SALES - PLACE OF TITLE - "CASH SALES"

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SALES — PLACE OF TITLE — “CASH SALES” — The plaintiffs contracted to sell lambs not yet in existence to Boylen; $500 was paid at the execution of the contract in May, an additional $500 was to be paid in August, and the remaining amount was “to be paid on delivery of the lambs.” The August payment was made. On September 20 plaintiffs delivered the lambs to Boylen at a railway shipping station. There was no station agent at the place, no bill of lading was taken out and no bill of sale or other paper transferred. Apparently the lambs were simply delivered into the possession of Boylen and left there. At that time Boylen gave plaintiffs a draft for the full amount still due. Plaintiffs sent this draft through the banks with reasonable expedition, but it was dishonored because of Boylen’s insolvency. In the meantime Boylen, soon after receiving the lambs, sold 955 of them to the defendant to whom he delivered them by rail; the defendant paid for them full value and in good faith. When plaintiffs traced these lambs, they sued defendant in what the court interpreted as an action for conversion with waiver of the tort and an implied promise by defendant to pay plaintiffs the value. Held, the plaintiffs were entitled to judgment for the value of the lambs. Keegan v. Lenzie, (Ore. 1943) 135 P. (2d) 717.

It is trite learning that a purchaser in good faith from one who himself has title acquires title against a previous owner, even though the latter might have recovered, because of fraud in the inducement, from his immediate purchaser. If Boylen acquired title to the lambs when they were delivered to his possession and left there, this rule would protect the defendant despite Boylen’s fraud on his vendor. On the other hand, as the court points out, it is equally trite learning that if Boylen had not title when he sold to the defendant, the latter could not hope to prevail against the plaintiff in the absence of estoppel; and the court found that Boylen had obtained no indicia of ownership from the plaintiff except the possession, which is not normally enough on which to predicate an estoppel. Thus defendant’s rights depended upon whether or not Boylen had obtained title as well as possession from plaintiff. The court labeled the transaction a “cash sale.” When it had once attached this label, the rest was easy; in a “cash sale” the title is not intended to pass until delivery; therefore it did not pass; Boylen had no title to pass on to defendant. But was that label properly attached? Was the transaction in truth a “cash sale,” with title retained until payment of the draft—a three or four day period at least? Or was it merely a sale, with the agreement that the price would be paid—in form of a draft or otherwise—at the time possession was delivered? Theoretically, courts look for the intent of the
parties to determine the propriety of the label given. Practically, because the intent cannot be really determined from the facts, they choose the consequence they deem desirable and assume an intent that will produce that consequence.¹ So far as precedents for the particular fact situation are concerned, the decisions are in hopeless confusion.² The situation in the principal case was in truth one of those numerous ones which ought to be more frankly admitted, where a court is free to settle the rights of the parties as it chooses to do, and does so settle them as a matter of choice, however persuasive the authority it cites in justification.

J.B.W.
