

Taxation - Chattels Purchased Under Conditional Sales Contracts

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that a stop sign be maintained at an intersection, and the city was held not liable for failure to do so. In *Doughty v. Philadelphia Rapid Transit Co.*, 321 Pa. 136, 184 A. 93 (1936), where city ordinance made a one way street, the city was not held liable when it permitted street car operation in the opposite direction. In *Curran v. Chicago Great Western Ry. Co.*, 134 Minn. 392, 159 N.W. 955 (1916), where a city ordinance required gates at a railroad crossing, the city was held not liable for damages arising from failure to erect gates. Where the plaintiff was injured by a fire truck the view of which was obstructed by automobiles parked along the side of the street, the court ruled that the city was not liable since supervision of traffic on the streets is a governmental function. *Bradley v. City of Oskaloosa* (Iowa 1922) 188 N.W. 896. For defective traffic light signal resulting in injuries for which the city was held not liable see also *Martin v. City of Canton*, 41 Ohio App. 420, 180 N.E. 78 (1931).

In cases where misfeasance or nonfeasance of governmental duties result in a physical obstruction in the streets, in the nature of a nuisance, cities are held liable. In *Rollow v. Ogden City* (Utah 1926) 243 Pac. 791, a loose and movable marker in the street as a "silent policeman" was the cause of plaintiff's injuries. The court held that the question of the city's negligence in rendering the street unsafe for travel should have been put to the jury. Likewise in *Jablonski v. Bay City*, 248 Mich. 306, 226 N.W. 865 (1929). There the city had placed wires to guard grass plats from traffic. The growing grass concealed the wires. A pedestrian tripped over a hidden wire and was injured. The city was held liable. In *Murphy v. Farmingdale*, 252 App. Div. 327, 299 N.Y. Supp. 586 (1937), plaintiff collided with a concrete base on which was set a stanchion supporting an unlighted traffic control signal, the city was held liable. However, in *Shaw v. City of New York*, 165 Misc. 765, 1 N.Y. Supp. (2d) 311 (1937), where a pedestrian was struck by an unlighted safety zone stanchion with which a motorist collided, the city was held not liable, the court purporting to follow the doctrine set out by the New York Court of Appeals in the *Parsons* case, *supra*. The court voiced disapproval of the doctrine set out in the latter case, but felt itself controlled by that holding. It would seem, however, that the court (Supreme Court, trial division) extended the scope of the *Parsons Case*, and that it might well have reached the conclusion it professed to favor by applying the rule which the Appellate Division laid down in *Murphy v. Farmingdale*, *supra*.

—GERARD A. DESMOND.

Taxation—Chattels Purchased Under Conditional Sales Contracts.—A manufacturing company rented voting machines to a county. Under the terms of the contract, the county had an option to purchase the machines. If the option was exercised, the rental paid was to be deducted from the purchase price. *Held*, the company was liable for the tax on the machines since it was the owner of the legal and equitable title. Title would vest in the county only upon the exercise of the option. The relationship here was that of bailor and bailee. *Automatic Voting Corporation v. Maricopa County* (Ariz. 1937) 70 P. (2d) 447, 116 A.L.R. 320.

By the weight of authority, property covered by an ordinary conditional sales contract or by an agreement in legal effect a conditional sales contract is, as far as taxation is concerned, the property of the buyer. Thus in *Massey Harris Co. v. Lerum*, 60 S.D. 12, 242 N.W. 597 (1932) it was held that the conditional-vendee of a reaper-thresher was properly taxed although the legal title in the machine remained in the vendor until such time as the full purchase price was paid. It appears to be a clear, general principle that the buyer who is invested

with the possession and control is properly assessed for taxation of the property as against the seller.

A survey of the cases, however, does disclose a conflict of authority. Some courts are willing to allow the state to tax the buyer who has possession and control of the chattel property purchased under a conditional sales contract because it is a practical, simple and effective method. As stated in the case of *State v. J. I. Case Co.*, 189 Minn. 180, 248 N.W. 726 (1933) if a company selling farm machinery could be taxed in all the taxing districts of the state for machinery sold to its dealers under a conditional sales contract, an inconvenient and unjust situation would result as far as the company was concerned as against its dealers. It was held in the case of *Singer Sewing Machine Co. v. Cooper*, 263 Fed. 994 (S.D. Ohio 1920) that the buyer is the proper party to be assessed for the taxes upon sewing machines sold under a written instrument construed to be a conditional sale contract. The frequently cited case of *State v. White Furniture Co.*, 206 Ala. 575, 90 So. 896 (1921) is in accord as well as *Houser & Haines Mfg. Co. v. Hargrove*, 129 Cal. 90, 61 Pac. 660 (1900) which holds that a harvester in the possession and control of the buyer under a conditional sales contract is properly assessed to such purchaser.

Other courts hold that the conditional-vendor of personal property is liable for the tax on the property. Thus sewing machines rented by a company under a contract providing for their purchase at the option of the lessee were held properly assessable to the lessor-company in the city in which it maintained a store as "stock in trade." *Singer Mfg. Co. v. Essex County*, 139 Mass. 266, 1 N.E. 419 (1885). In the case of *Wrought Iron Range Co. v. Rich*, 32 Idaho 453, 184 Pac. 627 (1919), ranges were sold to buyers under a conditional sales contract which provided that the company was not bound to make immediate delivery. It was held that until the sale was completed by delivery that the ranges were the property of the company and taxable against it. In *Wanee v. Thomas*, 75 Cal. App. 231, 242 Pac. 509 (1925), several thousand sacks of rice were sold subject to test. The buyer made a down payment, but the seller kept up the insurance and stored the rice in his warehouse until final payment was made. It was held that title to that portion of the rice which had not been tested and was in the seller's warehouse on tax day remained in the seller who, accordingly, was liable for the tax.

There is also some authority for the proposition that a tax on property sold under a conditional sales contract may be assessed against either the buyer or the seller. Thus in *Weber Showcase & Fixture Co. v. Kaufman*, 45 Ariz. 397, 44 P. (2d) 158 (1935) the court said that under a statute providing that property was to be assessed to the person "owning, claiming or having the possession" either the seller or the buyer may be assessed.

Although there appears to be no Wisconsin decision directly in point, it is probable that Wisconsin would follow the apparent weight of authority and hold the buyer liable for the tax. The Attorney General has held that property in possession and enjoyment of a city as buyer under a contract the terms of which provide that the seller retain title until the purchase price is fully paid is not subject to taxation. 22 Op. Atty. Gen. 989, 1034. That personal property is to be assessed in Wisconsin against the party having possession and beneficial ownership is drawn inferentially from the case of *Herzfeld-Phillipson Co. v. Milwaukee*, 177 Wis. 431, 434, 189 N.W. 661 (1922).

Although it is obvious that the courts can justify taxation of either party to the conditional sales contract, it appears to be the better practice to tax the party who enjoys the possession and beneficial interest.

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