

and holds further that since the corporation procured by the broker was a mere shell with no assets of its own the broker is entitled to no commission.⁹ Thus it is apparent from a reading of the cases that the weight of authority in this country requires more than a mere subjective willingness to enter into a contract with no intent or ability ever to perform.¹⁰

Assuming that both plaintiff and defendant are innocent of any fraud in this case, upon whom shall we place the loss? Mere passive innocence is not enough on the part of plaintiff because it was his duty to investigate the proposed purchaser exercising his best efforts and judgment for the protection of his principal.¹¹ Even if we did not hold plaintiff to such a strict standard of care, at least he is required to use reasonable diligence according to good business practise.¹² Plaintiff has been sadly remiss in his duty. Had he been alert it is quite probable that he would have discovered the fraud, but he did not accept his responsibility and his negligence made defendant easy prey to the fraudulent scheme perpetrated upon him. Plaintiff has done nothing which entitles him to collect commissions from defendant.

Conditional Sale—Chattel Mortgage—Filing—Automobiles

Respondent sold an automobile on July 2, 1936, to one Blanchard on a conditional bill of sale reserving to himself the title. On the date of the sale his reservation of title was duly noted on the records of the commissioner of motor vehicles in accordance with the provisions of the statute.¹ No renewal of this reservation was ever filed. On June 20, 1939, over three years thereafter, John D. Keats foreclosed a chattel mortgage on the automobile which had been given by the conditional vendee subsequent to the conditional purchase. *Held*, the title to be

9. *Hekemian & Co. v. Rivara, et al., supra.*

10. *Hagen v. Sahlen*, 226 App. Div. 271, 235 N.Y.S. 171 (1929); *Cook Co. v. Craddock-Terry Co.*, 109 S.W. 2d 731 (1937).

11. *Smith v. Fidelity & Columbia Trust Co.*, 227 Ky. 120, 12 S.W. 2d 276 (1928).

12. *Warwick v. Addicks*, 5 Del. 43, 157 A. 205 (1931).

1. N.J.R.S. 1937, 46:32-13.

in the respondent and that the act of the appellant was conversion. *Van Syckle v. Keats*, 125 N.J.L. 319, 15 Atl. 2nd 321 (S. Ct. 1940).

To understand the question in this case it is best to have the statutes involved before us. The original statute concerning conditional sales read as follows: "Conditional sale contract or copy shall be filed in the office of the county clerk, or where there is a register of deeds in the office of such register of deeds in the county in which the goods are first kept for use by the buyer after the sale. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in section eight."² This original act was amended to read: "The conditional sale contract or copy thereof shall be filed in the office of the recording officer in the county in which the goods are first kept for use by the buyer after the sale; provided that in the case of the conditional sale of any motor vehicle the record of such sale with the commissioner of motor vehicles as provided by chapter 10 of title 39, Motor Vehicles and Traffic Regulation, 39:10-1 *et seq.*, shall be deemed sufficient compliance with the provisions of this chapter as to filing, wherever such motor vehicle may be found from time to time. It shall not be necessary to the validity of such conditional sale contract or in order to entitle it to be filed that it be acknowledged or attested."³ With the original and amended statutes as stated above the intention of the amendment is clear. The amendment was to provide an exception to the statute which was the automobile. The automobile was to be controlled by the statute 39:10-1 *et seq.* The words in the amended statute state that the recording of the sale with the commissioner of motor vehicles shall be deemed sufficient compliance with the provisions of *this chapter* as to filing.

In this *same chapter* is the requirement for the refiling of conditional sales. The filing of conditional sale contracts provided for in sections 46:32-11, 46:32-13, 46:32-14 of this title shall be valid for a period of three years only. The validity of such filing may in each case be extended for successive additional periods of one year from date of refiling by filing in the proper filing district a copy of the original contract within thirty days next preceding the expiration of each period

2 L 1919, c 210, p 462 1919-182 92

3. N J R S 1937, 46 32-13

with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered in the same manner as a contract or a copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.⁴ This notice as to refiling is within the *same chapter*. Therefore when the amendment to the filing statute stated that in the case of the automobile filing with the Commissioner of Motor Vehicles would be deemed sufficient compliance with the provisions of this chapter it is quite clear the notice of refiling did not pertain to automobiles.

Where P took title to a truck as security for a note, a bill of sale conforming to the requirements of the statute was duly filed with the Commissioner of Motor Vehicles. Plaintiff was held to have good title to the extent of the amount due on the secured note as against subsequent judgment creditors of the debtor, notwithstanding plaintiff did not file title papers in county as a conditional sales agreement.⁵

The statute does not seem to require anything more than a record of the sale in the office of the commissioner of motor vehicles. If anything more were required, the legislature would undoubtedly have specifically so indicated. The filing of the title papers with the deputy is a sufficient compliance with the statute.⁶ These cases follow this construction of the statutes and hold that the filing with the Commissioner of Motor Vehicles is sufficient and the filing is good for a period of eight years.

The statute which controls the motor vehicles is that the commissioner shall retain a file of all bills of sale until the vehicle described therein shall be eight years old according to the year of manufacture stated in such bills of sale. Authority is hereby granted to the commissioner to destroy all other bills of sale.⁷

The above statute taken with the following paragraph in the same title and chapter clears all misconceptions as to the adequacy of notice

4. N.J.R.S. 1937, 46:32-16.

5. Security National Bank of Trenton v. Bill, 125 N.J.L. 13, 13 Atl. 2d 215 (S. Ct. 1940).

6. Automobile Banking Corporation v. Klein, 197 Atl. 422 (Dist. Ct. 1938).

7. N.J.R.S. 1937, 39:10-13.

of all incumbrances on the title to the automobile. The commissioner shall make a notation on the record or abstract of title of every motor vehicle registered with him, which may be sold upon contract of conditional sale, or other form of instrument reserving such title to such motor vehicle in the seller, showing the existence of such reservation of title, and shall index the same under the names of the purchasers thereof as long as the lien remains unsatisfied of record. Upon request from any person the commissioner shall issue a certificate showing names and addresses of the parties to such contract of conditional sale or other instrument, the name and addresses of the holder of the lien, the date thereof, the date of filing, the make, model, serial, and motor numbers of the motor vehicle, and if the condition in the contract has been performed, a statement to that effect, for which he shall be entitled to a fee of twenty-five cents.⁸

For a full certified copy of any instrument showing a lien on a motor vehicle the commissioner shall be entitled to charge the same fee as is authorized by law to be charged by county clerks.⁹

When evidence of satisfaction of any contract of conditional sale or other instrument as aforesaid shall be presented to the commissioner, who shall make a notation thereof on the record of the sale of such motor vehicle showing that the condition in the contract has been performed, for which he shall be entitled to receive a fee of twenty-five cents.¹⁰

In view of the above paragraphs of the chapter on motor vehicles it would seem clear that all notices would be kept on record and that a holder of a chattel mortgage could easily get notice of any liens on automobiles or such information as he would desire concerning the chattel. However, the words used in the statute above which required filing with the Commissioner of Motor Vehicles stated that he should retain a file of all bills of sale *until the vehicles therein described should be eight years old according to the year of manufacture stated in such bills of sale. Eight years from the date of manufacture.* In other words when the car or vehicle was eight years old the commissioner could throw the record of sale out. In such a situation what would happen

8 N.J.R.S. 1937, 39 10-14.

9. *Supra*, note 8.

10. *Supra*, note 8.

if plaintiff sold buyer a truck made in 1934 which was recorded with the commissioner? The sale was a conditional one. Next year the commissioner would be able to throw the record out. In two years if the debt had not been paid what would the rights of the holder of a chattel mortgage be? Plaintiff would claim he gave notice to the commissioner and the defendant, the holder of a chattel mortgage would claim he looked for any lien and could find none. The commissioner would be authorized to destroy records after the vehicle is eight years old. All that is required of the plaintiff is that he file with the commissioner. He filed. Is the holder of the chattel mortgage who looked for any incumbrances and found none to be disposed in such manner? It is not unlikely that trucks would be purchased after eight years. How is the conditional seller to file his sale? What is the duration of valid notice in such a case?

Constitutional Law—Delegation of Legislative Power—Taxation

On writ of certiorari, prosecutor brought up for review the validity of an order made by the Commissioner of Education directing the prosecutor, the Board of Education of the Town of Montclair, to comply with the provisions of N. J. S. A. 18:5-68 to 18:5-82, and to furnish the defendant with the names and salaries of all permanent employees coming into its employ subsequent to March 25, 1935, to pay to the defendant three (3) percentum of the total amount of the salaries paid to such employees, and to contribute an amount equal to four (4) per cent of such total salaries from March 25, 1935, to said defendant. *Held*, prosecutor's contention that this is special legislation, that it is a delegation of legislative power, that it is a delegation of the taxing power, and that it sets up machinery whereby one taxing district shall be taxed for the benefit of another were without merit; writ dismissed. *Board of Education of Montclair v. Board of Education Employees' Pension Fund of Essex County*, 125 N.J.L. 164, 14 Atl. 2d 783 (S. Ct. 1940).*

* Aff'd on mem., 125 N.J.L. —, 17 A. 2 780 (E. & A. 1841).