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USURY AND PURCHASES ON CREDIT

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USURY AND PURCHASES ON CREDIT—Defendant purchased goods of the plaintiff on credit, giving his note, secured by a chattel mortgage, for the balance of the purchase price. The total price included a “time price differential”¹ which exceeded the lawful rate of interest computed on the unpaid balance. Defendant defaulted in payment of the note and plaintiff sued to recover the goods. Defendant pleaded that the mortgage and note included usurious interest. *Held*, there was a bona fide sale on credit and the note was not usurious. *Brown v. Crandall*, (S.C. 1950) 61 S.E. (2d) 761.

By the general rule a person may sell his goods for a higher price on credit than for cash, and the fact that the difference between the two prices exceeds the lawful rate of interest upon the balance due does not bring the transaction within the pale of usury legislation.² The reasons advanced for this rule are that the increment in price is part of the consideration of the sale³ and that

¹ Finance charges.

² *Commercial Credit Co. v. Tarwater*, 215 Ala. 123, 110 S. 39 (1926); *Gen. Contract Purchase Co. v. Holland*, 196 Ark. 675, 119 S.W. (2d) 535 (1938); *Wilson v. J. E. French Co.*, 214 Cal. 188, 4 P. (2d) 537 (1931); *Atty. Gen. v. Contract Purchase Corp.*, 327 Mich. 636, 42 N.W. (2d) 768 (1950); *General Motors Acc. Corp. v. Weinrich*, 218 Mo. App. 68, 262 S.W. 425 (1924); 27 R.C.L. 214 (1920); 39 Crc. 926 (1912); 23 CORN. L. Q. 619 (1938); 39 YALE L. J. 408 (1930).

³ *Beete v. Bidgood*, 7 B. and C. 453, 108 Eng. Rep. 792 (1827); *Munson v. White*,

usury laws apply only to loans of money.⁴ However, no court will permit a sale to conceal a transaction which is essentially a loan,⁵ and some jurisdictions further hold that if the goods are sold at an agreed cash price, the increase in price for credit may not exceed the lawful interest.⁶ The court in the instant case appears to adopt this latter view in theory but fails to find an agreed cash price in spite of the appearance of such a price on the face of the note. This seems *contra* to prior South Carolina decisions⁷ but finds some support from other jurisdictions.⁸ The distinction between an agreed cash price with a charge for deferred payment and an agreed credit price, as contrasted with a cash price, seems artificial in that the economic effect on the purchaser is the same in both cases.⁹ Indeed, from an economic viewpoint, there is little difference between any credit sale and a loan.¹⁰ "Both transactions result in a contract for the future delivery of money."¹¹ However, considering the expanding volume of consumer credit through "easy payment plans" and the fact that so many of these purchases are in small amounts, the rates of interest allowed by usury laws prevent profitable extension of credit.¹² Therefore, until this problem can be corrected by legisla-

309 Ky. 295, 217 S.W. (2d) 641 (1949). But see *Hartranft v. Uhlinger*, 115 Pa. St. Rep. 270 (1887).

⁴ *Nelson v. Scarrit Motors*, (Fla. 1950) 48 S. (2d) 168; *In re Bibbey*, (D. C. Minn. 1925) 9 F. (2d) 944; *Henry v. P. & E. Finance*, 197 Okla. 676, 174 P. (2d) 373 (1946). Accord even when interest rate appears on the contract, *Morris, etc. v. Faulds*, 269 App. Div. 238, 55 N.Y.S. (2d) 372 (1945). Cf. *Van Schaick v. Edwards*, 2 Johnson's Cases 355 (1801).

See 6 WILLISTON, *CONTRACTS* §1684 (1938) for elements of a usurious contract. Also 2 *CONTRACTS RESTATEMENT* 1023, illus. 4 (1932), and in general §526. See 91 A.L.R. 110 (1934); 28 L.R.A. (n.s.) 102 (1910); 4 BLACKST. COMM., Wendell ed., 156 (1854).

⁵ See 6 WILLISTON, *CONTRACTS* §1687 (1938).

⁶ *Hogg v. Ruffner*, 1 Black (66 U.S.) 115 (1861); *Graham v. Lynch*, 206 Ga. 301, 57 S.E. (2d) 86 (1950); *Associated Inv. Co. v. Baker*, (Tex. Civ. App. 1949) 221 S.W. (2d) 363.

⁷ *Thompson v. Nesbit*, 2 Rich. 73 (1845); *Peoples Bank v. Jackson*, 43 S.C. 86, 20 S.E. 786 (1894); *Milford v. Milford*, 67 S.C. 553, 46 S.E. 479 (1903). The court distinguishes these cases from the principal case.

⁸ See note 6 *supra*. Also *In re Bibbey*, *supra* note 4; *G.F.C. Corp. v. Williams*, (Tex. Civ. App. 1950) 231 S.W. (2d) 565. Compare *Richardson v. C.I.T. Corp.*, 60 Ga. App. 780, 5 S.E. (2d) 250 (1939) and *Graham v. Lynch*, *supra* note 6.

⁹ See 39 YALE L. J. 408 at 412 (1930).

¹⁰ "Present goods command a premium in future goods. This premium is interest." RYAN, *USURY AND USURY LAWS* 65 (1924). The author is discussing Bohm-Bawerk's time-preference theory of interest. But see Ecker, "Commentary on 'Usury in Installment Sales,'" 2 LAW AND CONTEMP. PROB. 173 at 175-78 (1935), where the writer emphasizes items other than "interest" contained in a finance charge. Is the dispute one of definition only?

Usury statutes are sometimes said to be designed to protect borrowers from "unscrupulous and exacting lenders whose sole motive is to capitalize on . . . [their] . . . needy situation" (Ecker, *id.* at 184), and therefore are not applicable to sales. But see Berger, "Usury in Installment Sales," 2 LAW AND CONTEMP. PROB. 148 at 151-53 (1935).

¹¹ Berger, "Usury in Installment Sales," 2 LAW AND CONTEMP. PROB. 148 at 153 (1935).

¹² See Ecker, "Commentary on 'Usury in Installment Sales,'" 2 LAW AND CONTEMP. PROB. 173 (1935); RYAN, *USURY AND USURY LAWS* 127-57 (1924).

tion,¹³ it seems that the exemption of sales from usury laws is wise judicial policy.¹⁴

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¹³ See RYAN, USURY AND USURY LAWS, cc. 16 and 17 (1924). Cf. "Usury Laws," N.Y. Society for Political Education, Economic Tracts No. 4 (1881), containing opinions of Jeremy Benthan, John Calvin, and others.

¹⁴ But see 23 CORN. L. Q. 619 (1938) where the position is taken that application of usury laws to finance companies would stimulate legislation in this field.