

TRUST RECEIPTS—AUTOMOBILES—ESTOPPEL OF RECEIPTOR TO CLAIM AGAINST BONA FIDE PURCHASER—[Federal].—Plaintiff held legal title to an automobile by reason of a trust receipt executed by a local dealer. The dealer displayed the automobile in his show room and sold it in the regular course of business. The dealer took as a part of the purchase price the purchaser's negotiable promissory note and a conditional sales contract. The dealer transferred the note and contract to defendant, who took for value without notice of plaintiff's claim. The purchaser defaulted and defendant repossessed the car. Plaintiff sued to recover possession. *Held*, that the plaintiff was estopped to deny title in the local dealer and could not claim possession as against the defendant.<sup>1</sup>

The result is similar to that reached by the Supreme Court of California in a recent case<sup>2</sup> based on almost identical facts, except that it does not appear that a negotiable instrument was there involved. The decisions in the two cases are based on the recognized principle that the true owner of a chattel, by allowing a dealer to have possession with knowledge that it will be displayed, is precluded from asserting his claim against a bona fide purchaser.<sup>3</sup> Ordinarily where one is in possession of property subject to a trust receipt, the receiptor's rights are not affected by a sale of the goods to a bona fide purchaser.<sup>4</sup> The instant cases present an interesting extension of the doctrine of estoppel in favor of the assignees of conditional

1. *General Credit, Inc. v. Universal Credit Co.* (App. D. C. 1938) 99 F. (2d) 115.

2. *Commercial Credit Co. v. Barney Motor Co.* (Cal. 1938) 76 P. (2d) 1181. *Accord*, *Tharp v. San Joaquin Valley Securities Co.* (1937) 20 Cal. App. (2d) 20, 66 P. (2d) 230. In *California Standard Finance Corp. v. Riverside Finance Co.* (1931) 111 Cal. App. 151, 295 Pac. 555, defendant was assignee of two conditional sales contracts from a dealer on cars covered by trust receipts. One had been given by a bona fide purchaser without notice, the other by one who knew of the trust receipts. The court held that as to the contract from the bona fide purchaser, receiptor was estopped as against the defendant, but as to the one not from a bona fide purchaser, receiptor was not so estopped. *Contra*, *Henderson v. General Acceptance Corp.* (1930) 209 Cal. 268, 286 Pac. 1014; *Essex County Acceptance Corp. v. Pierce Arrow Sales Co.* (1934) 288 Mass. 270, 192 N. E. 604, 95 A. L. R. 1314; see also *Iowa Guaranty Mortgage Corp. v. General Motors Acceptance Corp.* (1933) 62 S. D. 18, 250 N. W. 669. This conflict in decisions is probably due to the variety of circumstances out of which the cases arise and difference among the courts as to the relationship created by trust receipts. In this connection see 7 Blashfield, *Cyclopedia of Automobile Law* (1935) 342, sec. 4755; Note (1935) 101 A. L. R. 453; 2A Bogert, *Uniform Laws, Annotated* (1924) 17, sec. 12.

3. *Singletary v. General Motors Acceptance Corp.* (C. C. A. 5, 1934) 73 F. (2d) 543; *Globe Securities Co. v. Gardner Motor Co.* (1935) 337 Mo. 177, 85 S. W. (2d) 561. 1 U. L. A. (1931) 189, sec. 23 provides in part: "Where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell."

4. Vold, *Sales* (1931) 355, sec. 113 says: "Each can transfer only what he has, and the creditor of each can take only what he has. *Caveat emptor. Caveat creditor.*"

sales contracts. The courts have been unwilling to accord similar protection to persons taking mortgages on automobiles to secure loans to dealers.<sup>5</sup> The reason for this refusal is that mortgagees are not considered to be in the same position as purchasers.<sup>6</sup> A purchaser of chattels from a dealer cannot be expected to verify the title of the dealer; such a requirement would be a serious hindrance to trade.<sup>7</sup> On the other hand, mortgagees ordinarily are bankers or companies with superior facilities for the investigation of automobile titles.<sup>8</sup> It would seem that the objections voiced against extension of the principle of protection to mortgagees would apply with equal force to assignees of conditional sales contracts.<sup>9</sup> The principle itself, being an exception to the more general common law rule that mere possession delivered to another will not be sufficient grounds for an estoppel, should be strictly construed.<sup>10</sup> It is submitted that the assignee of a simple conditional sales contract should get no greater right than his assignor had.<sup>11</sup> In the instant case however there was an additional consideration. The assignment involved a negotiable instrument. The policy favoring circulability of negotiable instruments therefore may justify the extension of the estoppel principle in this case.

W. J. H.

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UNFAIR COMPETITION—RECONDITIONING USED GOODS—PERMISSIBLE LIMITS OF RE SALE OF PATENTED OR TRADEMARKED ARTICLES—[Federal].—Defendant cleaned, readjusted, and sold used spark plugs as “reconditioned” under their original name and trade-mark. The manufacturer of the original spark plugs asked that this action of the defendant be enjoined. *Held*, preliminary injunction granted. While defendant had a right to repair and sell, he could not market the product as “reconditioned” and as that of plaintiff.<sup>1</sup>

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5. *People's Loan & Investment Co. v. Universal Credit Co.* (C. C. A. 8, 1935) 75 F. (2d) 545; *Singletary v. General Motors Acceptance Corp.* (C. C. A. 5, 1934) 73 F. (2d) 543; *National Guaranty & Finance Co. v. Pfaff Motor Co.* (1931) 124 Ohio St. 34, 176 N. E. 678.

6. *Rasmussen v. Lee & Co., Inc.* (1937) 104 Mont. 278, 66 P. (2d) 119; *National Guaranty & Finance Co. v. Pfaff Motor Co.* (1931) 124 Ohio St. 34, 176 N. E. 678. *Contra*, *Bauer v. Commercial Credit Co.* (1931) 163 Wash. 210, 300 Pac. 1049.

7. *Boice v. Finance & Guaranty Corp.* (1920) 127 Va. 563, 102 S. E. 591, 10 A. L. R. 654; *Comment* (1929) 42 Harv. L. Rev. 574.

8. *Pacific Finance Corp. v. Hendley* (1932) 119 Cal. App. 679, 7 P. (2d) 391; *Globe Securities Co. v. Gardner Motor Co.* (1935) 337 Mo. 177, 85 S. W. (2d) 561; *Boice v. Finance & Guaranty Corp.* (1920) 127 Va. 563, 102 S. E. 591, 10 A. L. R. 654; *Comment* (1931) 45 Harv. L. Rev. 375; *Note* (1932) 87 A. L. R. 302.

9. *Forgan v. Gordon Motor Finance Co.* (1932) 350 Ill. 445, 183 N. E. 462; *Sunbury Finance Co. v. Boyd Motor Co.* (1935) 119 Pa. Super. 412, 180 Atl. 103.

10. *Pacific Finance Corp. v. Hendley* (1932) 119 Cal. App. 679, 7 P. (2d) 391; *Forgan v. Gordon Motor Finance Co.* (1932) 350 Ill. 445, 183 N. E. 462.

11. *C. I. T. Corp. v. American National Bank* (1930) 256 Ill. App. 38; *Perkins v. Lippincott Co.* (1918) 260 Pa. 473, 103 Atl. 877.

1. *Champion Spark Plug Co. v. Reich* (D. C. W. D. Mo. 1938) 24 F. Supp. 945.