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Sales (Survey of Virginia Case Law - 1955)

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Lienholder's Rights vs. Good-Faith Purchaser. In *General Credit Inc.* v. *Winchester Inc.*,[1] the Supreme Court of Appeals, by a four to three decision, ruled that the principle of equitable estoppel adopted in *Boice* v. *Finance and Guaranty Corp.*,[2] was not invalidated by the motor vehicle registration and licensing statutes enacted in the Code of 1950.

The particular point in dispute was whether a properly recorded lien on an automobile given by a dealer to a finance company which left the car in the dealer's possession, knowing that it would be offered for sale in the regular course of business, is valid as against a purchaser for value without actual knowledge of the lien.

The decision declared that the particular statute[3] is restricted to creditors of the dealer and cannot by construction be extended to include purchasers from the dealer without reading into the statute language which the legislature had not seen fit to place there. It further stated that the statute was designed to supersede former provisions for recording a bill of sale for an automobile or a chattel mortgage thereon in the local clerk's office by requiring registration with a central state agency, thereby providing a simple means for ascertainment of liens against motor vehicles.[4]

General Credit Inc. was held to have waived the stipulation in the chattel mortgage by knowingly permitting the dealer to place the automobile in his stock and to offer it for sale indiscriminately to his customers in the usual and ordinary course of business. It could not thereafter claim the automobile from a purchaser for value from the dealer who had no actual notice of the existence of the mortgage, even though it was recorded.

In effect the ruling maintains and reiterates the law affecting the protected status of the bona fide purchaser for value.

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[1] 196 Va. 711, 85 S.E.2d 201 (1955).
[2] 127 Va. 563, 102 S.E. 591, 10 A.L.R. 654 (1920).
[3] Va. Code, §46-71 (1950).
[4] Maryland Credit Finance Corp. v. Franklin Credit Finance Corp., 164 Va. 579, 583, 180 S.E. 408, 409, 410 (1935).

Express Warranty. The case of *Clark* v. *Miller Manufacturing Co.*,[5] posed the question of whether an ambiguously worded letter of a seller constituted an express warranty, an implied warranty, or no warranty at all.

On appeal from the lower court, which found for the defendant on the basis that no warranty existed, the U. S. Circuit Court of Appeals, Fourth Circuit reversed the judgment, ruling that an express warranty was definitely determinable.

The issue developed from an exchange of letters made subsequent to an order placed by the buyer for boxes treated with a certain chemical preservative. Following a written request by the seller that the order be changed to include boxes impregnated with another type of chemical preservative, the buyer replied that if the change were to be effected it must rely on the seller's experience and requested reassurance in writing that the substitute chemical would yield "as good results" as the other. The seller's reply stated that all sources contacted reported that the substitute chemical preservative was superior and that the seller felt sure that the buyer would be well satisfied with boxes dipped in such preservative. When used, the boxes treated with the recommended chemical were found to be unsatisfactory and creative of a disruptive effect on the buyer's business.

The higher court, well supported in Virginia on principle and by authority,[6] concluded that because of the buyer's very definite statement of reliance on the seller and the seller's corresponding reply and actions, the seller intended to accept and comply with the conditions stated by the buyer.

This opinion is significant in that the court found the basis for an express warranty in the rather ambiguously worded letter of the seller, although it appeared that a decision based upon an implied warranty for suitability of purpose definitely would have been justified.

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[5] W. N. Clark Co. v. Miller Manufacturing Co., 224 F.2d 660 (1955).

[6] Mason v. Chappell, 56 Va. 572, 582, 15 Grat. 572 (1860); Morse and Co. v. Consolidated Fisheries Co., 190 F.2d 817, 821 (1951); Uniform Sales Act, Sec. 12.

Implied Warranty. In *Gleason* v. *International Harvester Co.*,[7] the Supreme Court of Appeals affirmed the finding of the trial court that an installed "fifth wheel" was not reasonably fit to be used for the purpose for which it was sold, and that the manufacturer-wholesaler through whose branch office the fifth wheel was sold was neither negligent nor guilty of breach of contract. Instead, an independent dealer from whom the fifth wheel was ultimately purchased was held liable for damages resulting from a breach of implied warranty[8] as to the fifth wheel, shown to be defective in operation only after installation by the dealer's employees, who had failed to make reasonable inspection.

The facts in the case were shown to be distinguishable from those in *MacPherson* v. *Buick Motor Co.*,[9] because the manufacturer-wholesaler was not shown to be guilty of any negligence. The Court did acknowledge the existence of the current tendency to extend the liability of a manufacturer to a remote vendee to include articles not inherently dangerous and not dangerous when properly constructed and put to their intended use, which if defectively constructed may reasonably be anticipated to cause injury to those properly using them.[10] However, in view of the facts applicable in this case it declined to decide whether the modern rule should prevail in this jurisdiction.

Fraud and Deceit. *Poe* v. *Voss*[11] concerned an action by the vendees against the vendor, vendor's real estate broker, and the broker's agent for alleged misrepresentations inducing vendees to buy a house with a defective furnace.

The Court by a three to two decision considered the misrepresentations made by the real estate broker's agent to be mere expressions of opinion and the vendees' opportunity to examine the furnace sufficient to overcome the fact that they did not dis-

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[7] 197 Va. 255, 88 S.E.2d 904 (1955).

[8] Universal Motor Co. v. Snow, 149 Va. 690, 140 S.E. 653, 59 A.L.R. 1174 (1927); Greenland Development Corp. v. Allied Heating Products Co., 184 Va. 588, 35 S.E.2d 801 (1943).

[9] 217 N.Y. 382, 111 N.E. 1050 (1916).

[10] Carter v. Yardley & Co., 319 Mass. 92, 64 N.E.2d 693, 164 A.L.R. 559 (1946); General Motors Corp. v. Johnson, 137 F.2d 320 (1943); Robey v. Richmond Coca-Cola Bottling Works, 192 Va. 192, 64 S.E.2d 723 (1951); 46 Am. Jur., *Sales*, §§307 and 812 (1951).

[11] 196 Va. 821, 86 S.E.2d 47 (1955).

cover its malfunction until after performance of the contract. This decision is the more significant in that there had been a jury verdict in the lower court in favor of the plaintiff.

Considering the circumstances of the case, the trial court judgment upon the verdict for the plaintiff, and the strong dissenting opinion on appeal, it appears that the judgment for the vendees could have been affirmed without doing violence to the law. The Supreme Court of Appeals has thus strongly adhered to the view that one who investigates for himself buys at his peril.

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