

ufacturer of defective goods from direct liability for breach of warranty, express or implied, is a thing of the past. See generally the excellent state-by-state analysis of the privity problem in 2 Frumer & Friedman § 16.04; Kessler, Products Liability, 76 Yale L.J. 887 (1967); Prosser, The Assault Upon the Citadel (Strict Liability to the Consumer), 69 Yale L.J. 1099 (1960).

The decision which provided the impetus for the collapse of privity was *Hennington v. Bloomfield Motors, Inc.*, supra, wherein the New Jersey Court held that public policy demanded the extinction of the privity doctrine because of mass marketing conditions causing the manufacturer to become remote to the ultimate consumer, sales being accomplished through intermediaries, and product demand being created by use of advertising media. It was obvious, indicated the Court, that manufacturer contemplated the cultivation of the ultimate consumer and that at least with respect to the purchase of a car, the implied warranty of merchantability should extend to the ultimate purchaser of such vehicle and those persons who would reasonably be anticipated to use it, such as members of the purchaser's family and those occupying or using the vehicle with his consent.

[9, 10] Of course, no extended discussion is necessary to show that this Court is bound by the New York law of warranty. And it is clear that if the requirement of privity is not dead in this jurisdiction, it has at least been dealt a deliberating blow by the New York Court of Appeals in *Greenberg v. Lorenz*, 9 N.Y.2d 195, 213 N.Y.S.2d 39, 173 N.E. 2d 773 (1961); *Randy Knitwear, Inc. v. American Cyanamid Co.*, 11 N.Y.2d 5, 226 N.Y.S.2d 363, 181 N.E.2d 399 (1962); and *Goldberg v. Kollsman Instrument Corp.*, 12 N.Y.2d 432, 240 N.Y.S.2d 592, 191 N.E.2d 81 (1963). See generally 2 Frumer & Friedman § 16.04 [2] [b] [x]. In *Greenberg v. Lorenz*, supra, the Court held that a retailer impliedly warrants the wholesomeness of food and household goods to all members of the buyer's household since a presumption should arise that the purchase was made for all such persons. *Randy Knitwear, Inc. v. American Cyanamid Co.*, supra, dispensed with the requirement of privity in an express warranty case. Frumer & Friedman point out that the real importance of *Randy Knitwear* was that it paved the way for the New York Courts to abrogate privity as a requirement in implied warranty cases since the Court noted (1) a trend away from privity; (2) privity was an outmoded technical rule; (3) that the separate indemnity actions required by the privity rule were a waste of time spent in litigation (obviously both on the part of the courts and the various parties who would be involved); and (4) that warranty was historically a tort action. *Id.* at § 16.04 [2] [b] [x]. Finally, in *Goldberg v. Kollsman Instrument Corp.*, supra, the New York Court of Appeals went about as far as *Hennington* by holding that an airplane assembler could be liable for the death of an airplane passenger under an implied warranty theory. It was held, however, that the manufacturer of a component part was not liable since "adequate protection is provided for the passengers by casting in liability the airplane manufacturer which put into the market the completed aircraft." 12 N.Y.2d at 437, 240 N.Y.S.2d at 595, 191 N.E. 2d at 83.⁹ It is apparent that the refusal to hold the component part manufacturer was not because of lack of privity. 2 Frumer & Friedman § 16.04[2] [b] [x].

From the foregoing, it should appear obvious in the instant case that privity presents no bar to recovery.¹⁰

b. Necessity of a Sale

In *Perlmutter v. Beth David Hospital*, 308 N.Y. 100, 123 N.E.2d 792 (1954), the Court held that a hospital administering a blood transfusion is rendering only a service and is not making a sale. Whether a sale is necessary to impose warranty liability today is questionable (see 1 Frumer & Friedman § 19.02; Rheingold at 974), but even assuming such a requirement, it is submitted that *Perlmutter* would not bar a recovery in the instant case. Faced with the argu-

⁹ For an apparent extension of *Goldberg v. Kollsman Instrument Corp.*, see *Rooney v. S. A. Healy Co.*, 20 N.Y.2d 42, 281 N.Y.S.2d 321, 228 N.E.2d 383 (1967), where the defendant supplier sold used protective masks to the City of New York. The Court of Appeals held defendant had breached the implied warranty of merchantability since the defect was in design.

¹⁰ *Gottsdanker v. Cutter Laboratories*, 182 Cal. App. 2d 602, 6 Cal. Rptr. 320, 79 A.L.R. 2d 290 (1960), used a novel but valid approach to solve the privity problem. The reasoning of the *Gottsdanker* Court was that both food and drugs are intended for human consumption and that such consumption is one of the basic reasons for the food exception. Therefore, the courts should extend the exception to drugs. Of course, in light of the New York cases cited supra, there is no need to resort to the *Gottsdanker* reasoning herein. See generally 3 Frumer & Friedman § 33.02 [2][a]; Rheingold at 978.