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Henri Niemann et al v. Grand Central Market, Inc. : Brief of Respondents

Utah Supreme Court

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MAY 3 1958

Case No. 8670

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IN THE SUPREME COURT
of the
STATE OF UTAH

HENRI NIEMANN, MARIA NIE-
MANN, RENATE NIEMANN, by
her guardian ad litem Henri Nie-
mann, and HENRI NIEMANN JR.
by his guardian ad litem Henri Nie-
mann,

Plaintiffs and Respondents,

vs.

GRAND CENTRAL MARKET -
SUGARHOUSE, a corporation,

Defendant and Appellant.

BRIEF OF RESPONDENTS

RAWLINGS, WALLACE, ROBERTS
& BLACK

CANNON & DUFFIN

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Plaintiffs and Respondents,

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GRAND CENTRAL MARKET-
SUGARHOUSE, a corporation,
Defendant and Appellant.

Case No. 8670

BRIEF OF RESPONDENTS

(Numbers in parenthesis refer to pages of the record. The parties will be referred to here as they appeared in the trial court).

STATEMENT OF THE CASE

This is an appeal from a judgment in favor of plaintiffs and against defendant for damages sustained by plaintiffs from trichinosis caused by eating ground beef infested with trichinae and sold by defendant to plaintiffs on June 24, 1955. The judgment was entered upon a verdict returned by a jury.

The case was submitted to the jury upon the propositions that if the jury found the ground beef was in-

fested with trichinae and caused plaintiffs to suffer trichinosis then there was either a breach of warranty as set forth in Section 60-1-15, Subdivisions 1 and 2, Utah Code Annotated, 1953, or a violation of Sections 4-20-5 and 4-20-8, Subdivisions 5 and 7, referring to foods, Utah Code Annotated, 1953.

Defendant has made an inaccurate statement of the facts and has failed to take into consideration the well established rule that in considering a verdict of a jury the evidence must be viewed in the light most strongly in favor of that party in whose favor the verdict was returned. This verdict was for plaintiffs and therefore in reviewing the evidence we will follow that rule and state the evidence in a light most favorable to plaintiffs.

Defendant only raises two points. The first point relates to the sufficiency of the evidence and the second point to the giving of an instruction and the failure to give a requested instruction.

Rather than review the testimony both under the statement of the case and under the point where it will be involved, we will merely discuss the evidence under the point where it is relevant.

STATEMENT OF POINTS

POINT I.

THE TESTIMONY SUSTAINS A FINDING THAT DEFENDANT SOLD TO PLAINTIFF GROUND BEEF INFESTED WITH TRICHINAE.

POINT II.

THE COURT DID NOT ERR IN GIVING INSTRUCTION

NO. 5 AND IN REFUSING TO GIVE DEFENDANT'S REQUESTED INSTRUCTION NO. 9.

ARGUMENT

POINT I.

THE TESTIMONY SUSTAINS A FINDING THAT DEFENDANT SOLD TO PLAINTIFF GROUND BEEF INFESTED WITH TRICHINAE.

Under the first point in its Brief defendant merely attacks the finding which the jury made that defendant sold ground beef to plaintiffs which was infested with trichinae. By Instruction No. 3 the jurors were instructed as follows (79):

INSTRUCTION NO. 3

“In order for the plaintiffs, of (sic) any of them, to recover in this action, they must prove by a preponderance of the evidence the following:

1. That the ground beef purchased by Mr. Niemann from the Grand Central Market, the defendant herein, contained sausage, which was infected with trichina.

2. That the plaintiffs, or any one or more of them, ate such ground beef containing sausage so infected and contracted trichinosis therefrom.

3. That the plaintiffs, or any one or more of them, were made ill and sustained damages to their person by the disease mentioned above, as trichinosis.”

The evidence clearly points to the ground beef purchased from defendant as being the cause of the trichinosis suffered by plaintiffs. We reach this result through

a process of elimination as well as a process of considering the persons who became infested with trichinosis and the severity of that infestation. We start with the indisputable and admitted fact that the four plaintiffs became ill with trichinosis (234, 243 and 244). The next established fact is that trichinosis can only come, so far as practical here, from pork which has not been properly treated to kill trichinae (242). Trichinae is eliminated from pork either by cooking, freezing, or using a salt process (213, 214).

Symptoms from trichinosis usually become apparent to the victim from seven to fourteen days after ingestion of the meat and it may be within two days or as long as four weeks (246). The testimony establishes that on Friday, June 24, 1955, Mr. and Mrs. Niemann went to the defendant's place of business between 8 and 9 o'clock at night (127, 156). They purchased fruit, potatoes, beans, liver, lamb necks, wieners and ground beef (137). Upon arrival at home Mrs. Niemann prepared the ground beef. It was not put in the refrigerator (156, 183). In preparing this ground beef bread spread she put the ground beef in a bowl, put salt and pepper on it, cut an onion real fine, broke an egg over it and mixed it all together. It was then spread on bread (127, 170). Mrs. Niemann ate three slices with this spread on it, Mr. Niemann two, the son Henri one and the daughter Renate merely took a taste of the spread with a fork (162). There was some left over and the next day Mrs. Niemann finished that (163). Shortly after noon on Saturday, July 2, the Niemann family left for an outing at Bear

Lake (128). On Sunday evening, July 3, Mr. Niemann did not feel very well (163). On Monday morning, July 4, Mrs. Niemann became ill (163). Their symptoms were the typical symptoms of trichinosis, including fever, chills, headaches, sore eyes, ect. (126, 163, 164). Because of their illness the family left before they had planned to do so. They left on the morning of the 4th and arrived at home at approximately 1:00 P.M. (129, 163). It will be observed that Mr. Niemann came down with trichinosis nine days after ingesting the ground beef purchased at defendant's store. Mrs. Niemann came down within ten days of eating the meat. These are both within the usual limits within which symptoms appear after ingesting trichinae infested meat. The son, Henri, first noticed an illness coming on on Saturday, July 9 (176). This was within fifteen days of eating the meat and within the limits placed by Dr. King on symptoms becoming evident. Renate became sick two or three days after Henri (183). This also puts her within the limits as indicated by Dr. King.

The Niemanns had a son by the name of Niels who did not eat any of the ground beef spread. He did not get trichinosis (127, 173). Also, Mrs. Niemann's mother did not eat any of this spread and she did not become ill with trichinosis (128, 173).

Also, it is to be noted that the severity of the cases was dependent upon the amount of this ground beef which each of the members of the family ate. Mrs. Niemann ate the most, she had the severest case (242) and, as a matter of fact, was confined in the hospital for two weeks (165).

Mr. Niemann ate next to the most and his case was the next in severity (242). Henri's case was less severe and he ate only one slice of bread with this spread on it. Renate was the next in line and she had the least severe case (242). All this, as indicated above, was in accordance with the amount of this spread ingested by each of these parties.

This was the only uncooked meat eaten by the Niemanns (129). The other meats eaten during the time when the Niemanns could have been infested consisted of lamb necks, liver and wieners (136, 137, 154). The only type of pork eaten before contracting trichinosis was some mettwurst purchased from Miller's by Carla Schnibbe and given to the Niemanns the 10th day of May (137, 155, 188, 189). This was some 53 days, or 7½ weeks before symptoms of trichinosis became evident. In any event Niels, the grandmother, and the Schnibbe family ate from this ring of mettwurst and none of them contracted trichinosis (156, 157, 190). The Niemanns had purchased no pork (141). They had never eaten any uncooked pork (142).

The foregoing facts created a hard core of evidence establishing that defendant had sold the plaintiffs the infested meat. This evidence was impervious and immune to any attempts by defendant to lessen its effectiveness to establish plaintiffs' case.

This evidence alone would justify the finding of the jury in accordance with Instruction No. 3, *supra*, that defendant sold the infested meat to plaintiffs causing them to suffer trichinosis. Plaintiffs took a further

step in proving their case and introduced evidence showing that there was opportunity at defendant's place of business for the ground beef to contain pork sausage.

It appeared from the evidence that defendant at its place of business used only one grinder in preparing its ground meat (194). Also, the same pans were used in handling both ground beef and ground pork (195). The method in which ground meats were produced was described by Edwin R. Benzon, who during June of 1955, was the meat market manager at the store where plaintiffs purchased the ground beef. During June of 1955, three butchers were working under Mr. Benzon. The man arriving at 8:00 in the morning would proceed with the grinding (204). Beef would first be ground and then sausage. Ordinarily, it would not be necessary to make any further sausage on any particular day inasmuch as it was made only two or three days a week. However, beef might be ground on more than one occasion and on Friday and Saturday it might be ground five or six times after the original batch was made up (205). Contrary to defendant's contention this means that beef was ground after sausage on the same day (200). Hence, it can be seen that opportunity existed for beef to be adulterated with sausage if great care was not used in cleaning this one grinder. This was admitted by Benzon when he testified as follows (205, 206) :

“Q. Are there ways which sausage could get into beef?

A. Intentionally, or otherwise?

Q. Otherwise?

A. No.

Q. If the machine were not completely washed, could it?

A. Yes, if it wasn't washed, yes."

LaMont Richins, the meat supervisor for defendant, who had never heard of trichinosis (195) did not eliminate the fact that this adulteration might occur. He testified as follows (195):

"Q. Now, could sausage, some particles of sausage be left in the grinder?

A. I doubt that very much.

Q. Could it be?

A. I doubt it."

As might be expected these employees of defendant stated that on all occasions the machines were thoroughly washed, but the jury did not need to believe that all particles of sausage were removed perfectly on every occasion. The witnesses who testified admitted that men under them did the grinding and they were not always present (207). Certainly in view of the testimony of the purchase of the ground beef and the resulting trichinosis a jury could find that the ground beef contained some of this sausage. A very small amount of this sausage could have caused the infestation suffered by these plaintiffs. Defendant's pathologist, Dr. John H. Carlquist, testified that an ounce of sausage could have in it 100,000 larvae (294). This is contrary to the statement in defendant's brief that a small particle of sausage could not cause infestation. A housewife merely tasting raw sausage in minute quantities to check seasoning could become heavily infected (219, 220).

Richins testified that immediately after using the grinder it was cleaned (193, 194). However, Benzon testified that the night shift, consisting of one man, usually cleaned up and that the grinder was left for him to clean unless it had been cleaned otherwise (205). This slight discrepancy in testimony indicates that the manager and supervisor could not possibly keep accurate check on exactly what was happening in connection with the cleaning of this grinder and further strengthened the opportunity for the ground beef to contain pork sausage.

A case in point is *Mouren v. Great Atlantic & Pacific Tea Co.*, 139 N.Y.S. 2d 375 (affirmed in the Intermediate Court of Appeals 1 A.D. 2d 767, 148 N.Y.S. 2d 1 and affirmed by the Court of Appeals in 1 N.Y. 2d 884, 136 N.E. 2d 715). The facts and law in that case are better explained by the words of the court:

“The plaintiff husband and wife bought and cooked some ground round beef at one of the stores of the defendant in New York County. It is alleged the beef had been contaminated through the negligence of the defendant by allowing the residue of previously chopped pork to become mixed with it and as a result of contamination, both of the plaintiffs contracted trichinosis.

“The defendant through the examination before the trial of the supervisor in its meat department, parts of which examination were read into the record on the trial, conceded in detail that it had two Hobart grinding machines and that both of them were used for grinding beef and pork. It is alleged by the plaintiff that after each grinding there is a residue of the meat ground left in the machine. In the examination before the trial,

the supervisor of the meat department of the defendant stated whichever machine is used to grind pork is cleaned out before the beef is ground in it. ***

"I find from my research, it is generally conceded that the trichinella spiralis which is the cause of the disease known as trichinosis is not usually associated with meat known as beef. ***

"The physician who originally attended the plaintiffs, diagnosed the illness as trichinosis. The same diagnosis was determined by the physician at the New York Hospital where Mrs. Mouren was for ten days. Mr. Mouren was not hospitalized. It is alleged Mrs. Mouren is still suffering from the effects of trichinosis. It seems to me, from the testimony that we may exclude all possibilities of infection to the plaintiffs, other than the beef which was purchased from and ground by the defendant, for the plaintiffs had not eaten pork since some time in July when two small cans of boiled ham were purchased. When a purchaser of pork knows he is buying pork, he can protect himself from the infection by thoroughly cooking the meat. Not knowing there was pork in the meat, it was cooked as hamburger and served rare on Saturday on which the meat was purchased and on the following day. The plaintiffs kept the meat in an electric refrigerator known as Frigidaire, said to be manufactured by the General Motors Corporation, until Mrs. Mouren was prepared to cook it, on both Saturday, September 20, 1952 and Sunday, September 21, 1952. In the sale of meat by the defendant to the plaintiff husband, there was an implied warranty that it was fit for human consumption. I find as a matter of law that the implied warranty extended to the benefit of the plaintiff wife. See *Bowman v. Great Atlantic & Pacific Tea Co.*, 284 App. Div. 663, 133 N.Y.S. 2d

904; *Visusil v. W. T. Grant Co.*, 253 App. Div. 736, 300 N.Y.S. 2d 652.”

Another case which is closely in point is *Flynn v. First National Stores, Inc.*, 296 Mass. 521, 6 N.E. 2d 814, wherein two children sought to recover for injuries caused by pieces of wire in hamburger, or ground steak, sold by defendant to their mother. The trial court directed verdicts for defendant and on appeal this was reversed, holding that it was a question for the jury whether or not the wire got into the hamburger while defendant was processing it. The court stated:

“And from the evidence that each of the plaintiffs was injured by a piece of wire in the very first mouthful of steak taken by each, it could be inferred that the entire mass of steak contained a substantial number of pieces. There was evidence from which it could be inferred that there was no wire in the meat when it came into the store. Hence the jury could find that the wire got in while the meat was being stored, manufactured into Hamburg steak and kept for sale at the defendant’s store under the defendant’s exclusive control. They were not obliged to believe the testimony of the defendant’s manager that it was impossible for wire to go through the Hamburg machine, even though this witness was called by the plaintiffs. ***”

In *Turner v. Wilson*, 227 S.C. 95, 86 S.E. 2d 867, the court stated:

“When under the same conditions, several persons who have eaten the same food become similarly ill, inference may be warranted that food was unwholesome and was cause of illness.”

See also *Johnson v. Kansavos*, 296 Mass. 373, 6 N.E.

2d 434; *Davis v. Van Camp Packing Company*, 189 Iowa 775, 176 N.W. 382, 17 A.L.R. 649; *Jensen v. Berris*, 31 Cal. App. 2d 537, 88 P. 2d 220.

Defendant's employees testified that every precaution was taken to eliminate the possibility of sausage getting into the ground beef. This is routine testimony in cases of this kind and can only create a conflict in the evidence as to whether or not trichinae in fact got into the beef.

In *Vaccarezza v. Sanguinetti*, 71 Cal. App. 2d 687, 163 P. 2d 470, plaintiff had salami and coppe and some time later came down with trichinosis. The court recognized the fact that in these cases circumstantial evidence must frequently be resorted to and stated the rule as follows:

"The plaintiff relying on circumstantial evidence does not have to preclude the possibility of all other possible inferences. He simply has to establish the reasonableness of his inference by a preponderance of the evidence."

In that case attempt was made to show that all precautions were taken and the court stated:

"This evidence is undoubtedly of considerable persuasive force. But as opposed to it are the facts found by the trial court, and supported by substantial evidence, that plaintiff wife and her two children became ill with trichinosis shortly after eating the pork in question; that they had eaten no other pork for a considerable period prior thereto; and that the main source of the infection is diseased pork. It was for the trial court to weigh the evidence. Its findings, being supported by substantial evidence and by reason-

able inferences from the evidence, cannot be disturbed.”

In *Kline v. Duchess Sandwich Company*, 14 Cal. 2d 272, 93 P. 2d 799, proof was introduced that precautions were taken to prevent any contamination of food from occurring. It was held, however, that inasmuch as there was contamination in the food this could only create a conflict of fact and in this connection the court stated:

“But in that regard, notwithstanding undisputed evidence to the effect that in the manufacture of sandwiches, generally, care had been exercised by the said defendant to prevent the happening of such an incident as befell one of the plaintiffs in the instant case, nevertheless, from the admitted fact that cheeseworms, or ‘maggots’ were present on or in the sandwich that was prepared by the defendant Duchess Sandwich Company and thereafter sold by defendant Kilpatrick to one of the plaintiffs, it becomes undeniable that at some time or place some person had failed to exercise the proper degree of care to prevent houseflies or cheese-flies from depositing their eggs on some of the material from which the sandwiches were manufactured, or the subsequent infestation of the particular sandwich in question by cheese-worms or ‘maggots.’”

Also, in *Gindraux v. Maurice Mercantile Co.*, 4 Cal. 2d 204, 47 P. 2d 708, similar testimony was introduced showing that defendant operated a sanitary shop and there was no direct evidence that the salami eaten by plaintiffs was actually infested with trichina. The trial court had granted defendant’s motion for judgment notwithstanding the verdict and in reversing this ruling the court stated:

“There is evidence from which it appears that the salami was properly manufactured and processed according to federal regulations. When so treated, the evidence shows that live trichina germs are destroyed, and cannot again appear in the prepared product. In this case the salami was duly inspected and certified by governmental authorities. The premises where the product was sold were clean and in all respects sanitary, meeting all requirements in that regard. But against the rather persuasive force of this evidence, the testimony of the plaintiffs must be considered. The evidence in support of plaintiffs’ case puts in the record the fact that plaintiffs became infected with trichinosis within ten days after purchasing the salami; that they had eaten no pork for a considerable time prior thereto; and the testimony of Dr. Monteith and Dr. Alexander that the symptoms of infection from that disease usually appear in from six to ten days, and that the only possible source of the disease is infected pork. This evidence gives rise to an inference of fact. In countless cases such inference has been deemed sufficient to go to the jury.”

Defendant made a valiant, but ineffective, effort to show that plaintiffs could have become infested with trichinae from sources other than the defendant company. It’s main reliance was apparently based on the fact that there was an epidemic of trichinosis among the German speaking people who had purchased mettwurst from a meat market run by a man by the name of Suhrmann. The testimony relating to this subject matter was clearly irrelevant. The persons who contracted trichinosis from this source did not become sick until some time in August, 1955, which was over a month after the plaintiffs here

contracted the disease. One of the plaintiffs first became ill July 3 and the last one became ill July 11th. There could have been no possible connection between plaintiffs' trichinosis and Suhrmann's market. True it is that plaintiffs had purchased unsalted butter, eggs and cheese from Suhrmann's Market, but the evidence was to the effect that the Niemanns had purchased nothing from Suhrmann since May 1, 1955 (314, 324-326). Hence, the jury could have found that Suhrmann's could not have been the source of plaintiffs' illness because two months elapsed between the time of dealing with Suhrmann's and the illness of plaintiffs. The testimony was to the effect that symptoms of trichinosis show up ordinarily between seven and fourteen days from ingestion and it might be as little as two days or as much as four weeks (246). This eliminates the testimony of Hoffman regarding the use of the same knife and same show case for meats and cheese (276, 277). In any event, this testimony of Hoffman's fell of its own weight when it appeared that he did not work for Suhrmann's after March of 1955 (278). No meat was purchased by plaintiffs from this place (138) until after they were sick and then it was not eaten by them (142, 160, 172). It was given to the dog (160, 172).

Defendant also tried to make much of the fact that the Niemanns on occasion picked up meat scraps for their dog and placed it in the refrigerator. The ground beef did not find its way into the refrigerator before it was first eaten (156, 183).

These scraps were kept in a sack, were cooked and placed in the bottom of the refrigerator . They came in contact with no food (146-149).

Also, defendant contended that plaintiffs ate some mettwurst which was delivered to them between April and June. The only mettwurst this could be is that which was brought to them by Carla Schnibbe. She testified that she brought it on the 10th day of May (188). The Niemanns testified that it was some time between the first and fifteenth of May (155, 178, 184). Even though this had been infested it would have been eaten at too remote a time to have caused the sickness of July 3 (211). There is also the added fact that only part of this stick of mettwurst was given to the Niemanns. The other portion was eaten by the Schnibbe family (190) and the Niemann boy, Niels, also ate this mettwurst (184). No one in the Schnibbe family were sick from eating this mettwurst (190) and Niels was not sick (178). Mrs. Niemann's mother also ate of this mettwurst and was not sick (184). This would support a jury finding that this mettwurst could not possibly have been the source of plaintiffs' illness. It did not come from Suhrmann's (138, 189).

Defendant called Glen Kilpatrick, an employee of the state to testify that Renate told him in a conversation in August that the family had mettwurst at Bear Lake (265). He testified that she stated her brother had purchased this mettwurst at Suhrmann's. In the first place, the time between when this could have been eaten and the onset of the symptoms was too short a time and certainly

would not come within the limits of the usual time for showing of symptoms. However, it was testified definitely that no such statement was made by Renate and that the Niemann family did not have any mettwurst at Bear Lake on this trip (312, 314, 317, 323). It was explained by plaintiff Henri Niemann, the son, that after the family had become sick, on July 9, 1955, he purchased what is called in Germany mettwurst but what is called here salami (178, 318).

Counsel for defendant in his brief has seen fit to drag in by the forelock a number of cases brought against Suhrmann & Jordan Meat & Livestock Company. These cases are entirely different from the case now being considered. They involve persons who contracted trichinosis in August, 1955, and who ate mettwurst purchased from Suhrmann's the latter part of July or the first part of August. Plaintiffs here came down with trichinosis more than a month before the persons involved in the other cases and plaintiffs here did not eat any mettwurst from Suhrmann's. Plaintiffs contracted trichinosis before any infested mettwurst was sold by Suhrmann as evidenced by the fact that the persons in those cases were regular mettwurst eaters and they ate mettwurst from Suhrmann's all during the summer months and before, and did not come down with trichinosis until well into August. The earliest case there was August 9th. The evidence in those cases established that the only source could be mettwurst from Suhrmann's while in the case at bar the only source could be the ground beef purchased from defendant. These plaintiffs had not traded at Suhr-

mann's since before May 1, 1955 (315). Other cases have been filed against the defendant in the case at bar for selling trichina infested ground beef.

The only case cited by defendant under this point of his brief is *Jordan v. Coca Cola Bottling Company*, 117 Utah 576, 218 P. 2d 660, which involved the explosion of a coke bottle. In that case it was shown that many people had access to the bottle from the time it was delivered by the Coca Cola Bottling Company until plaintiff sought to open the bottle. In the case at bar, plaintiffs bought the ground beef and immediately took it home and mixed it into the spread described above. Plaintiffs here do not rely upon the doctrine of *res ipsa loquitur*, we here rely upon a breach of warranty and a violation of statute.

We submit that under the evidence above set forth the verdict of the jury is supported by ample evidence and the trial court properly permitted the jury to make a determination of whether or not the ground beef prepared by defendant was adulterated and the source of the trichinosis contracted by these plaintiffs.

POINT II.

THE COURT DID NOT ERR IN GIVING INSTRUCTION NO. 5 AND IN REFUSING TO GIVE DEFENDANT'S REQUESTED INSTRUCTION NO. 9.

This case was submitted to the jury upon the simple proposition that if defendant sold to plaintiffs ground beef containing trichinae and this proximately resulted in plaintiffs contracting trichinosis then defendant was responsible for any damages proximately resulting there-

from. The jury was so informed by Instructions 3 and 4 (79, 80).

This is a correct statement of the law because if the beef sold contained trichina it would constitute (1) a violation of the Utah statutes referring to adulteration of foods, and (2) a breach of warranty. The instructions would be correct under either, or both, propositions and hence if one of these propositions is applicable the instruction is correct.

Defendant is in error when it states that plaintiff relied solely on *Section 60-1-15, Subdivision (1), Utah Code Annotated, 1953*. Plaintiffs relied also upon Subdivision 2 of that section and upon the Utah statutes prohibiting the sale of adulterated food.

VIOLATION OF ADULTERATION STATUTES

Many courts, including this Court, hold that where a statute is violated the violator is negligent per se. *Skerl v. Willow Creek Coal Co.*, 92 Utah 474, 69 P. 2d 502; *Wilcox v. Wunderlich*, 73 Utah 1, 272 P. 207; 38 *Am. Jur.* 827, *Negligence, section 158*. This merely means that upon violation of the statute nothing further need be shown. If the statute, therefore, does not require by its terms knowledge on the part of the violator or a lack of due care to establish liability it is unnecessary for a plaintiff to prove either of such elements.

In *Donaldson v. Great Atlantic & Pacific Tea Co.*, 186 Ga. 870, 199 S.E. 213, 128 A.L.R. 456, it was held that under statutes similar to the Utah statutes that it was unnecessary to prove either negligence in treating or knowledge of the adulteration of the food in order to constitute a violation of the statute and to visit liability

on the violator. See also the annotations to the same effect found at 128 A.L.R. 464 and 28 A.L.R. 1384.

The Utah statute *Section 4-20-5 Utah Code Annotated, 1953* provides:

“Every person who manufactures for sale, sells, exchanges or delivers, or offers to sell, exchange or deliver, or has in his possession with intent to sell, exchange or deliver, any adulterated or misbranded drug, or article of food, drink, or confectionery, or who adulterates or misbrands any article of food, drink, drug or confectionery, is guilty of a misdemeanor.”

Section 4-20-8 Utah Code Annotated, 1953, so far as material here defines adulteration as follows:

“For the purpose of this chapter an article shall be deemed to be adulterated:” * * * * * “In the case of foods:” * * * * (5) “If it contains any added poisonous or other added deleterious ingredients which may render such article injurious to health.” * * * * (7) “If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance or any portion of any animal unfit for food (whether manufactured or not), or if it is a product of a diseased animal or one that has died otherwise than by slaughter.”

Trichina could only come from pork. Plaintiffs could only have contracted trichinosis from eating the ground beef purchased from defendant. The presence of this trichina in the ground beef was certainly an added deleterious ingredient which rendered the beef injurious to health. Also, because of its presence the beef contained a portion of an animal unfit for food and this trichina was the product of a diseased animal. Hence,

the proof here established a violation of the statutes of the State of Utah and under them it was unnecessary to prove either knowledge or lack of care so far as the adulteration of the food was concerned. Instructions 3 and 4 were therefore, justified under these statutes.

In the case of *Troietto v. G. H. Hammond Company*, 110 F. 2d 135, similar statutes were involved. The trial court had directed a verdict in favor of defendant and on appeal this was reversed. The evidence indicated that plaintiff ate meat balls made from fresh pork and beef purchased from defendant. As a result he contracted trichinosis. The court stated:

“We are of the opinion that pork that is infected with trichinella is diseased within the meaning of the Ohio Pure Foods Law. *Allen v. Marvin*, 46 Wkly. Law Bul. 208, affirmed, 64 Ohio St. 608, 61 N.E. 1139. Its sale, even when the seller has no knowledge that it is diseased or infected, violates the statute and the seller is negligent in law. *Allen v. Marvin*, supra; *Portage Markets Co. v. George*, 111 Ohio St. 775, 146 N.E. 283; *Great Atlantic & Pacific Tea Co. v. Hughes*, 131 Ohio St. 501, 3 N.E. 2d 415, Cf. *Schell v. DuBois, Adm’r*, 94 Ohio St. 93, 113 N.E. 664, L.R.A. 1917A, 710.

“When appellant’s testimony was concluded, there was substantial evidence from which the jury could have found that appellant’s illness was caused by his eating pork that was infected with trichinella when sold by appellees; and, under Ohio law, the court should have instructed the jury that if they found these facts appellees were negligent in law. See cases cited above. If appellees were thus negligent, it appears to be well settled, under Ohio law, that their negligence

was the proximate cause of appellant's injury, even though another's negligence may have contributed thereto."

In *Leonardi v. Habermann Provision Co.*, 143 Ohio St. 623, 56 N.E. 2d 232, action was brought for damages resulting from trichinosis and the action was based on violation of the statute. It was held that neither knowledge nor lack of due care need be proven and the court stated:

"The inhibition of the statute against the sale of unwholesome food or infected meat means that only wholesome food or uninfected meat may be lawfully sold. The definition of the term 'wholesome' is 'sound, tending to promote health'; 'uninfected' means untainted or uncontaminated, not affected unfavorably, not impregnated or permeated with that which is bad or harmful. Trichinae-infected meat does not qualify under these definitions. If it were known that fresh pork offered over the counter for sale was infected with trichinae it would require much fortitude to assert that it was **wholesome, uninfected and marketable**, even though notice was given to the purchaser that all portions of it must be sufficiently cooked to render it harmless. The fact that it is not known to be infected at the time of sale does not render it wholesome or improve its marketability. The statute, in effect prohibitive rather than directive, was passed for the purpose of protecting and safeguarding the lives and health of the people. In harmony with that purpose, this court takes the view that absolute liability is cast upon the defendant as the seller of meat infested with trichinae, without regard to knowledge of its presence. *Troietto v. G. H. Hammond Co.*, 6 Cir., 110 F. 2d 135. Any other rule would generally

leave the injured purchaser, in his effort to place responsibility, without any practical remedy. This places a heavy burden upon the seller, but he may require a warranty from the person who sells the meat to him and is in a position to know whether the meat has been made safe by refrigeration."

In *Kelley v. John R. Daily Co.*, 56 Mont. 63, 181 Pac. 326, plaintiff recovered for illness and disability resulting from eating cooked and spiced pigs' feet sold by defendant to plaintiff's husband. Under a statute similar to that of Utah, the judgement for plaintiff was affirmed and the court stated:

"The sale of adulterated food is absolutely prohibited. The seller is made the insurer of the purity of food products sold by him, and guilty knowledge on his part is no longer an ingredient of the offense. The obligation imposed by the statute is personal, and cannot be avoided by showing that the impure food was purchased from a foreign concern, and bore the stamp of approval of the government inspectors."

See also *Rubbo v. Hughes Provision Co.*, 138 Ohio St. 178, 34 N.E. 2d 202; *Kurth v. Krumme*, 143 Ohio St. 638, 56 N.E. 2d 227; *Flynn v. Growers Outlet, Inc.*, 307 Mass. 373, 30 N.E. 2d 250.

Defendant's Requested Instruction No. 9 would not be applicable to the law relating to a violation of statute. It only purported to relate to a warranty situation. It also was a mandatory instruction for defendant and would have required a verdict for defendant even though there was a violation statute. On this ground alone the trial court properly rejected this requested instruction.

It is submitted that under the foregoing authorities the sale of beef with trichina infested pork constituted a violation of the foregoing Utah statutes and the violation of these statutes, without more, was a basis for liability and responsibility for any damages proximately resulting from such violation.

BREACH OF WARRANTY

Plaintiffs in this case also relied upon the Utah Statutes relating to implied warranties which so far as material here, provide as follows (Section 60-1-15, Utah Code Annotated, 1953):

“Implied warranties of quality. — Subject to the provisions of this title 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 to sell or a 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, and it appears that the buyer relies on the seller's skill or judgment (whether he is the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose:

“(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he is the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.”

Many cases hold without particular reference to any statute that where food is sold for consumption, such sale carries with it an implied warranty that the

food is wholesome and fit for human consumption. This warranty is based upon public policy requiring protection to members of the public eating food provided by persons who make a business of manufacturing, preparing or selling such food. A good example is *Decker & Sons v. Capps*, 139 Tex. 609, 164 S.W. 2d 828, 142 A.L.R. 1479. Suit was brought for damages resulting from eating sausage which was manufactured and sold under the trade name of "Cerfalet." In upholding plaintiff's verdict the court stated:

"After having considered the matter most carefully, we have reached the conclusion that the manufacturer is liable for the injuries sustained by the consumers of the products in question.

"We think the manufacturer is liable in such a case under an implied warranty imposed by operation of law as a matter of public policy. We recognize that the authorities are by no means uniform, but we believe the better reasoning supports the rule which holds the manufacturer liable. Liability in such case is not based on negligence, nor on a breach of the usual implied contractual warranty, but on the broad principle of the public policy to protect human health and life. It is a well-known fact that articles of food are manufactured and placed in the channels of commerce, with the intention that they shall pass from hand to hand until they are finally used by some remote consumer. It is usually impracticable, if not impossible, for the ultimate consumer to analyze the food and ascertain whether or not it is suitable for human consumption. Since it has been packed and placed on the market as a food for human consumption, and marked as such, the purchaser usually eats it or causes it to be served to his

family without the precaution of having it analyzed by a technician to ascertain whether or not it is suitable for human consumption. In fact, in most instances the only satisfactory examination that could be made would be only at the time and place of the processing of the food. It seems to be the rule that where food products sold for human consumption are unfit for that purpose, there is such an utter failure of the purpose for which the food is sold, and the consequences of eating unsound food are so disastrous to human health and life, that the law imposes a warranty of purity in favor of the ultimate consumer as a matter of public policy.

“Since very early times the common law has applied more stringent rules to sales of food than to sales of other merchandise. It has long been a well-established rule that in sales of food for domestic use there is an implied warranty that it is wholesome and fit for human consumption. *Race v. Krum*, 222 NY 410, 118 NE 853, LRA 1918F 1172; *Weideman v. Keller*, 171 Ill. 93, 49 NE 210; *Houston Cotton Oil Co. v. Trammell* (Tex Civ App) 72 SW 244; 55 CJ 764; 24 RCL 195; 37 Tex Jur 299. A majority of the American courts that have followed this holding have not based such warranty upon an implied term in the contract between buyer and seller, nor upon any reliance by the buyer on the representation of the seller, but have imposed it as a matter of public policy in order to discourage the sale of unwholesome food.”

Another outstanding case on this subject is *Weideman v. Keller*, 171 Ill. 93, 49 N.E. 210, wherein the action was predicated on a breach of implied warranty to re-

cover damages for illness from trichinosis. The court stated:

“Where, however, articles of food are purchased from a retail dealer for immediate consumption, the consequences resulting from the purchase of an unsound article may be so serious and may prove so disastrous to the health and life of the consumer that public safety demands that there should be an implied warranty on the part of the vendor that the article sold is sound and fit for the use for which it was purchased. It may be said that the rule is a harsh one; but, as a general rule, in the sale of provisions the vendor has so many more facilities for ascertaining the soundness or unsoundness of the article offered for sale than are possessed by the purchaser, that it is much safer to hold the vendor liable than it would be to compel the purchaser to assume the risk. Moreover, we have a statute which makes it a crime for any person to sell or offer to sell, or keep for sale, flesh of any diseased animal.”

In *Nelson v. West Coast Dairy Co.*, 5 Wash. 2d 284, 105 P. 2d 76, the court stated:

“Where articles of food are sold for domestic use and immediate consumption, the law implies a warranty that such articles are sound, wholesome, and fit to be consumed, and if the consumer is made sick through the consumption of such food, he has a right of action against the vendors thereof, either for breach of implied warranty, or for negligence; and in such action it is unnecessary either to allege or to prove scienter. *Mazetti v. Armour & Co.*, 75 Wash. 622, 135 P. 633, 48 L.R.A., (N.S.) 213, Ann. Cas. 1915C, 140; *Flesscher v. Carstens Packing Co.*, 93 Wash. 48, 160 P. 14;

Davis v. Van Camp Packing Co., 189 Iowa 775, 176 N.W. 382, 17 A.L.R. 649.

“This subject has been frequently dealt with by the various courts of this country, with the result, as stated in the annotation (supplementing *City of New Orleans v. Vinci*, 153 La. 528, 96 So. 110), appearing in 28 A.L.R. at page 1385, that ‘By the great weight of authority, the seller is under the duty of ascertaining at his peril whether an article of food conforms to the standard fixed by statute or ordinance; and the validity of regulations which, in express terms or by construction, dispense with scienter as a condition of the offense, is almost uniformly held or assumed.’ ”

Our Utah court in an action which arose prior to the enactment of the Uniform Sales Act, held that such an implied warranty exists in the sale of food. In *Walters v. United Grocery Co.*, 51 Utah 565, 172 Pac. 473, plaintiff purchased from defendant certain prepared foods such as potato salad and other edibles for immediate table consumption and plaintiff became ill from eating the food. A judgment for plaintiff was affirmed. Plaintiff did not prove that defendant was negligent in the preparation of the potato salad and so the question to be determined by the court was whether the fact alone that the salad was stale and not fit for human consumption would entitle plaintiff to recover. The court stated:

“While the authorities are not uniform, and there does not seem to be any well-defined universal rule governing the liability of vendors in the sale of food of all kinds for human consumption, still I think it is fairly deducible from the adjudicated cases, where the facts are such as

in the case at bar, that the vendor must be held liable when injury results from the consumption of such food.”

The court also stated:

“But, as indicated, the weight of authority is to the effect that in a case such as the one under consideration, where the seller has prepared the goods, and there is nothing in the appearance of the goods or the odor to indicate either to the seller or to the buyer that the combination is not fit for human consumption, the seller is liable. The opportunities and means of knowing the contents of the different ingredients that go to make up the salad, and the sources from which such ingredients are obtained, are exclusively in his possession and knowledge, and cannot in any way be known to the purchaser. True, the food was seen by the purchaser, plaintiff herein, as well as the defendant; but, as stated, there was nothing about its appearance to indicate its impurity. Not only was the means of knowing the impurity of the food within the knowledge of the compounder and seller of such food, but it seems that he ought to be charged with the responsibility for the injury resulting, for the reasons indicated.”

The court quoted with approval *Weideman v. Keller*, *supra*, as follows:

“As a general rule, we think the decided weight of authority in the United States is that, on all sales of meats or provisions for immediate domestic use by a retail dealer, there is an implied warranty of fitness and wholesomeness for consumption.”

Many cases rule with plaintiff on the grounds that there is an implied warranty that the goods are reason-

ably fit for the purpose for which they are purchased. Subdivision (1) of the implied warranty statute requires that the seller either expressly or by implication know the purpose for which the goods are purchased and the buyer must rely on the seller's skill and judgment. In these cases a person selling food for human consumption knows the food will be used for that purpose and naturally the buyer relies upon the skill and judgment of the seller to produce or sell the type of merchandise which will be suitable for the purpose of human consumption. Particularly is this true in the situation presented by the case at bar. The ground beef was ground by defendant and placed on its display shelves in packages for persons to pick up, buy and eat. Defendant knew that the meat would be purchased for human consumption. Inasmuch as this ground beef was packaged, of necessity the buyer relied upon the skill and judgment of the defendant in furnishing wholesome food. It would be impossible for the customers to determine in a case like the one at bar whether or not the meat was wholesome. Customers are not ordinarily experts in determining the wholesomeness of meat and must rely, as did plaintiffs, upon the skill and judgment of defendant. The meat was in a package and could not be examined.

It will not do to say that under ordinary and usual circumstances ground beef is sold to be both cooked and eaten. In the first place, the purpose of the purchase was for human consumption and if this beef contained trichina loaded sausage it would not meet that requirement. There is no reason to assume that this ground

beef would not be eaten raw or would be cooked to the extent that any trichina contained therein would be killed. To eat this as a spread is one of the ways ground beef is used. Particularly do Germans eat it this way (147, 148, 170). Certainly many people like rare ground beef just as they like rare prime rib. There could be no assumption on the part of defendant or any requirement on the part of plaintiffs that this ground beef should be cooked sufficiently to kill trichina. We are not dealing with a situation where the sale is of raw pork. This was a sale of ground beef which turned out to have in it some sausage.

There are cases holding because of the fact that raw pork is sometimes infested with trichinae the warranty with its sale is that it is fit for human consumption when properly cooked. Defendant has cited these cases, *Cheli v. Cudahy Bros. Co.*, 267 Mich. 690, 255 N.W. 414 and *Feinstein v. Reeves*, 14 F. Supp. 167. There are cases holding the contrary even in pork cases. *McSpedon v. Kunz*, 271 N. Y. 131, 2 N.E. 2d 513, 105 A.L.R. 1497; *Greco v. Kresge Co.*, 277 N.Y. 26, 12 N.E. 2d 557, 115 A.L.R. 1020.

In the *McSpedon case*, *supra*, the court supports its ruling by the following reasoning:

“This requisite of thorough heating and the nature of trichinae may seem very simple things to us and to experts who are dealing with these matters daily, but there are many people in this country who know nothing about trichinosis or the danger lurking in meats or the requisite heating point to destroy parasites, and who must

rely, and do rely, upon the grocer and the butcher and such reputable concerns as Armour & Co. to sell them wholesale food.

“This is the reason why we said in the Rinaldi Case that on every such sale of food by a dealer for immediate human consumption there is an implied warranty of its wholesomeness.

* * *”

This is not a case involving the sale of pork and as said in *Mouren v. Great Atlantic & Pacific Tea Co.*, 139 N.Y.S. 2d 375:

“When a purchaser of pork knows he is buying pork, he can protect himself from the infection by thoroughly cooking the meat. Not knowing there was pork in the meat, it was cooked as hamburger and served rare on Saturday on which the meat was purchased and on the following day.”

The reason for the rule announced in the pork cases holding the warranty is that the pork is wholesome only when properly cooked is obviously not present in a ground beef sale. There is no reason to protect against trichinae in beef and no need to cook it either at all or sufficiently to kill trichinae. Hence defendant's Requested Instruction No. 9 would be inapplicable to this case. The warranty was that the beef was fit for human consumption and it was not limited to a situation where cooked to eliminate trichinae.

The following cases hold under a statute similar to the above quoted Subdivision (1) that where food is sold for human consumption there will be implied a warranty that such food is wholesome and reasonably fit for human consumption: *McSpedon v. Kunz*, 271 N.Y. 131, 2 N.E. 2d

513, 105 A.L.R. 1497; *Vaccarezza v. Sanguinetti*, 71 Cal. App. 2d 687, 163 P. 2d 470; *Kline v. Duchess Sandwich Company*, 14 Cal. 2d 272, 93 P. 2d 799; *Jensen v. Berris*, 31 Cal. App. 2d 537, 88 P. 2d 220; *Gindraux v. Maurice Mercantile Co.*, 4 Cal. 2d 204, 47 P. 2d 708; *Charlis v. Hartloff*, 136 Kan. 823, 18 P. 2d 199; *Swengel v. F & E Wholesale Grocery*, 147 Kan. 555, 77 P. 2d 930; *Rinaldi v. Mohican Co.*, 225 N.Y. 70, 121 N.E. 471; *Greco v. Kresge Co.*, 277 N.Y. 26, 12 N.E. 2d 557, 115 A.L.R. 1020; *Ward v. Great Atlantic & Pacific Tea Co.*, 231 Mass. 90, 120 N.E. 225, 5 A.L.R. 242; *Burkhardt v. Armour & Co.*, 115 Conn. 249, 161 Atl. 385, 90 A.L.R. 1260.

In the *Rinaldi* case, *supra*, the court stated:

“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. *Farrell v. Manhattan Market Co.*, 198 Mass. 271-279, 21 Am. Neg. Case. 142, 84 N.E. 481, 15 L.R.A. (N.S.) 884, 126 Am. St. Rep. 436, 15 Ann. Cas. 1076. But we think, further, that such a purchase, where the buyer may assume that the seller has the opportunity to examine the article sold, unexplained, is also conclusive evidence of reliance on the seller’s skill or judgment.”

In the *Swengel* case, *supra*, the court stated:

“We think that a merchant, in displaying articles of food for sale, impliedly warrants that each and all of the articles are fit, whether of well known or little known brands, or whether packaged

or not, and that the fact the purchaser chooses one or the other should not relieve the dealer. And if the dealer is liable, under the circumstances instant in this case, so are the intermediate handlers.”

We submit that under the evidence and these authorities the defendant knew that the ground beef was to be used for human consumption and the plaintiffs relied upon the skill and judgment of the defendant in providing this packaged ground beef in a display counter and from this there was an implied warranty that the ground beef was fit for human consumption and that this was breached by defendant.

Some cases hold that where food is purchased the implied warranty is not created by Subdivision (1), but is by Subdivision (2). One of the outstanding cases on this phase of the law is *Ryan v. Progressive Grocery Stores, Inc.*, 255 N.Y. 388, 175 N.E. 485, 74 A.L.R. 339. Plaintiff sued for breach of warranty. He bought through his wife as his agent, a loaf of bread which had a pin concealed in it and which injured plaintiff's mouth. When the wife purchased the bread she asked the clerk for a loaf of “Ward's Bread.” The court held that there was no implied warranty that the goods would be reasonably fit for the purpose purchased because there was no reliance by the wife on the skill or judgment of defendant. However, in such event the goods were purchased by description and hence there was an implied warranty of merchantability which was breached by the sale of a loaf of bread containing a pin. In the case at bar if for any

reason there is no warranty under the Subdivision (1), then there is one under Subdivision (2).

In the case at bar there was a sale of ground beef by defendant to plaintiffs under a label of ground beef, but it was not as described or represented because it contained pork with trichina, and such beef could not be considered merchantable, or as it is defined, "saleable." See *Wallace v. L. D. Clark & Son*, 74 Okla. 208, 174 Pac. 557, 21 A.L.R. 361; annotation at 21 A.L.R. 367.

In the *Ryan* case, the court recognized that a case may come under both subdivisions. The court stated:

"Most of the sales of defective food stuffs have been dealt with by the courts as if subdivision 1 of the section defining warranties gave the exclusive rule to be applied. In some instances the goods were not purchased by description. In others, the courts may have been unmindful of the fact that the warranty of merchantable quality is no longer confined to manufacturers or growers. Innovations of this order are slow to make their way. Gradually, however, as the statute has become better known, the bearing of subdivision 2 upon sales of food in sealed containers has been perceived by court and counsel. 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, coexist, 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. 1 § 235, and cases there cited.

"A dual warranty is thus possible for food-stuffs as for anything else. Both in this court and in others the possibility is recognized."

Here again under a warranty of merchantability defendant's Requested Instruction No. 9 was inapplicable and erroneous. This warranty is not based upon its use. The sole question is whether beef containing trichinae infested pork is merchantable or saleable. This requires an emphatic "no" answer and whether cooked or not cooked in preparation for human consumption the warranty is breached when it is sold.

We submit that under these authorities there was an implied warranty that the beef was wholesome and reasonably fit for human consumption and also that said beef was merchantable. That the beef contained pork with trichina constituted a breach of these warranties and justified the trial court in submitting the case to the jury on strict liability. If the jury found that the beef contained trichina which caused plaintiffs to suffer trichinosis then the verdict was properly for plaintiffs.

DEFENDANT'S AUTHORITIES

The three authorities cited by defendants are not concerned with a situation involving the sale of beef containing trichina. Two of the cases relate to a sale of pork products. In *Cheli v. Cudahy Bros. Co.*, 267 Mich. 690, 255 N.W. 414, plaintiff sought to recover both on negligence and breach of warranty. He was not permitted to recover on either. He did not prove negligence and

the court held there was no implied warranty that pork is fit for human consumption in a raw state. We are not concerned with that situation. There is no reason why there should be no warranty that beef is fit for human consumption in a raw state. Beef is often eaten rare and need not be cooked to the extent that trichinae would be killed. There is no reason for a person not to eat raw beef, whereas in cases of pork the presence of trichina in raw pork, in some instances, has caused courts to say there is no warranty while in a raw state. However, there are many cases contrary to this Michigan case and many cases where recovery has been allowed where the plaintiff ate raw pork. They hold it is sold for food and hence should not contain anything which might be injurious to health. There is no danger in eating raw ground beef unless there is some type of adulteration such as was found in the case at bar.

Feinstein v. Reeves, 14 Fed. Sup. 167, is distinguishable on the same grounds as the Cheli case.

Bennett v. Pilot Products Co., 120 Utah 474, 235 P. 2d 525, deals with a situation where plaintiff was allergic to a hair preparation. It appeared that most people could use that preparation with safety, but it was not true with plaintiff. The case at bar is not one where certain people only are allergic to trichina. Anyone who becomes infested with this worm will get trichinosis. We submit that none of plaintiff's cases are in point here.

CONCLUSION

The testimony in this case raised a factual question as to whether or not the beef purchased from defendant

contained sausage with trichinae and whether plaintiffs contracted trichinosis from this source. These questions of fact were properly submitted to the jury under legally correct Instructions No. 3 and 4. This is established under Point I of this brief.

Under Point II it appears that the matter was properly submitted to the jury on the basis of strict liability. If the facts were established as set forth under Point I then defendant would be responsible regardless of what care it used or what knowledge it had. It was both a violation of statute and a breach of implied warranty to sell beef adulterated with sausage containing trichina. We submit that the judgment in favor of plaintiff should be affirmed.

Respectfully submitted,
RAWLINGS, WALLACE, ROBERTS & BLACK
CANNON & DUFFIN
By BRIGHAM E. ROBERTS