Indiana Law Journal

Volume 8 | Issue 8 Article 6

5-1933

Conditional Sales-Rights of Parties on Default

CONDITIONAL SALES—RIGHTS OF PARTIES ON DEFAULT.—On May 29, 1929, appellant and appellees entered a conditional sales contract for the purchase by the appellant from the appellees of a refrigerator. According to this contract the purchase price was to be paid in monthly installments of $19.78 with six per cent interest on each installment after its maturity. The title was to remain in the appellees until the purchase price had been fully paid. The contract further provided that on default by the appellant in any installment the appellees might at their option take possession of the refrigerator and any sums previously paid would be considered payment for the use of the property including its depreciation. On November 26, 1929, after appellant had defaulted in the payments, appellees exercised their option and repossessed the property. The husband of the appellant testified that in a talk with appellees on May 16, 1930, it was agreed that appellees were to redeliver the refrigerator on payment of $78.66 by the appellant; that this was paid on that day but appellees refused to redeliver until all payments in arrears had been made. Suit was brought by appellant for money had and received by appellees for appellant's use and benefit. From a judgment of the trial court for the appellees, this appeal was taken. *Held,* affirmed.[1]

Appellant defaulted in the payments under the written conditional sales contract entered into on May 29, 1929. There is some conflict in the authorities as to the rights of the parties to a conditional sales contract when the conditional buyer defaults and the seller repossesses the property. It is the rule in some jurisdictions that the buyer may recover any amounts paid under the contract.[2] In other jurisdictions the amount paid

---

[1] *Schwab v. Schmall,* Appellate Court of Indiana (1932), 183 N. E. 328.

[2] *International Harvester Co. v. Lockwood* (1932), (Ind. App.), 179 N. E. 736; *Hill v. Townsend* (1881) 69 Ala. 286; *Miller v. Steen* (1866), 30 Cal. 402, 89 Am.

by the buyer is forfeited.[3] Although both of these views are subject to criticism, the latter would appear to be the better view. In *Pfeiffer v. Norman*[4] the court said: "The question then arises whether, on the termination of such a contract, caused by the default of the vendee, the vendee may recover the partial payments made thereon. A few states seem to hold that he can do so, but it is not clear as to what extent their decisions are governed by statute. In this state there is no statute specifically covering such case. In any event, it seems clear that the great weight of authority, as well as of reason, is to the effect that in an action at law the vendee cannot recover such payments where he is the party in default. To hold that he might do so would lead to startling results." As is said by one authority, it would be offering a bounty for the violation of contracts. The Uniform Conditional Sales Act attempts to diminish the hardships that might result under either of these two rules and provides for repossession by the seller,[5] but protects the defaulting buyer by compelling the seller to comply with certain other provisions.[6] Indiana has not adopted this act and no statute governs the situation as do statutes in some states. There is no doubt that in Indiana the seller may repossess the property.[7] The rule has been stated: "It is a settled rule of law that if personal property is sold, title to remain in the seller until the purchase is fully paid, and there is default on the part of the purchaser in making the payment as agreed, the seller may elect to retake the property as owner thereof, or he may treat the sale as absolute and sue for the price."[8] The law in Indiana as to the right of the buyer to recover the amount paid in a situation where the seller elects to repossess the property appears to follow the rule submitted above as the minority view. It has been said: "But in Indiana it is a condition precedent to retaking that the seller return to the buyer whatever part payments he has made less damages done to the goods and the value of the use of the same, unless there is a provision in the contract of sale providing for a forfeiture of part payments. This is upon the theory that the seller is retaking the goods for his own use and is rescinding the contract."[9] In as much as the contract in the instant case contained a provision denying appellant the right to recover any amount paid, there is no basis for the contention that appel-

---

Dec. 124; *Hamilton v. Singer* (1870) 54 Ill. 370; *Preston v. Whitney* (1871), 23 Mich. 260; *Quality Clothes Shop v. Keeney* (1914) 57 Ind. App. 500, 106 N. E. 541.

[3] *Eiler's Music House v. Oriental Co.* (1912), 69 Wash. 618, 125 Pac. 1023; *Fields v. Williams* (1891), 91 Ala. 502, 8 So. 808; *Hughes v. Keely* (1873), 40 Conn. 148; *Fleck v. Warner* (1881) 25 Kans. 342; *White v. Oakes* (1896), 88 Me. 367, 34 Atl. 175; *Lorain Steel Co. v. Norfolk, etc. Ry. Co.* (1905), 187 Mass. 500, 73 N. E. 646; *Duke v. Shakelford* (1879) 56 Miss. 552.

[4] (1911) 22 N. D. 168, 133 N. W. 97 at 99.

[5] Uniform Conditional Sales Act, Section 16.

[6] Uniform Conditional Sales Act, Sections 18, 23, 25.

[7] *Quality Clothes Shop v. Keeny* (1914), 57 Ind. App. 500, 106 N. E. 41; *Reeves v. Miller* (1910), 48 Ind. App. 339, 91 N. E. 812; *Randall v. Chaney* (1926), 84 Ind. App. 280, 151 N. E. 105; *Peoples State Bank of Ind. v. Hall* (1925), 83 Ind. App. 335, 148 N. E. 486; *Green v. Sinker, Davis & Co.* (1893), 135 Ind. 434, 35 N. E. 262.

[8] *Randall v. Cahney* (1926), 84 Ind. App. 280, 151 N. E. 105, citing *Smith v. Barber* (1899), 153 Ind. 322, 53 N. E. 1014 and cases cited.

[9] (1926) I Ind. L. J. 194 at 199.

lant should recover the amount paid by her under the original contract unless the subsequent oral agreement alters the situation.

There are no facts set out in this case that would bring the contract in controversy within the terms of 1926 Burns' 8049 requiring the contract to be in writing and therefore the written contract could very well be modified by the subsequent oral agreement.[10] But, as was pointed out in *Pfeiffer v. Norman*,[11] this would not entitle the defaulting buyer to recover the amount paid under the original contract, and no question is presented as to payments under the contract as modified for no payments were made under it. J. S. H.

JURISDICTION OVER A FOREIGN CORPORATION—CONSTITUTIONAL LIMITATIONS ON EXERCISE OF JURISDICTION.—The plaintiff, a foreign corporation, which had not complied with the statutes permitting it to do business within this state, brought an action in the Delaware Superior Court upon six notes of five hundred dollars each which were executed in Missouri and payable in Massachusetts. The defendant was a foreign corporation engaged in the traveling show business, and it had not complied with the statutes permitting it to do business within this state, but at the time this action was commenced it was giving exhibitions in Muncie, Indiana. The general manager of the defendant corporation was served with process and the defendant corporation's property was attached. The defendant filed a plea in abatement questioning the jurisdiction of the court, and from a decree abating the action the plaintiff appealed. *Held*, that the court did have jurisdiction *quasi in rem* by attachment of the defendant's tangible property within the jurisdiction of the court.[1]

This is the first time that either the Supreme or the Appellate Court of this state has been called upon to pass upon this identical question, and it seems that this question has not yet been settled by the Supreme Court of the United States.[2]

In the opinion the court used the word jurisdiction in three different ways: first, general jurisdiction in the international sense meaning the power of the state to create rights which under the common law will be recognized as valid in other states;[3] second, jurisdiction over the defendant meaning the power to render a valid personal judgment against the defendant; and third, jurisdiction *in rem* meaning the power to create a valid judgment to the extent of property attached under the statute.[4] It is important and much confusion may be avoided if the meaning of the word jurisdiction, as used at a particular time, is kept in mind.

---

[10] *Robinson v. Harner* (1911), 176 Ind. 226, 95 N. E. 561; *Guthrie v. Carpenter* (1904), 162 Ind. 417, 70 N. E. 486; *Loomis v. Donovan* (1861) 17 Ind. 198; *Rigsbee v. Bowder* (1861), 17 Ind. 167; *Billingsley v. Stratton* (1858) 11 Ind. 396; *Rhodes v. Thomas* (1851), 2 Ind. 638.

[11] (1911) 22 N. D. 168, 133 N. W. 97.

[1] *Dodgem Corp v. D. D. Murphy Shows Inc.*, App. Court of Ind., December 23, 1932, 183 N. E. 699.

[2] American Law Institute, Restatement of the Law of Conflict of Laws, proposed final draft No. 1, Sec. 97, special note p. 135.

[3] *Supra*, Sec. 43.

[4] Burns' Ann. St. 1926, Sec. 981.