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Sales Act-Applicability to Sales of Less than Five Hundred Dollars-Constitutionality

SALES ACT—APPLICABILITY TO SALES OF LESS THAN FIVE HUNDRED DOLLARS—CONSTITUTIONALITY—The plaintiff entered into an oral contract to sell certain cherry trees when sawed into lumber, at an agreed price of $50 per thousand feet. He converted them into lumber and delivered them to defendant's lumber yard. Defendant refused to pay for them, alleging that he had contracted to buy 3,500 feet of select, clear cherry and that the lumber delivered was not of this type. The jury found for the plaintiff, the seller, and returned a verdict of $300. Defendant contended that the contract was controlled by the Sales Act, but on appeal it was held that the Sales Act did not apply because it is applicable only to sales of over $500, the court citing Section 4, Acts of 1929, c. 192, page 628 at P. 629, and that there was no evidence that this sale was $500 or more.[1]

This would seem to be a unique application of the Sales Act, since there is nothing in the statute itself which would limit it to sales over $500 and there is no authority to that effect. Of course, there has been no considerable litigation under the Act involving sums under $500 for the obvious and practical reason that people hesitate to bring actions for small sums. However, there have been decisions under the Sales Act where the amounts involved were less than $500[2] and it is at least dubious whether the principal case will be followed even in Indiana. Yet the decision of the court is correct, because even though the Sales Act does apply in this transaction, writing is by the Act not required unless the value amounts to $500 or upwards.

This is a contract to sell goods, but if it had been a contract to sell choses in action, another interesting question would have arisen. So far as concerns choses in action, the Indiana Sales Act is probably unconstitutional, since the subject is not expressed in the title, "An Act relating to the Sale of Goods." Section 19 of Article IV of the Indiana Constitution provides that every "act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

The purpose of this requirement has been variously expressed: "to prevent surprise and to inform the people of the subject of the legislation,"[3] "to prevent a combination of non-related subjects in the same act,"[4] "so that one reading it may at once understand the scope of the act,"[5] "to afford a fair index of the legislative intent, in case of ambiguity in the context,"[6] etc. Of course, the title need not be a complete index of the body and mere generality of title is not objectionable, the act not covering incongruous legislation without necessary or proper connection.[7]

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[1] Eddleman v. Myers (Feb. 15, 1934), 188 N. E. 802.

[2] Shohfi v. Rice (1922), 241 Mass. 211, 135 N. E. 141; Isaacs v. McDonald (1913), 214 Mass. 487, 102 N. E. 81.

[3] Crabbs v. The State (1923), 193 Ind. 248, 139 N. E. 180.

[4] Sarlls v. State ex rel. Trimble (1929), 201 Ind. 88, 166 N. E. 270.

[5] Provident L. & T. Co. v. Hammond (1911), 230 Pa. 407, 79 Atl. 628.

[6] Commonwealth v. Barney (1903), 24 Ky. L. R. 2352, 74 S. W. 181.

[7] Cannon v. Mathes (1872), 55 Tenn. (8 Heisk.) 504; House v. Creveling

It is clear that regardless of the propriety of such a constitutional provision, so long as it remains in effect, "An Act relating to the Sale of Goods" does not express the purpose of the Sales Act, within the meaning of the constitution, if the provisions of that Act are to apply to sales of choses in action.

Section 4 of the Sales Act reads, in part, "(1) A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action, etc."[8] The title of the Act, as has been seen, mentions only "goods." If choses in action were intended by the legislature to be included in that term, would Section 4 mention "choses in action" in addition to it? Further, the definition of the term "goods" as set forth in the Act itself, Section 76, specifically excludes "choses in action." Thus the statute discloses its own ambiguity.

Under the constitutional provisions similar to our Section 19, it was held in Pennsylvania that Section 4 of the Sales Act was unconstitutional because it expressly includes choses in action which are not included in the title, nor are they properly connected therewith.[9] There the plaintiff sought to recover because of defendant's refusal to comply with an oral contract for the purchase of shares of corporate stock. The defendant pleaded that the action was within Section 4. The plaintiff answered that that section was unconstitutional and hence void. The court, after holding that shares of stock in a corporation are choses in action,[10] said, "Stockbrokers and others buying and selling capital stock would hardly expect to find in 'An Act relating to the Sale of Goods' a provision relating to the sale of such stock. The question of constitutionality is not to be decided by determining whether or not words of a particular title may be broad enough to include a particular clause of the act, but whether or not the statutory provision is 'clearly expressed in the title' so that one reading it may at once understand the scope of the act."

As a result of this case, Section 4 of the Pennsylvania Sales Act was amended so as to satisfy the constitutional objection.[11] The court pointed out that the whole act might be unconstitutional as containing two subjects, but this point was left undecided.

The constitutionality of this section has been attacked in other states as class legislation,[12] which seems no serious contention, since the classification is reasonable and proper, as having inadequate title because the

(1923), 147 Tenn. 589, 250 S. W. 357; Trainer v. State (1926), 198 Ind. 502, 154 N. E. 273; Volderauer v. State (1924), 195 Ind. 415, 143 N. E. 674; Baldwin v. State (1923), 194 Ind. 303, 141 N. E. 343; White v. State (1924), 195 Ind. 63, 144 N. E. 531; Hobbs v. Gibson School Tp. of Washington County (1924), 195 Ind. 1, 144 N. E. 526.

[8] Section 13531.4 of Burns' Ann. St. 1929, the statute of frauds.

[9] Guppy v. Moltrup (1924), 281 Pa. 343, 126 Atl. 766.

[10] The Pa. court cites Peoples' Bank v. Kurtz (1882), 99 Pa. 344, 44 Am. Rep. 112. The same principle was announced in Tisdale v. Harris (1838), 20 Pick. (Mass.) 9; De Nunzio v. De Nunzio (1916), 90 Conn. 342, 97 Atl. 323; Illinois-Indiana Fair Assn. v. Phillips (1928), 328 Ill. 368, 159 N. E. 815; Culp v. Holbrook (1920), 129 N. E. 278 (Ind. App.).

[11] By Act of 1925, P. L. 310.

[12] Mason-Heflin Coal Co. v. Currie (1921), 270 Pa. 225, 113 Atl. 204; Commonwealth v. Puder (1918), 261 Pa. 129, 104 Atl. 505; Laplaca v. Phila. R. T. Co. (1919), 265 Pa. 304, 108 Atl. 612.

$500 limitation is not expressed nor choses in action mentioned in the title.[13] However, a Tennessee court[14] held that the title was sufficient, being broad and general so that the exceptions (sales under $500) do not invalidate it, and, further, that the provisions as to negotiable documents of title were germane to the subject of sales and therefore not necessary to be named in the title.

It would seem, therefore, that if the question of constitutionality were brought before an Indiana court, the result would be the same as in Pennsylvania. Since there are thirty-one other states which have much the same constitutional provision, one wonders that the question has not been raised more often. M. C. M.

WITNESSES—CROSS EXAMINATION—IMPEACHMENT—The defendant was on trial for rape; at this time there were other charges pending against him in the same court. The defendant had taken the witness stand and testified in his own behalf. On cross-examination he was asked the following question, "Are you the same A.P. that is charged in this court with burglary and that charge is still standing against you?" The defendant was compelled to answer this question after proper objection. The question before the court on appeal was whether it is proper on cross-examination to ask the defendant, who is being tried on a particular charge, if he has not been arrested or indicted on other charges distinct from the one he is on trial for, or to so frame the question as to be equivalent in meaning to the above question. Held: No. Reversed.[1]

This case resolves the doubt which has surrounded the question of whether for the purposes of impeaching the credibility of the witness he may be interrogated on cross-examination as to prior arrests, indictments, and prosecutions for crimes, or as to convictions for crimes only.[2] The statutes in Indiana on the point are broad; the two statutes on the point read as follows: "Any fact that might heretofore be shown to render the witness incompetent may be shown to affect his credibility," and "In all questions affecting the credibility of the witness his general character may be given in evidence."[3] The cases decided under this statutes are not strictly in accord; the earlier cases leaning toward the rule that past arrests and indictments could not be inquired into to affect the credibility of a witness.[4] However, the later cases generally followed the rule that it was in the sound discretion of the trial court to allow such question to be asked.[5] The principal case expressly overruled two prior decisions[6]

[13] Petty v. Phoenix Cotton Oil Co. (1924), 150 Tenn. 292, 264 S. W. 353.
[14] Ibid.

[1] Petro v. State (1933), Supreme Court of Indiana, 184 N. E. 710.
[2] Wigmore, Law of Evidence (1923, 2nd ed.), Vol. II, p. 392; Watson's Revision of Work's Practice and Forms (1921), Vol. II, sec. 1495.
[3] Burns' Ann. Ind. Stat. 1926, sec. 560.
[4] Glenn v. Glose (1873), 42 Ind. 60; Farley v. State (1887), 57 Ind. 331, 337; Canada v. Curry (1881), 73 Ind. 246.
[5] City of South Bend v. Hardy (1884), 98 Ind. 527; Spencer v. Robbins (1886), 106 Ind. 580, 5 N. E. 726; Parker v. State (1893), 136 Ind. 284, 35 N. E. 1105; Stalcup v. State (1896), 146 Ind. 270, 45 N. E. 334; Ellis v. State (1898), 153 Ind. 331, 52 N. E. 82; Dunn v. State (1904), 162 Ind. 174, 70 N. E. 521; Enock v. State (1907), 169 Ind. 488, 82 N. E. 1039; Crum v. State (1897), 148 Ind. 401, 47 N. E.