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Personal Property and Sales--1959 Tennessee Survey

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PERSONAL PROPERTY AND SALES—1959 TENNESSEE SURVEY

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I. PERSONAL PROPERTY

1. Damage to Chattel in Possession of Mortgagor or Conditional Vendee.—When a chattel is mortgaged or sold pursuant to a conditional sales contract and is subsequently damaged by a third party while in possession of the mortgagor or conditional vendee, it is generally agreed that either party to the chattel mortgage[1] or conditional sales contract[2] has a sufficient interest in the chattel to allow him to maintain an action against the wrongdoer. In *Ellis v. Snell*,[3] the court allowed recovery by the mortgagor for the full amount of damage to the mortgaged automobile, even though he was in default on the mortgage[4] at the time the automobile was damaged by the defendant. In the course of its opinion the court stated a rather broad rule, as follows:

> A conditional vendor or conditional vendee can prosecute an action for damages, the result of negligence of third party, to property involved in a conditional sales contract. The same rule applies where the relationship is mortgagor and mortgagee, as well as the relationships of bailor and bailee, and *a recovery by either will prevent a recovery by the other.*[5] (Emphasis added.)

The rule stated in the italicized clause of the above quoted paragraph is consistently applied in Tennessee and other jurisdictions

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1. See Jolly v. Thornton, 40 Cal. App. 2d 819, 102 P.2d 467 (1940); Vangellow v. East Side Sav. Bank, 11 N.Y.S.2d 982 (Rochester City Ct. 1939); 14 C.J.S. *Chattel Mortgages* § 227, 228 (1939).
2. See Ryals v. Seaboard Air-Line Ry., 158 Ga. 303, 123 S.E. 12 (1924); Carolina, C. & O. Ry. v. Unaka Springs Lumber Co., 130 Tenn. 354, 170 S.W. 591 (1914); Annot., 38 A.L.R. 1337 (1925).
3. 313 S.W.2d 558 (Tenn. App. W.S. 1955).
4. *Accord,* Lowery v. Louisville & N. R.R., 228 Ala. 137, 153 So. 467 (1934); Stewart Motor Trucks, Inc. v. New York City, 158 Misc. 738, 287 N.Y.S. 881 (Mun. Ct. 1936). The fact that a mortgagor is not in default does not affect the mortgagee's right to recover from the wrongdoer. Vangellow v. East Side Sav. Bank, 11 N.Y.S.2d 982 (Rochester City Ct. 1939).
5. 313 S.W.2d at 562.

when recovery by the equitable owner (mortgagor or conditional vendee) is interposed as a defense by the wrongdoer when an action is subsequently brought against him for the same wrong by the holder of the security interest.[6] In such a case the rule is a necessary corollary to the well settled rule that allows recovery for the full amount of damage to the chattel when suit is brought by the mortgagor[7] or conditional vendee.[8] It is based upon principles of res adjudicata and the policy, in Tennessee at least, against the splitting of actions.[9]

However, there is a conflict of opinion as to whether recovery by the holder of the security interest, if he is the first to sue for the damage, is limited to the amount due on the debt, or whether he may recover for the full amount of damages to the chattel.[10] If recovery by the mortgagee or conditional vendor is limited to the amount due on the debt, the mortgagor or conditional vendee should not be barred from recovery of any excess damage.[11] Otherwise, the wrongdoer would partially escape liability for his tort, and the equitable owner would be without a remedy.

Although the *Ellis* case and the cases reviewed therein were concerned only with the right of the equitable owner of the chattel to recover damages from the wrongdoer, and the effect of his recovery upon the rights of the holder of the security interest, the dicta in the

6. See *e.g.*, Harris v. Seaboard Air-Line Ry., 190 N.C. 480, 130 S.E. 319 (1925); Union Ry. v. Remedial Finance Co., 163 Tenn. 130, 40 S.W.2d 1034 (1931). It is often stated that recovery by *either* party to a conditional sales contract or chattel mortgage bars the other, as in the *Ellis* case; however, the great majority of cases stating this rule and cited in support of the proposition are concerned only with the question of whether recovery by the equitable owner of the chattel precludes recovery by the holder of the security interest. See Annot., 49 A.L.R. 1458 (1927); 50 C.J.S. *Judgments* § 803 (1947).

7. Lowery v. Louisville & N. R.R., 228 Ala. 137, 153 So. 467 (1934).

8. Carolina, C. & O. Ry. v. Unaka Springs Lumber Co., 130 Tenn. 354, 170 S.W. 591 (1914). The right of the mortgagor and conditional vendee to recover for the full amount of damage is likened to that of a bailee in the case of Stotts v. Puget Sound Traction, Light and P. Co., 94 Wash. 339, 162 Pac. 519 (1917). According to a long settled rule, a bailee may recover for the full amount of damage to the chattel by a third party. The Winkfield, (1902) P. 42 (C.A.).

9. Union Ry. v. Remedial Finance Co., 163 Tenn. 130, 40 S.W.2d 1034 (1931). *Cf.* RESTATEMENT, JUDGMENTS § 88 (1942).

10. Recovery by the holder of the security interest is limited to the extent of the amount due on the contract. Rentz v. Huckabee Auto Co., 53 Ga. App. 329, 185 S.E. 575 (1936) (conditional vendor); see WILLISTON, SALES § 333(a) (rev. ed. 1948). *Contra,* Bell Finance Co. v. Gefter, 147 N.E.2d 815 (Mass. 1958) (conditional vendor); Louisville and N. R.R. v. Mack, 2 Tenn. Civ. App. 194 (1911) (conditional vendor). The *Gefter* case, *supra,* was distinguished in Harvard Trust Co. v. Racheostes, 147 N.E.2d 817 (Mass. 1958), where the court held that where the mortgagor was contributorily negligent in causing damage to the mortgaged automobile, the mortgagee could recover only the amount due on the mortgage.

11. *Cf.* Fletcher v. Perry, 104 Vt. 229, 158 Atl. 679 (1932); RESTATEMENT, JUDGMENTS § 88(3) comment c (1942).

decisions to the effect that recovery by *either* party to a chattel mortgage or conditional sales contract will prevent recovery by the other seems to presuppose that the recovery by the mortgagee or conditional vendor is not limited to the amount due on the debt. One Tennessee case,[12] although not cited in the *Ellis* case, has so held insofar as the conditional vendor is concerned.

In *Butler v. Central Motors Acceptance Corp.*,[13] the issue was whether a conditional vendee of an automobile can bind the assignee of the vendor by settling a damage claim with the tortfeasor without the consent of such assignee. Although the decisions are in agreement that a recovery by the conditional vendee for the full amount of damage to the chattel, in a suit against the wrongdoer, bars recovery by the conditional vendor,[14] there is a sharp conflict as to whether a settlement has the same effect.[15] However, the Supreme Court of Tennessee had previously aligned itself with those courts holding that the right to sue gives the conditional vendee the right to settle in good faith with the wrongdoer, without the consent of the conditional vendor, and thereby preclude the latter from any further recovery.[16] The court followed that decision in the *Butler* case.

2. Carriers—Damage to Goods Caused by Act of Shipper.—When damage to goods while being transported by a common carrier results from an act of the shipper, the carrier is relieved of its liability as an insurer.[17] This well known exception to the carrier's common law liability was recognized at common law,[18] and has not been abrogated as to interstate shipments by the Interstate Commerce Act, as amended,[19] which has been said to have codified the common law liability of the carrier.[20] The exception applies to cases in which the loss is caused by the fault of the shipper in not properly packing the goods for shipment.[21] *Hoover Motor Express Co. v. United States*[22] involved the application of this exception to an interesting factual situation. Four rectifiers, weighing 1500 pounds each, were crated separately by defendant prior to an interstate shipment over plaintiff's truck line. They arrived at their destination in a damaged condition.

12. Louisville & N. R.R. v. Mack, 2 Tenn. Civ. App. 194 (1911).
13. 313 S.W.2d 260 (Tenn. 1958).
14. See note 6 *supra*.
15. See cases cited in Annot., 92 A.L.R. 205 (1934); 11 AM. JUR. *Compromise and Settlement* § 27 (1937); Feller, *Effect of Release by Conditional Vendee on the Rights of the Vendor*, 5 TENN. L. REV. 156 (1927).
16. First Nat'l Bank v. Union Ry., 153 Tenn. 386, 284 S.W. 363 (1926).
17. BROWN, PERSONAL PROPERTY § 97 (2d ed. 1955).
18. See, *e.g.*, Hart v. Chicago & N. W. Ry., 69 Iowa 485, 29 N.W. 597 (1886).
19. 44 Stat. 1448 (1927), 49 U.S.C. § 20(11) (1952).
20. Secretary of Agriculture v. United States, 350 U.S. 162 (1956).
21. See cases collected in Annot., 81 A.L.R. 811 (1932).
22. 262 F.2d 832 (6th Cir. 1959).

Plaintiff sued for freight charges due, and defendant counterclaimed for the damage to the rectifiers.

An inspection was made of the damage immediately after its discovery, by two persons, one of whom was defendant's principal witness at the trial. This inspection revealed that some of the damage was caused by the falling of separate parts which had been fastened to the crates by small screws or bolts which had either broken or backed out. Loose bolts were found throughout the crate; some had dropped into the bottom of the crate and others were missing. The few welds used to support the major weight of the rectifiers were coming apart at the fusion point, which the court said indicated a poor weld. An expert witness testified that, considering the weight of the rectifiers, far stronger cabinets should have been used to crate them. From this evidence the court concluded that the damage was caused by the act of the shipper in improperly crating the rectifiers for shipment.

Aside from the question of improper preparation of the rectifiers for shipment, the evidence failed to establish that the rectifiers were delivered to the carrier in good condition.[23] On these grounds the court ordered dismissal of defendant's counterclaim.

Loss of goods caused by improper loading of a car by the shipper, another common instance of an act of the shipper relieving the carrier of its strict liability, was involved in *Tennessee Packers, Inc. v. Tennessee C. Ry.*[24] Plaintiff, the shipper, loaded a tank car of tallow for shipment by defendant. While the tank car of tallow was being transported to the consignee, the discharge valve at the bottom of the tank came open and over half of the tallow was lost.

The fact relied upon by defendants as proof of improper loading by plaintiff was the failure of plaintiff to leave the outlet cap open while loading the car, in violation of a rule of the Interstate Commerce Commission. The trial court directed a verdict for defendants. The Tennessee Court of Appeals concluded that the purpose of the rule requiring the outlet cap to be left open during loading was to permit the loader to determine whether the discharge valve was properly seated. Therefore, it could not be said, as a matter of law, that the failure of the shipper to observe the rule was the cause of the loss, especially in view of a stipulation of the parties that the car and its operating mechanisms were in proper operating con-

23. Plaintiff must prove that the goods were received by the carrier in good condition and were delivered in a damaged condition in order to establish a prima facie case. Chicago R. I. & P. Ry. v. Greer, 187 Ark. 101, 58 S.W.2d 424 (1933); see Annot., 106 A.L.R. 1156 (1937).

24. 319 S.W.2d 502 (Tenn. App. M.S. 1958).

dition, and the fact that the car traveled 271 miles without any leakage.

The court, however, did not rest its reversal of the trial court solely on the ground that the evidence did not, as a matter of law, establish that the loss was caused by improper loading on the part of the shipper. After examining the evidence to the effect that the train traveled six miles after the leakage was discovered, before it was stopped, at which time the valve was closed by a simple manual operation, the court held that the trial judge should have submitted to the jury the question of negligence of the carrier in not stopping the train sooner. This holding follows the general rule that, even though the goods were improperly loaded or packed by the shipper, if the carrier's subsequent negligence contributes to the loss or damage, it is liable.[25] In other words, to come within this exception to the carrier's liability, the act of the shipper must be the sole cause of the loss or damage.[26]

3. Partnership Real Property—Conversion to Personalty.—In the case of *Brown v. Brown*,[27] the issue was whether real property which had been conveyed to a partnership, in the partnership name, and paid for with partnership funds, passed as realty or personalty on the death of the partners. In holding that the realty passed as personalty, the court quoted with approval from *Cultra v. Cultra*,[28] which was decided after Tennessee had adopted the Uniform Partnership Act,[29] and stated that the result of the latter decision is that the "out and out" conversion theory has superseded the "partial conversion" theory in Tennessee.[30] The only difference between the *Brown* case and the *Cultra* case is that in the former the court held that the realty need not be actively used in the partnership business in order for there to be a conversion of the realty into personalty.

Section 25 of the Uniform Partnership Act[31] provides that a member of a partnership is a "tenant in partnership," a tenancy unknown

25. The Tennessee Ry. v. Riddle Coal Co., 1 Tenn. App. 129 (1925); Annot., 44 A.L.R.2d 993 (1955).

26. McCarthy v. Louisville & N. R.R., 102 Ala. 193, 14 So. 370 (1893); Annot., 44 A.L.R.2d 993 (1955).

27. 320 S.W.2d 721 (Tenn. App. M.S. 1958).

28. 221 S.W.2d 533 (Tenn. 1949).

29. TENN. CODE ANN. §§ 61-101 to -142 (1955).

30. 320 S.W.2d at 727. For a discussion of the "partial" and "out and out" conversion theory see 21 TENN. L. REV. 202 (1950). The practical effect of the court applying the "partial" conversion theory to a given case was that the real estate of a partnership descended to the heirs of the deceased partner when it was no longer needed for partnership purposes. Williamson v. Fontain, 66 Tenn. 212 (1874). If the court applied the "out and out" conversion theory, the realty was considered personal property, for the purpose of distribution, upon the death of a partner. See Annot., 25 A.L.R. 389 (1923).

31. TENN. CODE ANN. § 61-124 (1955).

to the common law, and defines the incidents of such a tenancy. That partnership realty is considered as personalty for purposes of distribution on the death of the partners is a reasonable interpretation of the act, considering sections 8, 25 and 26 together.[32] The purpose of section 25 in creating a tenancy in partnership was to end the confusion caused by the courts in an attempt to treat partners as joint tenants, and at the same time to escape some of the inequities resulting from the application of the legal incidents of a joint tenancy to partnerships.[33] Since the result reached in the *Brown* case is within the meaning and purpose of the Uniform Partnership Act, it seems unnecessary to base the holding upon the fiction of conversion of real estate into personal property, a fiction which existed prior to the act and which produced some of the confusion which it was designed to remove. The application of the fiction that there is an "out and out" conversion of real estate, once it becomes the property of a partnership, to other situations could well produce more confusion.[34]

II. SALES

1. Remedies of a Defrauded Purchaser.—In *Continental Grain Co. v. First Nat'l Bank*,[35] plaintiff's claim against the two defendants was based upon a purchase by it from the Butler-Foster Milling Company of warehouse receipts, issued by the Alabama Grain Elevator Company, purporting to represent 1,299,839 bushels of soybeans. In fact, the receipts were worthless, and the milling company perpetrated a fraud upon plaintiff in accepting $3,164,458 as the tentative purchase price, which was geared to the market price of soybeans on a future date, for soybeans which did not exist. Prior to the fraudulent sale the warehouse receipts had been held by the defendant bank as security for a loan to the milling company, and were released to the latter under a trust receipt on the day of the sale, March 1, 1955. On the same day the milling company negotiated them to plaintiff upon payment of the above stated sum. With the proceeds of the sale the milling company paid the defendant bank $2,699,491, the full amount of its indebtedness to the bank. Plaintiff filed this suit on March 16, 1956, against the trustee in bankruptcy for the milling company,

32. TENN. CODE ANN. §§ 61-107, -124 and -125 (1955). The court, in Wharf v. Wharf, 306 Ill. 79, 137 N.E. 446 (1922), a leading case on the question under the Uniform Partnership Act, considered these sections in arriving at the result reached in the *Brown* case.

33. See commissioners' note to sec. 25 of the Uniform Partnership Act. 7 UNIFORM LAWS ANN. § 25 (1949).

34. One question, to which the application of the theory of conversion has already produced difficulties, is whether an agreement to sell partnership real estate is within the Statute of Frauds. See Smith v. Guy, 144 S.W.2d 702 (Tenn. App. E.S. 1940); 16 TENN. L. REV. 885 (1941).

35. 162 F. Supp. 814 (W.D. Tenn. 1958).

and the First National Bank of Memphis. As against the trustee in bankruptcy, plaintiff sought a declaration of the court that the sale was rescinded and that the proceeds received by the milling company were held by it as constructive trustee for plaintiff. The relief sought against the bank was recovery of the money paid to it by the milling company in discharge of its debt, on the theory that the bank was also constructive trustee of this amount.

Although the sale was made in the name of the milling company, the stage for the fraud was set by one Butler, who controlled the milling company and two other Missouri corporations engaged in milling, ginning, dehydrating and storage operations. He also controlled the Alabama Grain Elevator Company, which issued the warehouse receipts by which the fraud was committed. Butler was a member of a large brokerage firm in Memphis and a substantial dealer in the commodities future's markets. He was well known in the business world and financial circles, and enjoyed a good reputation for his financial strength, business ability, and fair dealing. He and the milling company had lines of credit with defendant bank up to $3,000,000. Neither the plaintiff nor the bank had any knowledge that Butler or his corporations were in any financial difficulty until after the sale in question. The court found that the bank had no knowledge of any fraud on the plaintiff at the time the milling company used the proceeds of the sale in question to pay off its debt at the bank. The finding was amply supported by the evidence as set out in the opinion.

Concerning the right of the plaintiff to rescind the contract as against the milling company, or its trustee in bankruptcy, the rules are settled. The defrauded party to a sale, whether he be the buyer or seller, has the right to rescind upon the discovery of the fraud.[36] Although a defrauded buyer usually has an adequate remedy at law, since he simply seeks recovery of the purchase price paid, a court of equity may rescind the sale and impose a constructive trust upon the consideration paid by the defrauded buyer if the fraudulent vendor is insolvent and the money is still held by him.[37]

In the instant case, however, the court held that no relief based upon recision could be had as against the trustee in bankruptcy for the milling company, on the ground that the plaintiff had affirmed the contract with the milling company and therefore was not entitled to recision. Since the money which had been obtained from the

36. See cases cited in 3 WILLISTON, SALES § 647 (rev. ed. 1948). The Uniform Sales Act does not provide for the effect of fraud or misrepresentation on sales, but § 73 specifically leaves in effect the common law relating to such matters. TENN. CODE ANN. § 47-1273 (1956).

37. See Trieseler v. Helmbacher, 350 Mo. 807, 168 S.W.2d 1030 (1943); 4 SCOTT, TRUSTS § 462.3 (2d ed. 1956).

plaintiff was no longer in the hands of the milling company or its trustee in bankruptcy, and since the contract had been validated by affirmance, there was certainly no basis for the imposition of a constructive trust as against the trustee in bankruptcy.

As the court held, upon discovery of the fraud the defrauded party to the sale may, rather than rescinding the transaction, elect to affirm it.[38] If he affirms, he cannot later rescind.[39] There are many ways in which the defrauded party may indicate his election to affirm the contract, one of which is by bringing an action against the fraudulent party based upon the validity of the contract.[40] In the present case, plaintiff did almost everything that could be done consistent with the validity of the contract, such as bringing an attachment suit and involuntary bankruptcy proceedings against the milling company, presenting its claim as a general creditor in the bankruptcy proceedings, and making statements under oath that it was the owner of the warehouse receipts in question. The most significant act of affirmance, however, was recovery of judgment in the amount of $140,000 against the bondsman of the Alabama grain elevator. That suit was based upon the theory that plaintiff was the owner of the warehouse receipts in question. The court was certainly justified in holding that there had been an affirmance of the sale.[41]

In regard to plaintiff's suit against the bank, the court stated that affirmance of the transaction by plaintiff rendered immaterial any question of knowledge or good faith on the part of the bank, but went on to say that since the bank received the money in good faith without notice of any fraud, it could not be held as a constructive trustee in favor of plaintiff.[42] As applied to the facts of the case, the latter proposition is clearly correct. The milling company, after receiving a check for the purchase price from plaintiff, drawn upon defendant bank, took the check to defendant bank and deposited it. The milling company then gave the bank a check for the full amount of the milling company's indebtedness to the bank. At the same time, the bank marked all the notes, evidencing the milling company's debt, "paid," and cancelled the trust receipt which it held as security. Whether this method of payment to the bank in satisfaction of the milling company's debt be considered as being made in money, as it apparently was by the court, or by negotiable instrument, the result is the same. The payment of an antecedent debt in money to one who

38. 3 WILLISTON, SALES § 648 (rev. ed. 1948).
39. Labagnara v. Kane Furniture Co., 289 Mass. 52, 193 N.E. 578 (1935).
40. Frederickson v. Nye, 144 N.E. 299 (1924); See Annot., 35 A.L.R. 1163 (1925).
41. As to what acts constitute acts of affirmance see 3 WILLISTON, SALES § 648(a) (rev. ed. 1948).
42. 162 F. Supp. at 833.

has no knowledge of any equity therein, cuts off any prior equities in the money,[43] and since a pre-existing debt is "value" within the meaning of the Uniform Negotiable Instruments Law,[44] the receipt by the bank of a negotiable instrument, without any knowledge that it was obtained by fraud, would cut off any prior equities in the negotiable instrument.[45] And as a general proposition of trust law, it is said that a transfer of property by a constructive trustee to one who pays value without notice of the breach of trust, cuts off the interests of the beneficiary of the trust.[46] The same result would be reached under the Uniform Sales Act if the property in question consisted of "goods" or "documents of title." Under section 24[47] of that act a bona fide purchaser for value from one having a voidable title gets a good title to the goods. Under section 76[48] of the act, satisfaction of a pre-existing debt constitutes value.

2. Legislation.—The most significant legislation in the field of sales during the past year was the enactment of the Retail Installment Sales Act.[49] Such legislation, based on the premise that the installment purchaser cannot protect himself from the sharp business practices of some retail credit establishments, has become increasingly popular[50] with the various states since Indiana enacted the comprehensive Retail Installment Sales Act in 1935.[51] Well over half the states now have such legislation, some of the acts covering specific types of goods, such as automobiles, and others being more comprehensive.[52]

The Tennessee Act covers all "goods" and "services," but specifically excludes motor vehicles, money, choses in action, and personalty sold by a wholesaler or manufacturer for commercial or industrial use.[53] The first protection of the retail customer is the requirement that the retail installment contract be in writing, containing, among other provisions, the cash price of the goods or services, the amount of the buyer's down payment, the amount of the cost to the buyer or any insurance or official fees, and the time price differential,[54] defined as the amount the buyer contracts to pay for the

43. Hall v. Hall, 241 Ala. 397, 2 So. 2d 908 (1941); Stephens v. Board of Education, 79 N.Y. 183 (1879).
44. TENN. CODE ANN. § 47-125 (1956).
45. TENN. CODE ANN. § 47-157 (1956); Reconstruction Fin. Corp. v. Patterson, 171 Tenn. 667, 106 S.W.2d 218 (1937).
46. 4 SCOTT, TRUSTS § 475 (2d ed. 1956).
47. TENN. CODE ANN. § 47-1224 (1956).
48. TENN. CODE ANN. § 47-1276 (1956).
49. TENN. CODE ANN. §§ 47-1901 to -1912 (Supp. 1959).
50. See Savage, *Commercial Law*, 1958 ANN. SURVEY AM. L. 387.
51. IND. ANN. STAT. § 58-902 to -934 (1951).
52. See Note, 58 COL. L. REV. 854 (1958).
53. TENN. CODE ANN. § 47-1902(a) (Supp. 1959).
54. TENN. CODE ANN. § 47-1903 (Supp. 1959).

privilege of paying in installments.[55] The amount of the time price differential which the retailer may charge is limited to a certain amount per $100 of the principal balance per year, the percentage decreasing as the principal increases.[56]

The seller is required, but only upon the buyer's request, to furnish the buyer with a copy of the retail installment contract, and, apparently even without request of the buyer, the seller must deliver or mail to the buyer any policy of insurance, or certificate thereof, which the seller has agreed to purchase, prior to the date the first payment is due on the policy.[57] The seller is also required to give the buyer a receipt for any payments, and when requested in writing by the buyer, a complete statement showing the dates and amounts of payments on the contract, and the total amount unpaid thereunder.[58] This statement must be furnished to the buyer not later than two months after the last payment on the contract.[59] Besides the protection afforded by the notice and disclosure provisions of the statute, the buyer has the privilege under the statute of repaying any installment due under the installment contract and of receiving a refund of a proportional amount of the time price differential.[60]

There is separate treatment of retail charge agreements,[61] as distinguished from retail installment contracts. The difference between the two seems to be that a retail charge agreement contemplates one initial agreement for all subsequent purchases. In general, the retail charge agreement must contain the same provisions as the retail installment contract.[62] A periodic statement must be sent to the purchaser showing the unpaid balance under the agreement, the cash price of purchases during the period, payments made during the period, and the amount of the time price differential.[63]

The statute is specifically made applicable to mail order and telephone sales solicited through the use of catalogs or other printed matter.[64] All of the provisions of the act are applicable to such sales with the exception of the requirement that the copy of the contract must be furnished to the buyer upon his request.[65] It is also provided that if the contract, when received by the seller contains any blank

55. TENN. CODE ANN. § 47-1902(j) (Supp. 1959).
56. TENN. CODE ANN. § 47-1903(d) (Supp. 1959).
57. TENN. CODE ANN. § 47-1903(e) (Supp. 1959).
58. TENN. CODE ANN. § 47-1903(f) (Supp. 1959).
59. *Ibid.*
60. TENN. CODE ANN. § 47-1903(h) (Supp. 1959).
61. TENN. CODE ANN. § 47-1904 (Supp. 1959).
62. *Ibid.*
63. TENN. CODE ANN. § 47-1904(b) (Supp. 1959).
64. TENN. CODE ANN. § 47-1905 (Supp. 1959).
65. *Ibid.*

spaces, the seller may insert in the appropriate spaces any terms which are set forth in the catalog or other printed solicitation.[66]

The seller has the right to provide in the retail installment contract for a limited delinquency charge on installments, for reasonable attorney's fees if referred for collection to an attorney who is not a salaried employee of the retail seller, and for court costs.[67]

The seller is given the right to assign the installment contract or charge agreement.[68] The assignment is not required to be filed for a retained title or a lien on the goods to be valid as against subsequent creditors, purchasers, or encumbrancers of the seller.[69]

Intentional and wilful violations of the act constitute a misdemeanor punishable by a fine not exceeding $500;[70] and the buyer is given the right to recover, set off or counterclaim against the seller, as liquidated damages, the entire amount of the original time balance.[71] If the violation is not intentional or wilful, the buyer can recover twice the amount of the time price differential.[72] In each case the buyer is also entitled to recover reasonable attorney's fees. However, in regard to the sanctions imposed, the statute provides: "[N]o person shall be subject to any penalty for any failure to comply with any provision of this chapter until the retail buyer has notified such person in writing of such failure and unless within thirty (30) days after such notice such failure is not corrected by such person."[73] This latter provision would seem to take away the effectiveness of the sanctions imposed and of the act itself. Under this provision the seller will be able to continue any oppressive business practices against the installment buyer with the assurance of no criminal or civil sanctions unless the buyer notifies him that he has violated the act; and after notification, he has thirty days to protect himself against any liability for even an intentional violation of the act.

As yet there is very little uniformity in this type legislation in those states where it has been adopted, and there are only a few cases interpreting the statutes.[74] The Tennessee statute is comprehensive in its coverage, particularly in respect to its inclusion of "services," without restriction. How effective it will be in protecting the installment purchaser cannot now be determined.

66. *Ibid.*
67. TENN. CODE ANN. § 47-1906 (Supp. 1959).
68. TENN. CODE ANN. § 47-1907 (Supp. 1959).
69. *Ibid.*
70. TENN. CODE ANN. § 47-1908(a) (Supp. 1959).
71. TENN. CODE ANN. § 47-1908(b) (Supp. 1959).
72. TENN. CODE ANN. § 47-1908(c) (Supp. 1959).
73. TENN. CODE ANN. § 47-1908(d) (Supp. 1959).
74. See Note, 58 COL. L. REV. 854 (1958).