successful felony. *State v. Effer*, 25 Del. 92, 78 Atl. 411 (1910); *Commonwealth v. Walker*, 108 Mass. 309 (1871); *Johnson v. State*, 29 N. J. L. 463 (1861); *People v. Tavormina*, 257 N.Y. 84, 177 N.E. 317 (1931); *contra*, *Commonwealth v. Barnett*, 196 Ky. 731, 245 S.W. 874 (1922). Michigan has abolished the merger doctrine by statute. Mich. Comp. Laws (1929), § 17297. Considering the advantages which flow to the state from having both avenues of prosecution open, the general American rule seems to be well-founded.

Mortgages—Receiver's Claim for Rent against Lessee Subsequent to the Mortgage—[New Jersey].—A lease was executed subsequent to a mortgage. After default on the mortgage, the mortgagee filed a bill to foreclose. The tenant was not made a party to the foreclosure proceedings in which defendant was appointed receiver. The receiver distraining for rent, the tenant sought to enjoin the distraint proceedings on the ground that the lease had been terminated by the appointment of the receiver. *Held*, the lease was not terminated, for the appointment of the receiver did not constitute an eviction. *Walgreen Co. v. Moore*, 173 Atl. 587 (N.J. Eq. 1934).

A tenant is bound by the terms of his lease until he has been evicted. Neither the filing of the bill nor the appointment of a rent receiver amounts to an eviction. *Metropolitan Life Ins. Co. v. Childs Co.*, 230 N.Y. 285, 130 N.E. 295 (1921); *Knickerbocker Oil Corp. v. Richfield Oil Corp.*, 234 App. Div. 199, 252 N.Y. Supp. 1017 (1931). It was argued that the possession of the receiver is the possession of the mortgagee, see *Bermes v. Kelley*, 108 N.J. Eq. 289, 154 Atl. 860 (1931); *New York Trust Co. v. Shelburne*, 110 N.J. Eq. 187, 159 Atl. 522 (1932); 2 Clark, Receivers (2d ed. 1929), § 963, and since the mortgagee claims under a paramount title, 2 Jones, Mortgages (8th ed. 1928), § 982, this amounts to an eviction of the tenant. See *Keenan v. Jordan*, 204 Ia. 1338, 217 N.W. 248 (1925); *Hoogestraat v. Donner*, 209 Ia. 672, 228 N.W. 632 (1930).

But the receiver is not in the position of the mortgagee, for the receiver acts not as an agent of the mortgagee, even though he be entitled to possession, but as an officer of the court to preserve the *status quo* during litigation. *Desiderio v. Iadonisi*, 115 Conn. 652, 163 Atl. 254 (1932); *Chicago Title and Trust Co. v. McDowell*, 257 Ill. App. 492 (1931); Tefft, Receivers and Leases Subordinate to the Mortgage, 2 Univ. Chi. L. Rev. 33 (1934).

Furthermore, even though it is conceded that the receiver is in the position of a mortgagee entitled to possession, it does not necessarily follow that there has been an eviction of the tenant, which will excuse his obligation to pay rent. A mere notice by the mortgagee to the tenant to pay rent to him has been held not to be such a hostile assertion of paramount title as to constitute a constructive eviction. *Wilton v. Dunn*, 17 Q.B. 294 (1851); *Towerson v. Jackson*, [1891] 2 Q.B. 484; *Drakford v. Turk*, 75 Ala. 339 (1883); 2 Jones, Mortgages (8th ed. 1928), § 982; 1 Tiffany, Landlord and Tenant (1912), § 73; 3 Tiffany, Real Property (2d ed. 1920), § 614. To have a defense on the ground of constructive eviction the tenant must attorn to the mortgagee either by payment of rent after notice or other acts indicating assent to the mortgagee's claim. *West Side Trust & Sav. Bank v. Lopoten*, 193 N.E. 462 (Ill. 1934); *Anderson v. Robbins*, 82 Me. 422, 19 Atl. 910 (1890); *Adams v. Bigelow*, 128 Mass. 365 (1880).

Moreover, the eviction argument defeats itself by its own premise. The receiver being considered in the position of the mortgagee, it becomes immaterial whether or not the tenant has been evicted, for eviction is a defense merely to the mortgagor's claim

for rent. Even without an eviction the mortgagee, not being in privity of estate or contract with the lessee, has no claim for rent in the absence of attornment. *Merchants Union Trust Co. v. New Philadelphia Graphite Co.*, 10 Del. Ch. 18, 83 Atl. 520 (1912); *Bartlett v. Hitchcock*, 10 Ill. App. 87 (1881); *Burke v. Willard*, 243 Mass. 547, 137 N.E. 744 (1923); 2 Jones, Mortgages (8th ed. 1928), § 982; 1 Tiffany, Landlord and Tenant (1912), § 73. To hold there is an eviction of the tenant would defeat the purpose of receiverships as a conservation measure to protect the rights of the parties, especially in view of the possibility that the mortgagor may redeem and thus there might never be a final decree of foreclosure.

Sales—Liability of Manufacturer of Food Products to Consumer—[Michigan].—Plaintiff purchased pork from a retailer packed by defendant. Her husband died from trichinosis caused by eating the pork raw, and plaintiff brought suit against defendant for breach of warranty. *Held*, a warranty of fitness for consumption will not be implied to cover such an unusual use of a food product since only a very small amount of pork sold is eaten raw and the danger of infection is negligible if the pork is cooked. *Cheli v. Cudahy Bros.*, 267 Mich. 690, 255 N.W. 414 (1934).

Under modern practice in food distribution, where many intermediaries come between manufacturer and consumer, it has appeared undesirable to limit the consumer to the traditional action against his immediate vendor for breach of an implied warranty of fitness for consumption. Some courts, unable to bridge the gap of lack of privity, hold there can be no implied warranty running with the chattel on which to found an action by the consumer against the manufacturer. *Collins Baking Co. v. Savage*, 227 Ala. 408, 150 So. 336 (1933); *Newhall v. Ward Baking Co.*, 240 Mass. 434, 134 N.E. 625 (1922); *Chysky v. Drake Bros. Co.*, 235 N.Y. 468, 139 N.E. 576 (1925); *Connecticut Pie Co. v. Lynch*, 57 F. (2d) 447 (App. D. C. 1932); 28 Mich. L. Rev. 89 (1929). But other courts do hold that an implied warranty of fitness runs with the chattel in the case of food products. *Challis v. Hartloff*, 136 Kan. 823, 18 P.(2) 199 (1933); *Hertzler v. Manshum*, 228 Mich. 416, 200 N.W. 155 (1924); *Curtiss Candy Co. v. Johnson*, 163 Miss. 426, 141 So. 762 (1932). The latter view is often made subject to qualifications. Thus, it has been held the warranty of the manufacturer is merely that the article was fit for consumption when it left his plant, the burden being on plaintiff to show it was not. *Cudahy Packing Co. v. Boshin*, 155 So. 217 (Miss. 1934). But if the food reaches the consumer in its original package it is presumed to be in the same condition then as it was when packed. *Coco-Cola Bottling Works v. Simpson*, 158 Miss. 390, 130 So. 479 (1930); see *Cudahy Packing Co. v. Boshin*, 155 So. 217 (Miss. 1934). The principal case adds the qualification that the warranty extends only to fitness for consumption in the usual manner.

Lack of privity does not prevent a manufacturer of food products from being liable to a consumer because of negligence. *Liggett & Myers Tobacco Co. v. Rankin*, 246 Ky. 65, 54 S.W. (2d) 612 (1932); *Reichenbacher v. Cal. Packing Co.*, 250 Mass. 198, 145 N.E. 281 (1924); *Cassini v. Curtiss Candy Co.*, 113 N. J. L. 91, 172 Atl. 519 (1934); 33 Col. L. Rev. 868 (1933). The difficulty of the consumer's proving specific acts of negligence on the part of the manufacturer has led the courts to make certain concessions in favor of the consumer. Thus some courts have found negligence in the breach of a pure food statute resulting in injury to the consumer, who is a member of the class