

PERSONAL PROPERTY AND SALES

By FRANK M. MCKENNY*

Again this year the most important development in this field was statutory, concerning changes in the UNIFORM COMMERCIAL CODE.

Fewer cases than usual were decided in the field of personal property and sales during the current survey period, and these cases followed established precedents.

WARRANTIES

In *Wilson v. Taylor*,¹ an affidavit of illegality alleging breach of warranty was filed to a suit on a retention title contract. The defendant in fi fa had purchased two tobacco curing machines, upon which the thermostats were defective. The plaintiff promised to repair the thermostats if the defendant would execute a conditional sales contract. The defendant therefore signed a contract containing the clause: "purchaser accepts under warranty of manufacturer only." A judgment dismissing the affidavit of illegality was reversed. The seller's promise to repair the defective machinery constituted an express warranty, upon which the defendant could rely, in spite of the contract's disclaimer of warranty.

The plaintiff in *Griffith v. Chevrolet Motors Division*² had been injured by a truck, because of the truck's defective steering mechanism. A general demurrer was sustained to his suit against the manufacturer of the truck. The Court of Appeals reversed the trial court, on the grounds that while the plaintiff could not maintain his suit on a breach of warranty based upon GA. CODE section 96-307, because he was not an ultimate consumer, his petition stated a good cause of action on tort principles,³ and should not have been dismissed.

One case⁴ involving breach of warranty was reversed for failure to charge the proper measure of damages, *i.e.*, the difference between the contract price of the auto, and its true value.

SALES

In *Black v. Albany Bowling Supply, Inc.*,⁵ an insolvent vendor trans-

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1. 106 Ga. App. 720, 128 S.E.2d 83 (1962).
2. 105 Ga. App. 588, 125 S.E.2d 525 (1962).
3. *McPherson v. Buick Motor Co.* 217 N.Y. 382, 111 N.E. 1050 (1916); *Washburn Storage Co. v. General Motors Corp.*, 90 Ga. App. 380, 83 S.E.2d 26 (1954).
4. *Davis-Pickett Chevrolet, Inc. v. Collier*, 106 Ga. App. 660, 127 S.E.2d 923 (1962).
5. 107 Ga. App. 357, 130 S.E.2d 263 (1963).

ferred his stock of goods to a corporation, in exchange for ten shares of the corporate stock. These stock certificates were then reconveyed to the corporation, in trust, until creditors claims were cleared. The court held that failure to comply with the BULK SALES ACT⁶ rendered the sale fraudulent and void. The vendor's trustee in bankruptcy could therefore recover the goods from the vendee. The void sale was complete when the stock certificates were delivered to the vendor. The reconveyance was only for security, and did not relieve the parties of the duty of complying with the BULK SALES ACT.

In *Chatam v. Clark's Food Fair, Inc.*,⁷ the plaintiff bought a "model 924" boathouse from the defendant, and paid the purchase price. The defendant mailed a bill of sale to the plaintiff, describing the property as a "model 924". Plaintiff tried to take the boathouse, but was prevented from doing so by bad weather. When the boathouse sank while still in the possession of the defendant, the plaintiff brought suit to recover the purchase price. The Court of Appeals reversed a judgment for the defendant. There had been no actual delivery of the property, and the bill of sale did not sufficiently distinguish the property from other boathouses of the same model number in defendant's possession, to amount to a constructive delivery. Risk of loss was therefore still on the seller.

Another case⁸ restated the settled rule that repossession and sale does not of itself rescind a conditional sales contract. The holder may pursue any number of consistent remedies to obtain the contract price. This case also holds that judicial sales are subject to Georgia sales tax.⁹

BAILMENT

Deloach v. Automatic Transmission and Brake Shop, Inc.,¹⁰ was a damage suit for destruction of bailed property. The plaintiff's automobile had been left with the defendant for repairs and was destroyed by fire while still in the possession of the defendant. In affirming a judgment for the defendant, the court outlined the shifting burden of proof in such cases. The bailor establishes a prima facie case by showing a bailment and loss. The bailee must then show proper diligence in safeguarding the property. When evidence of proper diligence is introduced, the burden reverts to the plaintiff bailor to prove that the loss was caused by the bailee's negligence. The plaintiff in the instant case failed to carry this burden.

6. GA. CODE §28-204.

7. 106 Ga. App. 649, 127 S.E.2d 868 (1962).

8. *Hopkins v. West Publishing Co.*, 106 Ga. App. 596, 127 S.E.2d 849 (1962).

9. *Id.* at 601.

10. 106 Ga. App. 797, 128 S.E.2d 512 (1962).

TITLE CONTESTS

An automobile dealer purchased certain cars out of the state, and shipped them to his agent in Georgia. The drafts given in payment for the cars were not honored, and the vendor brought a bail trover against the dealer. The dealer, being unable to deliver up the property, or give bond, was confined to jail. In due course, he filed his application to be discharged from jail, on grounds that he was not able to deliver the property or to furnish satisfactory security.¹¹ The superior court denied his petition, and on appeal, the Court of Appeals affirmed the judgment.¹² The court pointed out that the defendant admitted delivering the property into the hands of his agent, and the possession of an agent is deemed the possession of his principal.¹³ The defendant's contention that his agent had sold the cars and misappropriated the proceeds was not sufficient to overcome the presumption that, once established, possession continues.¹⁴ The defendant was therefore remanded to jail, there to ponder the presumptions and technicalities of the law. To this writer, there seems to be much merit in the defendant's argument that the presumptions relied upon by the court have no place in deciding whether a person has complied with the requirements of law for release from jail in a bail trover action. Actual personal inability to deliver the property would be a fairer rule.

In *Byrd v. Byrd*,¹⁵ the plaintiff sought to recover certain personal items and tools from his ex-wife. A prior alimony decree had awarded the ex-wife "all of the household and kitchen furniture," and she set up that judgment in a plea of *res judicata*. The Court of Appeals reversed the judgment of the trial court sustaining the plea. The court approved the definition of household furniture as "all articles necessary or ornamental to a house, having a domestic use, but not personal use of one occupant."¹⁶ A re-trial was ordered, at which each item claimed by the plaintiff would be found to be "household furniture" and subject to the divorce decree or "personal items" whose ownership would then be determined.

In *Bromley v. Bromley*,¹⁷ the plaintiff sought to recover for the conversion of certain stock certificates. The plaintiff had conveyed the stock to the defendant as collateral for a note. He contended the transaction was a "pledge," and that the defendant was guilty of

11. GA. CODE §107-205 (1956 Rev.).

12. *Mullis v. The Packer Corp.*, 106 Ga. App. 776, 128 S.E.2d 544 (1962).

13. *Finkelstine v. State*, 105 Ga. 617 (1898).

14. *Securities Trust Co. v. Marshall*, 30 Ga. App. 379, 118 S.E. 478 (1923).

15. 106 Ga. App. 89, 126 S.E.2d 270 (1962).

16. *Earl v. Barrett*, 54 Ga. App. 514, 180 S.E. 855 (1935).

17. 106 Ga. App. 606, 127 S.E.2d 836 (1962).

conversion in asserting ownership of the shares. The Court of Appeals held that the words used in the conveyance created a bill of sale to secure a debt, passing title, rather than a pledge, merely giving a right of possession. The plaintiff must therefore tender the amount of the debt in order to be entitled to have the security reconveyed. In this case, however, the creditor had demanded payment of debts in addition to those secured, as a condition for release of the stocks. This demand eliminated the necessity of tender, divested the lien and entitled the plaintiff to have the security returned.

STATUTES

The new UNIFORM COMMERCIAL CODE¹⁸ was extensively amended by the last session of the General Assembly. The amendments, while numerous, are mostly of a technical nature.¹⁹ As the "Repealer" clause of the act was itself repealed, and replaced, it is possible that some unintentional changes may result from this legislative tinkering. The most important apparent change moved the effective date of the act from January 1, 1963, to January 1, 1964.²⁰ All transactions subsequent to that date will be governed by the new law. As the General Assembly will not meet before the effective date, there is no hope for a further reprieve.

18. GA. CODE ANN. tit. 10A.

19. Ga. Laws, 1963, pp. 188-214.

20. *Id.* at p. 204.