and determine the information. In accordance with the previous order of the Court, the appellant will pay the respondent's costs of this appeal.

Order accordingly.

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Solicitor for the appellant, *W. H. Sharwood*, Commonwealth Crown Solicitor.

Solicitor for the respondent, *Felix F. Mitchell*, Cooma, by *Colquhoun & King*.

J. B.

Rev *Grant v Australian Knitting Mills Ltd* (1935) 54 CLR 49

[HIGH COURT OF AUSTRALIA.]

AUSTRALIAN KNITTING MILLS LIMITED AND ANOTHER . . . . . DEFENDANTS, } APPELLANTS;

AND

GRANT . . . . . PLAINTIFF, RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF SOUTH AUSTRALIA.

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MELBOURNE, *June* 13-16, 19, 20.

SYDNEY, *Aug.* 18.

Starke, Dixon, Evatt and McTiernan JJ.

Tort—Manufacturer of goods—Liability for damage caused by goods purchased through retailer.

Sale of Goods—Reliance on seller's skill or judgment—Merchantable quality of goods—Sale of underwear by retailer—Sale of Goods Act 1895 (*No.* 630) (*S.A.*), *sec.* 14*.

The plaintiff purchased woollen underwear from a retail merchant whose business it was to supply goods of that description. The manufacturer, after completing his preparation of the underwear, folded each garment, wrapped them in paper parcels and then tied them in quantities of one half dozen per

*The *Sale of Goods Act* 1895 (South Australia), sec. 14, provides:—"14. Subject to the provisions of this Act, and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:—(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether

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packet. To each garment there was a ticket attached upon which the manufacturer printed its name, described the garment as "pure woollen underwear," gave directions as to washing, and concluded "We guarantee to replace this garment free of charge if it shrinks when washed in accordance with the directions printed above." The retailer purchased the goods direct from the manufacturer who manufactured the material from which the garments were made as well as the garments. After wearing the garments for a short time an irritation commenced in the plaintiff's skin which developed into an acute general dermatitis. The plaintiff alleged that the garments contained a chemical substance introduced during the course of the manufacture of the material which formed an irritant when coming into contact with the skin and which was the cause of the plaintiff's condition. The plaintiff brought an action against the manufacturer and the retailer alleging against the manufacturer negligence in the making of the garments and against the retailer breach of the implied warranties of reasonable fitness for the purpose for which they were bought and of merchantable quality.

Held, by *Starke*, *Dixon* and *McTiernan* JJ. (*Evatt* J. dissenting), that upon the evidence the plaintiff's claim failed against both defendants.

Per Starke J.: The evidence did not show that the plaintiff relied on the skill or judgment of the retailer so as to imply a warranty of reasonable fitness under sec. 14 (1) of the *Sale of Goods Act* 1895 (South Australia); and assuming that the plaintiff "bought by description" from the retailer the evidence showed that the garments were of merchantable quality and, therefore, there was no breach of the implied condition in sec. 14 (2) of the Act.

Per Dixon and *Evatt* JJ.: The goods were "bought by description" so as to raise an implied condition of merchantable quality under sec. 14 (2) of the *Sale of Goods Act*.

Per Evatt J.: (1) The evidence established that there existed such a relationship between the defendant manufacturer and the plaintiff that the former was under a duty to the latter to take reasonable care in the preparation of the garments so as to avoid the retention in them of any chemical residuum likely to cause or set up injury or disease to the skin. (2) The plaintiff made known to the retailer the particular purpose for which the underwear was required so as to show that he relied on the seller's skill and judgment and there was therefore an implied condition under sec. 14 (1) of the *Sale of Goods Act* that the underwear was reasonably fit for the purpose of wear.

he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose: (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

(3) The finding of the Supreme Court that the plaintiff's injury was due to an irritant chemical introduced during the process of manufacture and carelessly allowed to remain in the garment was right and this established liability to the plaintiff on the part of manufacturer and retailer alike.

Priest v. *Last*, (1903) 2 K.B. 148 and *Donoghue* v. *Stevenson*, (1932) A.C. 562, considered.

Decision of the Supreme Court of South Australia (*Murray* C.J.) reversed.

APPEAL from the Supreme Court of South Australia.

This was an action brought by Richard Thorald Grant, medical practitioner, thirty-eight years of age, claiming damages against the Australian Knitting Mills Ltd., a Victorian company, which was the manufacturer, and John Martin & Co. Ltd. of Adelaide, which was the retail vendor, of certain woollen garments which he alleged contained irritating substances, finally limited at the trial to sodium sulphite and sulphur dioxide, that caused him to suffer from a severe attack of dermatitis. The garments, which consisted of two singlets and two pairs of long underpants, were purchased by the plaintiff from John Martin & Co. on 3rd June 1931. He put one of the singlets, and one of the pairs of underpants on for the first time on Sunday morning, 28th June. About nine hours later he felt an itching on the front part of both his shins, where the ends of his underpants were covered by his socks. Next day he wore the garments again. The itching continued and patches of redness measuring about two and a half by one and a half inches appeared on both shins. He treated the inflamed parts with calamine lotion and went on wearing the same garments for the rest of the week. On Sunday, 5th July, he put on the other singlet and the other pair of underpants and wore them till the following Sunday, 12th July. Then he changed back to the first set of garments, which in the meantime had been washed. The patches of redness having grown larger and papules having developed, some of which showed a tendency to weep, and some of which on account of the irritation he had scratched and caused to bleed, he consulted Dr. Upton, a specialist in dermatology on Monday, 13th July. Dr. Upton asked him what soap he had been using and whether he had put on any new undergarments recently. The inquiry directed the plaintiff's

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attention to the garments he had been wearing and he told Dr. Upton about them. Dr. Upton advised him to leave off woollen underclothes and prescribed for his skin conditions which were diagnosed as dermatitis. The plaintiff followed Dr. Upton's advice and applied the treatment.

Two days later the plaintiff called at John Martin & Co.'s shop and in consequence of a conversation he had with the head of the department in which he had purchased the garments he delivered them at the shop towards the end of the week. The set he had taken off on Dr. Upton's advice had again been washed before they were delivered, thus one set, the first worn, had been washed twice, and the other had been washed once. The plaintiff's condition did not improve and at the end of August and the beginning of September the plaintiff's medical advisers had fears for his life. In the opinion of the plaintiff's medical advisers the disease was the form of dermatitis, commonly known as eczema, which originated from an irritant applied externally to the places where the irritation began.

The claim against John Martin & Co., the retail shop keepers, was based on contract. It alleged first, a breach of the condition of reasonable fitness for the purpose for which the undergarments were required implied in a contract of sale by sec. 14 (1) of the *Sale of Goods Act* 1895 (South Australia) and secondly a breach of the condition of merchantable quality implied on a sale by description by sub-sec. (2) of the same section. The action against the Australian Knitting Mills, the manufacturers of the garments, was founded on tort. The allegation was that these defendants were guilty of negligence in the manufacture of the goods purchased by the plaintiff from John Martin & Co., and that he was injured in consequence of such negligence. Further facts appear in the several judgments of the High Court below.

The action was tried by *Murray* C.J. from whose judgment the above statement of facts is extracted. The learned Chief Justice found in favour of the plaintiff against both defendants and gave judgment for the plaintiff for the sum of £2,450 against the two defendants with costs to be taxed.

From this decision both the defendants appealed to the High Court.

Wilbur Ham K.C., *Thomson* K.C. and *Spicer*, for the appellants. This is an appeal by the two defendants from a judgment against each of them for £2,450 in favour of the plaintiff. The causes of action against the two defendants are quite separate. The case against the retail defendant was that the goods were not reasonably fit for the purpose for which they were bought under the *Sale of Goods Act* 1895, sec. 14, and the claim against the manufacturer lies in tort for having negligently manufactured the goods. The plaintiff examined the underwear, and having regard to the fact that the Australian goods were unshrinkable and cheaper he chose the Australian articles. He brought the goods home and kept them and later put them on. He continued to wear the underpants for a week and put them to the wash and then put on the other pair which he had bought and then at the end of that week he put on the first pair after they had been washed. The outstanding factor is that the plaintiff who was a doctor himself did not suspect these goods as the cause of his complaint until such suggestion was made to him by his medical adviser. The trial Judge found that the dermatitis was caused by sulphur dioxide, in at least one pair of the underpants and that nobody knows the least amount of sulphur dioxide that will cause damage and that sulphur dioxide was a component part of the wool. The experts both say that there was no free sulphur dioxide in the wool at all, but that the only sulphur dioxide that was there was such as was obtained from the breaking down of the wool molecule. But that would not matter because the quantity so existing was infinitesimal and without significance. The question arises whether the garments contained a greater quantity of sulphur than they should have. The primary Judge has confused the whole evidence as to the sulphur compounds. There are three sources from which woollen garments may derive traces of sulphur—(1) from the wool molecule itself; (2) in process of manufacture the wool molecule will be broken down, and (3) the sulphur dioxide used in process of manufacture, and in the manufacture acids are used which may break down the wool molecule and release the sulphur dioxide. It is also common to find sulphates which are harmless. In the preparation of the wool and thereafter there was a final washing. Though the Judge appreciates in some part of his

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judgment that sulphates are harmless, in other parts he simply deals with them as sulphur compounds and as if sulphur compounds were interchangeable with sulphites. The Judge takes Anderson's analysis as showing that there was free sulphur dioxide in the garment. Anderson says that by a process of analysis he found minute traces of sulphur dioxide. The Judge assumes that there must have been a larger quantity and Anderson found a larger amount of sulphur salts at the ends of underpants. The evidence is that sulphur compounds were more concentrated in the lower parts of the garments. There was no evidence that at the time when the garments were bought there was any sulphur dioxide, except such negligible part as might come from the wool molecule itself. There is no real evidence that there was a greater proportion of sulphur dioxide present when the garments were bought than when they were analyzed. The findings of the trial Judge come to no more than this that when the garments were analyzed they contained an infinitesimal amount of sulphur dioxide but that does not go beyond the point that there was anything deleterious in the garments. He found that the plaintiff had a normal skin and that he got dermatitis from these garments and, therefore, there must have been a deleterious amount of sulphur dioxide in them. This is a mere argument in a circle. There is no evidence to justify the finding that the plaintiff caught the complaint from these garments. He finds that as he got the complaint from them they must have contained a deleterious amount of sulphur dioxide. The complaint was not acquired from the garment and though there was sulphur dioxide present in the wool it was not there in sufficient quantities to be harmful (*Donoghue* v. *Stevenson* (1)). To make the manufacturer liable there must be a special relationship between him and the consumer. The special relationship between the manufacturer and the consumer was created in that instance by the intentional exclusion from examination by the manufacturer. The manufacturer intentionally excluded the possibility of examination for his own purposes. As to the retailer, in order to make him liable under the provisions in the *Sale of Goods Act*, the plaintiff must show that he relied upon the vendor's skill and judgment in giving him goods

(1) (1932) A.C. 562.

reasonably fit for the purpose for which they were required (*Wallis* v. *Russell* (1); *Benjamin* on *Sale* (1931), 7th ed., pp. 656-658). The *Sale of Goods Act* does not apply where the buyer selects the goods of his own motion. The buyer here did not rely on the skill or judgment of the retailer. The buyer did not make it known to the retailer that he was relying on the retailer's skill and judgment. There was no evidence that there was a deleterious amount of sulphur dioxide in the garments. The plaintiff admits himself that he was a member of a class having a sensitive skin. It was natural that the mineral salts would gravitate to the ends of the garment. It is not sufficient to find the garments may have had more, but it is necessary to infer that they did in fact have more, chemicals in them than they should have contained and that the amount found is sufficient to be deleterious. Anderson's evidence only shows that when he broke down the wool molecule he got sulphur dioxide but it does not show that when the garment was washed only sulphur dioxide was obtained. If the sulphur dioxide was obtained from the process of breaking down the wool molecule it would always be present as long as there was any wool left at all. The sulphur which was combined with the wool molecule was not soluble at all. All the witnesses agree that there was no free sulphur contained in the garments. It is only upon Anderson's evidence the Chief Justice bases his decision, and Anderson's analysis only represents the sulphur content of the wool itself. In this case the cause of the complaint may be both external and internal. There was no negligence in the manufacture of these garments. There was no evidence that the ankle parts were made by any other process than the other parts of the garment. The trial Judge seemed to treat the matter as one of *res ipsa loquitur*. The Judge finds that it is irrelevant to consider the manufacture of other garments if it is shown that there is no better process than the one adopted; it cannot be found that reasonable care was not taken. The defendants had an effective process of manufacture and omitted no step in that process, and there is no evidence to the contrary. The evidence was that nothing could have been done which was not done, to eliminate the noxious chemicals. On *Donoghue* v. *Stevenson* (2), it is not

(1) (1902) 2 Ir. R. 585.

(2) (1932) A.C. 562.

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sufficient to show the garments were intended to be worn in the condition in which they were bought but it must be shown that it was impossible to make an examination of them. The basis of *Donoghue* v. *Stevenson* (1) is not that the defect is not discoverable except by examination but that the manufacturer retains control over the article and puts himself in closer connection with the consumer than anyone else. This is not a case of *res ipsa loquitur*, but negligence must be both alleged and proved. The Judge was wrong in disregarding the evidence as to the processes followed by the defendant. The manufacturer is not liable to the plaintiff as there is no contract between them. The conditions of liability set forth in *Donoghue* v. *Stevenson* are not here present. According to that decision the manufacturer must prevent inspection (*Gordon* v. *M'Hardy* (2)). An implied warranty of reasonable fitness arises only in cases in which the purchaser makes known to the vendor that he relies upon the skill or judgment of the latter. The position is stated in *Benjamin* on *Sale* (1931), 7th ed., pp. 650-661. *Wallis* v. *Russell* (3) is distinguishable. The plaintiff voluntarily chose the underwear that he took away. The above reference in *Benjamin*, if it be correct, completely exonerates the vendor from liability. (*Preist* v. *Last* (4) ; *H. Beecham & Co.* v. *Francis Howard & Co.* (5) ; *Bowden Bros. & Co.* v. *Little* (6) ; *Frost* v. *Aylesbury Dairy Co.* (7) ; *Gillespie Bros. & Co.* v. *Cheney, Eggar & Co.* (8), where it was expressly stipulated that it was bunker coal that was required). *Manchester Liners Ltd.* v. *Rea Ltd.* (9), in which case the buyer showed that he relied upon the skill or judgment of the seller (*Bristol Tramways, &c., Carriage Co.* v. *Fiat Motors Ltd.* (10); *Halsbury, Laws of England* (1913), 1st ed., vol. xxv., p. 157, note (*d*)). Upon these authorities if the Court finds that these goods were not fit for human wear by reason of an excess of chemicals in the ankle parts there was not anything in the evidence that justified the finding that the buyer made known to the vendor that he relied on his skill or judgment in selling the article.

(1) (1932) A.C. 562.
(2) (1903) 6 Fraser (S.C.) 210.
(3) (1902) 2 Ir. R. 585.
(4) (1903) 2 K.B. 148.
(5) (1921) V.L.R. 428, at p. 433.
(6) (1907) 4 C.L.R. 1364, at pp. 1392, 1393.
(7) (1905) 1 K.B. 608, at pp. 612, 614.
(8) (1896) 2 Q.B. 59, at pp. 60, 64.
(9) (1922) 2 A.C. 74, at pp. 82, 91, 92.
(10) (1910) 2 K.B. 831.

Thomson K.C. The fabric that was used in these garments was dealt with by the manufacturers in the piece. No other complaint than this was ever made. An elaborate system of checks was provided. The solutions in which the web is immersed are continually checked and the web is also checked for excess of acid or alkalinity. The ankle ends are also treated in the same way as the body fabric, though there was some sulphur dioxide present. The real basis of the Judge's misconception is that he has confused sulphates with sulphites. His findings depend upon the fact that there were free soluble sulphites in the garment. Assuming there was a defect in the manufacture, that does not of itself prove negligence. There was no standard of care set up by the trial Judge. There is no evidence that the sulphur dioxide came from any free sulphite. Such as was there came from the sulphur molecule in the wool itself. The trial Judge applied an absolute standard of care. No one found free sulphites. No one has said definitely that this complaint was caused by sulphites. A distinction must be drawn between mathematical accuracy and a matter of practical utility.

Cleland K.C. (with him *T. E. Cleland*), for the respondent. As to the chemical evidence, the expression sulphite in the argument means sodium sulphite which was the chemical introduced into the process by the appellants. The witness, Hicks, by agitating the garment in cold water for two minutes obtained .11 per cent of sulphites, that quantity could not have come from the broken down wool molecule. He says that the wool could not possibly be in solution. Sulphite has never been found as part of the wool molecule. The evidence shows that chemical substances were introduced into the manufacture of this article which caused sulphur dioxide to adhere very closely to the wool fibre in such a way as to become very difficult to remove ; and this, after the garment is used, becomes an irritant very readily capable of causing dermatitis.

[DIXON J. referred to *MacPherson* v. *Buick Motor Co.* (1).]

The evidence of the experts called for the respondent shows that any appreciable quantity of sulphur dioxide or of sulphites may cause an eruption of dermatitis (*Priceley's Text-book of Practice of*

(1) (1916) 217 N.Y. 382.

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Medicine, p. 1287). It is not known what amount of sulphur dioxide is necessary to constitute an irritant, and it is not known what quantity of sulphur dioxide was in the garment at the time (*Ajum Goolam Hossen & Co.* v. *Union Marine Insurance Co.* (1)). The respondent never had any trouble before from wearing woollen undergarments though he wore them all his life and the conclusion to be drawn is that the dermatitis was caused by some external irritant in the underwear. Even assuming that there was a predisposition on the part of the respondent if the irritant was applied in the manner alleged, the defendants are still liable (*In re Polemis & Furness, Withy & Co.* (2)). The respondent unfortunately purchased and wore garments that were not satisfactory. The respondent was prevented from giving evidence of the fact of complaints to rebut evidence given by the appellants of the absence of complaints. There was free sulphur dioxide which was present in the garments even after they were washed. The evidence shows that there is no such thing as a normal skin. The respondent must succeed unless it is shown that his physical condition was the *causa causans* of the dermatitis. There was no such condition in the respondent, therefore, the events show that there were chemicals in these garments which were sufficient to do damage to a normal person's skin. A normal skin is one which comes within a class which is within certain wide limits. The evidence is sufficient to justify the finding of the trial Judge that the dermatitis was caused or aggravated by chemicals in the garments. The onus of establishing that the respondent has not a normal skin is upon the appellants. The effect of the Judge's findings is that the most probable cause of the dermatitis was the action of the present appellants. The demeanour of the witnesses plays a large part in the elicitation of the truth in this case. The manufacturers for trade purposes added dangerous chemicals to the fabric from which the garments were made. The garments were intended to be worn in contact with the skin for about fifteen hours which subjected the chemicals in the garments to further chemical action. Having employed dangerous chemicals in the manufacture of the garments the appellants are charged with a very special duty to take care that the wearers suffered no damage. The evidence

(1) (1901) A.C. 362, at p. 366.

(2) (1921) 3 K.B. 560.

shows that these processes properly and faithfully carried out were adequate both to neutralize and remove the dangerous chemicals. Therefore, the process was not all that could be desired. It follows, therefore, that if any dangerous chemicals were left in the fabric when the process was finished, the process itself must have been used carelessly and negligently. The conclusions of the trial Judge were not against the evidence or against the weight of evidence. The evidence shows that if anything occurred in the process that caused undue alkalinity or acidity it would be due to an oversight. The result appears to be that in the respondent's case the dangerous chemicals were not removed. The sulphur dioxide was mechanically adhering to the fabric of the garments and the sulphites were free in the sense that they were not part of the wool molecule but were obtained from solution, and both classes of chemicals were of unknown quantity. The onus is on the appellants to prove that the chemicals in the garments when the respondent wore them was negligible and the only possible inference was that the chemicals were allowed to remain in the garments by negligence. The presence of an unknown quantity of dangerous chemicals in the garments that the respondent wore *primâ facie* establishes negligence. If some initial negligence is established it is for the appellants to prove that the dermatitis was caused by some subsequent act of conscious volition (*Dominion Natural Gas Co.* v. *Collins and Perkins* (1); *Thomas* v. *Winchester* (2)). If these chemicals were irritants they were dangerous *per se* and were intended to be used in garments which were meant to be brought into contract with the human skin. As to dangerous things, short of intervention by some third party, the person who supplies them is in the position of an insurer. This case does not rest on inference but on substantive evidence. It is established that dangerous chemicals were in the garments; that dermatitis supervened after they were worn and that the respondent was a person of normal health, and that two witnesses both swore that the dermatitis was caused by the wearing of these garments. Ignorance is no excuse if it was negligent and if the person making or selling the garment ought to have known that it contained dangerous chemicals. They are liable for any damage that ensues (*George* v.

(1) (1909) A.C. 640.

(2) (1852) 6 N.Y. 396.

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Skivington (1)). All the evidence is consistent with the findings that the dermatitis was caused by an external irritating cause. Whether a thing is dangerous is a question of law once the facts are established (*Faulkner* v. *Wischer & Co. and Rosenhain & Co.* (2)). The underpants containing sulphuric acid are dangerous in themselves. Compare *Dominion Natural Gas Co.* v. *Collins and Perkins* (3). The liability of the manufacturer is one of insurance, see per Lord *Macmillan* in *Donoghue* v. *Stevenson* (4). *Cunard and Wife* v. *Antifyre Ltd.* (5), contains a concise and accurate summary of the position. The reference in *Donoghue* v. *Stevenson* (6) to the control exercised by the manufacturers is not a happy form of expression. The manufacturer exercises no control after the goods leave his possession. What he has is rather an expectation that they will not be tampered with, that expectation exists in this case.

[STARKE J. referred to *Rickards* v. *Lothian* (7).]

It is immaterial whether the manufacturer knew the chemicals were dangerous. It should have known. As to the retailer, Martin & Co., the Chief Justice found that these garments were not reasonably fit for the purpose for which they were sold; see the *Sale of Goods Act* 1895 (South Australia), sec. 14. *Preist* v. *Last* (8) establishes that though where you have an article capable of being used for various purposes the buyer must indicate which purpose he has in mind, yet when the article is only of use for one purpose this is not so. See also *Manchester Liners Ltd.* v. *Rea Ltd.* (9); *Ward* v. *Great Atlantic & Pacific Tea Co.* (10). The goods were not of merchantable quality; see sec. 14.

[DIXON J. referred to *Chaproniere* v. *Mason* (11).]

[Counsel referred to *Ryan* v. *Progressive Grocery Stores* (12).]

Ham K.C., in reply. The Chief Justice was correct in saying that the defendant had not established a breach of warranty of merchantable quality. In addition this is not a sale by description.

(1) (1869) L.R. 5 Ex. 1.
(2) (1918) V.L.R. 513; 40 A.L.T. 94.
(3) (1909) A.C. 640.
(4) (1932) A.C., at p. 613.
(5) (1933) 1 K.B. 551.
(6) (1932) A.C. 562.
(7) (1913) A.C. 263.
(8) (1903) 2 K.B. 148.
(9) (1922) 2 A.C. 74.
(10) (1918) 231 Mass. 90.
(11) (1905) 21 T.L.R. 633.
(12) (1931) 255 N.Y. 388.

[STARKE J. *Morelli* v. *Fitch & Gibbons* (1) is against you on that.]

[Counsel referred to *Benjamin* on *Sale* (1931), 7th ed., p. 658.]

[STARKE J. Do you come under the third category mentioned by *Benjamin* on *Sale* (1931), 7th ed., on p. 652 ?]

Ham. I suggest we come under the first. [Counsel also referred to *Matthews* on *Textile Fibres* (1924), 4th ed., p. 131.]

Cur. adv. vult.

Aug. 18.

The following written judgments were delivered :—

STARKE J. The Australian Knitting Mills Ltd. is a manufacturer on a large scale, of woollen undergarments known as "Golden Fleece." It does not dispose of its manufactures direct to the public but through retail houses. John Martin & Co. Ltd. is one of these retail houses, and it sells woollen undergarments manufactured by the Knitting Mills to the public in the ordinary way of retail business. On 3rd June 1931 Dr. Grant purchased from John Martin & Co. Ltd. two pairs of undergarments consisting of two singlets and two drawers or underpants. On Sunday 28th June he first wore a singlet and one of the underpants. Nine hours later he felt an itching on the front part of both his shins where the underpants were covered by his socks. Next day he wore the garments again ; the itching continued, and patches of redness measuring about two and a half inches by one and a half inches appeared on both shins. He treated the inflamed parts with calamine lotion, and went on wearing the same garments for the rest of the week. On Sunday 5th July, Dr. Grant put on the other singlet and the other pair of underpants, and wore them until the following Sunday, 12th July. Then he changed back to the first pair of garments, which in the meantime had been washed. The irritation increased, and on 13th July he consulted a skin specialist, on whose advice he discontinued wearing the woollen undergarments. The specialist prescribed for him. The inflammatory condition of the skin developed into an acute general dermatitis. In April of 1932 Dr. Grant brought an action against the Knitting Mills and Martin &

(1) (1928) 2 K.B. 636.

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Co. Ltd. for damages. Substantially he alleged that the underwear, particularly the underpants, purchased by him, contained a chemical or substance of an irritant nature which set up or originated the inflammatory condition of the skin or the dermatitis from which he suffered. The cause of action against the Knitting Mills was founded on negligence. The Knitting Mills, according to the pleadings, supplied to Martin & Co. Ltd. for sale to Dr. Grant and other customers woollen underwear from which the Knitting Mills had negligently omitted to remove chemicals or substances of an irritant nature, whereby the underwear purchased by him was rendered and became inherently dangerous to him and set up or originated the dermatitis from which he suffered. Against Martin & Co. Ltd. the cause of action was founded upon contract: the pleadings allege a breach of the condition implied in a contract of sale by the *Sale of Goods Act* 1895 of South Australia, sec. 14, sub-secs. (1) and (2). The action was tried before the learned Chief Justice of the Supreme Court of South Australia, who gave judgment in favour of Dr. Grant against both the Knitting Mills and Martin & Co. Ltd., and from that judgment an appeal is now brought to this Court.

It was a most exhaustive trial, and distinguished medical and chemical experts were called on both sides, but unfortunately they differed considerably in opinion. This Court must form its own independent conclusions on questions of fact (*Coghlan* v. *Cumberland* (1); *Dearman* v. *Dearman* (2)). It is for the appellant, however, to convince us that the learned Chief Justice came to wrong conclusions, and *in dubio* his findings ought to stand (*Colonial Securities Trust Co.* v. *Massey* (3)). In the present case, much depends upon the view taken of the facts. Three main questions arise. (1) First, did the woollen garments purchased by Dr. Grant contain any and what quantity of chemicals, or substances of an irritant nature? The pleadings suggested many such irritants, but some sulphur compound is the only one now suggested as of any importance. Wool in its natural state, I gather, contains sulphur in some form, either free or combined with the wool fibre itself. Commercial scouring detaches a large proportion of the sulphur. The garments

(1) (1898) 1 Ch. 704.
(2) (1908) 7 C.L.R. 549.
(3) (1896) 1 Q.B. 38.

which the Knitting Mills manufactures are of wool which has been scoured before it reaches them in the form of yarn, which contains a percentage of sulphur or one of its compounds adherent to the yarn or combined with the wool fibre itself. The evidence shows, I think, that the sulphur adherent to or combined with the wool fibre varies in the same and in different species and cannot be reduced to any definite proportion. (See *Marston's* pamphlet on the Chemical Composition of Wool). But it is contended that the process used by the Knitting Mills in the manufacture of its garments introduces a sulphur compound, bisulphite of soda, into the webbing of the garments which, unless removed, liberates, in contact with the sweat of the human body, the gas known as sulphur dioxide. And this, combining with sweat and oxygen, results in the formation of the acids known as sulphurous and sulphuric acid respectively. The gas and the acids are all known irritants. The process of manufacture is set forth in the evidence. The first step in the process is to scour or wash the fabric from which the woollen garments are manufactured ; the next is to bleach and shrink it, and the third introduces bisulphite of soda for the purpose of getting rid of the free chlorine formed in the second step ; the remaining steps are for neutralizing or washing purposes. Professor Hicks, perhaps, the most important witness called on behalf of Dr. Grant, said in relation to this process, upon examination in chief :—

"I have carefully considered the processes . . . which follow the first part of process 3, *i.e.*, the washing in process 3 and all subsequent processes.

Q. In your opinion, if those processes are carried out strictly in accordance with instructions in Ex. D5, will all excess bisulphite of soda be removed ?

A. It will.

Q. Does that opinion also apply to acidified bisulphite as such ?

A. Yes ; both those chemicals are very soluble in water.

Q. Do you agree that in any stage up to and including process 3, any sulphuric acid would have been formed ?

A. Yes.

Q. In your opinion, would any sulphuric acid which had been formed (have) been removed by any subsequent process ?

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A. I think so.

Q. If any free soluble sulphites were found in underclothing which had been treated by the process in Ex. D5, would that indicate anything to you ?

A. Only that it had not been removed in the final washing or in the process 5. Bisulphite would be easily removed by washing.

Q. Is the action of an acid on a bisulphite to produce sulphur dioxide ?

A. Yes.

Q. In your opinion, would the action of excess hydrochloric acid on the bisulphite in process 3 produce sulphur dioxide ?

A. Yes.

Q. Can free sulphur dioxide be removed from fabric by mere washing ?

A. No—not entirely.

Q. In order completely to remove free sulphur dioxide from fabric, would it be necessary to use an oxidising agent ?

A. Either an oxidising agent or very many washings, lasting over an impracticable period.

Q. Would such an oxidising agent as hydrogen peroxide be a proper one to use ?

A. It would."

This evidence, I think, clearly establishes that the process used by the Knitting Mills is, in the hands of careful manufacturers, a prudent and reasonable method, and other evidence makes it clear that it is a standard if not a standardized one. But analyses of the woollen garments purchased by Dr. Grant, and of other woollen garments manufactured by the Knitting Mills, are relied upon. It is said that they establish a sulphur content in the garments manufactured by the Knitting Mills quite inconsistent with a strict adherence to the process used or even a reasonable and careful working of it. Let me therefore turn to the analyses.

Dr. Grant returned the woollen garments he purchased to Martin & Co. Ltd., and they handed them over to the Knitting Mills. One pair of these garments had been washed twice, and the other once. I pass by a preliminary analysis made by Davies, a chemist in the employ of the Knitting Mills, for all parties agreed that it shed no

light on the issues involved in this action. In November of 1931 Anderson, an analytical chemist, made an analysis of a pair of underpants that had been purchased and worn by Dr. Grant. It failed to disclose the presence of any chemical substance likely to cause irritation to the skin. In May of 1932, however, he made a more detailed and exhaustive analysis upon the woollen garments purchased and worn by Dr. Grant; and he also made analyses upon other woollen garments. I shall take first the analysis of the garments worn by Dr. Grant, so far as it is material to the present discussion. The sulphur content of the garments—the sulphites found in them—so analyzed, expressed in terms of sulphur dioxide, was as follows :—

Sulphur Dioxide :	Percentage by Weight.
1. Underpants ..	.0082
2. do. ..	.0201
3. Singlet	Nil
4. do.	.0070

It must be remembered that Dr. Grant had had all these garments washed—one set of underpants and singlet twice and the other set once. Anderson in examination in chief thus deposed :

" Q. In your opinion, having . . . made these analyses, was there any irritating chemical in samples 1 to 4 ?

A. In my opinion, No.

Q. In your opinion, could anything further be done than was done to eliminate noxious or irritating chemicals ?

A. Speaking as an industrial chemist, No."

Professor Hicks, speaking of the same analyses, said : " In the first four items of Table G of Anderson the amounts were very small —infinitesimal—and without significance I think." Later, it is true, the learned professor said, " We are not dealing with infinitesimal quantities of sulphites. I have quantities in mind which Mr. Anderson listed in his analyses of various underclothing expressed as sulphur dioxide. I am sure I did not say the sulphur dioxide was infinitesimal." Nor did he : he referred to the first four items and not to those numbered 5, 6, 7, and 8 in Table G.

Next in order I take analyses of men's underwear manufactured by the Knitting Mills but not purchased or worn by Dr. Grant.

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Anderson made one such analysis in May of 1932, on summer weight underpants selected from bulk stores and of the same description as those worn by Dr. Grant. The sulphur content of the garment expressed in terms of sulphur dioxide was, percentage by weight, .0313. In 1932 Dr. Hargreaves made several analyses. Nos. 1 and 2 were upon a singlet and a pair of underpants manufactured by the Knitting Mills and obtained from the stock of Martin & Co. Ltd. The results were as follows :—

Sample Number	Free Sulphur Dioxide.	Total Sulphite calculated as Sulphur Dioxide—parts per million.
1	Nil	44.8
2	Nil	51.2

Nos. 3 and 4 were upon undergarments manufactured by the Knitting Mills; they were specially prepared, and had only one washing which took place between the first and second steps of the process used by the Knitting Mills. They were actually worn, one set by Ferguson and one by Davies, the secretary and chemist respectively of the Knitting Mills. A piece of the web (Sample No. 5) from which these garments were manufactured was also analysed. The results were :—

Sample Number.	Free Sulphur Dioxide.	Total Sulphite calculated as Sulphur Dioxide—parts per Million.
3	Nil	908.8
4	Nil	793.6
5	Nil	230.4

No. 6 was upon a singlet manufactured by the Knitting Mills, but it was also specially prepared, and all the washing steps in the process used by the Knitting Mills were omitted. The result was :—

Sample Number.	Free Sulphur Dioxide.	Total Sulphite calculated as Sulphur Dioxide—parts per Million.
6	Nil	140.8

Although the figures were calculated as sulphur dioxide, Dr. Hargreaves is emphatic that free sulphites were not present :— " There were no free sulphites. The sulphur was tied up in combination with the wool molecule. The pure wool keratin contains 35,000

parts per million of sulphur, which is equivalent to 70,000 parts per million of sulphur dioxide. That is infinitely more than the quantities of sulphur compound that I found—very much more."

"Q. What that indicates is that in the various processes that had been applied to this wool a great deal of sulphur had been removed? A. Yes. Definitely." He says at a later stage of the evidence "there were no sulphites other than those which came from the wool molecule." Professor Hicks does not agree with this view; in his opinion, the manufacturing process, and not the content of the wool fibre, was the source of the sulphur content of the garments analyzed by Anderson and Dr. Hargreaves. The reason he assigns for this opinion is that he has difficulty in following or understanding how the sulphur content of the wool fibre was oxidised.

The learned Chief Justice did not solve the rival theories. But he placed considerable weight upon an analysis made by Professor Hicks. A pair of woollen undergarments of the same description as those purchased and worn by Dr. Grant were procured from the stock of Martin & Co. Ltd., and handed to Professor Hicks. He agitated portions of the garments in cold water for two or three minutes and then wrung them out. The aqueous solution so obtained he analyzed and calculated the result, in terms of free sulphite of soda, as being approximately .11 percentage by weight.

"I extracted the singlet with cold distilled water at room temperature, agitating it for two minutes.

Q. Were all those extracts designed to remove from the fabrics some of any free soluble matter in the garments?

A. Yes; the idea was to see if I could get any readily free soluble substances. I did not think it worth while trying to get anything that was not soluble. I can definitely exclude any possibility that my results were affected by chemical content of the wool molecule itself. I found that the aqueous extract in the singlet contained free sulphite of soda. By calculation I ascertained the percentage by weight of that sulphite. It was .11 per cent approximately."

Before considering the effect of this evidence, I refer to some evidence given by Anderson of analyses of woollen garments similar to those worn by Dr. Grant but manufactured by firms other than

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the Knitting Mills. They are useful as comparisons. I shall call them VI., VII., and VIII. respectively. The results were :—

	Sulphur Dioxide per cent by weight
VI. (manufactured in Australia)	.1321
VII. (manufactured in England)	.0876
VIII. (manufactured in Australia)	.265

Also, I refer to an answer to an interrogatory made by the Knitting Mills which was much relied upon during argument. It is :—

" The garments at the time of delivery to the retailing defendant " (Martin & Co. Ltd.) " by the manufacturing defendant " (the Knitting Mills) " contained the following chemicals—the small quantity of napthaline mentioned in answer 3 (i.), arsenious oxide, sulphur dioxide." It is a very careless answer, but seems to be based upon the arsenic and sulphur content of the garments expressed in terms of arsenious oxide and sulphur dioxide in Anderson's analyses, which were in the possession of the Knitting Mills. It can mean no more, unless it refers to sulphur dioxide as such actually adherent to the fabric, which would be negligible.

The method of the analyses above mentioned has not been challenged, nor have the results. The conclusions I draw from these analyses are :—

1. That the manufacturing process of the Knitting Mills was the source of some at least of the sulphur content of the garments analyzed by Anderson, Hargreaves and Hicks. Hicks, I think, by his method demonstrated this fact. And, though bisulphite of soda is exceedingly soluble in water, yet in an industrial process where six pounds of bisulphite are mixed with twenty-five gallons of water in a mixing tank, there is a possibility, perhaps a probability, that the whole of the bisulphite will not dissolve and that some particles may attach themselves to the fabric in the course of manufacture. Ashworth, who is employed by the Knitting Mills in their process, put the matter fairly :—" We have to be very careful that there is no excess of one chemical or the other. We are always trying to be very careful. I maintain that the proportions of these chemicals are calculated so exactly that in fact there is no excess."

2. That it is not possible on the evidence to determine what proportion of the sulphur content of the garments analyzed was due to the manufacturing process and what proportion was combined with or adherent to the wool fibre.

3. That the sulphur content of the garments manufactured by the Knitting Mills and analyzed by Anderson, Hargreaves and Hicks was minute. Indeed, but for Professor Hicks' result—.11—one might well adopt his own statement and say that the amounts were "very small, infinitesimal and without significance."

A comparison of the analyses of garments made by the Knitting Mills with those of garments made by two other manufacturers is favourable to the Knitting Mills. Even the result obtained by Professor Hicks is very small and may easily represent some accident in the manufacturing process in the case of the particular garment. Dr. Grant's case, therefore, appears to rest upon the analysis made by Professor Hicks upon one pair of woollen garments.

(2) Second, did the sulphur compounds contained in the garments purchased by Dr. Grant originate or set up the inflammatory condition of his skin which developed into an acute general dermatitis ?

The learned Chief Justice resolved this question in the affirmative, and the medical evidence called for Dr. Grant clearly supports that conclusion. Perhaps the strongest expression of opinion is that contained in the evidence of Dr. Wigley :—

"Q. Assuming that underclothing contained known irritants, what is your opinion as to the cause of the dermatitis ?

A. The presence of a known irritant in the underclothing.

Q. In your opinion, is underclothing which contains sulphur or any compound of it or arsenic or any compound of arsenic or both a source of danger ?

A. Yes.

Q. In your statement where you blame the presence of known irritants—is that irrespective of the quantity of irritants ?

A. Yes. I would apply it to detectable amount of known irritant, *i.e.*, detectable by any chemical or physical analysis.

To His Honour: That is, by quantitative test of any sort. I apply that answer to any compound of sulphur or of arsenic."

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Drs. Upton and de Crespigny and Professor Hicks all support this view, though not perhaps in such emphatic terms. "Speaking as a medical expert," said Professor Hicks, "I would say that the skin over the anterior surface of the shin would tend to be more vulnerable to the effect of an irritant than the skin overlying the more fleshy part of the leg. This is because the capillary circulation in the former area of skin is likely to be poorer on account of the tension in the skin, as it is pulled over the hard underlying bone. I would also expect to find an irritation at that point by reason of the tight fitting underclothes with a sock pulled over it. I think it would be reasonable to expect the irritant to appear in that way. The close fitting underpants, plus the close fitting socks, tend to keep in the sulphur dioxide which might be produced. But I don't think it is the mere keeping in of the sulphur dioxide that matters, so much as the pressure of the two garments, the sock and the ankle of the undergarments upon the skin at that part, in so far as it will act like a tight bandage maintaining the irritant in closer propinquity to the skin."

The appellants suggested that the dermatitis suffered by Dr. Grant was induced by the peculiar hypersensitiveness of his skin to wool. Yet all his life he had worn woollen undergarments of much the same description as those manufactured by the Knitting Mills. Again, it was suggested that the dermatitis was of a type known as herpetiformis, which, so far as known, is not set up or originated by external irritation. But it is impossible to say that the learned Chief Justice was wrong in rejecting this theory, in the face of the definite and clear dissent of Drs. Upton and de Crespigny, who attended Dr. Grant throughout his illness and were in far and away the best position to form an opinion upon the matter. And if all the originating causes suggested by the appellants broke down upon examination, what else was left but the conclusion reached by the Chief Justice that some external irritant set up or originated the dermatitis in Dr. Grant? Everything then points to the sulphur content of the undergarments worn by Dr. Grant as the source of the trouble. I agree that to some extent the sulphur content of the garments was a constituent of, or adherent to, the wool fibre itself, but that may have been innocuous but for the action of the

Knitting Mills in washing the fabric of which the garments were manufactured in a solution of bisulphite of soda. This brings me to the third question.

(3) Third, did the Knitting Mills act negligently, that is, imprudently and without ordinary caution? The burden is upon Dr. Grant to show that he has been injured by a breach of duty owed to him by the Knitting Mills to take reasonable care to avoid such injury. It was contended that the Knitting Mills had added a dangerous chemical to the woollen fabric and that a special duty of protection or warning therefore rested upon it. The law takes notice that some things are dangerous in themselves, in which cases "the law exacts a diligence so stringent as to amount practically to a guarantee of safety." But neither experience nor knowledge warrants the assertion that bisulphite of soda belongs to the category of dangerous things, or that the Knitting Mills knew that it was a source of danger in the garments manufactured by it. It is used to get rid of any free chlorine produced by the manufacturing process, and is then washed out because its purpose has been served. Woollen undergarments are commonly used, in Australia and elsewhere, and the analyses in the present case demonstrate the presence of sulphur compounds in minute quantities in all the specimens subjected to analysis. But experience in the use of woollen garments has not suggested any danger from the presence in them of small quantities of sulphur compounds, though such compounds are known to medical men and chemists as irritants.

The case of *Donoghue* v. *Stevenson* (1) is relied upon. The special circumstances of the present case establish, it is said, a relationship of duty between the Knitting Mills and the purchasers and wearers of its garments. Articles of underwear are manufactured which the Knitting Mills knows and intends shall be purchased by members of the public through retail houses and worn by them, without any interference or examination of the articles by any intermediate handler of the goods. The duty, it is claimed, is to use reasonable care that the garments shall be free of any defects that would be likely to make them dangerous in use. Even so, I cannot think that Dr. Grant has established any breach of this duty. The process

(1) (1932) A.C. 562.

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adopted by the Knitting Mills is, as before observed, prudent and reasonable. It is, according to the evidence, the subject of continuous checks. But untoward results or accidents cannot, with the greatest of care, be wholly eliminated, in any industrial process. Theoretical calculations of the proportions necessary for the complete solution of any given substance may be perfect. But particles of the substance may not dissolve, and may then be caught up in the fabric of a garment during manufacture. All there is to rely upon in the present case is that Professor Hicks determined that a particular garment, which was never worn by Dr. Grant, contained an amount of free sulphite of soda calculated as .11 per cent, approximately, by weight. It is not suggested that the sulphite so calculated was evenly distributed over the whole garment, or that any other garment would necessarily produce the same result. It is a very small quantity, and, uninstructed by the expert evidence, I should have thought it negligible, having regard to the large trade in woollen garments and the general absence of any ill-effects from their wear. The burden of proof is upon the person who alleges negligence, and the evidence wholly fails to satisfy me that there has been any breach of duty on the part of the Knitting Mills, or in other words that the injury to Dr. Grant was occasioned by any carelessness on the part of the Knitting Mills.

The liability of Martin & Co. Ltd., founded upon the provisions of the South Australian *Sale of Goods Act* 1895, sec. 14, sub-secs. (1) and (2), remains for consideration. The provisions of sec. 14 (1) are: —" Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose."

" The buyer has to make known, expressly or by implication, the particular purpose for which the goods are required. He has to do this, so as to show that he trusts the seller's skill and judgment to supply something reasonably fit for the purpose " (*Manchester Liners Ltd.* v. *Rea Ltd.* (1)). " The buyer's reliance is a question of fact

(1) (1922) 2 A.C., at pp. 89, 90.

to be answered by examining all that was said or done with regard to the proposed transaction on either side from its first inception to the conclusion of the agreement to purchase" (*Medway Oil and Storage Co.* v. *Silica Gel Corporation* (1); *Cammell Laird & Co.* v. *Manganese Bronze and Brass Co.* (2)). The only evidence is that Dr. Grant asked to be shown some light weight woollen underclothing for his own use. He told the shopman that he had been in the habit of wearing "Gibsonia" brand, and had had some trouble with shrinking. The shopman said Martin & Co. Ltd. did not stock "Gibsonia," and showed him two other varieties, an English make, and an Australian make going by the name of "Golden Fleece." Dr. Grant inquired which were the better garments, and was informed that the English garments were better, but that the "Golden Fleece" garments were a very good article; he chose the "Golden Fleece" garments because they were cheaper. The Knitting Mills were, as already stated, the manufacturers of the "Golden Fleece" garments. It is plain enough that Dr. Grant knew that Martin & Co. Ltd. was only a retailer and not the manufacturer of the garments. It would have been wholly unreasonable on Dr. Grant's part to expect from Martin & Co. Ltd. an exact knowledge, not only of the sort of article he wanted but also of the processes by which it was manufactured and the defects or possible defects depending upon the modes of treatment employed by the manufacturer in the making of the garment. Martin & Co. Ltd. had no means of discovering the defects suggested in the garments in the present case, and even chemical analysis would have been ineffective, for, as already appears, the sulphur compounds are not evenly distributed over the garments. As a matter of fact, I do not believe that Dr. Grant trusted Martin & Co. Ltd.'s skill, or its judgment that the goods were reasonably fit for wearing and free from irritant chemicals or other noxious substances. He saw the goods himself, and was satisfied with their appearance and price. The provision in sec. 14 (2) is: "Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not) there is an implied condition that the goods shall be of

(1) (1928) 33 Com. Cas. 195, at p. 196.
(2) (1933) 2 K.B. 141, at p. 162; 38 Com. Cas. 175, at p. 180.

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merchantable quality." Assuming that Dr. Grant "bought by description" from Martin & Co. Ltd. the undergarments in question, the evidence shows clearly, to my mind, that they were of merchantable quality. Articles of the same character, containing sulphur compounds in more or less the same proportions, were being bought and sold in the market in large quantities.

In my opinion, the appeal should be allowed, the judgment below reversed, and judgment entered in favour of the Australian Knitting Mills Ltd. and John Martin & Co. Ltd.

DIXON J. The respondent has recovered damages for personal injuries against the manufacturer and the retailer of undergarments which have been found to be the cause of a serious disorder of his skin. The judgment against them was joint and both appeal against it. The manufacturer was sued in tort; the retailer, in contract. The retailer is a shopkeeper which in the ordinary way sold to the plaintiff two pairs of underpants and two singlets of the other defendant's manufacture. The plaintiff has obtained a finding by the learned Chief Justice of South Australia that the underpants were in an improper condition because the webbing at the ends of the legs contained sodium sulphite so as to be unfit for the purpose of wearing. This finding of fact was attacked on behalf of the appellants. But on their behalf it was also contended that, even if the finding stood, neither of them was liable for the damages suffered by the plaintiff. The manufacturer was held liable upon the ground that in undertaking the manufacture of underclothes, which it sold to retailers put up in a form in which they were expected to sell them to their customers, the manufacturer incurred a duty to exercise reasonable care that they should contain nothing likely to harm the wearer, a duty which it was inferred had not been fulfilled. The manufacturer, besides denying any want of care in fact, maintained that in point of law no such duty existed towards the plaintiff. In this Court, the question whether the contention is well founded must depend upon the interpretation of the decision of the House of Lords in *Donoghue* v. *Stevenson* (1). On the one side it is said that, in the case of a thing not of its own nature dangerous and not

(1) (1932) A.C. 562.

known to be dangerous because of some special property, the manufacturer's duty of care to users of the article who have not acquired it immediately from him was, by that decision, held to exist only when he establishes a " special relation " with them by putting up the article in such a form that until the consumer or user is about to consume or use it all reasonable opportunity of examining, testing or judging of its condition is excluded and all likelihood of alteration of or interference with it by intermediaries is removed. On the other side it is said that it is at least enough if the manufacturer shows, by labelling, tying or otherwise, that he contemplates the consumer's or user's receiving the article exactly as it left the manufacturer. But for reasons which will appear I find it unnecessary to decide whether the manufacturer incurred a duty of care to the plaintiff.

The plaintiff based his case against the retailer upon each of two conditions said to be implied under sec. 14 of the *Sale of Goods Act* 1895 (South Australia) which transcribes sec. 14 of the English Act. The learned Chief Justice considered that in the sale of the underclothes, a condition was implied under this provision that they should be reasonably fit for the purpose of wearing. He held that, in requesting to be supplied with underclothes for himself, the plaintiff had made known to the seller the particular purpose for which the goods are required so as to show that the buyer relied on the seller's skill or judgment. It is settled that the purpose for which goods are supplied may be " particular " within the meaning of this provision although it is the sole use for which goods of that kind are adapted. The purpose need not be some special use or requirement (*Preist* v. *Last* (1) C.A. and (2) per *Walton* J. ; *Wallis* v. *Russell* (3)). Thus in the case of food where the supplier is commonly considered responsible for seeing to the quality, state or freshness of the article little difficulty seems to have been felt in implying a condition upon a sale by a shopkeeper or retailer that it is reasonably fit for eating or drinking (compare *Frost* v. *Aylesbury Dairy Co.* (4) ; *Jackson* v. *Watson & Sons* (5), per *Farwell* L.J. ; *Chaproniere* v.

(1) (1903) 2 K.B. 148.
(2) 89 L.T. 33.
(3) (1902) 2 I.R. 585.
(4) (1905) 1 K.B. 608.
(5) (1909) 2 K.B. 193, at p. 202.

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Mason (1); and *Rex* v. *Manchester Profiteering Committee*; *Ex parte Lancashire and Yorkshire Railway Co.* (2), per *Bankes* L.J.).

When an article is sold for immediate consumption or use and the purpose to which it is to be put enters in to the very description under which it is sold, to imply a condition that it is fit to be so consumed or used is or, apart from the statute, would be an ordinary application of the general principles of contract. But the basis of the implication would be found in the nature of the transaction rather than in the buyer's reliance or appearance of reliance upon the seller's skill or his judgment. Thus, in 1829, in *Jones* v. *Bright* (3), *Best* C.J. considered it to be "a broad principle:—If a man sells an article, he thereby warrants that it is merchantable,—that it is fit for some purpose. . . . If he sells it for a particular purpose, he thereby warrants it fit for that purpose" (compare *Brown* v. *Edgington* (4); *Black* v. *Elliot* (5); *Harman* v. *Bennett* (6); *Beer* v. *Walker* (7); *Burrows* v. *Smith* (8); and *Davis* v. *Miller* (9)). It has been authoritatively declared that sub-sec. 1 of sec. 14 made no change in the common law (*Manchester Liners Ltd.* v. *Rea Ltd.* (10)). But it does not follow that the form in which the provision is expressed may now be disregarded or given an application which its natural meaning would not suggest. It is true that in *Rea's Case* (11) Lord *Atkinson* formulated propositions or presumptions which may tend to produce a result less easily reached if affirmative proof were exacted that the buyer did in fact so make known the purpose as actually to show that he relied on the seller's skill or his judgment. But Lord *Sumner* (12) said:—"The buyer has to make known, expressly or by implication, the particular purpose for which the goods are required. He has to do this, so as to show that he trusts the seller's skill and judgment to supply something reasonably fit for the purpose. . . . The words of sec. 14 (i) are 'so as to show,' not 'and also shows.' They

(1) (1905) 21 T.L.R. 633.
(2) (1920) 84 J.P. 177, at p. 181; 36 T.L.R. 593, at p. 594.
(3) (1829) 5 Bing. 533, at p. 544; 130 E.R. 1167, at p. 1172.
(4) (1841) 2 Man. & G. 279; 133 E.R. 751.
(5) (1859) 1 F. & F. 595; 175 E.R. 868.
(6) (1858) 1 F. & F. 400; 175 E.R. 781.
(7) (1877) 37 L.T. 278.
(8) (1894) 10 T.L.R. 246.
(9) (1894) 10 T.L.R. 286.
(10) (1922) 2 A.C. 74.
(11) (1922) 2 A.C., at pp. 85, 86.
(12) (1922) 2 A.C., at pp. 89, 90.

are satisfied, if the reliance is a matter of reasonable inference to the seller and to the Court."

In *Medway Oil and Storage Co.* v. *Silica Gel Corporation* (1), Lord *Sumner*, in a judgment delivered for a House consisting of himself, Lord *Atkinson* and Lord *Warrington*, made a pronouncement upon sec. 14 (1) which apparently was intended as an authoritative exposition. He said :—" On a scrutiny of section 14 (1) of the *Sale of Goods Act*, I think these propositions may be stated upon it: (*a*) The buyer's reliance is a question of fact to be answered by examining all that was said or done with regard to the proposed transaction on either side from its first inception to the conclusion of the agreement to purchase. (*b*) The section does not say that the reliance on the seller's skill or judgment is to be exclusive of all reliance on anything else, on the advice, for example, of the buyer's own experts or the use of his own knowledge or common sense. Indeed it would never be possible to be sure that the element of reliance on the seller entered into the matter at all unless the buyer made some statement to that effect. It follows that the reliance in question must be such as to constitute a substantial and effective inducement which leads the buyer to agree to purchase the commodity. (*c*) This warranty, though no doubt an implied one, is still contractual; and, just as a seller may refuse to contract except upon the terms of an express exclusion of it, so he cannot be supposed to consent to the liability which it involves unless the buyer's reliance on him, on which the liability rests, is shown, and shown to him. The Tribunal must decide whether the circumstances brought to his knowledge showed this to him as a reasonable man or not; but there must be evidence to bring it home to his mind before the case for the warranty can be launched against him.

" My Lords, I would like to add a few commonplace observations. One naturally asks, why should any buyer ever be supposed not to rely on the seller's skill or judgment ? It can do him no harm to do so, and may do him some good. Till the seller refuses to deal at all unless any such reliance is renounced surely a man of sense must be deemed to want to get for himself all that the law allows. . . . In this case I rather think that this may have been the view present to

(1) (1928) 33 Com. Cas. 195.

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the mind of *Rowlatt* J. . . . He would appear to have thought that reliance on the buyer's part follows almost as a matter of course from the communication of his purpose whenever he knows less than the seller does about the substance which he is minded to buy. My Lords, I think this will in most cases be a question of degree. To go into a chemist's shop for something for your toothache ; to order milk for your baby from a dairy ; to write to a coal merchant that your ship is lying in his port and to ask him to bunker her, are simple cases in which reliance is not indeed presumed in law but is obvious in fact. But reliance on another and not on yourself is not a course which is always either obvious or probable ; it may be so far from what prudence would dictate as to be neither."

In the present case, I think the difficulty in implying the conditions arises from the necessity which this statement emphasizes of an actual reliance upon the skill or judgment of the seller as a material inducement to the buyer. If the circumstances of the sale did exhibit such a reliance, it was exhibited to the seller. But, in respect of underclothing sold by a retailer under a well known manufacturer's brand, it may be doubted whether the ordinary buyer takes any account of the skill or the judgment of the retailer. Indeed, there is some inconsistency between the argument that the manufacturer by the form in which the underclothing is put up brings himself into a special relation with the ultimate purchaser or user, and the argument that the purchaser relies on the intermediaries' skill or judgment in selecting or purveying it for the purpose of wear. But, as the plaintiff relies upon another condition, which, I think, must be implied, the case cannot, I think, be disposed of on the ground that the condition of reasonable fitness is not made out, and, in these circumstances, it is the better course to refrain from forming a concluded view upon a matter of such general application. It must be remembered in connection with the implication of the condition of reasonable fitness that sec. 14 of the *Sale of Goods Act* provides that there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale except in the cases stated in the section. If, therefore, promises which, upon previous authorities, would be contained in a

sale of some common kind cannot be referred to the exceptions stated in the provision, the statute has made important changes in the rights springing from everyday transactions.

It is the second of these exceptions upon which the plaintiff also relies. The exception is as follows :—" Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality. Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed."

Specific or ascertained goods may be " bought by description " within the meaning of this provision ; it is not limited to unascertained goods (*Varley* v. *Whipp* (1) ; *Wren* v. *Holt* (2) ; *Boys* v. *Rice* (3) ; *H. Beecham & Co.* v. *Francis Howard & Co.* (4) ; *Morelli* v. *Fitch & Gibbons* (5)). Further, as appears from the proviso, the buyer may, at or before the time of sale, have examined the goods and so established their identity independently of the description. When identified goods are sold, it is obvious that they remain the subject of the sale whether they do, or do not, correspond with the description which the parties have given them. But, however certainly the identity of the goods may be established, the parties must, since the intention is expressed or communicated, refer in some way to the goods. They must use some " description " to refer to them. A difficulty, therefore, cannot but arise in determining when the sale is " by " the description and when not. Apparently the distinction is between sales of things sought or chosen by the buyer because of their description and of things of which the physical identity is all important. When the ground upon which the goods are selected or identified is their correspondence to a description and when, therefore, it may be said that the buyer primarily relies upon their classification or possession of attributes, then, notwithstanding that they are bought as specific goods ascertained and identified, the goods are bought by description. In the ordinary case of a sale over the counter by a shopkeeper to a customer, who calls for an article of

(1) (1900) 1 Q.B. 513.
(2) (1903) 1 K.B. 610.
(3) (1908) 27 N.Z.L.R. 1038.
(4) (1921) V.L.R. 428.
(5) (1928) 2 K.B. 636.

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a given description, inspects the specimens produced, and buys one, the transaction is a sale by description. There is in such a case a condition that the goods are of merchantable quality but a condition which, because of the examination, is qualified by the proviso to the sub-section and extends only to defects not reasonably discoverable by such an examination.

The condition that goods are of merchantable quality requires that they should be in such an actual state that a buyer fully acquainted with the facts and, therefore, knowing what hidden defects exist and not being limited to their apparent condition would buy them without abatement of the price obtainable for such goods if in reasonably sound order and condition and without special terms. See *Bristol Tramways, &c., Carriage Co.* v. *Fiat Motors Ltd.* (1); *Jackson* v. *Rotax Motor and Cycle Co.* (2); *Morelli* v. *Fitch & Gibbons* (3); *H. Beecham & Co.* v. *Francis Howard & Co.* (4).

The plaintiff, in my opinion, in buying the underclothing in the ordinary course "over the counter" obtained the benefit of such a condition. This conclusion makes it necessary, at any rate for the purpose of ascertaining the liability of one of the appellants, the retailer, to consider the question of fact, namely, whether any of the underwear when supplied to the plaintiff was in an improper condition because of the presence of harmful chemical agents. The ultimate statement of this issue of fact may not, perhaps, be precisely identical for the purpose of all three causes of action set up by the plaintiff. But, in the circumstances of the case, it is, I think, correct in substance that the plaintiff fails to establish negligence in the manufacturer and to establish a breach of the condition that the clothing should be reasonably fit for the purpose of his wear unless he has proved that the legs of the underpants contained some sulphur compound of such a strength or of such an amount that a real likelihood of their proving a source of injury to some wearer existed at the time of sale.

After a full examination of the evidence, I have reached the conclusion that the plaintiff has not established this issue. Presence of injurious sulphur compounds in the undergarments at the time

(1) (1910) 2 K.B., at p. 840.
(2) (1910) 2 K.B. 937, at p. 950.
(3) (1928) 2 K.B. 636.
(4) (1921) V.L.R. 428.

of wearing could only be inferred from circumstances. A number of facts is relied upon as a sufficient justification for that inference apart from the nature and course of the skin complaint from which the plaintiff suffered. But, before dealing with these, it is desirable to give some consideration to the question whether his disorder was of such a character that it should be attributed to the application of a chemical irritant to the legs where the ends of the underpants would enclose them. A very different view of the case might be taken, if it were right to conclude from the medical evidence that his condition was the consequence of contact with a chemical irritant in a strength or amount that underwear ought not to contain. The attempt made on the part of the plaintiff to establish that his disorder was of such a character, in my opinion, failed. The following is a summary statement of the facts material to this question.

The plaintiff put on one of the two suits of undergarments on the morning of Sunday 28th June 1931. They had not been washed. According to the plaintiff's answer to interrogatories, on the afternoon of the same day an itching developed on the anterior portions of both legs below the knee, and in the late afternoon or evening an erythemato-papular rash appeared which he recognized as indicative of and consistent with dermatitis. In his evidence the plaintiff said that he had the itching on the evening of the first day after he had been wearing the garment about nine hours and there was then no objective symptom: that the redness appeared next day in a patch upon each leg of about two and a half by one and a half inches which he first saw some time in the evening of that day. He noticed at the same time tiny papules, pin point things. The patches were on each leg in corresponding positions. The underpants extended just below the ankle joint and his socks were pulled up over them. The itching and patches appeared in a position just below the top of the socks. He continued to wear the undergarments each day. On the morning of the third day the papules were a little bigger. At the end of the week the eruption had spread and the papules had increased in size and number. On Sunday 5th July, the plaintiff changed his undergarments and put on the second suit which he had bought. These garments had not been washed. The condition of the skin over his shins became worse. The itching increased, the

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papules grew larger and tended to coalesce and at the end of that week the patches had become vesicular. The vesicles were small. On Sunday 12th July, he changed his underclothing again. He put on the suit of undergarments which he had worn during the previous week. These had, meanwhile, been through the wash for the first time. On the following day he consulted a skin specialist. At this time, according to the plaintiff, the size of the patches on the middle of his lower legs had become in area roughly about four by two and a half to three inches; there was erythema, confluent papules, and marked itching. The skin specialist inquired about soaps and underclothes and recommended that the plaintiff should leave off the new woollen garments. A few days after this the plaintiff went to the shop of the retailer and told one of the employees that he was suffering from an attack of dermatitis which had been attributed to the wearing of the garments he had bought. The shopman asked to have the garments and before the end of the week the plaintiff, after having both sets washed, brought them back to the shop. The plaintiff's condition got worse and, on 21st July, on the advice of the skin specialist, he took to his bed. An erythematous patch had appeared upon his left upper arm. It then appeared upon his other arm and upon his shoulders and eventually upon every part of his skin except the soles of his feet and the palms of his hands. The last place to be affected was the front of the chest. The whole body was not covered at the same time, but, by stages, the whole skin was affected. The eruption had an erythematous base upon which small vesicles formed. Throughout, the vesicles remained very small. There was a copious exudation and a crusting and scaling. By about 7th August, nearly three-quarters of the cutaneous system was involved. The vesicles did not become blisters. There were some pustules but they were isolated. Speaking generally, the papules and vesicles did not occur in groups or clusters but were distributed, although they crowded together through increase in size and number.

At the end of the first week in August, the skin specialist observed a tendency to grouping upon the forearms. As I understand his evidence, at first he considered the plaintiff's condition to have arisen from an irritant. But, at this time, he inclined to the view that

the complaint might be dermatitis herpetiformis, and he prescribed accordingly a solution of arsenic, a course of doubtful wisdom if the condition had arisen from an unknown chemical irritant. At the end of a week of this treatment there was no improvement and it was relinquished. But, in the following week, an improvement occurred, to be followed, however, by an increase in the severity of the disease. The symptoms had some characteristics of dermatitis herpetiformis which is a disease of infrequent occurrence and uncertain origin, sometimes being considered a neurosis and sometimes due to internal toxins; but typical features of that disease are the configuration of the papular eruptions and vesicles of the size of bullae or blisters. These symptoms were not present except that for a short time there were groups upon the forearms. Moreover, the complaint is rarely so severe as is the plaintiff's case. The plaintiff's condition became worse through sleeplessness due to the itching and it wore a serious aspect. He remained in bed for seventeen weeks altogether, and when he was convalescent he was sent to New Zealand to avoid the heat of the Adelaide summer. He returned, however, early in February 1932. At this time, though there was still some eruption remaining upon his legs, his condition was greatly improved. But a return took place of his complaint, and, at the end of March, he was compelled to go into hospital where he remained until 9th July 1932. During this period, the skin specialist injected intravenously a gold preparation used for the purpose of stimulating skin cells in toxic conditions, particularly, but not exclusively, those associated with tubercle. In 1924, the plaintiff suffered from pulmonary tuberculosis but that disease was arrested, and, in prescribing this remedy, the skin specialist did not consider that the plaintiff's condition had a tubercular origin.

Conflicting opinions were expressed by qualified dermatologists as to the nature and probable cause of the plaintiff's malady. Three skin specialists, called on the part of the defendants, deposed to the negative opinion that the disease was not attributable to an external irritant and to the positive diagnosis of dermatitis herpetiformis. Against the positive view that it was dermatitis herpetiformis were the facts that (1) the configuration of the eruption was not, or not for long, part of a grouped series, (2) the vesicles were small and

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there were no blisters, (3) the attack was severe in extent and intensity. None of these symptoms appears to be of itself absolutely inconsistent with the diagnosis, but together they may be taken to raise a probability of its incorrectness which, coupled with the comparative infrequency of the occurrence of the disease, lent support for the view that the skin specialist who actually attended the patient throughout the disease was right in rejecting, as he ultimately did, a diagnosis of dermatitis herpetiformis. At any rate, the conclusion that this was the nature of the disease is one which the Court ought not, on the evidence, affirmatively to adopt. On the other hand, there are serious difficulties in adopting the positive conclusion that the disease was caused by a chemical in the garments in such quantity or strength as to render them unfit for indiscriminate use. The quickness of the appearance of symptoms of irritation upon the shins, if shown to be due to an irritant, would in itself indicate that the irritant existed in strength or quantity. But this quick appearance was followed by a slow progress which scarcely suggests strength or quantity. Further, it was not arrested by the removal of the supposed cause, but was followed by the appearance of the disorder in a remote member. The simultaneous appearance of the eruption in similar places in two limbs is characteristic of dermatitis which is not caused by irritation at those places. The course of the complaint was obviously independent of the supposed cause. It is true that none of these matters is inconsistent with the cause being an external chemical irritant upon the legs. They too go only to probability. But a consideration of the medical evidence and an examination of a number of the text books cited in that evidence shows that the aetiology of disorders of the skin involves many uncertainties. It would appear that most of the older views are undergoing change or modification. It is difficult to discover any generally accepted explanation of the manner in which such a condition as that of the plaintiff is derived from the existence of a chemical irritant applied at one or two points such as the shins. No doubt, whatever may be the explanation, a general condition of dermatitis might develop as the result of the application of such an irritant at such a place or places. But, on the other hand, it seems probable that it would not do so unless the sufferer possessed

some peculiarity exposing him to a special reaction to the substance called the irritant. It further appears that the nature, amount, or strength of the substance can in no way be deduced from the general or from the local condition of the sufferer's skin. The special liability of a particular person to respond to some particular irritant or other substance, although the subject of much study, has not been explained upon any theory commanding general assent. But it is conceded that it may be congenital or acquired and may be a transient or a permanent characteristic. Whether the characteristic is simply called a special susceptibility or is referred to a technical description as a diathesis, a hypersensitiveness, an anaphylaxis, or an allergy, it seems to be clear that the application or proximity of the stimulus may be sufficient, although its extent or quantity be of the smallest and its strength or intensity of the weakest. If, therefore, it were considered proved that the exciting cause of the plaintiff's disorder was some chemical contained in or some property of the undergarment, no inference could be drawn from the medical facts that its presence rendered the garment unfit for general use or indiscriminate sale. But the correct conclusion is, in my opinion, that no Court could safely infer from the medical evidence that the plaintiff's condition was attributable to the garments. If *aliunde* it was established that an irritant chemical of a nature and in a quantity calculated to injure a normal person was present in the trousers, it might be right upon the medical evidence to attribute the plaintiff's illness to this fact, but the reason for this would be that the condition of the garment was such as to make it probable that an irritation of the skin would take place. It is, in my opinion, impossible to reason from the plaintiff's state to any conclusion as to the state of the garment.

The learned Chief Justice, however, found that a chemical irritant did exist in the undergarments. He came to the conclusion that the plaintiff's dermatitis was caused by the presence of bisulphite of soda in the ankle ends of at least one pair of the underpants, and by the continued exposure of the skin on his shin bones to the action of the bisulphite and its products, sulphur dioxide, sulphurous acid and sulphuric acid, for at least a week. This conclusion was, I think, much influenced by the view which his Honor took of the

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diagnosis and aetiology of the plaintiff's disorder, a view which I am unable to share; but it also depended to a very great extent upon inferences drawn from the results of chemical analyses in respect of the garments in question and other garments, from the character of the processes to which the web of the ankle ends was subjected in the course of the manufacture, and from other circumstances. It appeared that, in November 1931, the defendant, the manufacturer, submitted to an analytical chemist for report one of the pairs of underpants which the plaintiff had returned to the retailer. He reported that his examination disclosed the presence of no chemical substance likely to cause irritation of the skin, but he also reported that the mineral portion of the water soluble extract which he had made consisted mainly of neutral sulphates. The percentage of such matter was small, but was larger in the ankle and crutch of the garment than in the waist and knee. In May 1932, the same chemist made another examination, this time of all four garments and of a fifth which was taken as a sample from stock. From each garment he made up a given weight of material taken from various parts of the garment. From each sample he extracted a solution using distilled water at blood temperature. He reported that he obtained a percentage by weight of sulphur dioxide as follows: in one pair of the plaintiff's underpants, 0.0082 per cent, in the other, 0.0201 per cent, in one of the plaintiff's singlets none, in the other 0.0070 per cent, in the sample from stock, 0.0313 per cent. This statement was not intended to mean that the fabric contained sulphur dioxide, which is a gas, but that it was represented or obtainable. In fact he considered that the sulphur dioxide represented a sulphite. With these reports before them, the defendants answered an interrogatory that the garments at the time of delivery to the retailer by the manufacturer contained, among other things, sulphur dioxide. The evidence given by the defendants of the process of manufacture disclosed that the woven material, after going through a shrinking process in which calcium hypochlorite and some hydrochloric acid are used, is put through a bath, containing bisulphite of soda, to get rid of chlorine. The compounds formed are soluble, and in that process and in three succeeding washing processes, they would be completely taken out. The percentages of sulphur dioxide disclosed

by the analysis are described in the evidence as infinitesimal and as without significance ; and it is clear that if a corresponding proportion of sodium bisulphite or other sulphur compound existed in the garments, they would not have been in an improper condition. But, because before the analysis the underpants had been washed by a washerwoman and because the alkaline sulphites, unlike other sulphites, are readily soluble in water, it is said to be a proper inference that a greater, and an injurious, quantity of sodium bisulphite existed when the plaintiff began to wear them. In answer, it is pointed out that if the underpants were hung from the waist wet upon a clothes line the ankle ends are precisely where an aggregation might be expected of whatever water might carry down. But adopting the hypothesis that the sulphur dioxide result obtained upon the analysis should be explained as the reflection of the residual quantity of an injurious or improper amount of sodium bisulphite, the learned Chief Justice appears to have inferred, as indeed the hypothesis demands, that for some unexplained reason the webbing out of which the particular ankle ends were cut did not undergo the washing and other processes so as to remove sodium bisulphite which afterwards was almost wholly removed in the wash tub.

The chemists, who gave evidence for the defendants, pointed out that sulphur enters into the composition of the wool, and literature was referred to for the purpose of showing that it is thought to be held in feeble affinity and that some of the sulphur, perhaps existing in the wool as sulphonic acid, may not form part of the fibre. Experiments were made with other woollen fabrics and wool to establish, that where no foreign sulphur or sulphur compound could be supposed to be present, sulphur dioxide could be obtained. It was said that from the results of the analysis, it was impossible to deduce that the plaintiff's underpants had contained any sulphite or sulphur compound which arose from the process of manufacture. On the other hand, a chemist of eminence, who made an analysis in respect of other garments of the same manufacture, said that he had excluded the possibility that the sulphur dioxide result he obtained was attributable to the sulphur naturally contained in the wool and considered that it came from soluble sulphites adhering

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to the fibre of the wool. He further expressed the opinion that the results produced in the analysis in relation to the plaintiff's underclothes could not be accounted for by the natural sulphur content of the wool. His ground, as I understand it, was his inability to see how oxidation took place upon that hypothesis. To this difficulty an answer was given, or, at any rate, attempted.

The Chief Justice said that fortunately he had not to decide between these conflicting opinions; what he was alone concerned with was the garments delivered by the manufacturer to the retailer, which the plaintiff obtained. Whether or no the controversy is one which can be regarded thus as not calling for decision, I feel no doubt that a Court of law would not, as the evidence stands, be warranted in acting upon the view of the chemist called by the plaintiff. It is a highly technical chemical question. The considerations upon which it depends have not been expounded in detail in the evidence. It would not be safe to adopt any course except to decline to rely upon the theory put forward by the party upon whom the onus of proof rests. I am not prepared, therefore, to hold that the sulphur dioxide result can be accounted for in no other way than by the supposition that sodium bisulphite or some other sulphur compound occurred in the fabric in consequence of the manufacturing process. But even assuming that it should be adopted, either because it is the only, or because it is the most probable supposition, I find myself unable to make the further inference that the sulphite existed in the ankle ends at the time of sale in quantity, or intensity at a particular point, sufficient to render the garment improper for indiscriminate sale. The reasons given for regarding sodium bisulphite as injurious were clearly stated by a witness for the plaintiff as follows:—

"Sweat is acid. A resting individual secretes rather over a pint of sweat in 24 hours. The acid in the sweat will have an effect on the sulphite. It liberates the sulphur dioxide. The sulphur dioxide liberated will combine with the sweat to form sulphurous acid. Sulphurous acid is a powerful reducing agent. When brought in contact with the skin we can only infer what takes place from the known results of sulphurous acid as a reducing substance, and that would be that oxygen would be abstracted from the superficial cells of the skin and from other reducing materials secreted on to the

surface of the skin. The net result will be the formation of sulphuric acid by the oxidation of the sulphurous acid. The three chemicals —sulphur dioxide, sulphurous acid and sulphuric acid—are all known irritants."

Why should it be inferred that before the garments were entrusted to the washerwoman they contained sufficient sulphite to operate in this way to the injury of the wearer ? The inference, as it appears to me, necessarily involves a failure in the process of manufacture to submit the material to the same amount of washing as it would receive in a household wash, and the failure in spite of regular testing for acidity to discover the omission. I do not think a foundation for the inference can be eked out by reliance upon the character of the plaintiff's disease, or by the closeness in time between the use of the garments and the sensation of itching. If the plaintiff's disorder was called into action by the wearing of the underclothes, it by no means follows that they were in an improper condition. Even if the further step, which I think is not justified, were taken of attributing it to the existence in the underpants of some sulphite, it would not follow that enough was there to make them unfit for the purpose of wear so that the manufacturer or the seller would be responsible. In the case of a skin condition taking the course which the plaintiff's took, there does not appear to me to be any firm ground for supposing that it was originated by what would prove injurious to others. The medical evidence was that it was impossible to say what amount of irritant would suffice and that any perceptible or appreciable amount might be enough. Although the standard of fitness of garments for wear cannot be fixed by reference to some conception of the average resistance of average skins, but must take into account the great variations in such matters, and in this sense the apparel must be suitable for indiscriminate sale, yet I do not think that extraordinary or highly exceptional conditions or consequences must be provided against. Finally, in such a matter, the evidence that the manufacturer had received no other complaints in spite of the very large sale of garments put out over a considerable length of time cannot be left altogether out of account.

In my opinion the plaintiff's case depends upon ambiguous circumstances and speculative conjectures and at some points is opposed to arguments of probability which have weight.

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I do not think the primary issue upon which his case depends, namely, the improper condition of the undergarments ought, upon the evidence, to be found in his favour.

For these reasons I am of opinion that the appeal should be allowed.

I think that judgment should be entered for the defendants with costs and that the plaintiff should pay the costs of this appeal.

EVATT J. Richard Thorold Grant, an Adelaide physician, who is the respondent to this appeal, brought an action in the Supreme Court of South Australia against Australian Knitting Mills Ltd., hereinafter referred to as the manufacturer, and John Martin & Co. Ltd., hereinafter referred to as the retailer. The manufacturer carried on the business of manufacturing certain woollen goods including underwear known as " Golden Fleece " underwear. On June 3rd, 1931, Dr. Grant purchased two suits of " Golden Fleece " underwear from the retailer who carried on at Adelaide the business of selling by retail certain goods including underwear.

The plaintiff's claim was that the underwear contained a chemical substance of an irritant nature and that by reason thereof he became ill of a dermatitis which gradually developed into an acute general dermatitis. Liability was sought to be attributed to the manufacturer upon the ground that it was under a duty to the plaintiff to take reasonable care in the conduct of its manufacturing processes so as to avoid injury to the skin of the wearer of the goods subjected to the processes. Liability was sought to be attributed to the retailer upon two grounds both dependent upon the *Sale of Goods Act* 1895—(1) that the plaintiff made known to the retailer the particular purpose for which the underwear was required so as to show that he relied on the retailer's skill or judgment, the goods purchased were of a description which it was in the course of the retailer's business to supply, and therefore there was an implied condition that the goods should be reasonably fit for the purpose for which they were required (sec. 14 (1)). (2) That the plaintiff bought the goods by description from the retailer, who dealt in goods of that description, and there was an implied condition that the goods should be of merchantable quality (sec. 14 (2)).

The case came on for hearing before the Chief Justice of South Australia, and lasted no less than twenty days. A great deal of scientific evidence was called, and it is reasonably plain that, in the main, the Chief Justice accepted the opinions of the medical and chemical experts called by the plaintiff. His Honor made findings in favour of the plaintiff against both the manufacturer and the retailer. In the case of the retailer, he held that sec. 14 (1) did, and that sec. 14 (2) did not, apply to the facts as found. The two defendants joined in their defences and have been represented throughout by the one set of counsel. No question is raised as to the form of judgment which was entered for the plaintiff against both defendants in the one sum of £2,450. From that judgment both defendants have appealed to this Court. The notice of appeal contains no less than forty-four grounds, but the main questions which arise are comparatively few in number, though of some general importance.

It is convenient to deal first with the question whether the illness to which Dr. Grant nearly succumbed was caused, as his witnesses aver, by the action upon his skin of an irritant contained in the ankle ends of the undergarments. Prior to wearing the underpants in question, Dr. Grant had worn woollen underclothing for many years and suffered no injury or illness of any description which could have been caused from the mere wearing of wool. However he had not worn any of the manufacturer's brand of underclothing. There is a very strong body of evidence which the Chief Justice accepted, that, prior to his illness, Dr. Grant's skin was not abnormal in character. After a careful consideration of all the evidence the Chief Justice found:

> "My conclusion on the question is that the preponderance of evidence is in favour of the plaintiff, and consequently I find that the plaintiff's skin was not abnormally sensitive prior to putting on the 'Golden Fleece' garments he purchased on the 3rd June, 1931. The sensitiveness he admitted on what he had been told by his medical advisers arose subsequently from the allergic condition brought about by the severe attack of dermatitis from which he had suffered. The suggested weakening of his powers of resistance to the action of wool on his skin, owing to his tubercular history, was negatived by Dr. de Crespigny's evidence that he had become totally well; by his own evidence, which I have no hesitation in believing, that he had never previously suffered any skin complaint due to the wearing of wool, and by Dr. Wigley's experiment showing that, even now, when his skin is in a highly sensitive condition, clean wool has no irritating effect upon him."

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Dr. Grant had symptoms of skin irritation after wearing the underclothing for one day. The irritation took the form of itching at the front part of the middle of both lower legs, where there appeared some redness measuring about two and a half by one and a half inches. The parts affected were in close contact with the underpants which at the ankle ends were webbed or pleated, and fitted tightly. Dr. Grant treated the inflammation by applying a lotion to his shins. After a week's wearing, he changed his first suit on Sunday, July 5th, and proceeded to wear the second suit until the following Sunday, July 12th. Neither suit had been washed at Dr. Grant's home before wearing. He consulted Dr. Upton, a specialist in dermatology, on Monday, July 13th, and as a result of his advice, ceased wearing the first suit which had been washed at home prior to his putting it on again on Sunday, July 12th.

Dr. Upton's attention was directed to the appearance of a rash on both legs of Dr. Grant between the ankle and the knee. The signs at once suggested to his mind that the cause lay in the presence upon the skin of an external irritant. At the trial he expressed the opinion that, having regard to all the circumstances including the place of irritation on each leg, the cause of the illness which ensued was " the application of something of an irritant nature to the locality of the lesions." The irritation became so severe, and injury to the skin so extensive that at one time he thought that the case might prove to be one of dermatitis herpetiformis, although most atypical in character ; but after specially watching the case from that point of view he saw no further evidence suggesting the slightest resemblance to that disease, and at the trial he was quite emphatic that Dr. Grant's illness was not of internal origin. Dr. de Crespigny who also attended Dr. Grant during his illness gave evidence to the same general effect as Dr. Upton. Dr. Wigley, a specialist in dermatology with the highest qualifications, expressed the opinion that at the shins the skin reacted easily to an external irritant and he was of opinion that, having regard to the conditions found by Dr. Grant's medical attendants and to the first onset of the symptoms within twelve hours of wearing the underclothing, undoubtedly the dermatitis was caused by an external irritant therein contained. He also thought that the fact that the plaintiff had once suffered from

very easily. If there was an appreciable excess of bisulphite left in it it would be found in the acid reaction for which we test the web."

This evidence shows, very clearly, the probable source of the soluble sulphite of soda discovered by Anderson in Dr. Grant's garments. As Mr. Davies pointed out and is otherwise clear, the washing processes, *if faithfully carried out* should and would effectively remove the sulphite.

In the written description of the process it is stated—on behalf of the manufacturer :—

"For preference the fabric is left slightly on the acid side, owing to the fact that you obtain a greater clearness and bloom on the finished fabric. Another reason for leaving the fabric with a slight acid reaction is for the prevention of mildew."

As to the extent of acid remaining, Davies said :—

"In connection with the processes I supervise them, and if anything is wrong I try to put it right. At the end of the processes I apply a test, the indicator—polichrome—test. That is a test primarily for acidity or alkalinity. I aim to produce the material after the processes as slightly acid. We try to get between 4 and 5. Generally speaking, we do get that ; exceptions are very rare. We get about one exception a month. If the acidity is between 3 and 4 the article is re-washed, but if it is over 4 it is allowed to go."

That the indicator test mentioned by Davies is not always applied, or, at least, is not always an adequate test, appears clearly from the evidence of Dr. Hargreaves. Of the samples of the manufacturer's garments to which he applied the polichrome test, all of them except one being garments ready for sale, only one gave a figure between 4 and 5, the figure at which Davies said the manufacturer aimed. But, what is more important, one of the garments gave an indicator test of 3.7. This was a garment which was completed and ready for sale, yet, according to Davies, " if the acidity is between 3 and 4 the article is re-washed." The article in question, therefore, had been passed although its acidity was beyond what the process contemplated ; although it is only fair to add that Dr. Hargreaves still considered it to be within the permissible limits of neutrality.

I have again considered Anderson's evidence, and I am satisfied that the admission made by the defendant that sulphur dioxide was present in the garment when delivered to the retailer, this admission having been made as a result of Anderson's analysis, was intended to mean, as in my opinion was the fact, that sulphur dioxide was present in the form of soluble sulphite of soda. It is not suggested

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by the plaintiff that the precise quantity ascertained by Anderson would be sufficient to cause Dr. Grant's dermatitis, but it is quite obvious that the home washing which Dr. Grant's garments received would remove the greater proportion of the free sulphites. I agree with *Murray* C.J. that the reasonable inference is that when Dr. Grant wore the garments there was present a much greater quantity of free sulphites than after the washing. It does not follow that the precise quantity would correspond with the quantity found by Professor Hicks after merely agitating another specimen of the defendant's manufacture for two minutes at ordinary room temperature. But the object of Professor Hicks was to ascertain what quantity of free sulphites in the garment could easily be removed by a short immersion in cold water at room temperature, and it is reasonable to infer that a quantity sufficient to cause definite irritation to the skin was present in the underwear when Dr. Grant first wore it.

Looking at all the circumstances of the case it seems to me to be reasonably clear (1) that Dr. Grant's attack of dermatitis was caused by some irritant contained in the ankle ends of the underpants he purchased from the retailer. (2) That this irritant was sodium sulphite in its free soluble form. (3) That the subsequent washing or washings removed a very great portion of this sodium sulphite from the two garments. (4) That some sodium sulphite remained. (5) That sodium sulphite was present in the garments when delivered by the manufacturer to the retailer. (6) That sodium sulphite was the form taken by the sulphur dioxide, the presence of which in the garments at the time of such delivery was admitted by the defendants in the answer to interrogatories. (7) That the source of the sodium sulphite in the underpants was the bisulphite of soda introduced into the wool fabric by the process of the manufacturer. (8) That the process of manufacture was well calculated to get rid of all traces of sodium sulphite if the washing process had been carried out in accordance with the plan. (9) That, in the case of Dr. Grant's undergarments, the washing processes were not fully or completely carried out and that this was the real cause of his injury and severe illness.

It does not follow that the manufacturer's failure to complete the process in the particular instance or instances amounted to actionable negligence. But I think it sufficiently appears from the evidence of the witness, Ashworth, who was employed by the manufacturer as a wool scourer that mere accident as a factor may reasonably be excluded from this case. He said :—

> "We have to be very careful that there is no excess of one chemical or the other. We are always trying to be very careful. I maintain that the proportions of these chemicals are calculated so exactly that in fact there is no excess. If there were an excess of some sort or the other it would be bound to be somebody's fault. The washing off is to clear out as much of the previous processes as possible."

Now it is common ground that the method and extent of the washing processes, if carried out in accordance with directions, would be sufficient to remove all sodium sulphites. Further, it was the duty towards his employer of one or other of the servants of the manufacturer either to see to it that the processes were fully carried out or actually to carry them out. The bringing of a chemical like dissolved bisulphite of soda into direct contact with the web from which the garments were made, of itself necessitated subsequent washings of a sufficiently thorough character to provide a reasonable safeguard against any excess of sulphite of soda being left clinging to the finished garments. From beginning to end the processes were under the control of the manufacturer.

It has been suggested that there is no direct proof that the manufacturer knew that free sulphite of soda in underclothing was likely to cause serious injury to a wearer by attacking his skin. But the chemist employed by the defendant did not profess ignorance of the dangerous effect of the irritant released by the reaction of the sulphite with sweat. I am satisfied that although he may not have adverted to the question of the precise form of injury to the wearer's skin, he regarded his employer as being bound to secure by its washing processes the prevention of danger by the removal not only of chlorine but also of the sulphite of soda. I do not think that in a case where a manufacturer has a skilled chemist employed and for purposes of gain introduces chemicals in the course of its treatment of garments to be used as underwear, positive knowledge of the precise injurious consequences of a failure to remove the chemical

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residua must also be proved. I think it is quite sufficient if a plaintiff shows that chemicals have been used which are to the manufacturer's knowledge likely in fact to cause some injury to a wearer if allowed to remain in the garment. Proof of such knowledge may well be afforded by the nature of the processes and the directions for their conduct.

Before summing up the position as to proof of carelessness, it is essential to deal with the appellant manufacturer's submission that it was under no legal duty to Dr. Grant in respect of its manufacture of the garments. In this connection the recent decision of the House of Lords in the *Snail Case* (1) has been subjected to considerable analysis, discussion, and attempted distinction. Lord *Thankerton* regarded as " the essential element " in the *Snail Case* the circumstances of " the manufacturer's own action in bringing himself into direct relationship with the party injured " (2). Lord *Macmillan* emphasized that not only had the article of consumption been prepared by the manufacturer so as " to reach the consumer in the condition in which it leaves the manufacturer," but the manufacturer had also taken steps to ensure that result by preventing any tampering with the contents of the container (3). And he added :—

> " I regard his control as remaining effective until the article reaches the consumer and the container is opened by him. The intervention of any exterior agency is intended to be excluded, and was in fact in the present case excluded " (3).

In my opinion the appellant manufacturer does not, by stressing these passages from Lord *Macmillan's* judgment, succeed in negativing the existence of a duty towards the present plaintiff. That judgment invoked the idea of " control " by the manufacturer, but this was intended to describe such action on the part of a manufacturer as was intended to, and would ordinarily secure, that the manufactured article should reach the ultimate consumer in precisely the same condition as when it left the manufacturer. The broad principle is thus stated by Lord *Macmillan* (4) :—

> " Now I have no hesitation in affirming that a person who for gain engages in the business of manufacturing articles of food and drink intended for consumption by members of the public in the form in which he issues them is under a duty to take care in the manufacture of these articles. That duty,

(1) (1932) A.C. 562.
(2) (1932) A.C., at p. 604.
(3) (1932) A.C., at p. 622.
(4) (1932) A.C., at p. 620.

> in my opinion, he owes to those whom he intends to consume his products. He manufactures his commodities for human consumption; he intends and contemplates that they shall be consumed. By reason of that very fact he places himself in a relationship with all the potential consumers of his commodities, and that relationship which he assumes and desires for his own ends imposes upon him a duty to take care to avoid injuring them. He owes them a duty not to convert by his own carelessness an article which he issues to them as wholesome and innocent into an article which is dangerous to life and health."

So, too, Lord *Thankerton's* reference to the manufacturer's intentional exclusion of interference with, or examination of, the article by intermediate handlers merely lends point to his general principle that the manufacturer "of his own accord, brought himself into direct relationship with the consumer" (1). Whilst, therefore, Lord *Thankerton* thought it was necessary for the consumer to "establish a special relationship with the manufacturer" (1), that special relationship was brought into existence because the articles manufactured were so prepared that of themselves they provided conclusive evidence against the manufacturer that he was creating direct contact between himself and the ultimate consumer.

Lord *Atkin* makes the position abundantly clear in his treatment of the case of *Heaven* v. *Pender* (2). In his opinion the duty of care arose towards

> "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question" (3).

In this connection Lord *Atkin* defined proximity, which was the basis of the duty, as "not confined to mere physical proximity," but as extended also to

> "such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by his careless act" (4).

It is my opinion that, in the proved circumstances of the present case, the defendant manufacturer was under a duty to take reasonable care in the preparation of the underclothing at its factory so as to avoid the retention in the garments of any chemical residuum likely to cause or set up injury or disease to the skin of the ultimate purchaser. As appears from the answers to interrogatories, the manufacturer, after completing his preparation of the underwear, folded each garment, wrapped them in paper parcels and then tied them in quantities of one half dozen per packet. To each garment there was a ticket attached upon which the manufacturer printed

(1) (1932) A.C., at p. 603.
(2) (1883) 11 Q.B.D. 503.
(3) (1932) A.C., at p. 580.
(4) (1932) A.C., at p. 581.

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its name, described the garment as " pure woollen underwear," gave directions as to washing, and concluded " We guarantee to replace this garment free of charge if it shrinks when washed in accordance with the directions printed above."

The existence of such a guarantee from the manufacturers to the ultimate purchaser, whatever its utility or futility from a point of view of contractual liability, furnishes conclusive evidence of a deliberate intention to create a " close," " special " and " direct " relationship with the purchaser, as those expressions are employed in the *Snail Case* (1).

In these circumstances it seems clear that a " special relationship " with the purchaser was actually created by the defendant manufacturer. It is true that this case is distinguishable from the *Snail Case* in that there, as appears from the statement of the plaintiff's condescendence, the bottles of ginger beer were actually sealed with a metal cap by the manufacturer, and so inspection of their contents was out of the question. But I do not think that the judgments of the majority of the House of Lords would distinguish between that case and one like the present where the manufacturer, clearly intended that his products should not, one by one, be inspected and examined by the retailer, and where he so clearly desired to create, for some purposes at least, a direct obligation from himself to the wearer of the undergarments. Even if, as the appellants contend, Lord *Atkin's* judgment places the decision of the *Snail Case* upon broader grounds than those upon which Lord *Macmillan* and Lord *Thankerton* founded themselves, the facts of the present case satisfy the test laid down by all three.

It was also suggested for the appellant, somewhat diffidently, that the decision in the *Snail Case* had to be limited to articles of food and drink, but in my opinion this is not so. Lord *Atkin* pointed out (2) that :—

> " There are other instances than of articles of food and drink where goods are sold intended to be used immediately by the consumer, such as many forms of goods sold for cleaning purposes, where the same liability must exist. The doctrine supported by the decision below would not only deny a remedy to the consumer who was injured by consuming bottled beer or chocolates poisoned by the negligence of the manufacturer, but also to the user of what should be a harmless proprietary medicine, an ointment, a soap, a cleaning fluid or cleaning powder. I confine myself to articles of common household use, where every one, including the manufacturer, knows that the articles will be used by other persons than the actual ultimate purchaser—namely, by members

(1) (1932) A.C. 562.

(2) (1932) A.C., at p. 583.

of his family and his servants, and in some cases his guests. I do not think so ill of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilized society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong."

The same principle has been applied even more generally in the United States, for instance, in *MacPherson* v. *Buick Motor Co.* (1) where the liability of a manufacturer was affirmed in respect of the collapse of a car owing to the presence of defective wood in one of its wheels. There *Cardozo* J. said (2) :—

"We are not required at this time to say that it is legitimate to go back of the manufacturer of the finished produce and hold (*sic*—? liable) the manufacturers of the component parts."

More recently, however, the rule has been extended as appears in *Smith* v. *Peerless Glass Co.* (3). In that case *Crouch* J. said (4) :—

"There emerges, we think, a broad rule of liability applicable to the manufacturer of any chattel, whether it be a component part or an assembled entity. Stated with reference to the facts of this particular case, it is that if either defendant was negligent in circumstances pointing to an unreasonable risk of serious bodily injury to one in plaintiff's position, liability may follow though privity is lacking (Cf. The American Law Institute, Restatement of the Law of Torts, pars. 265, 266)."

In the present case, at any rate, I am of opinion that there existed such a relationship between the defendant manufacturer and the plaintiff that the former was under a duty to the latter in respect of the underwear. I have already stated in general terms what that duty was. Sir *Frederick Pollock*, in a discussion on the *Snail Case* (5), defined the duty as being that the manufacturer

"must use reasonable diligence to ensure freedom from possible non-apparent defects which would be likely to make the product noxious or dangerous in use ; and if he does not, any consumer who sustains damage from such a defect shall have his action " ((1933) 49 *Law Quarterly Review*, at p. 23).

I consider that the defendant manufacturer was guilty of a breach of duty to the plaintiff when it omitted, as in my opinion it did, to cause to be washed from his garments the sodium sulphite which had been introduced in the course of the third manufacturing process. In the *Snail Case* (5) the duties averred were two, (1) to provide a system "which would not allow" snails to get into bottles (6), and (2) to provide an efficient system of inspection of the bottles before filling them with ginger beer (6). There is of course a distinction to be drawn between a case where a living creature has been allowed to enter into a bottle, and the present case,

(1) (1916) 217 N.Y. 382.
(2) (1916) 217 N.Y., at p. 390.
(3) (1932) 259 N.Y. 292.
(4) (1932) 259 N.Y., at p. 295.
(5) (1932) A.C. 562.
(6) (1932) A.C., at p. 563.

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where the injuries to the plaintiff resulted from the process of manufacture not being carefully carried out. In my opinion the distinction operates rather in favour of the plaintiff than against him. For the defence of " inevitable accident " can seldom apply where a plaintiff is able to prove that an adequate system of manufacture has been instituted but the resulting product has become dangerous and caused injury to him solely through an omission to carry out some essential part of the processes. In such instances, the inference is almost inescapable that the omission is the result of carelessness on the part of some servant or other of the manufacturer. An excellent illustration is afforded by the decision of the Court of Appeal in *Chaproniere* v. *Mason* (1). There the plaintiff had purchased a bun from a manufacturing baker, and the bun, which contained a stone, broke one of the plaintiff's teeth. *Collins* M.R. dealing with the defendant's attempt to prove that there was no negligence, said :—

> " He called witnesses who gave evidence to the effect that in the manufacture of his buns he made use of a system which rendered it impossible that a stone should be present in the dough. One of the witnesses said that it was not feasible, in the system adopted by the defendant, for a stone to pass into the dough of which the buns were made. He must have meant that it was not feasible if proper care had been used. That did not rebut the presumption of negligence, but, on the contrary, it showed that the system was not properly carried out—that there was negligence. A stone did get into the dough, and that fact was evidence that the system followed by the defendant was not carried out with proper care and skill. There was, therefore, certainly evidence of negligence causing the injury."

Here, too, a similar method of approach is permissible. I have already referred to the evidence which indicates that, upon occasions, slips and carelessness had occurred in the course of manufacture. Whilst such carelessness on the part of an employee may be overlooked by the manufacturer, it seems to me that each and every omission to complete the washing process was an act calculated to endanger the health of each and every person who was destined to wear a garment made from the insufficiently washed web or part of it. It appears that such an omission must have occurred in the case of the web or part of it from which the plaintiff's garments were made. If so, the manufacturer should be held responsible in these proceedings for the negligence of his servant, though from the nature of the case the servant cannot be specified. Some confusion has been introduced into the case by the statement that other manufacturers use processes similar to those of the present defendant. Be

(1) (1905) 21 T.L.R. 633.

it so. The plaintiff's case concedes that the processes of the manufacturer are sufficient, and only insists that, as bisulphite of soda is used in the course of it, it is essential that reasonable care should be taken to wash out the sulphites in order to prevent subsequent contact between them and the skin of the wearer. The standard of care is laid down by the requirement of washings in the process of manufacture. The only question is whether the requirement was satisfied. In the opinion of *Murray* C.J. it was not, and I agree with him in thinking that the plaintiff succeeds against the manufacturer.

I now turn to the question of the retailer's separate liability under the *Sale of Goods Act*. The conclusion I have come to is that the liability of the retailer has been established under sec. 14 (1). It is conceded that the undergarments were goods of a description which it was in the course of the retailer's business to supply, and the only question is really one of fact—whether Dr. Grant expressly or by implication made known to the retailer the particular purpose for which the underwear was required so as to show that he relied on the retailer's skill or judgment.

In *Preist* v. *Last* (1), *Collins* M.R. said :—

> "In a case where the discussion begins with the fact that the description of the goods, by which they were sold, points to one particular purpose only, it seems to me that the first requirement of the sub-section is satisfied, namely, that the particular purpose for which the goods are required should be made known to the seller. The fact that, by the very terms of the sale itself, the article sold purports to be for use for a particular purpose cannot possibly exclude the case from the rule that, where goods are sold for a particular purpose, there is an implied warranty that they are reasonably fit for that purpose."

In line with this principle is the decision of the New York Court of Appeal in *Rinaldi* v. *Mohican Co.* (2). In that State the Personal Property Law, sec. 96, is in terms substantially identical with those of the South Australian (and the English) *Sale of Goods Act*. *Andrews* J. said (3) :—

> "We think that the mere purchase by a customer from a retail dealer in foods of an article ordinarily used for human consumption does by implication make known to the vendor the purpose for which the article is required. Such a transaction standing by itself permits no contrary inferences. In this we agree with the Courts of Massachusetts."

The real objection of the retailer to the Chief Justice's adverse decision is that the circumstances of the present case were not such as to show that Dr. Grant relied upon the retailer's skill or judgment. It appears from the evidence that when the plaintiff was purchasing the goods at the retailer's store he asked to be shown woollen

(1) (1903) 2 K.B., at p. 153. (2) (1918) 225 N.Y. 70.
(3) (1918) 225 N.Y., at pp. 73, 74.

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underclothing *for his own use* and the shopman produced two varieties —an English make, and the "Golden Fleece"—the make of the defendant manufacturer. Dr. Grant said:—

> "I asked which was the better garment of the two, and he informed me that the English garment was the better one but that the 'Golden Fleece' was a very good article. I enquired as to the respective prices, and he told me that 'Golden Fleece' was the cheaper of the two. I examined the garments and from the fact that 'Golden Fleece' appeared to be quite satisfactory in appearance and being the cheaper of the two, I decided to take it, and the purchase was entered to my account."

Dr. Grant also said:—

> "I cannot recall examining both suits of underclothes before taking them away with me. It is my impression that the assistant showed me only one."

When he was cross-examined he said:—

> "The assistant said one of the garments he was handling was English and the other Australian going under the name of 'Golden Fleece.' I asked which was the better for wearing purposes and for non-shrinking. The two qualities I was concerned with were durability and non-shrinkability. I was told the English garment was the better. I contrasted the prices, and I decided on my own judgment that I preferred 'Golden Fleece.' I handled the garment."

It is not surprising that the retailer draws attention to the phrase, no doubt that of cross-examining counsel, "on my own judgment" in the statement by the plaintiff that he decided that he preferred the defendant manufacturer's brand. But the importance of this is quite inconsiderable, because it is quite apparent that the plaintiff's decision to purchase was mainly affected by the representation that the article would wear well and would not shrink. The appellant also emphasizes this in an endeavour to exclude the fact of trusting to the seller's skill or judgment as to general fitness for wear as though *expressio unius* were *exclusio alterius*. On the other hand plaintiff's counsel says that the expression of opinion by the salesman was calculated to extend rather than to diminish the area of reliance. In my opinion the question of durability and non-shrinkability are only important as negativing the suggestion that the plaintiff purchased the articles relying entirely upon his own skill or judgment. Further than that, they seem to be of no significance.

In the opinion of Lord *Atkinson*, stated in *Manchester Liners Ltd.* v. *Rea Ltd.* (1), a buyer satisfies the second portion of sec. 14 (1), *primâ facie* at all events, if the seller was "before or at the time of purchase by implication made aware by the buyer of the purpose for which he (the buyer) required the goods." Lord *Sumner* (2) said:—

> "The crucial time is the time when the contract is made. The buyer has to make known, expressly or by implication, the particular purpose for which

(1) (1922) 2 A.C., at p. 85.

(2) (1922) 2 A.C., at pp. 89, 90.

the goods are required. He has to do this, so as to show that he trusts the seller's skill and judgment to supply something reasonably fit for the purpose. That this was done is hardly in dispute. With great respect to the opinions of the Lords Justices I cannot see that this involves an express statement of the buyer's reliance in any form, though sometimes, as in *Gillespie's Case* (1), this actually occurs. *Frost's Case* (2), however, and *Preist's Case* (3) are instances in which communication of the reliance is inferential. The words of sec. 14 (i) are 'so as to show,' not 'and also shows.' They are satisfied, if the reliance is a matter of reasonable inference to the seller and to the Court, and in this case I think the evidence supports the finding of *Salter* J. that the inference ought to be drawn."

Walton J. who was the trial Judge in *Preist* v. *Last*, the hot-water bottle case, said (4) :—

"I think that when people go into a shop in which these articles are dealt with, they are entitled to expect that some skill or judgment has been exercised by the shopkeeper in selecting the goods, so that when you buy something which the shopkeeper professes to sell you may expect to get a thing which is of some use for the purpose for which it is sold and is not mere rubbish. To that extent it seems to me that when the plaintiff asked at the druggist's shop for a bottle for use as a hot water bottle he did it in such a way as to show that he relied upon the seller's skill and judgment."

In the case of *Rinaldi* v. *The Mohican Co.*, *Andrews* J., for the New York Court of Appeals, said (5) :—

"We do not lay stress on the question as to whether the particular article was selected by the buyer or by the seller. That may or may not be important. If the buyer selects one chicken from twenty offered him, exercising his judgment as to its wholesomeness, clearly he does not, or at least may not rely upon the dealer's skill. But where the buyer selects one of the twenty for some reason unconnected with its fitness for food and exercising and having no judgment on that question—makes the selection because the colour is pleasing or the weight suitable, then he is relying upon the dealer no less than when the selection is made by the latter. He assumes that the dealer knows and has the means of knowing that all are fit for food. It is a matter about which ordinarily the purchaser knows and can know nothing."

In the Supreme Court of Massachusetts the same question has been debated. Thus in *Ward* v. *Great Atlantic & Pacific Tea Co.* (6) where a dealer sold a sealed can of baked beans to a customer, a pebble being contained in the beans, *Rugg* C.J. said (7) :—

"It is not expressly stated in the agreed facts that the defendant selected the can for delivery to the plaintiff, or that the latter relied upon the skill and judgment of the defendant in selecting the can for delivery. But that he did so rely seems an almost irresistible inference from the facts stated. The cans in the defendant's stock were all alike in label and in general appearance. The cans were sealed. Their contents could not in the nature of things be open to inspection before the sale. There could be no intelligent selection based upon any observation by the purchaser. There is no room for the exercise of individual sagacity in picking out a particular can. The customer

(1) (1896) 2 Q.B. 59.
(2) (1905) 1 K.B. 608.
(3) (1903) 2 K.B. 148.
(4) (1903) 89 L.T., at p. 35.
(5) (1918) 225 N.Y., at p. 74.
(6) (1918) 231 Mass. 90.
(7) (1918) 231 Mass., at pp. 93, 94.

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at a retail store is ordinarily bound to rely upon the skill and experience of the seller in determining the kind of canned goods which he will purchase, unless he demands goods of a definite brand or trade name. The situation is quite different from the choice of a fowl or a piece of meat from a larger stock, all open to inspection, where there is opportunity for the exercise of an independent judgment by both the buyer and the seller, and where, therefore, the fact as to the one who makes the selection is of significance, as in the *Farrell Case*. The case at bar must be treated on the footing, as matter of necessary inference arising from the relation of the parties, so far as that is material in view of the other facts, that the plaintiff relied upon the knowledge and trade wisdom of the defendant in purchasing the can of beans. In the absence of an express statement to the contrary, this must be regarded as a necessary inference from the relation of the parties."

The decision of the question of fact in this case involves a consideration of several aspects. I have already discussed the importance of the manufacturer's tag and guarantee as creating a " direct relationship " of duty between it and the plaintiff. No doubt the fact that the garment bore the brand and guarantee of the manufacturer was calculated to induce the plaintiff to trust, to some degree at least, upon the manufacturer's skill. Further, something is to be said for the view that Dr. Grant relied to a substantial extent upon his own opinion and observation. But he did not address his mind to any question of latent danger in the garment, nor did any of the discussion with the salesman even remotely suggest such a possibility.

A question may be interposed—is it necessary that there should be positive evidence from which it appears that the retailer expressed to the purchaser some judgment pointing to the absence of all latent defects ? The answer must be, No. It is not the absence of any particular defect as to which the purchaser must rely on skill or judgment but the positive quality that the article is reasonably fit for the only purpose for which it is intended to be used. If the implied condition exists, its breach may be proved by any defect which makes it not reasonably fit for such purpose.

It would appear from sec. 14 (1) that the fact of reliance is proved if it appears that the buyer is trusting to a substantial extent upon the skill or judgment of the retailer as to the general fitness of the article for the known purpose. The section does not require that the exercise of judgment or skill must be evidenced by a salesman's expression of approval at the time of the purchase. It is quite consistent with the requirement of the section that skill or judgment has already been exercised by the retailer so long as the buyer is trusting to it. That is the point of the observations of *Walton* J. in *Preist* v. *Last* (1), and, in my opinion, they are pertinent to this case. Here

(1) (1903) 89 L.T. 33.

the plaintiff must have been impressed by the fact that the retailer, with whom he had an account, had seen fit to purchase the manufacturer's product, and in so doing had demonstrated that according to its "knowledge and trade wisdom," the garments were reasonably fit for wear.

But the plaintiff's case does not end there. The retailer was clearly trusted by Dr. Grant to this extent that he accepted the opinion that "Golden Fleece" was a "good" brand or variety or make of article, though not so good as the English brand. The mere production by the salesman of the two brands in answer to Dr. Grant's demand, involved the representation that all "Golden Fleece" garments were reasonably suitable for the stated purposes. To adapt Lord *Sumner's* language, the plaintiff showed that he trusted the seller's skill or judgment to supply brands which were, and exclude brands which were not, reasonably fit for his purpose. The judgment of *Andrews* J. in *Rinaldi's Case* (1) shows that the selection by Dr. Grant of two articles from the recommended brand, for reasons unconnected with general fitness for wear, does not prevent the section from applying. It is not a case where the customer has, of his own motion, chosen the brand. The evidence negatives the possibility of differences in the particular "Golden Fleece" garment as a subject for any possible exercise of judgment or skill on the part of the plaintiff. At the best a hurried inspection was all that could be attempted. It seems probable that he examined only one of the two garments. In all the circumstances I think that *Murray* C.J. was right in inferring, as he did, that Dr. Grant did place trust and reliance to a substantial and material extent upon the retailer's skill and judgment. The retailer exercised skill or judgment (1) in purchasing the garments from the manufacturer, (2) in producing them to the customer in response to a very general demand, and (3) in commending them as suitable for purchase.

I therefore agree that the implied condition of sec. 14 (1) applied to the transaction and the facts I have already examined show clearly that the underwear was not reasonably fit for the purpose for which it was bought, namely, personal use by the plaintiff.

It was conceded by the retailer before us that it could not rely on the proviso to sec. 14 (1) which excludes the implied condition of fitness for a particular purpose in the case of a sale of a specific article under its patent or other trade name. This concession was

(1) (1918) 225 N.Y. 70.

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made because the transaction was not that of " an article specified by the purchaser as being the article which he wishes to buy " (per *Atkin* L.J. in *Baldry* v. *Marshall* (1)).

Upon this view of the case, it becomes unnecessary to determine the question whether the retailer also became liable to the plaintiff under sec. 14 (2) of the South Australian *Sale of Goods Act* 1895. I have, however, formed the opinion that there was also, upon the sale, an implied condition under sec. 14 (2) that the garment should be of merchantable quality, and I will give my reasons for this opinion.

The main question under sec. 14 (2) is whether Dr. Grant bought the undergarments " by description." *Atkin* L.J. also stated in the case of *Baldry* v. *Marshall* (2) above mentioned,

> " But if on the other hand he buys the article in reliance on the seller's assurance that it will answer his purpose, the fact that it is described in the contract by its trade name will not have the effect of excluding the condition."

These observations although relating to the proviso to sec. 14 (1) and not to sec. 14 (2), furnish a good illustration of those cases where goods may be bought " by description " from a seller within the meaning of sec. 14 (2), so as to give rise to an implied condition of merchantable quality, although there is also an implied condition arising under sec. 14 (1) in relation to the same transaction.

In my opinion the present case belongs to those where a dual condition arises. Referring to the analogous enactment of the State of New York, *Cardozo* C.J. explains that:

> " The nature of the transaction must determine in each instance the rule to be applied. There are times when a warranty of fitness has no relation to a warranty of merchantable quality. This is so, for example, when machinery competently wrought is still inadequate for the use to which the buyer has given notice that it is likely to be applied. There are times on the other hand when the warranties co-exist, in which event a recovery may be founded upon either. ' Fitness for a particular purpose may be merely the equivalent of merchantability ' (*Williston, Sales*, vol. I., par. 235, and cases there cited) " (*Ryan* v. *Progressive Grocery Stores* (3)).

I have already set out certain passages from the evidence which show that the transaction concluded by the plaintiff's deciding to buy " Golden Fleece " garments. Although one or more garments was displayed to him at the time of sale, this does not, in my opinion, prevent the sale from being a sale " by description," and I conclude that the description of the goods by the retailer's salesman not only cannot be severed from the transaction, but remained an essential part of it until its completion.

(1) (1925) 1 K.B. 260, at p. 268.
(2) (1925) 1 K.B., at p. 268.
(3) (1931) 255 N.Y. at pp. 392, 393.

tuberculosis had no influence on the condition. Professor Hicks of Adelaide University, an eminent medical and chemical authority, also thought that the commencement of Dr. Grant's premonitory symptoms within twelve hours of his first putting on the underclothes, was significant of their being the cause.

The outstanding facts of this part of the case are :—(1) Dr. Grant had never suffered previously from dermatitis. (2) He had always worn woollen underclothing. (3) The irritation appeared in corresponding places on each shin. (4) The irritation upon which dermatitis supervened commenced within a very short period after the plaintiff put on the garments. (5) Dr. Grant's skin was, prior to the disease, normal in character. (6) There is no evidence of any external cause, other than the contents of the underwear, and (7) the Chief Justice accepted the evidence of highly qualified persons in the best position to judge, that the plaintiff's dermatitis was not of internal origin.

This combination of facts, having regard to time place and circumstances, is such as to raise a high degree of probability that the cause of the onset of the disease was to be found in those portions of the garment which alone came in contact with the affected parts of the body. In such conditions the appellants get no assistance from their attempt to employ the tag *Post hoc ergo propter hoc* in order to characterize and condemn the learned Chief Justice's reasoning. On the contrary there was, on the Chief Justice's part, a search for cause and relationship in the surrounding events and other relevant facts. The element of sequence in time was of the very essence of a scientific approach to the solution of the question at issue. It is not a case where two events otherwise completely unrelated have succeeded one another in time, and where that mere succession is itself regarded as making the sequence causal in character. It is a case where habitual proximity of the plaintiff to a suggested source of injury (*e.g.* wool as such) not only tends to exclude that source in the particular case, but indicates that the differentia will probably be found to lie in the addition to the suggested source of some other element (*e.g.* something peculiar to the new garment). Where there is an admitted addition of such other element by the wearing of a new kind of woollen underwear and the injury follows quickly upon

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the use of that new kind, commonsense and science both insist that inquiry may easily discover the source of the new effect in some particular quality of the new element. This is not mere conjecture, it is a basis of reasonable inference.

In my judgment, therefore, the plaintiff's case is enormously strengthened by the fact that the ankle ends of the undergarments which Dr. Grant wore, still contained, after one washing in one instance, and after two washings in the other, a quantity of sodium sulphite. That quantity was, in itself, probably insufficient to prove injurious or deleterious. But the question is, what quantity of readily soluble sodium sulphite was contained in the ankle ends of the unwashed underpants when Dr. Grant wore them for the first time. Sodium sulphite, if existing "free" in the ankle ends of underpants and thereby almost bandaged to the skin and covering the shin bones, will, when there is perspiration, gradually release sulphur dioxide and the result will be that sulphurous acid, and finally sulphuric acid will be produced. All these are skin irritants.

Looking at all the circumstances, the most satisfactory evidence as to the probable extent of sodium sulphite present in the ankle ends of the undergarments, is that of Professor Hicks. He conducted an experiment upon another singlet and a pair of underpants made by the manufacturer. He placed the singlet in cold distilled water at room temperature and agitated it for two minutes only. His object was to ascertain whether any readily soluble substance was contained in the garment. He found that the aqueous extract in the singlet contained free sodium sulphite. In his opinion he definitely excluded any possibility that his results were affected by the chemical content of the wool molecule itself. It is not disputed that, if a quantity at all commensurable with the sodium sulphite he thus removed from the garment into solution, had been present in Dr. Grant's underpants, it would have been likely to cause skin irritation. Professor Hicks thought that a closely-fitting undergarment would be as effective as a bandage over the ankles and explained how the secretion of sweat would liberate the sulphur dioxide from the soluble sulphite, the sulphur dioxide would combine with the sweat to form sulphurous acid, oxygen would be extracted from the cells of the skin, and the extraction would then cause the

formation of sulphuric acid. He said that sulphur dioxide, sulphurous acid, and sulphuric acid all well known irritants, would be produced very slowly and steadily, and their noxious effect would be cumulative.

Professor Hicks was closely questioned about an experiment which a witness for the manufacturer, Dr. Hargreaves, had conducted, and his final opinion was that the source of the sulphur dioxide he (Hicks) obtained from the aqueous extract was free soluble sodium sulphites present in the garment, and was neither the sulphur combined in the wool molecule itself nor minute quantities of gas said by the defendant to be adherent to the wool fibre though free of the wool molecule. Professor Hicks' opinion is supported by the fact that scoured wool, treated in the same manner as he had treated the manufacturer's garment, produced no sulphur dioxide at all, although he applied the same test to both. Dr. Hargreaves' experiment was conducted upon portions of the garments. But the wool was retained in the water for a period of twelve hours and at a temperature of 125 to 130 degrees.

It was Mr. Anderson, an industrial chemist, who, at the instance of the manufacturer, analyzed portions of the plaintiff's garments. He extracted substances soluble in distilled water at blood temperature. Table G represented the amount of sulphites he found, expressed in terms of sulphur dioxide. A dispute exists as to whether Anderson's evidence was intended by him to affirm the absence, or merely to suggest the possible absence, of free soluble sulphite from Dr. Grant's garments. I am satisfied that Anderson thought that the source of the sulphur dioxide he extracted from the solution was free soluble sodium sulphite; and was not the wool molecule nor sulphur dioxide gas in close attachment to the wool fibre. He analyzed four samples of Dr. Grant's underwear. Sample 3 produced no sulphur dioxide at all, although samples 1, 2, and 4 did give rise to it. Mr. *Cleland* forcibly contended, and I agree with him, that Mr. Anderson did not mean to imply that the sulphur dioxide given off during his analysis had its source in anything but free sodium sulphite in the garment. It is impossible to suppose that a nil result would have been obtained from sample 3 if the sulphur dioxide came from the wool molecule or was present in gaseous form

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in the garments. Of course Mr. Anderson considered that sulphur dioxide might in certain circumstances derive from the wool molecule. On this point Professor Hicks is in strong disagreement with Anderson. But the question is, not whether, under special conditions such as continuous heating, the wool molecule may not be successfully broken down and the sulphur content oxidised, but whether Anderson's experiment demonstrated the presence in three of the four specimens of free sulphites. Upon this point Professor Hicks was definite and convincing. He said that the presence of sulphur dioxide as explained in Anderson's evidence, indicated the presence in the garment of free sodium sulphite, which was derived not from the wool as such but, as clearly appears otherwise, from the introduction of sodium sulphite during the manufacturing process.

Until the plaintiff had concluded his case in chief, the only information which had been furnished to him by the manufacturer in reference to chemicals in the garments, was the admission joined in by the retail defendant that " the garment at the time of delivery to the retailing defendant by the manufacturing defendant contained the following chemicals—a small quantity of napthaline mentioned in answer 3, arsenious oxide, sulphur dioxide." In the course of the hearing it became evident that the only relevant irritant in the circumstances was sulphur dioxide. This was the sulphur dioxide extracted from Dr. Grant's garments by Anderson's analysis. The admission took an ambiguous form but there can be little doubt that Anderson was merely expressing in terms of sulphur dioxide the free sodium sulphite which he dissolved in water.

When the defendant's case was entered upon, their industrial chemist, Mr. Davies, described the process of manufacture. The detailed description need not be set out. But the course of manufacture includes, in process 3, an application of the woollen web to a mixture containing six pounds of bisulphite of soda with twenty-five gallons of water, the web being intended to run in this solution for fifteen minutes. This bisulphite of soda is thus described by Mr. Davies :—

> " Process 3 calls for the use of sodium bisulphite. Here again we use more than the amount actually required, approximately twice as much. That is done deliberately to neutralize the chlorine. The excess is washed out in washings under processes 3, 4, and 5. It is very soluble with water—dissolves

It appears from the learned Chief Justice's judgment that he reached the same conclusion as to the existence of the implied condition under sec. 14 (2). He rejected the claim based upon the breach of this condition, but only because he did not feel at liberty to find that the garments were not of merchantable quality. He said :—

> "My difficulty is in finding on the evidence that if a reasonable man had discovered the precise quantity of sodium bisulphite in the ankle ends of the underpants he would have refused to accept them. The quantity that would irritate a normal skin is unknown, and a reasonable man might reasonably think that there could be no risk in wearing the garments because they contained a certain quantity. For these reasons I think this part of the claim must fail."

It seems to me that because of his Honor's findings of fact, which I think were correct, a different finding is required as to the existence of "merchantable quality." As his Honor found the plaintiff's skin was normal in character, the quantity of sodium bisulphite contained in the underpants at the time of sale was sufficient to irritate the normal skin. Underpants containing so great a quantity of irritant chemical as to be likely to cause injury to the skin of a normal wearer, are not merchantable, as I think his Honor should not have hesitated to find, having in view his very definite findings as to the condition of the plaintiff and the cause of his illness and suffering.

It is also clear that the proviso to sec. 14 (2) does not apply because the defect in the garments could not have been revealed by examination or inspection at the time of sale.

The damages for breach of the condition implied by sec. 14 (2) are those actually sustained and proved by the plaintiff. An illustration is the case of *Morelli* v. *Fitch & Gibbons* (1), where a verdict for £21 was recovered in respect of a bottle of wine costing only two shillings and ninepence. The matter of damages is fully discussed by *Cardozo* C.J. in *Ryan* v. *Progressive Grocery Stores* (2).

In the result, therefore, I agree with *Murray* C.J. that the facts of the case establish a case of liability in both manufacturer and retailer, and the appeal should be dismissed.

McTIERNAN J. Upon the evidence I do not think that the inference should be drawn that the dermatitis from which the plaintiff suffered was caused by a chemical irritant in the ankle ends of the

(1) (1928) 2 K.B. 636.

(2) (1931) 255 N.Y. 388.

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garments which he bought from the defendant retailer; or that a chemical irritant derived from the processes of the defendant manufacturer was present in those garments in sufficient quantities and concentration to cause the dermatitis from which the plaintiff suffered.

I concur in the reasons given by my brother *Dixon* for declining to draw these inferences and I have nothing to add to them. It follows that the essential basis of fact to support the plaintiff's causes of action is lacking.

In my opinion, the appeal should be allowed.

Appeal allowed. Judgment of the Supreme Court of South Australia dated 13th March 1933 reversed. Judgment for the defendants in the action with costs. Respondent to this appeal to pay costs of appeal.

Solicitors for the appellants, *Varley, Evan, Thomson & Buttrose.*
Solicitors for the respondent, *Cleland & Teesdale Smith.*

H. D. W.