

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.

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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

intended to be protected by the statute. *Benes v. Champion*, 186 Minn. 578, 244 N.W. 72 (1932); *Burnette v. Augusta Coca-Cola Co.*, 157 S.C. 359, 154 S.E. 645 (1930). One court may, perhaps, be regarded as holding that the presence of a harmful substance in food amounts to negligence *per se*. *Rozumailski v. Philadelphia Coca-Cola Co.*, 296 Pa. 114, 145 Atl. 700 (1924). The doctrine of *res ipsa loquitur* has also been applied, the presence of the harmful substance giving rise to a presumption of negligence by the manufacturer. *Coleman v. Dublin Coca-Cola Co.*, 47 Ga. App. 369, 170 S.E. 549 (1933); *Nehi Bottling Co. v. Thomas*, 236 Ky. 684, 33 S.W. (2d) 701 (1930); *contra*, *Tonsman v. Greenglass*, 248 Mass. 275, 142 N.E. 756 (1924); *Perry v. Kelford Coca-Cola Co.*, 196 N.C. 690, 145 S.E. 14 (1928). In any event plaintiff need only show the presence of an injurious substance in the food when it was shipped from the manufacturer's plant and consequent injury to make out a *prima facie* case of negligence. *Goldman & Freeman v. Sindell*, 140 Md. 488, 117 Atl. 866 (1922); *De Groat v. Ward Baking Co.*, 102 N. J. L. 188, 130 Atl. 540 (1925); *Campbell Soup Co. v. Davis*, 175 S.E. 743 (Va. 1934). And the presence of the foreign substance at the time of shipment may be inferred. *Doyle v. Continental Baking Co.*, 262 Mass. 516, 160 N.E. 325 (1928). The courts apparently being desirous of holding the manufacturer liable on one theory or another, for injury caused by defective food, the theory of an implied warranty of fitness running with the chattel seems commendable as the simplest way to reach the desired result.

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Trusts—Salary Received by Trustee as Corporate Official—[Maryland].—A co-trustee, by virtue of the trustees' holding one-half of the stock of a corporation in trust, was elected secretary of the corporation at a salary of fifty dollars per week. In an accounting by the trustee, it was held, the cestui is entitled to one-half of the salary received without interest. *Mangels v. Safe Deposit & Trust Co. of Baltimore*, 173 Atl. 191 (Md. 1934).

The court relied on the well-established rule that a trustee will not be permitted to deal with his trust so as to gain profit for himself; he may not retain any advantage gained directly or indirectly because of his position; *Michoud v. Girod*, 4 How. (U.S.) 503 (1846); *Magruder v. Drury*, 235 U.S. 106 (1914); *Linsley v. Strang*, 149 Ia. 690, 126 N.W. 941 (1910); *Williams v. Barton*, [1927] 2 Ch. 9; 3 Bogert, Trusts (1935), § 492; Lewin, Trusts (13th ed. 1928), 251. It is immaterial that the trustee rendered a fair equivalent to the estate, and that the estate has not been injured, for the rule rests on the rigid policy of equity against allowing the trustee to be in any position where his self-interest and his interest as trustee may possibly conflict. *Hoyt v. Latham*, 143 U.S. 553 (1891); *Kahn v. Chapin*, 152 N.Y. 305, 46 N.E. 489 (1897); Perry on Trusts (7th ed. 1929), § 427; Pomeroy, Equity Jurisprudence (4th ed. 1918), § 958. The vigor of this policy led to a denial at first of any commissions to the trustee, in the absence of a provision in the trust instrument, for his work as trustee. *Egbert v. Brooks*, 3 Harr. (Del.) 110 (1840); *Green v. Winter*, 1 Johns. Ch. (N.Y.) 26 (1814); *Ayliffe v. Murray*, 2 Atk. (Eng.) 58 (1740); *Barrett v. Hartley*, L.R. 2 Eq. 789 (1866). That rule no longer prevails. *Barney v. Saunders*, 16 How. (U.S.) 534 (1853); *Howard v. Hunt*, 267 Mass. 185, 166 N.E. 568 (1929); *Loud v. St. Louis Union Trust Co.*, 313 Mo. 552, 281 S.W. 744 (1925). See 42 Yale L. J. 771 (1933).

There is a tendency in some jurisdictions to regard the rule that a trustee may not profit from his trust as not inflexible. Thus one court allows a trustee commissions for