

Conditional Sales: Forfeiture

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decision in the Lauson case has been often cited and although it has been severely criticized in some jurisdictions, it still stands as the law in Wisconsin.

— ALFRED G. GOLDBERG

Conditional Sales: forfeiture.

In the case of *Schneider v. Allis-Chalmers Mfg. Co.*, 219 N.W. 370; 196 Wis. —, the plaintiff had contracted to buy, on the installment plan from the defendant, certain machinery to be manufactured to order, and had made certain payments on account, aggregating \$24,400. The written contract of conditional sale provided:

Upon failure to make payments, or any of them, as herein specified, the company [i.e., the defendant] may retain any and all partial payments which have been made, as liquidated damages.

Plaintiff being in default, prior to the delivery of any of the machinery, the defendant is alleged to have resold the machinery and to have sustained no actual damage. Whereupon the plaintiff sued for a return of the partial payments, on the theory of unjust enrichment. Defendant demurred. Demurrer sustained.

The Supreme Court of Wisconsin held that:

The parties having lawfully and expressly contracted for just such a situation as arose, the law will make no other contract for them.

Although Wisconsin has both the uniform *sales* act and the uniform *conditional sales* act, the Court unfortunately mentioned neither. As William M. Hargest says on page 181 of the *University of Pennsylvania Law Review* for December, 1927, in his article on "Keeping the Uniform Laws Uniform":

The courts have rather consistently failed to preserve uniformity. There are two rather outstanding reasons for this failure. One is the tendency of courts to adhere to *stare decisis*, and the other the failure to even refer to the statute law of their own state which governs the principle in the case. . . . The courts in states which have adopted the *Uniform Sales Act*, when deciding questions to which that *Act* applied failed to even refer to the *Act* in 353 cases, while 941 cases cited it.

Of course, the *conditional sales* act cannot apply to such a case until the goods have been delivered unless the words "is delivered" in Sec. 1 of that act be construed to mean "is to be delivered." Otherwise, the decision under review might have the effect of removing from the protection of the act all conditional sales of made-to-order goods, for the Court said:

The defendant was certainly under no duty to the buyer to take any steps or legal proceedings either as to the machinery, title

to which remained in the seller until paid for in full, or as to the defaulted payments.

Compare the recent Georgia decision, to the effect that a valid conditional sale can *not* be made of goods not specific and ascertained at the date of contract. *Stevens v. Bank*, 129 S.E. 172; 34 Ga. App. 268.

But the uniform *sales* act clearly applies. In fact the Wisconsin Court expressly refers to the parties as "buyer" and "seller." Instead of disregarding this act, and/or holding that the sale in question was not a "sale," the Court could perfectly well have based its decision on the principle that, where the terms of the contract are such as the parties thereto have a legal right to make, the rights of the parties must be governed thereby rather than by the uniform sales act. *Cadillac v. Mitchell*, 205 Mich. 107; 171 N.W. 479. Compare the *non-waiver* provisions of Sec. 26 of the Uniform *Conditional Sales Act*.

As the Wisconsin Court did not discuss these points, the *Schneider* opinion leaves the law in a very uncertain and unsatisfactory state.

It would seem to the reviewer that the *Schneider* opinion would have been much more convincing and instructive, if the Court had cited and distinguished both of the uniform acts involved. For, as the matter now stands, it will be possible to reverse the *Schneider* decision at some later date on the principle latent in *Sherer v. Long*, 149 N.E. 225; 318 Ill. 432, that a decision rendered in ignorance of a statute is not binding on the Court when that statute is called to the Court's attention in a later case. And compare 15 C.J. 958, note 19, h and i. Such a decision is not binding even on *inferior* courts. *Central v. Jones*, 110 S.E. 914; 28 Ga. App. 258.

The *Schneider* decision can perhaps be sustained on the theory that the sale of goods to be made to order is not a sale. There is some authority for this proposition. It is stated in 35 Cyc. 40 that, where the statute of frauds is not involved, the same rule must be followed as though it were involved. The rule under statutes of frauds is discussed at length in 27 C. J. 233 to 236. The Uniform Sales Act (Wis. Statutes, 1927, sec. 25) treats contracts to manufacture and sell, as contracts of sale, unless the goods are to be manufactured especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business; even then the act does not say that the contract is not a sale, but rather merely that the statute of frauds shall not apply. All decisions on this point, so far noted under the Uniform Sales Act, are merely declaratory of this section 25, except *Goralnik v. Delohery*, 120 Atl. 283; 98 Conn. 560, and *Continental v. Tri-Continental*, 198 N.Y.S. 753, both of which hold categorically that a contract to sell goods to be manufactured *is* a contract of sale. No

decisions in this connection have been noted under the uniform *conditional sales act*.

ROGER SHERMAN HOAR*

Conflicts of Laws: Divorce: Marriage in another state before the expiration of one year after entry of divorce.

A case of interest to Wisconsin as a whole was recently decided by the Supreme Court of Illinois, in *Mosholder v. Industrial Commission et al*, 160 N.E. 835.

This was a proceeding under the Workman's Compensation Act before the Industrial Commission by one Hannah Wilcox, who claims to be the widow of William Wilcox for compensation for the latter's death. The lower court awarded compensation to Hannah Wilcox, and the employer, Ralph Mosholder, brought the cause before the Supreme Court on a writ of error.

The exact question in the case was whether Hannah Wilcox at the time of the accident and death of William Wilcox was the lawful wife of deceased. The facts leading up to the question were these: Claimant married Wilcox in Wisconsin in 1890 and they were divorced in 1896. In the latter part of 1896 he married one known in the record as Mary Wilcox. On June 21, 1922, Mary Wilcox procured a divorce from Wilcox in Milwaukee, Wisconsin. On October 2, 1922, the divorce was granted, claimant remarried Wilcox in Illinois. There is no question as to her good faith in this marriage.

Sec. 247.37 of the Wisconsin Statutes declares that where a judgment of divorce from the bonds of matrimony is granted so far as it affects the status of the parties, it shall not be effective until the expiration of one year from the date of entry of such judgment. By subsection 3 of this section it is made the duty of every judge who enters a judgment of divorce to inform the parties appearing in court that the judgment so far as it affects the status of the parties will not become effective until one year from the date when such judgment is entered.

Counsel for the claimant argued vigorously on the question whether the decree of Wisconsin was binding on William Wilcox in Illinois. The Court considered the Wisconsin cases of *White v. White*¹ and *Hiller v. Johnson*.² In the first case our Supreme Court held that under sec. 247.37 of the statutes, the marriage is not absolutely severed until one year has expired from the entry of judgment and that under subsection 2 of sec. 245.03 if either party marries again during the year, such marriage shall be null and void even though contracted in another

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¹ 167 Wis. 615; 168 N. W. 704.

² 162 Wis. 19; 154 N. W. 845.