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Conflict of Laws: Rights of Seller Under Conditional Sales Contract When Buyer Removes Property form State

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Regardless of the traditional distinction between the narrow writ of error at law, now abolished in Florida,[19] and appeal in equity, which opens the entire record made below,[20] our Supreme Court has of necessity promulgated its own procedural rules. The requirement of compliance with these, at law as well as in equity, is evidenced by the fact that Rule 2 of the Florida Supreme Court Rules of Practice [21] controls all appeals taken in law actions and equity suits.[22] It follows logically that all of the Supreme Court Rules similarly control appellate procedure.

In exploring the extent to which a cross-assignment takes on the characteristics of an appeal, no authority has been found determining whether the mere filing of cross-assignments of error entitles the appellee to a supersedeas. Furthermore, the Court did not have to decide in the principal case whether the appellee must pay costs before assigning cross-errors, inasmuch as he had already paid these. Nevertheless, the decision, in permitting on one appeal complete coverage of all issues involved in the cause, indicates a trend toward simplification of the procedure involved in an appeal at law. This accords with the Florida statute[23] that changed the method of review of a judgment in a common-law action by abolishing writ of error and by substituting appeal, as in equity.

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CONFLICT OF LAWS: RIGHTS OF SELLER UNDER CONDITIONAL SALES CONTRACT WHEN BUYER REMOVES PROPERTY FROM STATE

Inman v. Rowsey, 41 So.2d 655 (Fla. 1949)

The plaintiff vendor entered into a conditional sales contract in California for the sale of an automobile then located in that state.

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[19]See note 4 *supra.*

[20]Parken v. Safford, 48 Fla. 290, 37 So. 567 (1904); Foster v. Ambler, 24 Fla. 519, 5 So. 263 (1888).

[21]Enacted as FLA. STAT. §59.01(3)(6)(8) (1949).

[22]*See* Miami v. Saco, 156 Fla. 634, 637, 24 So.2d 115, 116 (1945); State *ex rel.* Wilson v. Quigg, 154 Fla. 348, 352, 17 So.2d 697, 700 (1944).

[23]See note 4 *supra.*

Shortly thereafter the buyer and automobile disappeared without the knowledge or consent of the vendor. The automobile appeared in Georgia about a month later, where it was sold at one of the well-known automobile auctions to a Floridian. This purchaser, holding a Georgia bill of sale, applied for and received a title certificate in accordance with the Florida statute.[1] The automobile was subsequently sold in Florida to a used-car dealer, who sold it to defendant. All buyers were bona fide purchasers. The applicable Florida statute[2] required recordation of contract liens such as the one held by the plaintiff. Plaintiff, the California vendor, recovered in an action of replevin in the lower court; the defendant appealed. HELD, the vendor's rights were lost by failure to record in Florida as required by the Florida statute. Judgment reversed.

At common law, within any single jurisdiction, domestic conditional sales were generally recognized *inter partes*.[3] In the United States, Louisiana was the only exception, since its laws emanate from the civil law.[4] The great majority of courts also protected the conditional vendor against bona fide purchasers[5] and creditors.[6] As various states adopted recording statutes, the courts generally continued to uphold the conditional sales contract *inter partes* even though the contract was not recorded,[7] and as against bona fide purchasers if the vendor had complied with the local recording statutes.[8]

Today the majority of courts follow the conflict-of-laws rule that retention of title by the conditional vendor against all third parties is determined by the law of the state in which the chattel was

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[1]FLA. STAT. §319.02 (1941), repealed, Fla. Laws 1947, c. 23658, §16.

[2]FLA. STAT. §319.15 (1941).

[3]Detroit Steel Cooperage Co. v. Sistersville Brewing Co., 233 U. S. 712 (1914); Alexander v. Kellner, 131 App. Div. 809, 116 N. Y. Supp. 98 (1909); 2A U. L. A. 46 (1924).

[4]Universal C. I. T. Credit Corp. v. Victor Motor Co., 33 So.2d 703 (La. 1948); Overland Texarkana Co. v. Bickley, 152 La. 622, 94 So. 138 (1922).

[5]Pacific Finance Corp. v. Hendley, 103 Cal. App. 335, 284 Pac. 736 (1930); Van Allen v. Francis, 123 Cal. 474, 56 Pac. 339 (1899); Roof v. Chattanooga Wood Co., 36 Fla. 284, 18 So. 597 (1895); Goodwin v. May, 23 Ga. 205 (1857), 2A U. L. A. 47 (1924).

[6]Ross v. Thomas, 24 Cal. App. 734, 142 Pac. 102 (1914); Jackson Sharp Co. v. Holland, 14 Fla. 384 (1874); 2A U. L. A. 48 (1924).

[7]Bank of Ringgold v. West Publishing Co., 61 Ga. App. 426, 6 S. E.2d 598 (1939).

[8]Beckwith Machinery Co. v. Matthews, 57 A.2d 796 (Md. 1948); Spencer

located at the time of sale.[9] If the contract be valid and properly recorded in such state, it will be enforced in any other state.[10] This is especially true when the chattel is removed without the knowledge and consent of the vendor,[11] unless the forum has a statute which expressly or by clear implication requires that foreign-executed conditional sales contracts be recorded.[12]

Justification for application of the traditional rule of comity is found in the fact that it relieves the conditional vendor of the impracticable burden of recording in all of the several states, thereby promoting easier credit, which in turn, so it is claimed by some, benefits interstate trade and commerce.[13] Furthermore, at first glance it seems reasonable to apply the ancient doctrine of *caveat emptor,* since conditional sales and other installment buying plans are matters of general knowledge among the business class and buying public. On the other hand, it is obviously unreasonable to require the bona fide purchaser to peruse the records of all the states, and in some instances of counties, to search for possible encumbrances that may later be asserted against him. The buying public does not have the technical knowledge necessary to make such a search; and the cost is in any event prohibitive.

The minority holding, accepted by Florida,[14] does not deny full faith and credit to the recording statutes or laws of sister states governing contracts encumbering personal property, since their re-

v. Staines, 292 Mich. 672, 291 N. W. 50 (1940); 2A U. L. A. 53 (1924).

[9]*E.g.,* Kelley v. Brack, 214 Ky. 9, 282 S. W. 190 (1926); U. S. Fidelity Co. v. Northwest Eng. Co., 146 Miss. 476, 112 So. 580 (1927); Youssoupoff v. Widener, 246 N. Y. 174, 158 N. E. 64 (1927); *cf.* RESTATEMENT, CONFLICT OF LAWS §272 (1934); 2 BEALE, CONFLICT OF LAWS §272.2 (1935); 3 JONES, CHATTEL MORTGAGES AND CONDITIONAL SALES §1147 (Bower's ed. 1935).

[10]RESTATEMENT, CONFLICT OF LAWS §273 (1934).

[11]RESTATEMENT, CONFLICT OF LAWS §275 (1934); GOODRICH, CONFLICT OF LAWS §156 (3rd ed. 1949).

[12]Goetschius v. Brightman, 245 N. Y. 186, 156 N. E. 660 (1927), *affirming* 214 App. Div. 158, 211 N. Y. Supp. 763 (1927); GOODRICH, CONFLICT OF LAWS §157 (3rd ed. 1949).

[13]Beale, *Jurisdiction over Title of Absent Owner in a Chattel,* 40 HARV. L. REV. 805 (1927); Carnahan, *Tangible Property and The Conflict of Laws,* 2 U. OF CHI. L. REV. 345 (1935); Griffin, *Effect of Foreign Chattel Mortgages upon the Rights of Subsequent Purchasers and Creditors,* 4 MICH. L. REV. 358 (1906); Lee, *Conflict of Laws Relating to Installment Sales,* 41 MICH. L. REV. 445 (1942); Stumberg, *Chattel Security Transactions and the Conflict of Laws,* 27 IOWA L. REV. 528 (1942).

[14]Lee v. Bank of Georgia, 159 Fla. 481, 32 So.2d 7 (1947).

cordation laws have no extra-territorial effect.[15] Nor does there arise any problem of impairment of the obligation of a contract by the Florida forum in refusing, on the basis of public policy, to enforce a valid foreign contract.[16] Admittedly, the conflicts issue involved in this type of case is not infrequently misconceived by the bench and bar, as decisions from other jurisdictions demonstrate.[17] The contract here involved, accurately speaking, is a contract of resale, negotiated and executed in its entirety outside California. The rights of the parties to the original contract of sale, as distinct from the subsequent contracts of resale, are not in question. Here, third parties to the original contract are concerned; the validity of that contract is not in issue, and accordingly the decisions requiring full faith and credit to be given by a state to a valid contract made or to be performed outside its borders, even when limitation of action provisions are embodied in such contract, are beside the mark.[18] The public policy of Florida prefers enforcement of the Florida contract of resale to a bona fide purchaser for value as against support of the original California contract of sale when application thereof to an innocent third party is sought without compliance by the original vendor with Florida recordation requirements. The choice here lies with Florida.[19]

The adoption of either view is, in the final analysis, a matter of policy to be determined by the individual state. The application of neither rule, however, gives the ideal practical result; in either event

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[15]Hervey v. Rhode Island Locomotive Works, 93 U. S. 664 (1876); Kellogg-Citizens Nat. Bank of Green Bay, Wis. v. Felton, 145 Fla. 68, 199 So. 50 (1940); Crowell v. Skipper, 6 Fla. 580 (1856). *But cf.* GOODRICH, CONFLICT OF LAWS §156 (3rd ed. 1949); Stumberg, *Chattel Security Transactions and the Conflict of Laws*, 27 IOWA L. REV. 528, 548 (1942).

[16]Griffin v. McCoach, 313 U. S. 498 (1941); Walters & Walker v. Whitlock, 9 Fla. 86, 76 Am. Dec. 607 (1860), followed in General Elec. Co. v. Porter Carroll Hardware Co., 94 Fla. 1000, 114 So. 671 (1927).

[17]See note 9 *supra*.

[18]*Compare* Alaska Packers Ass'n v. Industrial Accident Comm'n of California, 294 U. S. 532 (1935), *with* Seeman v. Philadelphia Warehouse Co., 274 U. S. 403 (1927); *cf.* Order of United Commercial Travelers v. Wolfe, 331 U. S. 586 (1947); Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 (1934); Home Ins. Co. v. Dick, 281 U. S. 397 (1930); Aetna Life Ins. Co. v. Dunken, 266 U. S. 389 (1924).

[19]Pink v. A. A. A. Highway Express, 314 U. S. 201 (1941); Griffin v. McCoach, 313 U. S. 498 (1941); Union Trust Co. v. Grosman, 245 U. S. 412 (1918); *cf.* Loucks v. Standard Oil Co. of New York, 224 N. Y. 99, 120 N. E. 198 (1918).