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Conditional Sale--Ten Days Time for Redemption--And Ten Days Notice of Resale May Run Concurrently (Eisenberg v. Commercial Credit Corporation, 267 N.Y. 80 (1935))

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to be invalid, where the loss or damage was caused by the negligence of the carrier.⁴ After the passage of the Act, the requirement of written notice, where there was negligence on the part of the carrier, was still generally held to be inoperative, for such a requirement was deemed to constitute an unjust exemption from liability for negligence.⁵ But at least one decision reached the opposite conclusion, based on the view that these provisions are not a limitation of the common law liability of the carrier, but a reasonable protection to the carrier, working no hardship on the shipper, and benefiting the shipper as well as the carrier.⁶ Although this line of reasoning has been occasionally adopted by the federal jurisdiction in recent cases,⁷ and although an interstate shipment is involved here, nevertheless, the court, in the instant case, had ample precedent, drawn from the United States Supreme Court, to read the Act literally,⁸ and hold that the admitted misdelivery, unexplained, constituted negligence, as a matter of law, on the part of the carrier,⁹ and that, consequently, the requirement of filing was void.

B. D. B.

— CONDITIONAL SALE—TEN DAYS TIME FOR REDEMPTION—AND TEN DAYS NOTICE OF RESALE MAY RUN CONCURRENTLY.—Plaintiff's assignor purchased a number of taxicabs from the defendant's assignor. After default had been made in payment, and at a time when more than fifty per cent of the purchase price had been paid, the defendant's assignor retook possession of the taxicabs. Fourteen

⁴ *Westcott v. Fargo*, 61 N. Y. 542, 19 Am. Rep. 300 (1872); *Vroman v. American M. U. Exp. Co.*, 2 Hun 512, 5 Thomp. & C. 22 (N. Y. 1874).

⁵ *Security Trust Co. v. Wells Fargo & Co. Exp.*, 178 N. Y. 620, 70 N. E. 1109 (1904); *Richardson v. N. Y. C. & H. R. R. Co.*, 122 App. Div. 120, 106 N. Y. Supp. 702 (4th Dept. 1907); *Sheldon v. N. Y. C. & H. R. R. Co.*, 61 Misc. 274, 113 N. Y. Supp. 676 (Sup. Ct. 1908).

⁶ *Osterhoudt v. Southern P. R. R. Co.*, 47 App. Div. 146, 62 N. Y. Supp. 134 (3d Dept. 1900). The court closely followed the reasoning and ruling laid down in the leading Federal Supreme Court case, decided before the Act was passed, *Southern Exp. Co. v. Caldwell*, 88 U. S. 264, 22 L. ed. 556 (1874). However, the *Osterhoudt* case appears to have been tacitly overruled, in New York, by the decisions following it.

⁷ In particular, *Georgia, F. & A. R. R. Co. v. Blish Co.*, 241 U. S. 190, 36 Sup. Ct. 541 (1914); *Chesapeake & O. R. R. Co. v. Martin*, 283 U. S. 209, 51 Sup. Ct. 453 (1931); *Clegg v. St. Louis & S. F. R. R. Co.*, 203 Fed. 971 (C. C. A. 8th, 1913). These cases also derive their rule of expediency from *Southern Exp. Co. v. Caldwell*, 88 U. S. 264, 22 L. ed. 556 (1874). Moreover, they stress the contractual element, holding that notice of the character under consideration is a condition precedent to recovery, in the nature of an estoppel.

⁸ *Barrett v. Van Pelt*, 268 U. S. 85, 45 Sup. Ct. 437 (1924); *Davis v. Roper Lumber Co.*, 269 U. S. 158, 46 Sup. Ct. 28 (1925); *Chesapeake & O. R. R. Co. v. Thompson Mfg. Co.*, 270 U. S. 416, 46 Sup. Ct. 318 (1926); *Missouri P. R. R. Co. v. Hartley Bros.*, 290 U. S. 576, 54 Sup. Ct. 271 (1934).

⁹ *Barr & Shoulberg v. Yellow Taxi Corp.*, 152 Misc. 293, 273 N. Y. Supp. 754 (1st Dept. 1933).

days after repossession, the taxicabs were resold at public auction. The plaintiff sued under Section 80(e) of the Personal Property Law¹ to recover one-quarter of the sum of all payments made, on the ground that the sale was not in accordance with the statute² since the defendant had not waited until the expiration of the ten-day redemption period before giving notice of resale. The complaint did not allege the date of notice of resale. From a judgment dismissing the complaint the plaintiff appeals, *held*, judgment affirmed. The ten-day notice of resale may be effected ten days prior to the expiration of the redemption period. In such case the ten-day period of redemption and the ten-day notice of resale may run concurrently. *Eisenberg v. Commercial Credit Corporation*, 267 N. Y. 80, 195 N. E. 691 (1935).

Prior to the decision of this case there seems to have been some confusion and uncertainty as to whether the notice of resale could be effectively given before or not until after the expiration of the redemption period.³ In the most recent case in this state holding that it could not be effectively given until after the redemption period⁴ the decision was based upon the following reasons: that the wording of the statute—"if the buyer does not redeem" expresses clearly that the ten-day exemption period must expire before the property can be advertised for sale; that if this were not so and the two periods ran concurrently it would be difficult to determine just when the redemption period would expire; that such procedure would subject the vendor to the expense of advertising and marshaling bidders for the sale when such sale might have to be called off because the vendee exercised his right to redeem. Cases holding that notice of resale may not be effectively given until after the expiration of the redemption period are based on the interpretation that Section 78 seeks to protect the buyer, while Section 79 protects the seller. But the purpose of Section 79 is merely to protect the purchaser from

¹ N. Y. PERSONAL PROPERTY LAW §80 (e)—"if the seller fails to comply with the provisions * * * after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth the sum of all payments which have been made under the contract, with interest."

² N. Y. PERSONAL PROPERTY LAW §78 requires the seller to "retain the goods for ten days after the retaking * * * during which period the buyer, upon payment * * * of the amount due on the contract * * * may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred."

³ *Freeman v. Engle*, 185 App. Div. 218, 172 N. Y. Supp. 715 (4th Dept. 1918); *Strickland v. Hare and Chase, Incorporated*, 217 App. Div. 196, 216 N. Y. Supp. 506 (4th Dept. 1926); *Commercial Credit Corporation v. Goldberg*, 130 Misc. 597, 224 N. Y. Supp. 177 (1927); *Lowy v. Hardman Peck*, 176 App. Div. 121, 162 N. Y. Supp. 461 (1st Dept. 1916); *Uptown Transportation Corporation v. Fisk Discount Corporation*, 150 Misc. 829, 270 N. Y. Supp. 273 (Sup. Ct. 1934).

⁴ *Uptown Transportation Company v. Fisk Discount Corporation*, 150 Misc. 829, 270 N. Y. Supp. 273 (Sup. Ct. 1934).

being mulcted by the seller⁵ and giving the purchaser a ten-day period in which he can redeem seems to afford sufficient protection. It is apparent that Section 78 defines the rights of the buyer, by giving him ten days in which to redeem, and that Section 79 defines the rights of the seller, giving him the right to sell, if during the ten-day redemption period the buyer fails to redeem. There is no provision in either section that notice can be given only after the lapse of the ten-day period in which the buyer has the right to redeem.⁶ The redemption period and the ten-day notice of resale may overlap.⁷ If a seller wishes to advertise a public auction of the repossessed goods, he knows that such sale is subject to the purchaser's right of redemption. If the seller wishes to expend the necessary time and money in advertising a public auction to be held at the expiration of the redemption period, such action is not inconsistent with the purpose of the law. The purchaser is granted a ten-day period of redemption, and allowing this ten-day period to run concurrently with the ten-day period of notice does not defeat the purpose of the law, or in any way destroy the right of the purchaser to redeem, or the seller to sell at public auction.

G. H. M.

CONSTITUTIONAL LAW—CONFLICT OF LAWS—FULL FAITH AND CREDIT—STOCKHOLDERS' DOUBLE LIABILITY.—Plaintiff, as statutory liquidator of the Bank of the United States, a New York corporation, sought to recover in the New Jersey state courts unpaid assessments levied against defendant stockholders who are residents of New Jersey, pursuant to law.¹ By way of defense, the defendant, one of the stockholders, pleaded a New Jersey statute² under which plaintiff would have to bring an action in equity, naming all depositors, stockholders and creditors of the bank parties to the action. Plaintiff claimed that to sustain the defense would violate the full faith and credit clause of the Federal Constitution.³ The trial court sustained the motion to strike out the complaint,⁴ on the ground that the statute

⁵ *Petze v. Waters*, 166 N. Y. Supp. 1000 (App. T. 2d Dept. 1917).

⁶ *Commercial Credit Corporation v. Goldberg*, 130 Misc. 597, 224 N. Y. Supp. 177 (1927).

⁷ *Ibid.*; *Freeman v. Engle*, *Strickland v. Hare and Chase, Incorporated*, both *supra* note 3.

¹ N. Y. CONST., art. VIII, §7; N. Y. BANKING LAW (1909) §§80, 120.

² 2 Comp. St. N. J. (1910) p. 1656, §94b; see 2 BEALE, CONFLICT OF LAWS (1935) §1868 for a discussion of this section.

³ U. S. CONST., Art. IV, §1 provides, "that full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other state."

⁴ *Broderick v. Abrams, et al.*, 112 N. J. L. 309, 170 Atl. 214 (1934), *aff'd*, 113 N. J. L. 305, 174 Atl. 507 (1934).