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Personal Property and Sales -- 1956 Tennessee Survey

J. Allen Smith

PERSONAL PROPERTY AND SALES—1956 TENNESSEE SURVEY

J. ALLEN SMITH*

PERSONAL PROPERTY

The Right to Possession: In *Shirley v. State*[1] the Supreme Court of Tennessee held that a county court clerk could not be required to return money illegally gained by participation in a gambling game, which money had been confiscated by the sheriff and turned into court. Despite a theoretical difficulty arising from the absence in Tennessee of a statute authorizing forfeiture of gambling funds, the decision invoked the equitable principle that courts will not assist persons violating the law. For its result, the court relied in considerable measure on the New York case of *Hofferman v. Simmons*,[2] which involved a replevin action to recover money seized in a gambling game. The New York court had reasoned that since in New York replevin is a possessory action in which the plaintiff must show a possessory right recognized by law, the courts would not give their sanction to "titles and possessory rights founded only on law-breaking."[3] The Tennessee Supreme Court approved essentially the definition of replevin as given by the Court of Appeals of New York,[4] and apparently treated the action in the *Shirley* case as equivalent to one of replevin though it actually arose as a petition in criminal court.

The Tennessee Supreme Court further recognized that in cases involving automobiles used to transport whiskey the state authorities cannot confiscate the automobiles without following the precise language of the forfeiture statute.[5] Despite the moral tone of the opinion an anomaly is presented in that the policy of the legislature is sometimes frustrated when officers do not adhere carefully to that policy, and yet the right to the possession (and perhaps even of title) of money can pass from an individual to the state without statutory sanction by what amounts to the application of the equitable clean hands doctrine in the legal action of replevin.

Dictum in the New York case stating that title does not pass when a person illegally bets money and loses suggests that a different result might obtain if the true owner of the money (prior to the gambling

* Associate Professor of Law, Vanderbilt University.

1. 280 S.W.2d 915 (Tenn. 1955).
2. 290 N.Y. 449, 49 N.E.2d 523 (1943).
3. 49 N.E.2d at 526.
4. See also Duplicator Supply Co. v. Patterson, 197 Tenn. 157, 270 S.W.2d 467 (1954).
5. TENN. CODE ANN. § 57-147 (1956). See Brooks v. McCoy, 192 Tenn. 586, 241 S.W.2d 579 (1951); Wells v. McCanless, 184 Tenn. 293, 198 S.W.2d 641 (1947); Casone v. State, 176 Tenn. 279, 140 S.W.2d 1081 (1940).

operation) sought its return. However, this point is not discussed by the Tennessee Supreme Court.

Gifts: In *Miller v. Hubbs*,[6] a decedent, prior to her death, executed with a savings bank a signature card and joint tenancy agreement providing that upon her death the funds remaining in the account should go to her brother-in-law, who was named as the other joint tenant with right of survivorship. The brother-in-law had performed services both for the deceased and her husband who had died earlier. The lower courts awarded the money to the brother-in-law on the theory that a contract existed between him and the deceased that was supported by valuable consideration. The Supreme Court of Tennessee affirmed the holdings of the chancellor and the court of appeals, but placed its rationale on the law of gifts. This latter concept involved a consideration of *Turner v. Leathers*,[7] a case in which the court held purported gifts invalid by reason of the donor's age, the fiduciary relationship between him and the donees, the latters' dominion and control over the donor, and the absence of independent advice to assist the donor free of the influence of the donees.[8] In the *Miller* case, the court did not overrule the last requirement as necessary to a gift in situations involving a fiduciary relationship, but found instead that prior to her husband's death the donor had received his advice to give the money to her brother-in-law. These directions constituted such independent advice as to take the *Miller* case without the rule of the *Turner* case. In lessening the rigors of the rule in the *Turner* case, the Supreme Court of Tennessee moves along with the modern tendency to examine all circumstances of a gift to see if it is freely made but to avoid the automatic application of technical doctrines that would defeat the clear intent of the doner.[9]

Bailments: The case of *David Karp Co. v. Read House, Inc.*[10] arose in the federal district court and involved the liability of innkeepers as modified by statute. A salesman left jewelry in the value of almost fifty thousand dollars in cases which he had checked at a hotel. The jury accepted evidence showing that the hotel, in compliance with Tennessee statutes,[11] had provided a place for the safekeeping of valuables and had also posted the statutory notice to guests that their valuables should be deposited with the hotel in a

6. 285 S.W.2d 527 (Tenn. 1955).
7. 191 Tenn. 292, 232 S.W.2d 269 (1950).
8. For cases indicating the development of the rule of "independent advice," see Annot., 123 A.L.R. 1505 (1939).
9. Harrison v. Foley, 206 Fed. 57 (8th Cir. 1913), is a leading authority for the more liberal and more realistic view. That the Tennessee courts still take a rather formal and orthodox approach to the requirement of delivery in the law of gifts, see Ball, *Personal Property and Sales*, 7 VAND. L. REV. 892 (1954).
10. 136 F. Supp. 372 (E.D. Tenn. 1954), *aff'd*, 228 F.2d 185 (6th Cir. 1955).
11. TENN. CODE ANN. §§ 62-703 to -704 (1956).

designated place and that a $300.00 liability was the maximum loss for which the hotel would be responsible in the absence of a special contract. The district court and the court of appeals upheld damages in favor of the plaintiff for only $300.00. The opinions indicate that in view of the Tennessee statute, the concept of innkeeper's liability as that of an insurer is only a matter of ancient common-law history.[12]

CONDITIONAL SALES

The court of appeals decided two cases involving the problem of the rescission of conditional sales contracts and in each case granted the rescission. In the first, *White v. Mid-City Motor Co.*,[13] the complainant had purchased a secondhand automobile. He sought to rescind the contract, cancel the notes he had executed, and recover the amount he had already paid. In seeking this relief the complainant invoked the Uniform Sales Act which provides for such relief if the seller has breached a warranty.[14] The court agreed that the seller had broken a warranty, and described it as an implied warranty of title. The Uniform Sales Act recognizes three implied warranties of title[15] as distinct from the warranty that arises from sales by description[16] and the implied warranties of quality.[17] These three implied warranties of title are: (1) that the seller has a right to sell the goods; (2) that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale; and, (3) that the goods are free of any charge or encumbrance in favor of any third person.

Factually, the buyer, who took title for his minor son, permitted the son to take the car to Michigan where it was impounded by Michigan authorities upon the failure of the son to produce indicia of title. In selling the car to the complainant the defendant motor company had failed to follow the requirements of the Tennessee Motor Vehicle Title and Registration Law, specifically the provision that requires the transferor to give the transferee a bill of sale and a title card in lieu of the actual certificate of title held by the lienor.[18] The act further makes it a misdemeanor for any person to fail to carry out its provisions for the transfer of title.[19] The court of appeals reasoned that by violating the Motor Vehicle Title and Regis-

12. For a discussion of the extraordinary extent of the common-law liability of innkeepers, see BROWN, PERSONAL PROPERTY, § 102 (2d ed. 1955). For a discussion of Tennessee cases involving more typical bailment problems, see Warren, *Personal Property and Sales*, 6 VAND. L. REV. 1113, 1116 (1953).
13. 284 S.W.2d 689 (Tenn. App. E.S. 1955).
14. UNIFORM SALES ACT § 9; TENN. CODE ANN. § 47-1269 (1956).
15. UNIFORM SALES ACT § 13; TENN. CODE ANN. § 47-1213 (1956).
16. UNIFORM SALES ACT § 12; TENN. CODE ANN. § 47-1214 (1956).
17. UNIFORM SALES ACT § 15; TENN. CODE ANN. § 47-1215 (1956).
18. TENN. CODE ANN. § 59-319 (1956).
19. TENN. CODE ANN. § 59-328 (1956).

tration Law, the motor company had breached the implied warranty that it had the right to sell the goods. The result is obviously fair in that the fault appears to be with the defendant-seller. Some question might be raised whether the implied warranty breached by the seller was (1) the right to sell or (2) the right of the buyer to have and enjoy quiet possession of the goods as against any lawful claims existing at the time of sale. In this respect, a similar Ohio case involving an incorrect certificate of title and permitting rescission of the contract speaks of both warranties as possibly breached.[20]

In the second of the two conditional sales cases, *Huddleston v. Lee*,[21] the court of appeals permitted the conditional vendee to rescind the sale of an automatic freezer and to recover payments already made. The problem is complicated by the difficulty the court faced in having to decide whether the warranty breached by the seller was (1) an express warranty[22] or (2) an implied warranty of quality.[23] The court accepted evidence that the seller through statements, advice, and printed advertisements had warranted the general fitness of the freezer. In addition to these representations, however, the memorandum of sale stated that the seller would service and replace any defective parts for a period of one year and that "the correction of such defects by the seller shall constitute a fulfillment of its obligation to the purchaser hereunder."[24] The question then arose whether the express warranty in the memorandum negated any other warranty. The court held that it did not.[25] The court cited the case of *Kohn v. Ball*,[26] which is good authority for two propositions: (1) a written warranty limited in terms does not necessarily preclude an implied warranty of merchantability or general fitness; (2) despite the language of the Uniform Sales Act which states that there is no implied warranty of fitness for a particular purpose in sales of articles bought under a patent or trade name, an implied warranty of general fitness may nevertheless arise.[27] But to bring the *Huddleston* case within the holding of the *Kohn* case, the warranty involved ought to be characterized as implied rather than express; yet the court in the *Huddleston* case said:

20. Martin v. Coffman, 87 Ohio App. 398, 95 N.E.2d 286 (1949).

21. 284 S.W.2d 705 (Tenn. App. M.S. 1955).

22. TENN. CODE ANN. § 47-1212 (1956).

23. TENN. CODE ANN. § 47-1215 (1956).

24. 284 S.W.2d at 708.

25. The court cited TENN. CODE ANN. § 47-1215(6) (1956) which reads: "An express warranty or condition does not negative a warranty or condition implied under this chapter, unless inconsistent therewith."

26. 36 Tenn. App. 281, 254 S.W.2d 755 (W.S. 1952).

27. For a trenchant analysis of this decision, see Warren, *Personal Property and Sales*, 6 VAND. L. REV. 1113, 1121 (1953).

> It seems to this court that the complainant's right of recovery more properly rests on a violation of an express warranty, or express representations made by the defendants to the complainant as an inducement to buy the product in question.[28]

By holding the warranty to be express rather than implied, the court reaches a problem under the parol evidence rule and states that since warranties based on affirmation of fact sound in tort rather than contract, the parol evidence rule is not applicable.[29] This statement that warranties sound in tort rather than contract has the support of early English law;[30] and Williston has urged that warranties may involve both tort and contract principles.[31] There is little question, however, that in the great majority of cases express warranties of fact are deemed contractual in nature. A number of cases permit oral evidence of these express warranties on the basis that liability is imposed by law irrespective of the written contract.[32]

28. 284 S.W.2d at 709.
29. In another case, Yarbrough v. Viar, 282 S.W.2d 367 (Tenn. App. W.S. 1954), the court of appeals was concerned with the Statute of Frauds and refused to permit a retailer to go against a guarantor of credit for a debtor where the promise of the guarantor was oral.
30. See cases and authorities cited in 1 WILLISTON, SALES § 195 n.3 (rev. ed. 1948).
31. 1 *id.* § 197. See also 1 *id.* § 215 n. 16.
32. See VOLD, SALES § 151 (1931).