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# PERSONAL PROPERTY AND SALES—1955 TENNESSEE SURVEY

CLYDE L. BALL\*

## SALES

The cases of *Edwards v. Central Motor Co.*<sup>1</sup> and *Hunter v. Moore*<sup>2</sup> offer interesting variations upon the same basic problem. In the *Edwards* case plaintiff automobile dealer sold a car to X in what was intended to be a cash transaction. X paid for the car with a worthless check and received possession of the car together with a carbon copy of a bill of sale executed by plaintiff. X then took the automobile to another dealer and sold it to him, giving the purchaser a bill of sale executed by X. Defendant was present at this transaction; at no time did X exhibit the copy of his bill of sale from plaintiff. Defendant then bought the car from the second dealer. When the check received by plaintiff was dishonored, he brought replevin to recover the car.

It seems to be agreed that the parties to the original sale did not intend that title should pass to X until the check was paid. This being true, the title remained in plaintiff under the provisions of the Uniform Sales Act.<sup>3</sup> Defendant's principal contention was that plaintiff, having clothed X with indicia of ownership (the copy of the bill of sale) and having delivered possession of the chattel to X, was estopped to assert his title against an innocent purchaser for value without notice. Obviously, however, as Judge Hickerson pointed out, estoppel requires more than misleading acts on the part of the plaintiff; there must also be reliance and a subsequent detriment to the defendant. In the *Edwards* case there was no evidence whatever as to reliance, so that plaintiff was entitled to recover the automobile.

In *Hunter v. Moore* the plaintiff automobile dealer originally bought an automobile from a resident of the State of Georgia, and took a bill of sale from the vendor. As Georgia is a "non-title" state, and the car bore Georgia license tags, nothing more was required to vest title in the plaintiff. Plaintiff then sold the automobile to X who gave a worthless check in payment. (The villain in the two cases appears to have been the same individual). Plaintiff stated in the sale order signed by X that plaintiff retained title until the check was paid. Plaintiff also retained the original bill of sale from the Georgia vendor. In order to protect X against possible difficulties with highway police, plaintiff executed and delivered to X a notarized bill of sale purporting to convey unencumbered title to X. The latter took possession of

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1. 277 S.W.2d 413 (Tenn. App. M.S. 1954), *aff'd*, 277 S.W.2d 417 (Tenn. 1955).  
2. 276 S.W.2d 754 (Tenn. App. E.S. 1954).  
3. TENN. CODE ANN. § 7211 (Williams 1934).

the car which now bore a Tennessee "drive-out" tag, and immediately drove it to an auction and sold it to defendant. X represented the automobile to be a Georgia car not requiring a prior title certificate, and exhibited the bill of sale which he had obtained from plaintiff. When the check was dishonored plaintiff brought replevin to recover the car. The Eastern Section of the Tennessee Court of Appeals ruled in favor of the defendant. The court in its opinion appears to be treating the case as one of estoppel—that is, that the plaintiff having clothed X with possession and indicia of perfect title will not be heard to say that he did not pass title when the rights of an innocent purchaser intervene. The court points out that the Tennessee Motor Vehicle Title and Registration Law<sup>4</sup> enables a dealer to pass title without obtaining a certificate of title in his own name, and as there was no previous title, defendant could reasonably rely upon the bill of sale.<sup>5</sup>

The court then goes on to say that title actually passed to X upon delivery to him of the notarized bill of sale by plaintiff. No mention was made of the expressed intent of the parties, not controverted by evidence other than the bill of sale, that title should remain in plaintiff until the check was paid. If even a voidable title actually passed, it would not seem necessary to talk in terms of estoppel, as the transfer to defendant had taken place before the check was dishonored.

No doubt it would be a burden upon automobile dealers and the state registration office to require that dealers obtain title certificates in their own names for all automobiles which they purchase for resale. So long, however, as they are permitted to transfer title by bill of sale only, there will be occasional instances of fraud resulting in loss to innocent persons. So in *Commerce Union Bank v. Overall*<sup>6</sup> a dealer sold a new automobile, on which no title certificate had ever been issued, to defendant under a conditional sales contract; the dealer then assigned the contract and notes to a finance company. The dealer then delivered a bill of sale on the same automobile to plaintiff bank, which had been financing him, and obtained a loan from the bank. Under these circumstances the finance company prevailed against the bank in a contest for possession of the automobile.

#### CONDITIONAL SALES

*What is a Conditional Sale?* In the case of *Matthews v. Archie*<sup>7</sup> the parties executed a contract whereby defendant agreed "to sell" and plaintiff agreed "to pay \$1250 in weekly installments of \$30.25" for an automobile. Plaintiff further agreed that if he ceased to use the car

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4. Tenn. Pub. Acts 1951, c. 70.

5. To the same effect see *Jackson v. Waller*, 190 Tenn. 588, 230 S.W.2d 1013 (1950).

6. 274 S.W.2d 15 (Tenn. App. M.S. 1954).

7. 268 S.W.2d 334 (Tenn. 1954).

as a taxicab he would pay the balance in full, "or such as the owner deems within his power." Plaintiff paid \$242.00 and apparently defaulted in further payments. Defendant regained possession of the automobile, but did not sell pursuant to the provisions of the conditional sales statute.<sup>8</sup> Plaintiff sued under the conditional sales statute to recover the \$242.00. The court held that the transaction was not a conditional sale. Under the Tennessee statute a conditional sale must be evidenced by a writing executed at the time of the sale evidencing the retention of title as security for the purchase price. The court found no such evidence here.<sup>9</sup> The court stated the rule that conditional sales are out of harmony with registration laws and should not be extended by implication. This particular rule is based upon a desire to protect third parties; as no third party was involved in this case there was no occasion to invoke the rule. The conditional sales statutes were designed to protect purchasers against unfair treatment by the conditional vendor; this purpose could have been effectuated by calling the transaction a conditional sale, without reference to the policy of the registration laws. The opinion appears to apply properly the rule that where there is a doubt as to whether a contract is one of conditional sale, the doubt will be resolved against that construction.

*Failure of Vendor's Assignee to Follow Statute: Ballinger v. Delta Loan & Finance Co.*<sup>10</sup> presented the interesting question as to what effect failure to advertise and resell repossessed chattels, as required by the Conditional Sales Act,<sup>11</sup> will have upon the rights and duties of the original conditional vendor as against his assignee. Defendant was an automobile dealer who sold certain automobiles under conditional sales contracts. He then assigned the contracts and purchasers' notes to plaintiff finance company. Plaintiff repossessed certain automobiles upon default of their purchasers, but did not advertise and resell them in accordance with the terms of the statute. Had this been the whole story, the court states by way of dictum, the assignor-indorser would have been released from liability upon the contracts and notes, just as the defaulting purchasers would be released.<sup>12</sup>

There was an additional important factor in the case, however. Defendant's indorsement of the notes provided that in case of default on the part of the conditional vendee, then defendant vendor would repurchase the notes from plaintiff for the balance due upon them. Upon repossession of the automobiles in question, plaintiff offered to deliver them to defendant, pursuant to the repurchase agree-

8. TENN. CODE ANN. §§ 7286-98 (Williams 1934).

9. The provision that the purchaser should pay the full balance "or such as the owner deems within his power," indicates that the parties still considered the vendor to be the owner. There is no indication that he retained ownership for security purposes, however.

10. 277 S.W.2d 368 (Tenn. 1955).

11. TENN. CODE ANN. §§ 7287, 7291 (Williams 1934).

12. See *Commerce Union Bank v. Jackson*, 21 Tenn. App. 412, 111 S.W.2d

ment. Defendant refused to accept them, and this refusal cost him the protection afforded by the Conditional Sales Act.

The holding of the court seems clearly correct. The Conditional Sales Act is intended to require the person who, by the terms of the contract, will sell the chattel upon default to conduct the sale under conditions calculated to insure fair treatment of the debtor. Under the repurchase agreement the dealer and the finance company contemplated that the dealer should conduct the public sale of the automobiles. When by his own breach of this contract he imposed the duty of disposing of the automobiles upon the finance company, he was no longer in the position of the conditional vendee, and could insist only that the finance company act in accord with common-law principles.

*Replevin as Device to Perfect Right to Resell:* When a conditional vendor obtains possession of the chattel which was the subject of the sale, but he obtains it for some other purpose, how can he perfect his right to resell upon default of the conditional vendee? This question arose in *Duplicator Supply Co. v. Patterson*<sup>13</sup> where the conditional vendee returned the chattel to the vendor's representative with the statement that the vendee was forfeiting his down payment and rescinding the contract on the ground that the chattel was not satisfactory. The vendor, seeking to convert his position into that of a repossessing creditor, brought a replevin action. Without indicating what action, if any, might be necessary or sufficient, the Supreme Court simply ruled that replevin could not, by its nature, be brought to obtain possession of a chattel which the plaintiff already possessed. Replevin seeks to obtain possession, not to create any particular type of possessory holding.

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870 (M.S. 1937); *Commercial Credit Co. v. McConkey*, 9 Tenn. App. 605 (E.S. 1929).

13. 270 S.W.2d 467 (Tenn. 1954).