[27]

Still another means of circumventing privity in the food and drug

[23] [1892] 2 Q.B. 484.

[24] Ibid.

[25] Mouren v. Great Atlantic & Pacific Tea Co., 139 N.Y.S.2d 375 (1955).

[26] Ward Baking Co. v. Trizzino, 27 Ohio App. 475, 161 N.E. 557 (1928).

[27] Ibid., at 482, 559.

cases is the idea that an implied warranty of fitness for human consumption *runs with a product in a sealed container or package.*[28]

But as to all the privity evasion theories in the food and drug opinions, it would seem that the Texas case of *Decker v. Capps*,[29] declared the real reason for the exception in the food cases (and this would apply equally, of course, to drugs) as "the *public policy* to protect human health and life."[30] That is, in these cases there exists an implied warranty of fitness for human consumption "imposed by operation of law as a matter of public policy."[31]

THE HEART OF THE PROBLEM: RECOVERY ON EXPRESS WARRANTIES IN ADS

But putting aside the implied warranty in food and drug situations and arriving at the chief concern of this comment: "Can an ultimate consumer recover from the manufacturer on representations made in *advertisements* on the theory of *express* warranty?" When a manufacturer makes statements via television, radio, newspapers, billboards, etc., concerning his product, are these sufficient to bind him as a warrantor to one who purchases relying upon them? In 1958, the widely recognized case of *Rogers v. Toni Home Permanent Co.*[32] answered these questions affirmatively. In the *Toni* case, plaintiff had purchased, and used according to directions, a Toni home permanent marked "Very Gentle" on the package. When the curlers were removed, however, so were her curls—to within a half inch of her head. One of the grounds for her suit against the company was breach of express warranty made in Toni ads that the permanent was safe to use. The majority of the Ohio Supreme Court said, in effect, that the conditions of modern advertising and sales justified abandoning the privity requirement in a suit based on an affirmation by a manufacturer as to his product. In the opinion of the majority:

[28] Coca-Cola Bottling Works v. Lyons, 145 Miss. 876, 111 So. 305 (1927). The court in this case took special pains to show that although the bottle of coke that caused the injury had not been purchased by plaintiff herself, it had been *given* to her by her friend, "and since the gift carried with it the title, and the implied warranty runs with the title," she could recover on the warranty. Ibid., at 883, 307; Cf. Tiffin v. Great Atlantic & Pacific Tea Co., 20 Ill.App.2d 421, 156 N.E.2d 249 (1959).

[29] 139 Tex. 609, 164 S.W.2d 828 (1942).

[30] Ibid., at 612, 829 (emphasis supplied).

[31] Ibid. Accord: Crystal Coca-Cola Bottling Co. v. Cathay, 83 Ariz. 163, 317 P.2d 1094 (1957); Klein v. Duchess Sandwich Co., Ltd., 14 Cal.2d 272, 93 P.2d 799 (1939). But cf. Anheuser-Busch, Inc. v. Butler, 180 S.W.2d 996 (Tex. Civ. App., 1944), where there was an injury to plaintiff not from something deleterious in the food substance, but in the bottle in which it was sold.

[32] 167 Ohio St. 244, 147 N.E.2d 612 (1958).

[U]nder modern merchandising practices the manufacturer owes a very real obligation toward those who consume or use his products. The warranties made by the manufacturer in his advertisements and by the labels on his products are inducements to the ultimate consumers, and the manufacturer ought to be held to strict accountability to any consumer who buys the product in reliance on such representations and later suffers injury because the product proves to be defective or deleterious.[33]

Although in the food cases, recovery is usually had on an *implied* warranty of fitness for human consumption, the consumer may also have an action for an *express* warranty, if he can find one. This is illustrated by a case involving a can of "boned" chicken.[34] The bone that stuck in plaintiff's throat necessitated medical and surgical attention; plaintiff sued not on any implied warranty of fitness, however, but on the express warranty that the can of chicken was free from bones. The warranty asserted was founded upon (1) the label which contained the words "Boned Chicken" in big letters, and (2) an ad in a newspaper read by plaintiff, a portion of which (next to a picture of a can of boned chicken) read: " 'SWANSON BONED CHICKEN! All luscious white and dark meat. *No bones.*' "[35] The *Swanson* court held that "the label on the can coupled with the representation in the newspaper ads that the contents contained no bones, constituted an express warranty and that the same was breached."[36] Similarly, in a case of the drug type the court recognized the possibility of recovery on an express warranty contained on the label of a bottle of liniment. The label stated: " 'FOR MAN AND BEAST . . . Follow directions carefully and you will be rewarded with good results.' "[37] On applying the preparation to her ankle, plaintiff's "reward" was a serious burn. The opinion of the court on express warranty, constituted dictum, however, since recovery was denied for lack of proof of reliance on the warranty when the item was bought.

[33] Ibid., at 249, 615, 616. Accord: Markovich v. McKesson & Robbins, Inc., 106 Ohio App. 265, 149 N.E.2d 181 (1958). Indications that the Toni holding might be extended in Ohio to allow recovery on representations in advertisements of products other than the home permanent type, appear in Arfons v. du Pont de Nemours & Co., 261 F.2d 434 (C.A.2d, 1958). In that case, plaintiff had relied upon ads and literature that dynamite and a fuse produced by defendant manufacturers were not harmful when properly used, and was injured while using them in an allegedly proper manner. On plaintiff's appeal from an adverse decision, the court granted a new trial because Rogers v. Toni had not been decided when the du Pont case was first tried, and the court was of the opinion that they could not "at this point say that the Rogers case is limited to its particular facts and might not be extended to inherently dangerous merchandise." Arfons v. du Pont de Nemours & Co., 261 F.2d 434, 436 (C.A.2d, 1958).

[34] Lane v. Swanson & Sons, 130 Cal. App.2d 210, 278 P.2d 723 (1955).

[35] Ibid., at 212, 724.

[36] Ibid., at 216, 726.

[37] Randall v. Goodrich-Gamble Co., 238 Minn. 10, 11, 54 N.W.2d 769 (1952).

Other cases where the courts were inclined to recognize that representations on the package (which it is believed can be considered "advertising" in a broad sense of the word) could constitute an express warranty are *Worley v. Proctor & Gamble Mfg. Co.*,[38] where the package stated that " 'Tide is kind to hands,' "[39] and *Simpson v. American Oil Co.*,[40] where the representation was that " 'Amox . . . is *not poisonous to human beings*, but is sure death to insects.' "[41]

Up to this point the cases discussed have involved advertisements of products that could be considered as falling into the general category of food and drugs, construing that category as including products on the periphery like home permanents, soaps, and insecticides. It might thus be said that the courts that allow recovery on an implied warranty in the food and drug cases are just carrying over a general "food and drug recovery" policy into the area of express warranty. The argument fails, however, when the decision of *Baxter v. Ford Motor Co.* is examined; here the plaintiff succeeded in a suit based on a warranty contained in a circular put out by the manufacturer of a *car*.[42] The representation in the leaflet was that the windshield of the car was made of shatterproof glass; while plaintiff was out on the road, however, a passing car threw a pebble against his windshield which shattered the glass and caused plaintiff to lose the sight of his left eye and to incur damage to his right. On appeal from a judgment for defendants by the trial court, which court had excluded from evidence the advertising matter containing the representation as to the glass, the Supreme Court of Washington declared that "[r]adio, billboards, and the products of the printing press

[38] 241 Mo.App. 1114, 253 S.W.2d 532 (1952).

[39] Ibid., at 1117, 534. It should be noted that the court's statement regarding express warranty was dictum, however, for the reason that plaintiff had failed to prove that she was a member of that class of persons having normal skin, and to whom such a warranty was restricted.

[40] 217 N.C. 542, 8 S.E.2d 813 (1940).

[41] Ibid., at 543, 814 (emphasis supplied). This court's remarks about the express warranty were also, however, as in the Worley case, dictum—here, because a new trial was ordered on the basis of an error in the judge's instructions.

[42] Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409 (1932), aff'd. 15 P.2d 1118 (1932). Accord: Bahlman v. Hudson Motor Car Co., 290 Mich. 683, 288 N.W. 309 (1939). But cf. Murphy v. Ford Motor Co., 327 S.W.2d 535 (1959). Contra: Chanin v. Chevrolet Motor Co., 89 F.2d 889 (C.C.A.7th, 1937). Recovery was not allowed in this case on the manufacturer's representation that the windshield was shatterproof, because of lack of privity. However, it should be noted that in reply to plaintiff's contention that by its advertising methods the manufacturer had made representations to the consumer public for which it should be liable, the court replied: "[S]uch a statement of facts is not disclosed here. We cannot read such allegations into the complaint." Ibid., at 891. The court thus seemed to leave the door open for a decision in accord with, rather than contra to Baxter, on a proper statement of facts.

have become the means of creating a large part of the demand that causes goods to depart from factories to the ultimate consumer."[43] The court then proceeded to point out the unfairness in allowing manufacturers to represent by such means that their products possess certain merits, the lack of which is not easily discovered, and then refusing to hold them liable on these representations just because there is no privity of contract.

CONCLUSION

In the light of *Toni, Baxter,* and similar decisions, where recovery was permitted on the warranty in an ad, perhaps *Cobb v. American Motors*—which launched this entire discussion—would not appear to be a true innovation on the privity rule. The distinction to be noted, however, is that in *Toni, Baxter,* and the like, there was some *physical harm* to the plaintiff as the result of the product not being as represented. In the *Cobb* case, however, plaintiff's action on the express warranty involved a purely *monetary* loss because the car did not give 32 miles per gallon of gas. It is almost self-evident that the courts would be more readily inclined to drop the privity requirement in cases of personal injury; with this in view, it can hardly be doubted that *Cobb* is the most liberal departure from the privity rule in the express warranty ad cases. Therefore, decisions of the *Toni* and *Baxter* variety have not gone as far as, but have rather served to augur an adjudication such as made in the *Cobb* case.

Will the Supreme Court of Louisiana uphold the *Cobb v. American Motors* decision? In the past ultimate consumers attempting to recover on representations in advertisements have found that the old trail of precedent leads to the blind alley of privity. It may be that in the future, however, they will find available a new highway in *Cobb v. American Motors*—a highway leading to recovery.

THE PARENTAL DUTY TO SUPPORT DISABLED ADULT CHILDREN

The family has often been described as the basic unit of our society. Throughout the history of the law, the courts and legislatures have endeavored to set forth the rights and duties of the various members of the family in relation to each other. One such duty is that of the parent to support his child. Only recently have the American courts been in agreement as to the child's right to such support and to its extent.

[43] Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409, 412 (1932).