

Conditional Sales--Personal Property--Fixture Statute Inapplicable to Gas Ranges (Alf Holding Corp. v. American Stove Co., 253 N.Y. 450 (1930))

St. John's Law Review

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Recommended Citation

St. John's Law Review (1930) "Conditional Sales--Personal Property--Fixture Statute Inapplicable to Gas Ranges (Alf Holding Corp. v. American Stove Co., 253 N.Y. 450 (1930))," *St. John's Law Review*: Vol. 5 : No. 1 , Article 20.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol5/iss1/20>

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whole service is rendered illegal and no recovery is permitted.¹² The broker who performs such a service is deemed to be doing it *gratis*.¹³ Even in an agreement where the broker is not to be paid until title passes, if he did not have a license at the time of performing the services, he cannot recover.¹⁴ The instant case then, follows the long line of decisions, in agreeing that the broker must be possessed of his license during entire time of the performance of his services. But it goes a step farther, too, and states that these services do not begin with the employment but from the time the broker works to procure a customer for his principal. This decision introduces the latest refinement in the theory and is in all justice to both broker and client.

E. H. S.

CONDITIONAL SALES—PERSONAL PROPERTY—FIXTURE STATUTE INAPPLICABLE TO GAS RANGES.—Plaintiff sought an injunction restraining defendant from removing eighty-three gas ranges installed by the usual means in an apartment house of which plaintiff was owner, under a contract of conditional sale between the builder of the apartment house, who was plaintiff's vendor, and the defendant. The stoves had been installed by defendant pursuant to the contract of sale whereby the plaintiff's vendor covenanted to complete the then partially constructed building and finish it "in a fashion similar to buildings of the same type in said location." Some time after the conveyance to plaintiff, the builder defaulted in his payments on the gas ranges and went into bankruptcy. Defendant then, for the first time, filed his conditional bill of sale of the stoves, reserving title in himself and took steps to regain possession of them. *Held*, the reservation of title in the conditional vendor was invalid against plaintiff, a purchaser in good faith, for value without notice of the conditional seller's rights. *Alf Holding Corp. v. American Stove Co.*, 253 N. Y. 450, 171 N. E. 703 (1930).

Gas ranges have already been denominated personal property¹ and the nature of property having a determinate legal character can-

¹² *Roman v. Lobe*, *supra* Note 3 (broker's license expired before he performed his services; he renewed it before bringing his action; *held*, he could not recover part of services being illegally rendered); *Bendell v. DeDominicis*, *supra* Note 5 (where broker was licensed when employed and when contract of sale was signed, but not when he produced customer; he could not recover); *Goldin v. Shankroff*, 125 Misc. 822, 211 N. Y. Supp. 569 (2nd Dept., 1925) (where services were performed while broker was unlicensed, commission was not to be paid until title passed; he had license when title passed but could not recover. Court holding he must have license when services are performed).

¹³ *Stake v. Roth*, 91 Misc. 45, 154 N. Y. Supp. 213 (1st Dept., 1915), *supra* Note 6.

¹⁴ *Goldin v. Shankroff*, *supra* Note 12.

¹ *Central Union Gas Company v. Browning*, 210 N. Y. 10, 103 N. E. 822 (1913); *Madfes v. Beverly Development Corporation*, 251 N. Y. 12, 166 N. E. 787 (1929).

not be affected by the manner in which the parties treat it.² Plaintiff, therefore, could not rely on section 67 of the Personal Property Law³ to overcome the conditional vendor's reservation of title, since, by the judicial classification already referred to, gas ranges when attached to the realty in the usual manner do not become a "part thereof." In order for the plaintiff to succeed, the doctrine of the Cohen case⁴ was necessarily invoked. There a mortgagee whose mortgage contained a personalty clause covering all chattels used in connection with the mortgaged premises, was held to be a purchaser in good faith within the statute,⁵ and as such prevailed over the conditional vendor whose bill of sale, though prior in time to the mortgage, had not been filed. In the instant case, the Court concluded that the transaction consisted of a purchase of the chattels, as independent of the realty, in the reduction of the purchase price because of the failure of the builder to install certain specified fixtures. This was held to be an indication that a definite portion of the purchase money was given as payment for the furnishings necessary to finish the house according to contract. The installation of gas ranges was clearly contemplated by the phrase "in a fashion similar to buildings of the same type in said location," and hence plaintiff was a purchaser in good faith for value without notice and as such comes within the protection of the statute⁶ and must prevail over the conditional seller whose bill of sale was not filed.

J. V. M.

CRIMES—ADMISSIBILITY OF EVIDENCE TO SHOW PROFESSIONAL CRIMINALITY.—The indictment charged the defendant with the crime of murder in the first degree. The deceased and three other men were at work repairing an automobile on the street and defendant's wife claimed that one of them had insulted her. Defendant was enraged and threatened "to bump them all off." After arming himself with a pistol at his apartment, he returned to the scene, where words and blows were followed by a shot which killed the deceased. Defendant then threw the pistol in the river. In a confession, he sought to justify the homicide by saying he had been threatened by the deceased with a monkey-wrench. Upon the trial, the prosecution was permitted to prove that at the time of the homicide and arrest defendant possessed other weapons which were received in evidence. No claim was made that any of them had been used by the defendant. Cross-examination brought out the fact that the defendant had no

² McRea v. Central National Bank of Troy, 66 N. Y. 469 (1876).

³ Laws of 1922, ch. 642, art. 2.

⁴ Cohen v. 1165 Fulton Avenue Corp., 251 N. Y. 24, 166 N. E. 792 (1929); (1929) 4 St. John's L. Rev. 131.

⁵ N. Y. Personal Property Law, sec. 65.

⁶ *Supra* Note 5.