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SALES — WORTHLESS CHECK GIVEN IN PAYMENT OF PRICE OF
MOVABLE — EFFECT ON PASSAGE OF TITLE

Plaintiff, a Michigan automobile dealer, delivered eight cars to a Tennessee dealer and accepted a check as payment. Plaintiff withheld the delivery papers, invoices, title, and statement of origin. Although his check was dishonored, the Tennessee dealer sold one of the cars to a Louisiana dealer, using a forged statement of origin as the basis for transfer of title. The Louisiana dealer sold the vehicle to defendant. Plaintiff sued to be recognized as owner. The trial court, applying Louisiana law,¹ rendered judgment for defendant. On appeal, the Second Circuit Court of Appeal affirmed. *Held*, delivery of an automobile and acceptance of a worthless check in payment therefor constituted a valid sale despite the vendor's having withheld all evidence of title from the vendee. Consequently, the original vendor could not recover the vehicle from a good faith third party purchaser. *Trumbull Chevrolet Sales Co. v. Maxwell*, 142 So.2d 805 (La. App. 2d Cir. 1962).

French Civil Code Article 2279 imparts to French law the doctrine of *la possession vaut titre*, by which the possessor of movables not lost or stolen is considered their owner,² thus capable of passing valid title to good faith purchasers. The

by conveying title, thereby subjecting the vendee to eviction. It has been suggested, however, that the true remedy to this problem is to award damages for breach of warranty resulting in eviction, not to deny them for breach of the contract to sell. 5 CORBIN, CONTRACTS 445, § 1098 (1951); Smith, *Recovery of Damages for Non-Delivery and Eviction in Louisiana — A Comparison*, 17 LA. L. REV. 253, 257 (1957); Comment, 21 TUL. L. REV. 603, 604 (1947).

Perhaps another consideration favoring the decision in the instant case is a possible reluctance on the part of the courts to require the seller to part with his own money. It may not seem as harsh to require the buyer to forfeit money that has already left his possession as it is to require the seller to forfeit money he may have already put to use. If there is such a reluctance, however, it is submitted that it produces a less equitable result.

1. The conflict of laws problem was not discussed in the instant decision. See LA. CODE OF CIVIL PROCEDURE art. 1391 (1960).

2. Although French Civil Code Article 1599 provides that the sale of a thing belonging to another is null, the doctrine of *la possession vaut titre* is an exception. Another provision is that if a purchaser acquires lost or stolen goods at a fair, market, or public auction, or from a professional dealer in similar goods, the true owner may regain the goods by reimbursing the purchaser; but three years possession of the goods by the purchaser gives him prescriptive title of which the true owner has no right to deprive him. FRENCH CIVIL CODE arts. 2279, 2280. However, LA. CIVIL CODE arts. 3507, 3509 (1870) provide that one who has purchased lost or stolen movables acquires title to them only by ten years' uninterrupted possession; the owner must, however, return the purchase price if the possessor bought the thing at public auction or from one in the habit of selling such things and has possessed it for three years.

redactors of the Louisiana Civil Code rejected the doctrine.³ The Louisiana Code provides that one can acquire ownership of movables not lost or stolen by three years' good faith possession.⁴ Thus, the Louisiana Code affords the original owner of movables greater protection than does the French Code. Nevertheless, the Louisiana courts, by application of the common law bona fide purchaser doctrine, have favored not the original owner, but the good faith third party purchaser.⁵

At common law, one who acquires a movable by error, fraud, violence, or threat from a vendor who intended to transfer ownership has a voidable title.⁶ The bona fide purchaser doctrine protects a third party good faith purchaser whose vendor had a voidable title.⁷ However, the vendee of a thing conditionally sold receives no title until the condition is fulfilled, since the parties intended that title remain in the vendor until that time.⁸ Most common law courts treat cash sales⁹ in which the vendor accepts a check in lieu of cash the same as they do a conditional sale.¹⁰ The condition is that the check be honored, and title does not pass until it is. If it is not honored, the seller is entitled to recover the thing even from a bona fide purchaser.¹¹

3. The Louisiana Civil Code contains no article corresponding to the French Article 2279.

4. LA. CIVIL CODE art. 3506 (1870).

5. Stamm-Scheels Mfg. Co. v. Fontenot, 171 La. 614, 131 So. 728 (1930); State v. Hackley, Hume & Joyce, 124 La. 854, 50 So. 772 (1909); Thomas v. Mead, 8 Mart.(N.S.) 341 (La. 1829).

6. Richmond v. Mississippi Mills, 52 Ark. 30, 11 S.W. 960 (1889); Callendar Savings Bank v. Loos, 142 Iowa 1, 120 N.W. 317 (1909); Cardone v. Consolidated Edison Co., 89 N.Y.S.2d 845 (Mun. Ct. 1949).

7. Wilson v. Commercial Finance Co., 239 N.C. 349, 79 S.E.2d 908 (1954); Handley Motor Co. v. Wood, 238 N.C. 468, 78 S.E.2d 391 (1953).

8. People's State Bank v. Brown, 80 Kan. 520, 103 Pac. 102 (1909); National Bank v. Chicago, B.&N.R.Co., 44 Minn. 224, 46 N.W. 342 (1890); Johnson-Brinkham Co. v. Central Bank, 116 Mo. 558, 22 S.W. 813 (1893); First Nat. Bank v. Griffin & Griffin, 31 Okla. 382, 120 Pac. 595 (1911); Young v. Harris-Cortner Co., 152 Tenn. 15, 268 S.W. 125 (1924).

9. The common law "cash sale" doctrine also looks to the intent of the parties to determine whether title has passed. Since, as a practical matter, delivery and payment cannot be simultaneous, if the parties intend that the sale be for cash, title remains in the vendor during the slight interval between the two acts. See Vold, *Worthless Check Cash Sales, "Substantially Simultaneous" and Conflicting Analogies*, 1 HASTINGS L.J. 111, 114 (1950).

10. *Id.* at 113: ". . . the American judicial materials have preponderantly held that where in a cash sale transaction, no credit being contemplated, the goods are delivered on the giving of a check for the price and the check is not paid on due presentation, the property interest in the goods never passes to the buyer."

11. Clark v. Hamilton Diamond Co., 209 Cal. 1, 284 Pac. 915 (1930); Gustafson v. Equitable Loan Assoc., 186 Minn. 236, 243 N.W. 106 (1932); Hale Co. v. Beley Cotton Co., 154 Tenn. 689, 290 S.W. 994 (1927); Frye v. Boltman, 182 Wash. 447, 47 P.2d 839 (1935); Quality Shingle Co. v. Old Oregon etc. Lumber Co., 110 Wash. 60, 187 Pac. 705 (1920).

The conditional sale is to be distinguished from a credit sale in which, although the transfer of title is not subject to any suspensive condition, property is sold without expectation of immediate payment. As a general rule, acceptance of a check does not convert the transaction from a conditional sale into a credit sale unless the check is post-dated.¹²

Since *Barber Asphalt Paving Co. v. St. Louis Cypress Co.*,¹³ it has been firmly established in Louisiana that a common law conditional sale will be treated as a completed sale. It would seem to follow that a transaction in which the seller accepts a check for the price is a conditional, and therefore a completed, sale.¹⁴ The Louisiana courts have, however, vacillated as to the effect of acceptance of a check in payment for movables. The court held in *Fisher v. Bullington*¹⁵ that one who gave a worthless check in payment for an automobile acquired no title. Two courts of appeal reached the same result,¹⁶ stating the rationale to be that the transactions were thefts and thieves acquire no title. *Jeffery Motor Co. v. Higgins*,¹⁷ in which acceptance of a draft payable in two days was held to be a completed credit sale, appears to have abrogated these decisions, for the court said "the broad criminal definition of theft¹⁸ cannot properly be applied in civil cases." This reasoning was

12. *E.g.*, *Wilson v. Buchenau*, 43 F.Supp. 272 (S.D. Cal. 1942); *Capital Automobile Co. v. Ward*, 54 Ga. App. 873, 189 S.E. 713 (1936).

13. 121 La. 152, 46 So. 193 (1908). The vendor lost his security when the vendee sold the property to a third person. The court ruled that the payment of the price cannot be made a suspensive condition or condition precedent to a sale, and that a vendee cannot be made responsible for the price before there is a sale.

14. It is interesting to notice, however, that in *Flatte v. Nichols*, 233 La. 171, 179, 96 So.2d 477, 480 (1957), the court did not apply this reasoning, but seemed to rely principally on the seller's having given the buyer indicia of ownership. It pointed out that "it is settled jurisprudence that where one of two innocent parties must suffer loss through the fraud of another, the burden of the loss should be imposed on him who most contributed to it. . . . The trial judge was correct in maintaining the plea of estoppel." Additionally, it said that acceptance of the check, although it was not post-dated, converted the transaction into a "credit sale." Whether the court considers the transaction a conditional sale or a credit sale, the result is that the buyer acquires a title that he can pass on to a bona fide purchaser.

15. 223 La. 368, 65 So.2d 880 (1953).

16. *Hub City Motor Co. v. Brock*, 71 So.2d 700 (La. App. 2d Cir. 1954); *Port Finance Co. v. Ber*, 45 So.2d 404 (La. App. Orl. Cir. 1950).

17. 230 La. 857, 89 So.2d 369 (1956).

18. LA. R.S. 14:67 (1950): "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential."

upheld in *Flatte v. Nichols*,¹⁹ although that decision was based primarily on the seller's having had indicia of ownership.²⁰

Plaintiff asserted that the instant case was distinguishable from *Flatte* since in the latter the original vendor had clothed the defrauder with indicia of ownership in addition to possession. The court, dismissing this distinction as "purely technical," held that title had passed although all evidence of title was withheld. The instant case is the first to so hold. The decision indicates that Louisiana courts will consider the common law "cash sale" in which a check is given for the price the same as a "credit sale," with the result that the giver of a worthless check acquires a voidable title that he can transfer to a bona fide purchaser, who will then be protected.

Public policy has been the primary factor determining whether to protect an innocent third party purchaser against a defrauded original vendor. This in turn has required consideration of which of the two innocent parties is better able to protect himself. The seller, unable to investigate his vendee's financial position when the "cash sale" doctrine developed, can now, by modern communications, readily do so. If still in doubt as to his vendee's solvency, he can demand cash or a certified check. Were the burden on the purchaser, however, he would have to check his vendor's title — a far more difficult task.

The Uniform Commercial Code extends protection to the third party purchaser when the original vendor was deceived as to the identity of his vendee, delivery was in exchange for a check, the transaction was to be a "cash sale," delivery was procured through fraud, or the movable was entrusted to a merchant who deals in goods of that kind.²¹ The instant decision, as does the Uniform Commercial Code, affords greater protection to the innocent third party purchaser than does the common law bona fide purchaser doctrine modified by the rules of "conditional" and "cash" sales.²² Despite Louisiana's rejection of *la possession vaut titre*, the present result, which affords greater protection to the third party purchaser than to the original vendor, moves far in that direction.

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19. 233 La. 171, 96 So.2d 477 (1957).

20. See note 13 *supra*.

21. UNIFORM COMMERCIAL CODE § 2-403.

22. See note 9 *supra*.