

dence when it made its basic decision as to the more probable reason for the tragic accidental discharge of the Remington .22-250 rifle. Was it an unintentional touching of the trigger or did the rifle malfunction? Viewed in that light, we must conclude that exclusion of the evidence of redesign, offered for impeachment, resulted in "a reasonable likelihood that a substantial right [of Dawn Muzyka] was affected." *Johnson*, 609 F.2d at 823.

The verdict and judgment in favor of Remington Arms Co., Inc. is VACATED and the cause is REMANDED for a new trial.

GEE, Circuit Judge, dissenting.

I find myself unable to join the majority in its disposition of this appeal. A jury, well aware that the design change in question was feasible (Remington admitted it at trial), determined that the act of Mrs. Muzyka's stepfather in running live ammunition through the chamber of a rifle—indoors, in her company, and with the gun's safety in the "fire" position—was negligence and the *sole* cause of her injury. That the rifle could have been designed so that even such carelessness would not have caused her injury was undisputed and conceded. Like the trial judge, who heard the evidence and observed both jury and witnesses, I cannot believe that evidence of the subsequent design change by Remington would have altered this jury finding.

Either the jury did not believe the family's account of how the accident happened, or it believed that Mr. Melton's knowing adoption of the unsafe procedure caused the accident. Because the jury well knew that Remington *could* have designed the rifle so that this particular accident would have been impossible, it seems to me unlikely in the extreme that evidence of Remington's later decision to adopt such a design would have influenced the jury to any significant degree. That being so, I would not disturb its verdict; I therefore respectfully dissent.

Sarbast JAFF, Individually and d/b/a
Soma Agro Industry,
Plaintiff-Appellee Cross-Appellant.

v.

CAL-MAINE FOODS, INCORPORATED,
et al., Defendants-Appellants
Cross-Appellees.

No. 84-4388.

United States Court of Appeals,
Fifth Circuit.

Oct. 25, 1985.

Iranian buyer of poultry equipment brought suit against American seller, alleging breach of contract and that subsequent release executed by parties was invalid for failure of consideration. The United States District Court for the Southern District of Mississippi, John R. Countiss, III, Magistrate, found that seller had breached contract and that release agreement lacked consideration. Seller appealed. The Court of Appeals, Sear, District Judge, sitting by designation, held that: (1) each parties' promised forbearance from asserting any claim against the other constituted sufficient consideration to support release, and (2) buyer failed to establish that release was fraudulently induced.

Reversed.

1. Release ⇐14

Agreement by which buyer of poultry equipment released seller of any obligation arising from loss of equipment, and by which seller released buyer of any obligations arising from lost profits to which seller would have been entitled was a valid release, since each parties' promised forbearance from asserting any claim against the other constituted sufficient consideration to support the release, even if claims released were doubtful.

2. Release ⇐57(2)

Buyer of poultry equipment who entered into agreement releasing seller of