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### **Sales--Implied Warranty--Work, Labor and Services (Haag v. Klee, 162 Misc. 250 (1936))**

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in person and upon an equal footing with a natural person, including the right to sue in person."<sup>16</sup> The corporation when acting through its duly constituted officers is acting in person as much as a natural person who himself performs acts on his own behalf,<sup>17</sup> and to deny the corporation the right to appear in our courts to prosecute and defend its own legitimate actions is to unjustly penalize the corporation.

H. K.

**SALES—IMPLIED WARRANTY—WORK, LABOR AND SERVICES.**—Defendant employed plaintiff, a woman, as a domestic in his household. As compensation he agreed to pay her a sum of money per month and to furnish her with food and lodging. Defendant accordingly purchased for plaintiff's consumption a quantity of ham and pork which plaintiff prepared and ate, following which she became ill allegedly due to an infection with trichinae of the food. Plaintiff's complaint was based on the theory of a sale of the food by defendant to her with a consequent implied warranty that such food was reasonably fit for consumption and contending that the consideration for such sale consisted in the services rendered by plaintiff to defendant. Plaintiff failed to allege negligence in her complaint. *Held*, complaint insufficient to state a cause of action since transaction between parties did not constitute a sale. *Haag v. Klee*, 162 Misc. 250, 293 N. Y. Supp. 266 (1936).

It is rare that any change of property for a consideration takes place today without some warranty as to quality or utility of the commodity sold. This warranty may be either express or implied.<sup>1</sup> Under both the common law<sup>2</sup> and by statute<sup>3</sup> upon the sale of provisions for human consumption there arises an implied warranty of wholesomeness and fitness<sup>4</sup> because of the reliance by the vendee upon the vendor's skill and judgment in the selection of goods that

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<sup>16</sup> *Ibid.*

<sup>17</sup> 10th St. & 5th, Inc. v. Naughton, 163 Misc. 437, 296 N. Y. Supp. 952 (1937), plaintiff, landlord-domestic corporation, instituted summary proceedings without counsel. *Contra*: Finox Realty Corp. v. Lippman, 163 Misc. 870, 296 N. Y. Supp. 945 (1937).

<sup>1</sup> WHITNEY, SALES (2d ed. 1934) § 166.

<sup>2</sup> Van Bracklin v. Fonda, 12 Johns. 468 (N. Y. 1815); Moses v. Mead, 5 Denio 617 (N. Y. 1846); Divine v. McCormick, 50 Barb. 116 (1867).

<sup>3</sup> N. Y. PERS. PROP. LAW § 96.

<sup>4</sup> WHITNEY, SALES (2d ed. 1934) § 173.

he offers for sale<sup>5</sup> and because of the vendor's knowledge, by implication, of the purpose for which the article is required.<sup>6</sup>

A warranty is an incident to a contractual relationship resulting in a sale. If there be no sale there can be no warranty.<sup>7</sup> Under the common law a sale of personal property was defined as a transfer of the absolute or general property in a thing for a price in *money*.<sup>8</sup> With the coming of the Uniform Sales Act, however, a money consideration became unnecessary to create a sale.<sup>9</sup> That Act defines a sale as follows: "A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the *price*." Therefore, if any *price* be paid, not necessarily in money, that consideration will be adequate to create a sale. The term "price", however, is not so universal a term as to include anything that one may give to another, even though it be of great value, in exchange for something else, but is expressly limited by the Sales Act which specifies that "the price may be payable in any personal property."<sup>10</sup> Barter or exchange is then expressly brought within the purview of the Act.<sup>11</sup> Consequently, the provisions of the Act would apply only to sales for money or barter of personal property transactions.

The consideration involved in the instant case in return for the food supplied to plaintiff by the defendant herein was the rendition by her of personal services in his behalf. If defendant failed to supply the contracted money, food and lodging to plaintiff her remedy would lie in suit based upon the theory of work, labor and services which is clearly not within the scope of the Act.<sup>12</sup> Even though materials be furnished incidental to services rendered a sale will not result.<sup>13</sup> Plaintiff could not sue for breach of a sales contract as labor is not a commodity<sup>14</sup> and cannot be placed in the category of that "personal property" necessary to constitute a sale.

M. F.

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<sup>5</sup> *Race v. Krum*, 222 N. Y. 410, 118 N. E. 853 (1918); *Muller v. Childs Co.*, 185 App. Div. 881, 171 N. Y. Supp. 541 (1st Dept. 1918).

<sup>6</sup> N. Y. PERS. PROP. LAW § 93; *Rinaldi v. Mohican Co.*, 225 N. Y. 70, 121 N. E. 471 (1918).

<sup>7</sup> *Turner v. Edison Storage Battery Co.*, 248 N. Y. 73, 161 N. E. 423 (1928); *Osborn v. Gantz*, 60 N. Y. 540 (1875); *Chysky v. Drake Bros. Co.*, 235 N. Y. 468, 139 N. E. 576 (1923); *Fairbank Canning Co. v. Metzger*, 118 N. Y. 260, 23 N. E. 372 (1890); *WHITNEY, SALES* (2d ed. 1934) § 175; *WILLISTON, SALES* (2d ed. 1924) § 244.

<sup>8</sup> *BOUVIER'S LAW DICTIONARY*; *WILLISTON, SALES* (2d ed. 1924) § 13.

<sup>9</sup> N. Y. PERS. PROP. LAW § 82, subd. 2.

<sup>10</sup> N. Y. PERS. PROP. LAW § 90, subd. 2.

<sup>11</sup> *WHITNEY, SALES* (2d ed. 1934) § 3.

<sup>12</sup> *Racklin, Fagin Const. Corp. v. Villar*, 156 Misc. 220, 281 N. Y. Supp. 426 (1935).

<sup>13</sup> *Carlson, Holmes & Bromstad, Inc. v. M. I. Stewart & Co., Inc.*, 147 Misc. 607, 264 N. Y. Supp. 277 (1932).

<sup>14</sup> *Rohlf v. Kasemerer*, 140 Iowa 182, 118 N. W. 276 (1908).