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## Sales - Conditional Sales - Punitive Damages for Forcible Repossession of Chattel

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SALES—CONDITIONAL SALES—PUNITIVE DAMAGES FOR FORCIBLE REPOSSESSION OF CHATTEL—Plaintiff purchased a truck under a conditional sales contract which was assigned to the defendant finance company. He drove the truck to the place of business of the defendant to adjust differences between the two parties, but when he attempted to leave after no agreement had been reached, he discovered that the keys had been removed from the truck. When informed that the truck had been repossessed,<sup>1</sup> the plaintiff produced another set of keys but was unable to leave with the truck. The testimony of the plaintiff that an agent of the defendant seized his hand to prevent the unlocking of the ignition switch was contradicted by testimony for the defendant. However, the branch manager of the defendant testified that he stood on the left running

<sup>1</sup> If repossession is complete, the vendor has the right to defend his possession. *Westerman v. Oregon Automobile Credit Corp.*, 168 Ore. 216, 122 P. (2d) 435 (1942). But if the repossessed car contains property not subject to the sales contract, liability may arise for its wrongful seizure. *Sanders v. General Motors Acceptance Corp.*, 180 S.C. 138, 185 S.E. 180 (1936). Force used to enter the car may also entail liability. *Commercial Credit Co. v. Spence*, 185 Miss. 293, 184 S. 439 (1938) (window broken).

board while the plaintiff sat under the steering wheel, and that he told the plaintiff "he wasn't going to leave in the truck." In the conversion action which followed, the jury awarded \$100 compensatory damages and \$800 punitive damages. On appeal, *held*, affirmed. Regardless of whether physical contact between the parties occurred, the statement by the branch manager constituted a threat of violence to the plaintiff, was so intended by the manager, and was so understood by the plaintiff. Since a conditional vendor or his assignee are not entitled to use force or threat of force to repossess a chattel, the trial court correctly allowed punitive damages. *Kensinger Acceptance Corp. v. Davis*, (Ark. 1954) 269 S.W. (2d) 792.

Retail financing plays an important role in maintaining the prosperity of the United States,<sup>2</sup> but without adequate security devices few finance companies would be willing to risk their capital to meet the demands of the large consumer market.<sup>3</sup> One security device is the retention of the right to repossess the chattel should the vendee fail to complete his contract obligations. As a supplement to this self-help remedy, the contracts often state that the vendor has the right to enter the premises of the vendee and the right to use force to repossess the chattel in case of default.<sup>4</sup> In spite of these contract provisions, some, if not most, courts will not allow the vendor to enter the premises of the vendee without the latter's consent or despite his protest.<sup>5</sup> All are agreed, however, that a forcible and violent repossession cannot be tolerated.<sup>6</sup> The general rule is expressed by the Uniform Conditional Sales Act, which states that "unless the goods can be taken without breach of the peace, they shall be retaken by legal process. . . ."<sup>7</sup> This limitation on the extremes to which the vendor may resort finds support in past cases which demonstrate the disregard of the vendee's rights which may and do occur because an over-zealous agent attempts to repossess despite protest.<sup>8</sup> On the other hand, some self-help should be available to provide a certain and economical remedy for the vendor.<sup>9</sup> Physical violence presents no problem, but no clear line can be drawn in cases where

<sup>2</sup> On the importance of the finance company to the economic development of the nation, see Grimes, "Distribution and the Finance Co.," 18 HARV. BUS. REV. 199 (1940).

<sup>3</sup> The seller needs adequate security before he can afford to gamble on the future economic status of the ordinary buyer. See VOLD, SALES 283 (1931).

<sup>4</sup> Examples of the contractual reservation of the right to repossess by entry and force may be found in many of the cases cited below.

<sup>5</sup> *Dominick v. Rea*, 226 Mich. 594, 198 N.W. 184 (1924) (cannot break into locked garage); *Girard v. Anderson*, 219 Iowa 142, 257 N.W. 400 (1934) (cannot enter unlocked house). But see *R.C.A. Photophone, Inc. v. Sharum*, 189 Ark. 797, 75 S.W. (2d) 59 (1934) (business place). See generally 36 A.L.R. 853 (1925).

<sup>6</sup> *Gerstein v. C. F. Adams Co.*, 169 Wis. 504, 173 N.W. 209 (1919); *Culver v. State*, 42 Tex. Crim. 645, 62 S.W. 922 (1901). See generally 9 A.L.R. 1180 (1920); 105 A.L.R. 926 (1936).

<sup>7</sup> Uniform Conditional Sales Act, §16. Cf. ALI Uniform Commercial Code, §9-503 (1952).

<sup>8</sup> *Peddie v. Gally*, 109 App. Div. 178, 95 N.Y.S. 652 (1905); *Spangler-Bowers v. Benton*, 229 Mo. App. 919, 83 S.W. (2d) 170 (1935). See cases cited in note 6 supra, where physical violence to women plaintiffs was involved.

<sup>9</sup> Court action involves time and money. It is said that business "abhors the necessity of going to court." Isaacs, "The Economic Advantages and Disadvantages of the Various

some threat or intimidation of the vendee might be implied from the manner of the repossessing agent.<sup>10</sup> The principal case goes as far as any in holding that the retaking was accomplished by threat of violence to the person of the vendee.<sup>11</sup> In the future, the vendor should not attempt to repossess while the vendee is in the near vicinity unless the vendor is willing to risk a large verdict from a hostile jury.<sup>12</sup> The justification of similar decisions is that any action which might lead to a breach of the peace should be discouraged. In reality, the rule against forcible repossession is based on the desire to prevent a breach of the peace and is not intended to aid the vendee to breach his contract. However, a decision which gives the vendee large punitive damages in addition to compensatory damages tends to defeat this goal. Not only is the vendee encouraged to breach his contract to surrender the possession of the chattel on default, but he is rewarded for his active obstruction of the attempted repossession, thus encouraging a breach of the peace.

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Methods of Selling Goods on Credit," 8 CORN. L.Q. 199 at 206 (1923). On the rights of vendors to take without the aid of the courts, see 55 A.L.R. 184 (1928); 57 A.L.R. 26 (1928); 146 A.L.R. 1331 (1943).

<sup>10</sup> When the buyer objects to the retaking, the seller has the duty to proceed no further and should resort to the legal process. *Burgin v. Universal Credit Co.*, 2 Wash. (2d) 364, 98 P. (2d) 291 (1940). Yet repossession has been sanctioned despite protest, so long as no violence or threat of violence is present. *Commercial Credit Co. v. Cain*, 190 Miss. 866, 1 S. (2d) 776 (1941). The vendor is liable for use of "constructive force" to obtain possession. *Cecil Baber Electric Co. v. Greer*, 183 Okla. 541, 83 P. (2d) 598 (1938); *Crews and Green v. Parker*, 192 Ala. 383, 68 S. 287 (1915); *Freeman v. General Motors Acceptance Corp.*, 205 N.C. 257, 171 S.E. 63 (1933); *American Discount Co. v. Wyckroff*, 29 Ala. App. 82, 191 S. 790 (1939). Note that repossession by trick or deceit is questionable. *McCarty-Greene Motor Co. v. House*, 216 Ala. 666, 114 S. 60 (1927).

<sup>11</sup> See cases where recovery was allowed in note 10 *supra*. The action by the agent usually demonstrated flagrant disregard for the person of the vendee.

<sup>12</sup> The temptation to use "just a little self-help against resisting buyers would seem wisely avoided." 31 MICH. L. REV. 987 at 988 (1933). If the repossession is not complete when the buyer discovers what is taking place, resistance and objection may be expected in many instances. Repossession is possible when the vendee remains passive. *Rutledge v. Universal C.I.T. Credit Corp.*, 218 Ark. 510, 237 S.W. (2d) 469 (1951) (plaintiff raised no objection); *McWaters v. Gardner*, 37 Ala. App. 418, 69 S. (2d) 724 (1954) (employer of vendee did not object). Yet a retaking in the face of resistance or over strong objection may result in a judgment for damages in favor of the vendee. See cases cited in note 10 *supra*. But see *Kaufman v. Kansas Power & Light Co.*, 144 Kan. 283, 58 P. (2d) 1055 (1936) (retaking proper despite protest since no threatening language was used by the agents).