PERSONAL PROPERTY

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TITLE

As would be expected, in most of the personal property cases decided during the survey period, the controlling question was one of title. Who held the legal title? Was there a divided ownership of the pensonalty? Did the conduct of a party preclude his claiming title? Since the answers to these questions depend upon the facts of the particular case, it is believed that a somewhat detailed discussion of the facts is justified.

Three cases turned squarely upon whether there had been a passage of title. In *Hinchcliffe v. Pinson*[1] the court had to decide the ownership of an automobile solely on circumstantial evidence—fortified only by the vague legal presumption that title to personalty follows first possession. Plaintiff administratrix offered evidence that, immediately before purchase of the automobile involved, decedent had sent for the exact amount of the purchase price, and had appeared shortly thereafter in possession of the car. It had then been used both by decedent and his family and by defendant, who was decedent's confidential secretary. Defendant's claim that she had furnished the purchase price was supported only by circumstantial evidence, some of which was contradictory. In holding for plaintiff administratrix, the court relied upon the legal presumption arising from first possession and held that subsequent possession by defendant was entirely consistent with title remaining in decedent.

Another case[2] resulted in a directed verdict on the ground that there was never a complete delivery of the personalty to the buyer. Plaintiff had sold to defendant a diesel engine which proved defective, and had later accepted a return of the engine (but not a rescission of the sale), with the understanding that he would try to sell it for defendant. He then authorized defendant to go to the factory in Chicago to get a new one, on condition that defendant was to pay cash for this new one when he returned. Upon his return, defendant refused to pay the entire purchase price of the new machine, alleging a right to subtract therefrom the price of the original, faulty one. The court found that the agreement regarding the purchase of the new machine contemplated a cash sale, the time of payment being the return of defendant to Georgia. Since defendant refused to make

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1. 87 Ga. App. 526, 74 S.E.2d 497 (1953).
2. Taylor v. Gill Equipment Co., 87 Ga. App. 309, 73 S.E.2d 755 (1952).

the payment, the delivery of the new engine was never, in contemplation of law, completed. Title to it thus remained in defendant, who could sue for it in trover.

In *Lee v. Hamilton*[3] the Court of Appeals had held that a county commissioner from whom a car belonging to the county had been stolen did not have sufficient interest in the car to support a trover action, in his individual capacity, against the dealer to whom the thief had sold it. The case was again before the courts during the past year, this time in the form of a bail trover action by the county against the dealer. The dealer set up as a defense the fact that an insurance company had paid the county commissioner $1,600 insurance for the car, and that the commissioner had thereupon executed to the company a "loan receipt." The company argued that this "loan receipt," plus the fact that the proceeds had been paid over to the county estopped the county from claiming title to the car. The Court of Appeals held,[4] however, that the loan receipt, which did not disclose that the commissioner was acting for the county, could have no effect upon the county's title to the car. Title remained in the county, and possession of the car by defendant, though acquired in good faith, constituted a conversion as against the true owner.

Ratification of Unauthorized Dealings

Ratification, by words or conduct, of an otherwise illegal or unauthorized act of another may deprive the true owner of his right to claim personalty which had theretofore been his. In *Southern Motors of Savannah v. Kreiger*[5] the plaintiff, upon his discharge from the Army, discovered that his wife had traded his car for a new one and had obligated the two of them jointly to defendant for the purchase price of the new one. Plaintiff immediately took steps to disaffirm her action, but, being unable to locate the president of defendant company, he had had some repairs made on the new car and had then taken a two-week trip in it to Baltimore. When he returned, he again tried, unsuccessfully, to contact the president. After notifying defendant that he stood ready to return the new car, on condition that his old one were returned to him, he filed this trover action. A verdict for the value of his old car was reversed, the court holding that his having repairs made on the new car and his taking an extended trip in it constituted a ratification of the unlawful contract made by his wife. Aside from the question of ratification, the court also held that his recovery was prevented by the fact that his offer to return the new car was conditional and hence ineffective as a prerequisite to the maintenance of a trover action.

3. 83 Ga. App. 59, 62 S.E.2d 419 (1950).
4. Hamilton v. Pulaski County, 86 Ga. App. 705, 72 S.E.2d 487 (1952).
5. 86 Ga. App. 574, 71 S.E.2d 884 (1952).

Ratification of a different sort deprived plaintiff of his title to a car in *Kitchens v. Beverly*.[6] Defendant, a sheriff, had seized plaintiff's car on a charge of possessing non-tax paid liquor. A few days after the seizure, defendant turned the car over to federal authorities, who had it forfeited in condemnation proceedings. The case against plaintiff in federal court was *nol. prossed.*, and the one in state court resulted in a verdict in his favor. He then filed this bail trover action against defendant for recovery of his car. A verdict for defendant was affirmed by the Court of Appeals. Under Georgia law, the sheriff was under a duty to turn the seized property over to the solicitor within ten days.[7] His failure to do so, however, was justified by the fact that 26 U.S.C., Sec. 2803 gives the federal court concurrent jurisdiction with the state court in such cases. Since defendant was in no way connected with the federal government, he acted merely as a private citizen in turning the car over to it; the acceptance of the car by the federal authorities, however, constituted a ratification of, and gave validity to, all his dealings with the car.

Closely akin to ratification is the element of estoppel. In *Light v. Smith*[8] a conditional buyer of a trailer, who had not yet paid all of the purchase price, consigned it to defendant for purposes of sale. When the conditional buyer defaulted in some of the payments, the conditional seller demanded possession of the trailer from defendant, and the latter surrendered it to him without legal process. To a bail trover action then filed by the conditional buyer, defendant replied that his surrender to one with paramount title was legally justified. On an appeal from the verdict in favor of defendant, the Court of Appeals held that a directed verdict should have been rendered for plaintiff. A new trial was ordered solely to allow the jury to fix the value of the trailer and its hire. Although technical legal title remained in the conditional seller, defendant should not have been allowed to show that fact. An agent cannot deraign the title of his principal, and defendant had accepted the trailer as the property of plaintiff. His surrender of it without legal process constituted a converson.

Duty of Care of a Bailee

The duty of care required of one in possession of personalty belonging to another was discussed in three cases, all of which resulted in verdicts for the bailee. In *Railway Express Agency v. Parker Fish Co.*,[9] the consignee of some fish shipped from Canada sought to recover damages from the carrier on the ground that it was negligent in failing to keep the fish properly iced while in transit, as a result of which they were spoiled when received by plaintiff. A verdict for plaintiff was reversed, the Court of

6. 86 Ga. App. 880, 72 S.E.2d 819 (1952).
7. Ga. Code § 58-207 (1933).
8. 86 Ga. App. 591, 71 S.E.2d 844 (1952).
9. 87 Ga. App. 779, 75 S.E.2d 180 (1953).

Appeals holding that there was no evidence that the fish were not spoiled when they were received by the carrier in Canada. Since it was an interstate shipment, the presumption of negligence authorized by Code section 18-102 is inapplicable. There was opinion evidence, by defendant's own agent, that the fish did not "appear" to have been properly iced en route. The court, however, stressed the fact that there was no evidence that the goods were in any worse condition when received by the consignee than when received by the carrier from the consignor in Canada. This decision seems to put an impossible burden of proof upon the consignee, who necessarily has no means, other than the appearance of the goods upon their arrival, to prove the care exercised by the carrier during transit.

Millender v. Looper[10] held that, even though warehouse receipts have been issued for the bailed property, the bailor is estopped from holding the warehouseman liable for surrendering the goods to an agent of the bailor without demanding the receipts, if the bailor and the warehouseman had previously by-passed use of the receipts in their dealings with the goods. Despite the ideals of the Uniform Warehouse Receipts Act, the authors of that Act were forced to compromise with reality and accept the common law rule justifying the surrender of goods without receipts when the surrender is made "to the person lawfully entitled to posession of the goods, or his agent."[11]

The bailee was also protected in *Wood v. Sanders*,[12] which held that the provisions of Code section 107-101 do not apply when the bailee's possession was lawfully acquired. This section states that it is not necessary to prove a conversion in an action of trover if defendant is in possession of the property when suit is brought. The bailment in this case was strictly gratuitous, the bailor had removed part of the goods, and the bailee had exercised no dominion over them other than allowing them to remain in his garage. How this case stayed in court as long as it did is not apparent from the reports, especially in view of the fact that there was no allegation or proof that defendant ever prevented plaintiff from removing the property; on the contrary, there was positive evidence that defendant had repeatedly requested that it be removed.

Timber Leases

Two cases during the survey period involved rights arising under timber leases. One of them[13] was concerned solely with construction of a clause which provided that "purchasers shall not cut over any portion of the land more than once." Plaintiff argued that this required the purchasers to "cut clean," by continuous operation, all the specified types of timber

10. 86 Ga. App. 430, 71 S.E.2d 724 (1952).
11. U.W.R.A., § 9(a), as adopted in Ga. Code § 111-411 (1933).
12. 87 Ga. App. 84, 73 S.E.2d 55 (1952).
13. Roberts Marble Co. v. Bridges, 209 Ga. 401, 73 S.E.2d 89 (1952).

when they entered any particular area of the land. In dismissing plaintiff's petition on demurrer, the court held that this was not correct. The sole purpose of the quoted provision was to prevent the purchaser from taking advantage of further growth of the timber during the term of the lease. To be valid, plaintiff's contention would have to be supported by a more specific provision, such as that in *Bozarth v. Paschall,*[14] which required that the purchasers cut-clean "as they go."

In the other timber lease case, the owner of land, after executing a security deed to plaintiff, had then sold a quantity of timber on the land to defendant, who proceeded to cut and remove it. When plaintiff discovered these activities, he sued defendant for conversion of the timber. A directed verdict in his favor was affirmed[15] on the authority of *Ga. Laws* 1939, p. 340, which makes one who cuts and removes timber without the written consent of the holder of the legal title to the land liable for a conversion. The holder of the security deed may sue individually or jointly with the grantor of the security deed, his recovery being limited, of course, to the amount of the unpaid balance due under the security deed.

TAXES

One tax case[16] is of interest from the point of view of personal property. It involved the question of whether there is a "retail sale" or a "sale for resale" when a wholesaler sells a shoe repairman leather to be used in repairing shoes. The Court of Appeals held that the wholesaler must collect the sales tax from the repairman, because the sale of materials to the repairman is a "retail sale" unless the repairman makes separate charges to his customers for materials and labor. It would seem to follow, as pointed out by Judge Felton in his dissent, that the repairman is in a position "to write his own sales tax law" by electing to make or not to make separate charges for substantial materials furnished by him.[17]

14. 158 Ga. 208, 122 S.E. 683 (1924).
15. Cordele Sash, Door & Lumber Co. v. Prudential Insurance Co. of Amreica, 86 Ga. App. 738, 72 S.E.2d 497 (1952).
16. Craig-8ourial Leather Co. v. Reynolds, 87 Ga. App. 360, 73 S.E.2d 749 (1952).
17. This notion is supported by P-H, *Ga. State and Local Tax Service,* ¶¶ 21, 184(.5).