1968

Sales (1959-1967)

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Sales

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6. On July 13,1958, Beulah Patience, the wife of a farmer, wrote to the Demonstrable Appliance Co., stating that she wished to buy a good washing machine but was unable to go to town because of the demands of her new-born son. She requested C.O.D. delivery of such a machine. Demonstrable selected a washing machine from one of several makes which it sold, and sent it C.O.D. to Beulah, who paid for and accepted delivery thereof. Accompanying the machine was a written guarantee by Demonstrable containing the following language: "Seller guarantees that the machine is free of defective material and workmanship. The machine will be serviced for one year free of charge." The first time that Beulah attempted to use the machine she learned that it was not suitable for ordinary laundry work because it would not drain properly and, on calling the repairman from Demonstrable Appliance Co., she was informed that the difficulty arose from the manner in which the machine was designed and that the trouble was not due to defective material or workmanship. Upon claim being made, Demonstrable denied liability on the ground that it had not expressly warranted the design and operating efficiency of the machine. Beulah consults you as to her right, if any, against Demonstrable Appliance Company. What would you advise?
(SALES) I would advise that she could rescind the sale and recover her payment, or, sue for damages for breach of the implied warranty of merchantability and suitability since the seller held himself out as having special knowledge and knew the purpose for which she wanted it and chose the machine for that purpose. An express warranty does not negative and implied one where the two are not inconsistent.

Question 6 on page 468(Sales). A washing machine that is designed in such a way that it is not suitable for ordinary laundry work is not a merchantable machine. Under U.C.C.#2-314 unless excluded or modified, a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant of goods of that kind. So, same result for same reason under U.C.C.

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10. In September, 1958, White Heat Co. exhibited to John's Cafe in Luray, Virginia, a floor oil heater which White Heat represented would heat the entire cafe even in the coldest weather. John Dye, the proprietor of the cafe, told White Heat's salesman that, because the heater was so small, he doubted it could do the job, but that the price was so attractive he would try it anyhow. They agreed orally that White Heat would install the heater on a trial basis until it had been tested in the coldest weather, and that if it did not heat the cafe under these circumstances John could return it. Late September, 1958, Luray suffered a severe and unseasonable cold spell, during which time, although the heater was fully fired, the tempearature in the cafe remained in the 40's. When the cold weather persisted, John Dye finally decided to seek warmer climes, and he locked up the cafe and went to Florida early in October, 1958. Upon his return to Luray in July, 1959, an action was instututed against him by White Heat Co., seeking to recover the purchase price of the heater.
John immediately asks your advice as to whether he is liable. How should you advise him?
(SALES) John is liable. This is a sale on approval. John had a reasonable time in which to return the article if he was not satisfied after he had had a reasonable opportunity to try it out. He had such an opportunity in late September of 1958. July 1959 is too late as the vendor could reasonably assume that all was well since he had heard nothing to the contrary. There is no cause of action for breach of warranty as John did not rely on the warranty, but on his own personal test. See 193 Va.831.

Q.10 on p.483(Sales) The same result would be reached under U.C.C.#2-327 which read in part, "(1) Under a sale on approval unless otherwise agreed ***(b)***failure seasonably to notify the seller of election to return the goods is acceptance."

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4. Smith went into the shoe store of Douglas and, after trying on several pairs of shoes, selected one that fitted and suited him, and said of a particular pair of shoes: "I will take this pair; wrap them up for me and keep them until I attend to another errand and I will come back, pay for them and pick them up on my way home. I don't want to be bothered with them now so just keep them for me". The clerk thereupon said: "All right, Mr. Smith," and proceeded to wrap up the shoes and put Smith's name on the package. Smith returned in about an hour and found the store in flames caused by a fire of unknown origin.

Is Smith liable to Douglas for the purchase price of the shoes?

(SALES)Yes. The title to the shoes passed when a particular pair was unconditionally appropriated to the buyer with the assent of the seller. When buyer left the shoes with seller he made the seller a bailee for the buyer. Since there was no evidence of negligence on the part of the seller the loss is on the buyer who was the owner of the shoes when they were destroyed.

Q.4 on p.497(Sales) Smith is not liable under the U.C.C. He was not in default at the time of the fire, seller was a merchant, and possession had not been given to Smith. Seller is in a better position to protect the goods and is more apt to have them insured. See U.C.C.#2-509 and Comment 3 thereon.

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7. Mickey offered to sell to Parsons 50,000 bricks, the contents of the kiln. Parsons saw the exterior of the kiln and some of the bricks which had been taken from the kiln which appeared to be in good condition. To induce the sale, Mickey stated: "They are good brick and all right." Parsons could have gone to the top of the kiln, removed three layers of boards and some bricks and discovered a "cold spot" in the kiln where 10,000 of the bricks were imperfectly burned. Parsons did not do this and the seller knew that he did not; however, the seller also was unaware of the existence of this cold spot at the time of the acceptance by Parsons. Upon delivery the defects were discovered. Parsons refuses to pay and Mickey sues for the purchase price agreed upon for the bricks. The defendant claims a set-off for the defective bricks. Should the set-off be allowed?

(SALES) Yes. There was an express warranty that the brick were all right. Since defendant relied on this warranty he owed no duty to inspect the brick in advance.

D60.
10. Lime Corporation of America accepted the order of Orville Lund, a merchant in the City of Richmond, to ship him 80 bags of lime at an agreed price, F.O.B.,Albany, N.Y. At about the same time, Lime Corporation accepted comparable orders for 600 more bags of lime placed by other buyers in the Richmond area. Thereafter, and with Lund's knowledge, Lime Corporation shipped all 680 bags from Albany in one railroad car. Through no fault of Lime Corporation, half of the bags were spoiled in transit. Lund was one of the last of the buyers to go to the freight station to obtain his bags of lime, and by that time those bags which had arrived in satisfactory condition had been taken by other buyers. Thereafter, Lund having ignored billings sent him by Lime Corporation, the Corporation brought an action against him in the Law and Equity Court of the City of Richmond for the agreed purchase price.

Does Lund have a good defense to the action?

(SALES) No. Lund and the others were tenants in common of fungible goods. Title passed to all the lime at the time of shipment. The loss should be shared pro-rata among all the tenants in common. This answer assumes that all the buyers knew the lime would be shipped in this manner. See 139 Va.92 in which sugar was shipped as above set forth.

8. D61 Chemical-Plastics Corporation owned and operated its manufacturing plant in the State of Virginia. It received an order from the Plastics Products Corporation for a carload of plastic materials, the character and quality of which were specified in the written order. Pursuant to the directions contained in the order Chemical-Plastics Corporation shipped the plastic materials to the New York plant of the buyer, f. o. b. the shipper's plant in Virginia. The agreed purchase price was to be paid ten days after the materials had reached the plant of the buyer. Upon the arrival at buyer's New York plant of the car carrying the plastic materials and before its unloading, the buyer directed the carrier to haul the materials to the buyer's plant in Chicago. The carrier immediately complied with this order. While the plastic materials were enroute from the New York plant to the Chicago plant, the seller received notice that the buyer was at that time insolvent, and had been adjudicated a bankrupt. Chemical-Plastics Corporation immediately directed the carrier not to deliver the plastic materials to the Chicago plant of Plastics Products Corporation but to hold the car of materials in the carrier's yeards at Chicago until the seller could make a resale thereof. The carrier complied with the direc- 546.
tions it received from the seller. The trustee in bankruptcy sought to recover possession of the plastic materials as assets of the buyer.

Is the trustee in bankruptcy entitled to recover possession of the plastic materials?

(SALES) The trustee in bankruptcy is entitled to recover possession. The original transit was over. The carrier has attorned to the buyer, i.e., has recognized him as the owner and made a new contract of carriage. It is the same as if the carrier had delivered the goods to the buyer, and then the buyer had re-shipped them. Hence seller's right to stop in transitu goods the title to which had passed has been terminated. See Williston on Sales, §§ 520 et seq.

Q. 8 on p.545(Sales) The answer is quite different under the U.C.C.#2-702(2) of which provides that where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after their receipt. Moreover while the seller's right of stoppage in transit is cut off by a reshipment(U.C.C.#2-705(2)(c) it is not cut off by a diversion which is incident to the original shipment. A direction by the buyer to the carrier to take the goods to the buyer at another place would be a diversion rather than a reshipment. See Comment 3 to U.C.C.#2-705. Hence buyer's trustee in bankruptcy is not entitled to the car load of plastic materials. The basic reason for this is that buyer's other creditors should not be allowed to profit because of buyer's fraud who impliedly represents that he is solvent when he buys on credit.

7. 562 Chase long desired to own a Stutz automobile, and on Jan.18,1962, a salesman of Antique Car Co., of Richmond, showed him a 1912 Stutz. Chase explained to the salesman that he wanted the car for his normal transportation needs, as well as for its antique value, and that it must be in perfect working condition. The salesman assured him that the Stutz was in perfect working order, that its engine had recently been entirely overhauled and worn out parts replaced with new parts. Chase drove the car around the block and remarked to the salesman that the engine was firing erratically, causing a jerking motion. The salesman replied that the parts were so new that they were not properly "seated" but that within several days of driving the trouble would disappear. On this assurance Chase bought the car and drove it home. For several days the engine's irregular firing continued, and on Jan.22,Chase returned the car to Antique for an explanation. Antique's reply was that the parts had not yet "seated". When the trouble persisted, Chase returned the car again to Antique on Feb.9, and again on March 13. Antique gave as an explnation of the trouble that the car's parts were taking an unusually long time to "seat" themselves.

On June 18,1962, Chase consults you and tells you the above history of his car and further that the trouble still persists although he has driven 2,800 miles. He tells you also that on May 1, 1962, he was told by an expert mechanic that the replacement parts in the car were in fact taken from another 1912 engine and were too worn to give perfect performance. Chase asks you whether he is entitled to return the car to Antique and recover his purchase price. How should you advise him.

(SALES) I would advise him that he has waited too long to rescind. He found out on May 1st that the statements made to him were false. He should have rescinded shortly thereafter. Six weeks later is an unreasonably long time. See 152 Va.635.

7 D63 Farmer exhibited to Dealer samples of his peanuts but said that the bulk of the peanuts was not as good as the sample. Dealer said "Bring them to my warehouse and I will look at them; good peanuts are worth $13 a bag and I will give you that for them." Farmer replied "All right," and the next day delivered 500 bags of peanuts to the warehouse and Dealer, without opening the bags, shipped them to his commission merchant in New York, who sold them for Dealer's account. The peanuts were not as good, on an average, as the samples and brought on the market only $10 a bag.

Dealer consults you as to whether he is liable to Farmer, on the above facts, for the $13 per bag. How ought you to advise him?

(SALES) Dealer is liable. He waived his rignt to examine the peanuts when he did not take advantage of his opportunity to inspect. He was told by Farmer that the peanuts were not up to sample so there was no fraud or misrepresentation. Dealer had no right to sell the peanuts until he had the title and acceptance of Farmer's offer was necessary for him to have the title. 78 Va.250.

Q. 7 on p.575(Sales) The U.C.C. does not specifically cover this question. There is no reason to believe that the answer would be different under the U.C.C.

7. 563 On March 1,1963, Winchester Feed Co. entered into a contract to sell 100 bags of #2 turkey feed to Harrisonburg Poultry Co. at $15 per 100 lb. bag. The contract provided delivery to be made by truck to Harrisonburg late in March. On March 25th, Feed Company dispatched their truck to Harrisonburg for delivery of the feed. However, upon arrival at Harrisonburg, the Poultry Co. refused to accept delivery from the truck driver, and ordered him to return the feed to Winchester. The driver immediately returned to Winchester with the feed and a letter from Harrisonburg Poultry Co., which read as follows:

"March 25,1963

"To Winchester Feed Company

We will not accept this order. The drastic action of the European Common Market has created a crisis in the turkey market, and the price of turkey feed has dropped substantially.

(s) Harrisonburg Poultry Company".

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What remedies, if any, are available to Winchester Feed Company?

(SALES) Since the title to the feed has passed Feed Company may recover the price of $1500. Or, after notification to the buyer, Feed Company may resell the feed at the best price obtainable and hold Poultry Company for any deficiency plus reasonable charges incurred for transportation and storage.

Note: Under Section 2-709 of the U.C.C. neither the passing of title to the goods, nor the appointment of a day certain for payment is material to an action for the price. Such an action lies only for goods accepted or for conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer, or for goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or such effort would be unavailing.

Thus if the U.C.C. applied, Feed Company could resell and recover damages as per 2-706, or recover damages for non-acceptance as per 2-708 but could not recover the purchase price as such.

10. D63 Wyatt Dillon was an avid television fan and, when his set broke down for the third time in as many weeks, he decided to purchase a new one. Going to Superior TV Sales, Inc. he met Salesman Sam who offered to sell him a new 21 inch, 1963 model Big Screen television set for $399.95. Dillon told Sam that the two sets he had owned previously had been made by Big Screen and had given him trouble and that he would not be interested in buying another unless it was in perfect working condition. Sam replied that the new model Big Screen sets contained an improved picture tube and a completely re-designed electrical system. "In this new assembly," said Sam, "they have completely eliminated all difficulties found in earlier sets. You will find the 1963 Big Screen set excellent and free from the defects of previous models." In reliance on this, Dillon purchased the set on signing, but not reading, a standard sales contract tendered him by Sam.

During the first day of use, Dillon found that, as was true in earlier sets, the picture made was dim, unstable and had sharp horizontal lines running through it. He returned the set to Superior TV Sales, Inc. for repair and the service manager assured him that it was a matter of adjustment and that he could pick up the set in two days. Dillon did so, but found no material improvement in the operation of the set. After two further unsuccessful attempts on the part of the service manager to correct the difficulties, Dillon delivered the set to Superior TV Sales, Inc. and asked for the return of his money. The service manager told Dillon that he was very sorry but there was nothing he could do, adding that, although Salesman Sam had not known it, the newly designed Big Screen set had as many defects as the old. Dillon then brought a suit for rescission of the sales contract. Superior TV Sales, Inc. pleaded in defense a clause clearly printed in bold type in the standard sales contract disclaiming all warranties not included therein. The only warranty recited in the contract was one guaranteeing good title. The evidence was heard ore tenus and all the foregoing facts were proved. Should the Court grant the prayer of Dillon's bill?

(SALES) Yes. The statement to the effect that Dillon would find the set free from all defects of previous models was a material statement of fact, and so intended, and meant to induce Dillon to buy the set which he did. If false it is constructively fraudulent even if made in good faith. Its falsity made the entire contract voidable including the clause that there are no other warranties. The parol evidence rule does not prohibit evidence to show that there is no contract. Here the purpose of such evidence is not to vary the terms of a valid contract but to void a voidable contract. 198 Va.557 on p.727 of the Contract Cases in these notes.

10. J65 Jason and Neras entered into the following agreement with respect to a specially built computing machine:

"In consideration of $1000 to be paid on receipt of machine, Jason hereby agrees to sell and deliver to Neras at his office in Richmond, Va., one 125 DX Computor #165 now in process of construction by Jason, on or before June 1, 1965."

The machine was completed according to specifications but the night before it was to be delivered a fire of undetermined origin destroyed Jason's plant and its contents including the DX Computor. Jason claims that Neras owes him the $1000 and Neras claims $500 damages from Jason for failure to deliver the computor. Each consults his lawyer. (a) How ought Jason to be advised? (b) How ought Neras to be advised?

(SALES)(a) Jason should be advised that he has no rights against Neras. Since Jason still had something further to do and still had possession of the machine and is in the better position to protect it, the risk of loss was on him both at common law and under U.C.C.#2-509.

(b) Neras should be advised that he has no cause of action for damages for breach of contract. U.C.C.#2-613 reads in part, "Where the contract requires for its performanc goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer,***(a) if the loss is total the contract is avoided.

Official comments to this section indicate that the common law is the same.

7. JK4 The Green Valley Grain Corporation was engaged, in Virginia, in the business of processing and sellinggrains at wholesale and retail. The Company received an order from the Long Horn Cattle Ranch, in Texas, for 300 barrels of Grade A Hybrid Yellow Corn, a well-known grade and species of corn. Green Valley Grain Corporation advised Long Horn Cattle Ranch that it could not furnish the grade of corn it had ordered but that it did have in its possession a bin of Grade B Hybrid Yellow Corn, not exceeding 300 barrels, which it would sell at $7.50 per barrel. In respone to this advice the Long Horn Cattle Ranch addressed a letter to Green Valley Grain Corporation in which it stated:

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"We desire to purchase, at the price quoted in your letter, the entire bin of Grade B Hybrid Yellow Corn. After you have determined the number of barrels of corn in the bin wire or call us and we shall send our trucks to pick up the corn."

In reply, Green Valley Grain Corporation sent the following telegram to Long Horn Cattle Ranch:

"Holding bin of corn which you ordered by your last letter. Will measure at time of loading in your trucks."

and, in reply, Long Horn Cattle Ranch wired the Grain Corporation:

"Received wire, will pick up corn at your plant Friday, March 20,1964."

Thereafter, but prior to March 20,1964, the storage bins and contents of Green Valley, without fault on its part, were destroyed by fire. Green Valley Grain Corporation consults you and inquires whether it may recover from Long Horn Cattle Ranch the purchase price of the corn. How would you advise?

(SALES) There are three good answers as follows:

(1) The correspondence set forth completed a contract of sale and the corn has been appropriated to the contract. The measuring does not involve any act of discretion but is a purely mechanical job to determine the amount due for ascertained goods. Hence title had passed and seller may recover the purchase price. This is the view of the Sales Act.

(2) There is some authority that title had not passed since seller still had something to do.

(3) Under U.C.C.2-509(3) Seller has no rights against Buyer. Seller was in possession, had the better opportunity to guard against fire, and is the one more apt to carry insurance and Buyer was not then in default. Under the U.C.C. the risk of loss does not necessarily follow the title.

6. DK4 Dealer desires to sell Hardup a TV set for $900, payable $300 cash, balance in six equal monthly installments and he asks you by what means he may secure, by lien on the TV set, the unpaid installments of purchase money. What would you advise him to do?

(SALES)Under the present law Dealer and Hardup can enter into a written and signed agreement for a conditional sale, or Hardup may give Dealer a purchase money chattel mortgage, or a purchase money deed of trust. These should be properly recorded.

Under the U.C.C.9-105 in place of such terms as chattel mortgage, conditional sale, etc, the Article substitutes the general term "security agreement". The property subject to the security agreement is called "collateral". The interest in the collateral that is convoyed by the debtor to the secured party is a "security interest". In our case Dealer would secure a purchase money security interest

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(U.C.C.9-107) by a security agreement signed by the debtor(U.C.C.9-203(1)(b)). Since consumer goods(other than fixtures) are involved here the filing of a financing statement is optional and is not necessary for the perfection of Dealer's security interest, but if there is no such filing bona fide purchasers for value for their own personal use take free of the rights of the secured party. See U.C.C.9-302(1)(d) and 9-307(2).

7. D65 Plaintiff, a housewife, stopped for gasoline at a combination service station and grocery store, owned and operated exclusively by the Defendant, in Franklin County, Va., where she had dealt for many years. While Defendant was filling the gas tank of her automobile, Plaintiff remembered she needed some bleach for the clothes she intended to wash later that day. She entered the store, took down from a shelf a plastic bottle of "Bleach-All", a well-known brand, manufactured and distributed by a large corporation with a national reputation. She returned with it to her car. Defendant, who had been servicing the automobile, was not aware of her activities. She told him what she had done and requested him to charge the gasoline and bleach to her account.

In laundering her clothes, she used the "Bleach-All" according to directions. She hung the clothes on a line to dry. When she returned several hours later, she discovered they had so deteriorated that they were unable to support their own weight on the line and had fallen to the ground. It later developed that the damage to the clothes had been caused from an error made in mixing the chemicals during the manufacture of "Bleach-All".

She consults you as to her right of action, if any, against Defendant. How should you advise her?

(SALES) I would advise her that she had a cause of action against Defendant. He is a merchant and impliedly warrants that his merchandise is merchantable both at common law and under V#8.2-314 (U.C.C.)

10. J66 In March of 1966, while Paul Taylor was visiting at the home of Ray Davis, Taylor expressed his admiration of an antique vase in Davis' living room. The next day Taylor wrote and mailed to Davis the following letter: 1st Full Letter Code went into effect —

"March 17, 1966

"Dear Ray:

As you know, I very much admired the beautiful vase in your living room which the two of us discussed yesterday evening. I offer to buy it from you, and we can later agree on the price. I would appreciate your letting me know whether you are willing to sell it.

"/s/ Paul Taylor"

On receiving this letter from Taylor, Davis wrote the following reply:

"March 18, 1966

"Dear Paul:

I appreciate your letter of March 17th, and accept your offer to buy my vase. I will send it to you tomorrow. The price I am asking is $600, that being the amount at which it was appraised on the death of my mother from whom I inherited it.

"s/s/ Ray Davis"

On receiving this letter from Davis, Taylor telephoned Davis and stated that he did not want to purchase the vase because he thought the price was exorbitant, and that, in any event, he would not be able to accept delivery or pay for the vase for many months. Shortly thereafter Davis tendered the vase to Taylor and, on its being refused, brought an action against Taylor in the Law and Equity Court of the City of Richmond. In his motion for judgment Davis alleged the foregoing facts, charged Taylor with breach of contract, and asked damages of $200. As exhibits with his motion for judgment, Davis filed true copies of the letters of March 17 and 18, 1966. Taylor filed a demurrer on the ground there was no binding contract of sale between himself and Davis because (a) the parties had not agreed on the purchase price, and (b) the parties had not agreed on a time and place of delivery of the vase.

Should the demurrer be sustained on either, or both, of these grounds?

(SALES) Under UCC and Code Va.8.2-305(1) The parties if they so intend can conclude a contract for sale even though the price is not settled and in such a case the price is a reasonable price at the time for delivery. Here the parties intended to consummate a sale with the price to be later agrred upon and therefore Taylor breaches in refusing Davis' tender. Under 8.2-308 and -309 where time of delivery is not fixed, it shall be at seller's place of business or where the goods are located. The demurrer should be denied in both (a) and (b). Time shall be a reasonable time.

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10. Blue Ridge Livestock, Inc., of Greene County, Virginia, pursuant to a written order, dated November 15, 1966, shipped by rail a carload of steers to Southern Cattle Company. The shipment was f.o.b. at the point of delivery to the carrier. The purchase money was due and payable two days after receipt of the shipment by the buyer. The carrier issued a nonnegotiable bill of lading for the shipment. While the shipment was enroute, the seller learned that the buyer was insolvent and had filed a voluntary petition in bankruptcy. Before the shipment reached its destination the carrier, upon directions of the seller, delivered the carload of steers back to the seller. In an approprate action the Trustee in Bankruptcy claimed that he was entitled to take possession of the steers and to sell them and apply the proceeds of the sale ratably among the general creditors of Southern Cattle Company.

How should the Court rule?

The court should rule in favor of the defendant. Virginia Statute 8.2-705(1) states that the seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent irrespective of passing of title. (See also Va. Code 8.2-702)

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9. A written memorandum was signed by both parties, who were residents of Virginia, stating as follows:

"Sold to L. F. Benton by O. T. Sully one carload, 28 tons, 40% soy bean meal, bagged, at $90 per ton wholesale. Delivered Beetletown, Virginia. For November shipment. Dated Nov.4, 1966".

Sully obtained the meal from a processor and had it shipped by rail on Nov.27, 1966, with the bill of lading showing 28 tons. Benton had not received the meal by Dec.3, and called Sully repeatedly advising that he had to have the same for his customers. On Dec.4, the retail price of meal dropped from $100 to $80 per ton. On Dec.5, 1966, the car arrived at the siding, but the seal on the door was broken, and the car only contained 20 tons of meal. The usual shipping time of such a shipment was 5 to 12 days.

Benton refused to accept the shipment and so advised Sully and refused to pay for the meal. Sully advised Benton that he would charge for 20 tons only or would divert another shipment of meal. Sully found another shipment and diverted it, the second car containing 8 tons of meal arriving at Beetletown on Dec. 10. Benton continued to refuse acceptance of any of the meal or make payment for the same. Sully later managed to sell the meal at $70 a ton wholesale and brought an action at law against Benton in a proper court for the difference of $20 per ton for 28 tons of meal.

Who should prevail in this action?

(SALES) The seller should prevail in this action. Where the exact quantity called for has been shipped by the seller, and no time for delivery is fixed, and the quantity shipped has been diminished in transit, without the knowledge or fault of the seller, the buyer should notify the seller and give him a reasonable opportunity to make good the deficiency. Buyer has no right to flatly refuse to accept the shipment because of the deficiency thus occasioned.(141 Va.123) Furthermore, now under Va.8.2-508, this rule of law has been codified in the Virginia adoption of the U.C.C.

10. Jones bought and paid Smith $1,000 for a bull and took immediate delivery of the animal. Nothing was said about the title. Later Citizens Bank demanded payment of $500 from Jones, or the surrender of the bull, because of a duly recorded lien it held on the bull but of which neither Smith nor Jones had actual knowledge as it had been given by Carter, a prior owner of the bull.

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What liability, if any, is there on Smith to Jones because of the transaction?

(SALES) The vendor is liable to Jones. In a contract for sale there is a warranty by the seller that the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge. The recording of the lien does not serve as actual knowledge; hence the warranty of title stands up. (8.2-312)