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SALES - TRANSFER OF POSSESSION - INTENTION OF PARTIES

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SALES — TRANSFER OF POSSESSION — INTENTION OF PARTIES — Manlove brought an action against Maggart to recover possession of furniture which Manlove asserted belonged to him. He based this claim of ownership upon a written instrument entitled "Conditional sale note" whereby Maggart promised to pay Manlove $150. In the body of this instrument was the statement that "The express condition of the sale and purchase of one eleven piece mahogany dining room suite . . . for which this note is given, is such that the title and ownership of the above described property does not pass from the said Omer S.

Manlove . . . until this note with interest is paid in full. Omer S. Manlove has full power to declare this note due, and take possession of said property at any time he may deem this note insecure." No other reference to the furniture, nor to its ownership, nor to an intention to transfer title, appears in the instrument. Manlove had never been in possession of the furniture; it had been bought from the administrator of an estate eleven months prior to the making of the so-called conditional sale note and had at that time been delivered by the administrator directly to Maggart. Prior to the time of this sale by the administrator, Manlove, knowing that Maggart was interested in the furniture, had offered to lend him money with which to buy it. Payment to the administrator was made by Manlove with his personal check. The court held the jury justified in finding that title had passed directly from the administrator to Maggart; that Manlove had merely loaned him the money with which to pay for it; and that Manlove had no title upon which to sustain a replevin action. *Manlove v. Maggart*, (Ind. App. 1942) 41 N. E. (2d) 633.

It would seem clear enough that the note to Manlove could not possibly have been truly a "conditional sale" note, despite its entitlement as such, unless Manlove had title to the furniture at the time. That is to say, title could not have been reserved by Manlove unless he had a title to reserve. And the only way he could have acquired the title previously to the note was by taking it from the administrator at the time of the original sale by him. There was not even a suggestion in the case that Maggart had ever conveyed a title to Manlove subsequent thereto. The real issue of the case therefore goes back to the question whether the sale by the administrator was to Manlove or to Maggart. On this basic issue the court simply assumes that there was enough evidence to justify the jury in finding that that sale was to Maggart. In other cases, however, this problem of the real recipient of title where the party who particularly desires the goods is not the party who pays for them has caused considerable judicial difficulty. If the objective facts are clear, how does the matter of intent of the parties become a jury question? It is generally held to be a conclusion which the courts themselves will draw.[1] Why the court in the principal case left it to the jury is not evident. The cases involving the particular problem of the person to whom title is transferred by the original owner arise most commonly from the tripartite dealings of a manufacturer, a dealer in the manufactured goods and a financier who guarantees payment to the manufacturer. Decisions involving the issue have been neither sufficiently consistent nor sufficiently numerous for any "rule" of presumption to be determined. Normally, as the jury decided in this case, courts seem to assume that title is intended to pass to the party to whom the possession passes,[2] though this assumption is not consistently adhered to.[3]

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[1] Lewis v. Farmers' Grain & Milling Co., 52 Cal. App. 211, 198 P. 426 (1921); Cassinelli v. Humphrey Supply Co., 43 Nev. 208, 183 P. 523 (1919); Pittsburgh Provision & Packing Co. v. Cudahy Packing Co., 260 Pa. 135, 103 A. 548 (1918).

[2] In re Schuttig, (D. C. N. J. 1924) 1 F. (2d) 443; McLeod-Nash Motors v. Commercial Credit Trust, 187 Minn. 452, 246 N. W. 17 (1932); In re E. Reboulin Fils & Co., (D. C. N. J. 1908) 165 F. 245; New Haven Wire Co. Cases, 57 Conn. 352 (1889); In re Bettman-Johnson Co., (C. C. A. 6th, 1918) 250 F. 657.

[3] E.g., In re James, Inc., (C. C. A. 2d, 1929) 30 F. (2d) 555; Handy v. C. I. T. Corp., 291 Mass. 157, 197 N. E. 64 (1935).