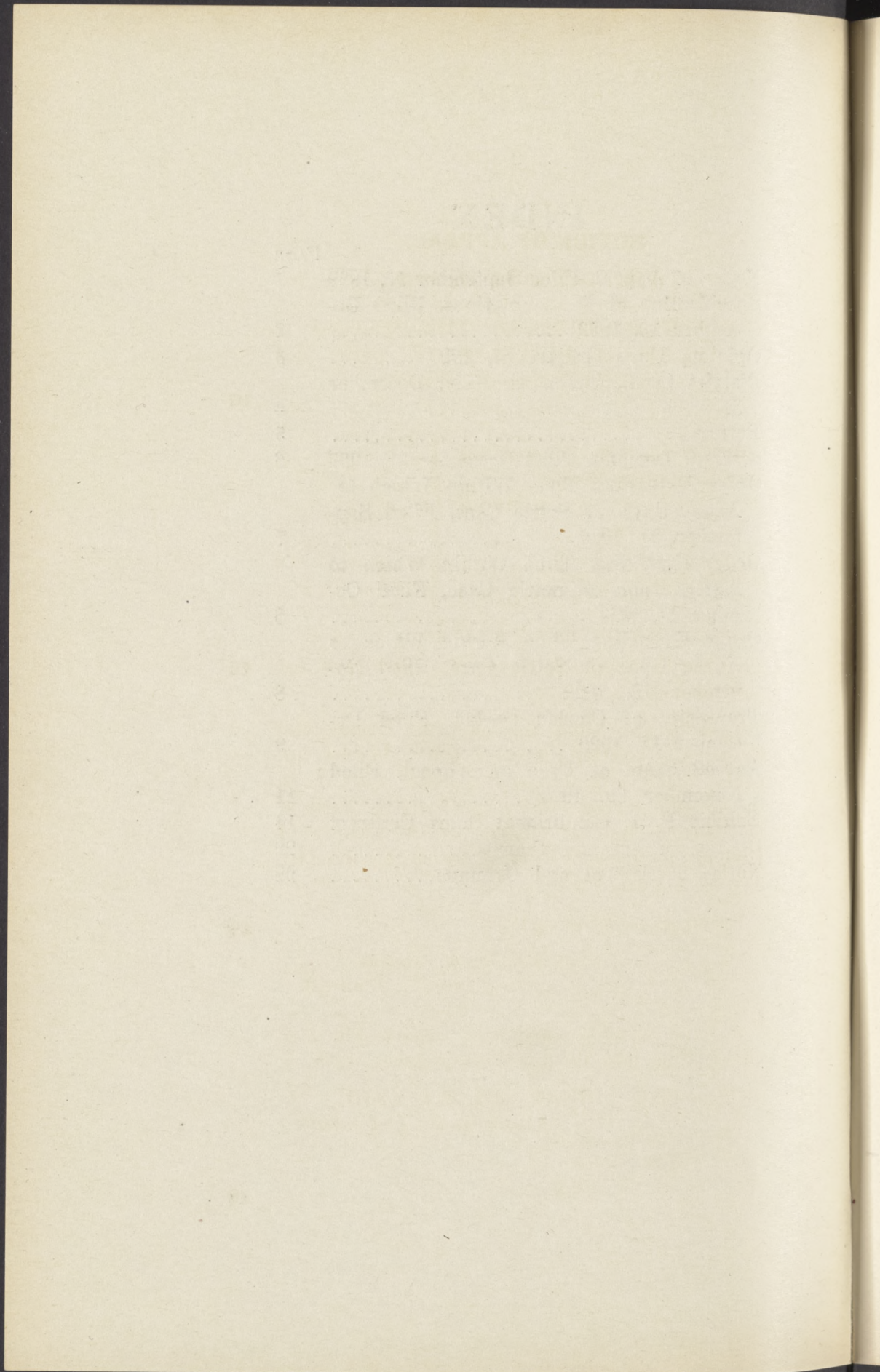


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NOTICE OF APPEAL.

Filed September 17, 1929.

DISTRICT COURT OF THE SECOND
JUDICIAL DISTRICT OF THE
COUNTY OF HUDSON.

10

COMMERCIAL CREDIT CORPORA-
TION, a corporation,

Plaintiff,

vs.

GEORGE SATTERTHWAITE,

Defendant.

In Tort.

To Charles Stockdell Gray, Esq., attorney for 20
defendant.

TAKE NOTICE, that the plaintiff, Commercial Credit Corporation, a corporation, hereby appeals to the New Jersey Supreme Court, from the judgment rendered by the District Court of the Second Judicial District of the County of Hudson, in the above stated action, on the 14th day of August, 1929.

Dated, September 5, 1929.

30

GREEN & GREEN,
Attorneys for Plaintiff.

Service of within and copy acknowledged as within time this 5th day of September, 1929.

GRAY, MEAD & REID,
Attorneys for Defendant.

40

SPECIFICATION OF DETERMINATIONS.

Filed December 13, 1929.

NEW JERSEY SUPREME COURT.

10

COMMERCIAL CREDIT CORPORATION, a corporation,
Plaintiff-Appellant,
vs.

GEORGE SATTERTHWAITE,
Defendant-Respondent.

*Action
 at Law.*
*On Appeal
 from District
 Court of the
 Second
 Judicial
 District of
 County of
 Hudson.*

20

The following is a specification of determinations or directions of the District Court, with respect to which appellant is dissatisfied in point of law.

1. The District Court erred in finding that the contributory negligence of the conditional vendee is imputed to the conditional vendor and therefore barred recovery by conditional vendor for damages sustained to motor vehicle.

30

2. District Court erred in finding that even if such negligence cannot be imputed to conditional vendor, plaintiff has no such interest in property which entitles it to maintain this action.

3. District Court erred in giving judgment in favor of the defendant and against the plaintiff in that judgment should have been given in favor of the plaintiff and against the defendant.

40

Opinion of District Court Judge.

4. District Court erred in finding in favor of the defendant and against the plaintiff as there was no evidence whatsoever before said Court, upon which to base such a verdict.

GREEN & GREEN,
Attorneys for Plaintiff-Appellant.

10

OPINION.

Filed August 14, 1929.

Judgment in favor of the defendant will be entered in this case.

Dated, August 14, 1929.

LEO S. CARNEY,
J.

20

30

40

DISTRICT COURT SUMMONS.

Filed December 31, 1927.

THE STATE OF NEW JERSEY, } ss.
 HUDSON COUNTY.

10 To any Constable in said County
 or to the Sergeant-at-Arms of said
 (SEAL) District Court.

SUMMON George Satterthwaite to
 appear before the District Court of
 the Second Judicial District of the County of
 Hudson to be held at Town Hall in the City of
 Kearny on the 13th day of January, 1928, at ten
 o'clock in the forenoon to answer unto Com-
 mercial Credit Corporation, a corporation, in
 20 an action upon tort to the damage of the plain-
 tiff five hundred dollars. Hereof fail not.

WITNESS, LEO S. CARNEY, Judge of said court,
 at Kearny, aforesaid, the 31st day of December,
 in the year one thousand nine hundred and
 twenty-seven.

GREEN & GREEN,
 Attorneys.

JAMES A. KELLY,
 Clerk.

30

40

RETURN.

ERNEST R. KERR, of full age, being duly sworn on his oath deposes and says that he is Chief Clerk in the office of the Secretary of State of the State of New Jersey and the person designated by the Secretary of State to acknowledge service of process under the provisions of Chapter 232, Laws of 1924, as amended by Chapter 232, Laws of 1927, and is likewise the person designated by the Secretary of State to mail notice of service of copy of Summons and State of Demand in proceedings under said Statute. Deponent further says that the original and a copy of the summons and state of demand in the above-entitled case was served upon him the seventh day of January, 1928, in accordance with the above mentioned statute, and that a notice of such service and a copy of the summons and state of demand was forthwith sent by registered mail to the defendant named therein and that the defendant's return receipt, hereto annexed, containing such notice and copy of summons and state of demand for the registered letter was received by deponent on the eleventh day of January, 1928.

Deponent further says that attached to this affidavit is the original return receipt above referred to, together with the original summons and state of demand served on deponent on the seventh day of January, 1928.

ERNEST R. KERR,
Acting for Secretary of State.

10

20

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40

STATE OF DEMAND.

Filed December 31, 1927.

Plaintiff, a corporation, says that:

10 1. At the times hereinafter mentioned, plaintiff was the owner of a certain Cleveland Touring Car, Serial No. 50089, Motor No. 45120, and equipment, under a conditional sales agreement, made between Newark Flint Company, "seller" and Frank Scagliola, "buyer," wherein and whereby title to said motor vehicle remained in the "seller" until the sum of \$582.50 was paid.

2. Said "seller," assigned all its right, title and interest in said agreement and in said motor vehicle to plaintiff.

20 3. On October 14, 1925, an installment became due which said buyer failed to pay and under the terms of said conditional sales agreement the entire unpaid balance with interest from said date, became due and payable at once, and plaintiff also became entitled to immediate possession of said motor vehicle.

30 4. On September 13, 1925, said buyer was driving said automobile in the Town of Towaco, a public highway of the County of Morris, State of New Jersey.

5. Defendant, George Satterthwaite in and about his business, was also driving an automobile in the Town of Towaco, County of Morris, State of New Jersey, when said automobile struck and collided with the automobile driven by the buyer.

40 6. As a result of said collision plaintiff's automobile was wrecked and permanently damaged.

Order Extending Time to Settle Case.

7. Said collision was caused by the reckless, careless and negligent operation of automobile by defendant.

Plaintiff demands as damages the sum of \$299.00 plus costs of suit.

GREEN & GREEN, 10
Attorneys for Plaintiff.

**ORDER EXTENDING TIME WITHIN WHICH
TO AGREE UPON OR SETTLE CASE.**

Filed September 25, 1929.

It appearing that state of case has not been agreed upon or settled, and upon application of plaintiff; 20

It is, on this 25th day of September, 1929, ORDERED, that the time within which the case shall be agreed upon or settled be, and the same is hereby extended to October 22, 1929.

LEO S. CARNEY,
Judge of the District Court of
the Second Judicial District
of the County of Hudson. 30

**ORDER EXTENDING TIME WITHIN WHICH
TO AGREE UPON OR SETTLE CASE.**

Filed October 23, 1929.

10 It appearing that state of case has not been
agreed upon or settled, and upon application of
plaintiff;

It is, on this 22nd day of October, 1929,
ORDERED, that the time within which the case
shall be agreed upon or settled be, and the same
is hereby extended to November 15, 1929.

LEO S. CARNEY,
Judge of the District Court of
the Second Judicial District
of the County of Hudson.

20

**ORDER EXTENDING TIME WITHIN WHICH
TO AGREE UPON OR SETTLE CASE.**

Filed November 19, 1929.

It appearing that state of case has not been
agreed upon or settled, and upon application of
plaintiff;

30 It is, on this 14th day of November, 1929,
ORDERED, that the time within which the case
shall be agreed upon or settled be, and the same
is hereby extended to December 2, 1929.

LEO S. CARNEY,
Judge of the District Court of
the Second Judicial District
of the County of Hudson.

40

TRANSCRIPT OF CLERK'S DOCKET.

Filed December 13, 1929.

DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE COUNTY OF HUDSON.

10

COMMERCIAL CREDIT CORPORATION, a corporation,

Plaintiff,

vs.

GEORGE SATTERTHWAITE,

Defendant.

In Tort.

20

Plaintiff's attorneys, Green & Green.

Defendant's attorney, Charles S. Gray.

PLAINTIFF'S COSTS.

Summons	\$1.50
Trial	1.50
Order	1.00
Order	1.00

Summons was issued in the above-entitled cause on December 31, 1927, returnable January 8, 1928.

30

The summons was served and returned as follows:

Summons and state of demand in the above-entitled cause were served upon me the 7th day of January, 1928, in accordance with Chapter 232, Laws of 1924 as amended by Chapter 232, Laws of 1927, and a copy of the summons and

40

Transcript of Clerk's Docket

state of demand was forthwith sent by registered mail to the defendant therein.

ERNEST R. KERR,
Acting for Secretary of State.

1928.

10 Jan. 13. This case was called for trial but by various adjournments continued to July 16, 1928.

July 16. Plaintiff appeared and the defendant appeared and cause was tried as follows:

On the part of the plaintiff, Frank Scagliola, Ida Scagliola and William J. Quinlan were sworn and testified.

20 On the part of the defendant, Peter Brown was sworn and testified.

The case being closed, the Court reserved decision.

1929.

Aug. 14. Opinion filed by Court, finding in favor of the defendant, George Satterthwaite, and against the plaintiff, Commercial Credit Corporation.

Sept. 17. Notice of appeal filed.

30 Sept. 25. Order filed extending time within which to agree upon or settle case.

Oct. 23. Order filed extending time within which to agree upon or settle case.

Nov. 19. Order filed extending time within which to agree upon or settle case.

Nov. 29. Agreed state of case on appeal filed.

Agreed State of Case on Appeal.

I, JAMES A. KELLY, Clerk of the District Court of the Second Judicial District of the County of Hudson, do certify that the above is a true copy of the records and proceedings had in the above stated cause of action as taken from Docket No. 11800, of the records of this Court.

Given under my hand and seal of the said Court, this 11th day of December, 1929.

(Signed) JAMES A. KELLY,
Clerk.

10

AGREED STATE OF CASE ON APPEAL.

Filed November 29, 1929.

The parties hereto by their respective attorneys submit the following as state of case for appeal:

20

The action was commenced by plaintiff to recover damages sustained by motor vehicle owned by plaintiff as a result of collision between said motor vehicle which was operated by Frank Scagliola and motor vehicle owned and operated by defendant, George Satterthwaite.

On July 14, 1925, Frank Scagliola (hereinafter referred to as conditional vendee), made and delivered his note of that date for \$582.50 to Newark Flint Company (hereinafter referred to as dealer), payable at the office of Commercial Credit Corporation (hereinafter referred to as conditional vendor) in ten (10) equal monthly installments of \$58.25 each. Said note was given simultaneously with the purchase of the motor vehicle of the said conditional vendee, from the said dealer and represented the balance due on purchase price.

30

40

Agreed State of Case on Appeal.

10 Payment of said note was secured by conditional sale contract covering Cleveland Touring, Serial No. 50089, Motor No. 45120 and equipment which contract provided that title was to remain in dealer until the full amount of the purchase price was paid as will appear by said contract, a true copy of which is annexed hereto and made a part hereof.

20 Conditional vendor purchased said note from dealer for value in the usual course of business and became the holder of all the right, title and interest in and to the said contract by virtue of the assignment of the conditional sale contract to conditional vendor. It became the owner of said motor vehicle, subject to the right of use by said conditional vendee in compliance with the terms and conditions of said contract.

Said contract provided, inter alia, that upon default in the payment of any installment, conditional vendor had the right to retake the motor vehicle.

In violation of the contract, said conditional vendee defaulted in payment of installment due October 14th, 1925, and installments thereafter, leaving an unpaid balance of \$115.00.

30 As a result, conditional vendor became entitled to immediate possession of said motor vehicle.

On September 13th, 1925, said motor vehicle, while driven by said conditional vendee, was in a collision with motor vehicle owned and operated by defendant, George Satterthwaite, as a result of which plaintiff's motor vehicle was wrecked and permanently damaged. Damage to plaintiff's motor vehicle was in the sum of \$115.00.

40 Defendant George Satterthwaite was negligent in the operation of his motor vehicle which negli-

Agreed State of Case on Appeal.

gence was the proximate cause of the collision aforesaid.

Frank Scagliola operating plaintiff's motor vehicle was jointly negligent in the operation of said motor vehicle which negligence contributed to the happening of the aforesaid accident.

10

At the close of the case, the Court rendered judgment in favor of the defendant George Satterthwaite, and against the plaintiff, Commercial Credit Corporation, on the following grounds:

1. That the contributory negligence of the conditional vendee is imputed to the conditional vendor and therefore barred recovery by conditional vendor for damages sustained to motor vehicle.

2. That even if such negligence of conditional vendee cannot be imputed to conditional vendor, plaintiff has no such interest in property which entitles it to maintain this action.

20

Exceptions to the Court's rulings were prayed for and granted.

Dated: November 20th, 1929.

GREEN & GREEN,
Attorneys for Plaintiff-Appellant.

30

GRAY, MEAD & REID,
Attorneys for Defendant-Respondent.

40

Exhibit P. 1.

EXHIBIT P. 1.

Conditional Sales Contract.

PURCHASER'S STATEMENT

(Please answer all questions and fill in all blanks)

10 City State
 Date 192...

To the "Seller" named in the contract on reverse side hereof.

For the purpose of securing credit from you in the purchase of the Motor Vehicle mentioned in the contract on the reverse side hereof, and in order that you may sell to or discount with Commercial Credit Corporation the note mentioned therein, undersigned makes the following representations: Individual ☐ Partnership ☐ Corporation ☐

(Check proper square.)

Residence Address

No. and Street City County State

How long there?.....Years

Previous Address

No. and Street City State

How long there?.....Years

Employed by L. Bamberger Co.....

Position? Barber..... How long?.....

30 If in business for self, in what business engaged?

Business Address Newark, New Jersey.....

No. and Street City County State

Married?Age?

Number of dependents?

Color?Monthly Income, \$.....

Carry savings account Number.....with.....

BankBranch

Carry checking account Number.....

BankBranch

Description and location of Real Estate or Personal Property owned by and in name of undersigned. 10

Description	Location
-------------	----------

Check the source or sources of revenue from which you expect to make payments:

Cash on Hand ☐ Salary ☐ Commissions ☐
Professional fees ☐
Expected profits of business ☐
Other Sources ☐
What other sources?
Car will be used for Pleasure ☐ Business ☐
Passenger hire ☐

(Check proper square)

Remarks

Undersigned will pay said note irrespective of any imperfections in the Motor Vehicle or any breach of alleged representations. You and/or Commercial Credit Corporation are authorized to correct patent errors in said contract and other papers executed by undersigned in connection therewith.

P Frank Scagliola
(Purchaser)

IMPORTANT
(Please insert mailing address)

Exhibit P. 1.

DEALER'S ASSIGNMENT

10 FOR VALUE RECEIVED, Undersigned does hereby sell, assign and transfer to Commercial Credit Corporation, New York, N. Y., his, its or their right, title and interest in and to the contract on the reverse side hereof and the motor vehicle referred to therein, with power to take legal proceedings in the name of the Undersigned or itself in respect thereto, and Undersigned guarantees full performance of said contract by the purchaser mentioned therein. Undersigned warrants that the down payment made by the purchaser as stated in the contract was in cash and not its equivalent, unless otherwise mentioned in the contract, and that no part thereof was loaned by Undersigned to the purchaser;
20 and warrants that Undersigned had a title free and clear of all encumbrances at the time of the execution of this contract by the purchaser.

Commercial Credit Corporation is hereby authorized to correct patent errors in said contract and other papers executed, endorsed or assigned by Undersigned in connection therewith.

WITNESS the signature and seal of Undersigned at192....

(Place)

(Date)

30

D Newark Flint Company (Seal)
(Dealer)

By H. F. T. Miller
(Owner, Officer or Firm Member)

P. G. Smith

Exhibit P. 1.

CONDITIONAL SALE CONTRACT

Newark, New Jersey, July 14th 1925

(City and State)

(Date)

Frank Scagliola, 119 Alexander St., Newark,

(Print Purchaser's name)

(Street)

(City)

New Jersey hereinafter called Purchaser

(State)

10

Newark Flint Company, 1018 Broad St., Newark,

(Dealer's Name)

(Street)

(City)

New Jersey hereinafter called Seller.

(State)

Purchaser hereby acknowledges delivery and acceptance of the following described Motor Vehicle in its present condition, after thorough examination, which Purchaser agrees to buy and Seller agrees to sell on the following terms and conditions.

20

Make—Used Cleveland

Type of Body—Tour.

Year and Model—1924

Manufacturer's Serial Number—50089

Motor Number—45120

Name of Locking Device

If truck tons capacity

Motor Vehicle will be kept at.....

(Number and Street)

(City)

(State)

COST

30

List Price (F. O. B. Factory).....\$550 00

Freight and Tax

Extra Equipment (Itemized).....

.....

.....

.....

.....

Total Cash Price.....\$550 00

Financing Charge 82 50

*Total Time Price.....\$632 50

40

Exhibit P. 1.

PAYMENTS

	Cash on or before delivery.....	\$
	Allowance on Trade In.....	
	(Make) (Year)	
	Total Down Payment.....	50 00
	Balance	\$582 50
10	(For which a note payable in.....	
	equal monthly installments, commenc-	
	ing one month from date hereof, has	
	been given by Purchaser to Seller as	
	evidence but not as payment)	
	*Total Time Price.....	\$

* These Amounts Should Agree Exactly

20 Title to said Motor Vehicle shall remain in Seller until all amounts due hereunder are fully paid in cash, and if the Purchaser resides in the State of New Jersey, it is hereby agreed that immediately upon completion of payments there will be delivered to Purchaser a regular bill of sale in conformity with Chapter 168, P. L. 1919, New Jersey Statutes; that bill of sale thus to be delivered to the Purchaser in conformity with Chapter 168, P. L. 1919, shall be the original bill of sale with all assignments of subsequent ownership noted thereon. The negotiation or assignment of said note or this contract, or the renewal or extension of the payments thereof, shall not pass title to Purchaser, all of which may be done without notice to Purchaser. The loss, injury or destruction of said Motor Vehicle shall not release Purchaser from the payment of said note.

30 Said Motor Vehicle shall not be used for taxicab purposes or for hire. Purchaser shall not keep said Motor Vehicle at any other place than the County and State where it is now located, and shall not lend, mortgage, assign, encumber or

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Exhibit P. 1.

dispose of said Motor Vehicle or this contract or any interest therein. Purchaser shall not use or permit said Motor Vehicle to be used for transporting or holding intoxicating liquor contrary to any laws, and shall conform with all laws and ordinances governing said Motor Vehicle.

10

Purchaser shall keep said Motor Vehicle insured against fire and theft for whom it may concern for not less than the total amount owing on said note until fully paid, and Seller may place said insurance at Purchaser's expense, if Seller so elects.

If Purchaser should fail to pay said note or any installment thereon, or breach this contract or commit any acts of bankruptcy, or if any execution, attachment or other writ should be levied on any of Purchaser's property, Seller or his representative may take possession of said Motor Vehicle and all equipment, accessories or repairs thereon, which shall be considered a component part thereof, wherever it may be found, and may enter any premises therefor without notice or demand to Purchaser and without legal process, and Purchaser waives all claims for damages caused thereby, and the holder of said note may declare it due and payable. Said Motor Vehicle may be retained by Seller, if Seller is the holder of said note, together with any and all amounts paid thereon which shall be considered for the reasonable use of said Motor Vehicle, and Purchaser shall pay to Seller any costs for necessary repairs because of damages to said Motor Vehicle; or said Motor Vehicle may be sold at private or public sale without being at the place of sale, and with or without notice to Purchaser, and Seller shall have

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Exhibit P. 1.

the right at any public sale to purchase said Motor Vehicle the same as any other person, and all laws governing such sales are hereby waived by Purchaser. The proceeds of any sale after deducting expenses, liens, storage and an attorney's reasonable fee paid or incurred by the

10 Seller shall be applied to the amount due on said note and the surplus, if any, shall be paid to Purchaser; and in case of a deficiency Purchaser covenants to pay forthwith the amount thereof to the holder of said note and does hereby confess judgment in the amount of such deficiency.

20 This agreement constitutes the entire contract and no waivers or modification shall be valid unless written upon or attached to this contract, and said Motor Vehicle is accepted without any express or implied warranties unless written hereon at the date of purchase. Any action to enforce payment of said note shall not waive or effect any of Seller's rights hereunder. Time is the essence of this agreement. Any part of this contract contrary to the law of any state shall not invalidate other parts of this contract in that state. The term Seller shall include persons

30 or parties to whom this contract may be assigned and all rights and remedies hereunder are cumulative and not alternative. This agreement shall apply to, inure to the benefit of, and bind the heirs, executors, administrators, successors and assigns of the Purchaser and Seller.

Exhibit P. 1.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals to this contract.

D Newark Flint Company (Seal)
(Dealer sign here)

By H. F. T. Miller
(Owner, Officer or Firm Member)

10

P Frank Scagliola (Seal)
(Purchaser sign here)

Witnesses:

P. G. Miller

H. Freeman

IMPORTANT

Purchaser Read Before Signing

.....

(Owner, Officer or Firm Member)

20

Purchaser sign here if Motor Vehicle is actually in your possession, but do not sign here unless you have actually received Motor Vehicle, since by doing so you might place yourself in the position of being a party to a fraud.

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OPINION OF SUPREME COURT.

Filed May 6, 1930.

NEW JERSEY SUPREME COURT.

No. 410, January Term, 1930.

10

COMMERCIAL CREDIT CORPORA-
TION,

Appellant,

vs.

GEORGE SATTERTHWAITE,

Respondent.

20

Submitted January 31, 1930; decided May ,
1930.

1. The conditional vendor of a chattel contracted to be sold under the act of 1919, P. L., page 461, or the assignee of the vendor's interest in such contract, has a property interest in the chattel which entitles him to maintain, after default, an action against a third party for injury to the chattel from negligence.

30

2. In such an action the vendor or assignee of his interest as such is not chargeable with contributory negligence of the vendee.

Defendant's appeal from District Court.

Before Justice Parker, Black and Bodine.

For the appellant, David Green and Duane R. Dills of the New York Bar.

For the respondent, Charles S. Gray.

40

Opinion of Supreme Court.

The opinion of the Court was delivered by Parker, *J.*

This case raises the interesting question, somewhat novel in this State, whether the conditional vendor of a chattel pursuant to the Conditional Sales Act, P. L. 1919, page 461, or the assignee of the seller's interest under the contract, which amounts to the same thing, may recover after default against a third party for injury done to the chattel by the negligence of said third party before default, notwithstanding contributory negligence of the vendee.

10

The agreed state of the case shows that the plaintiff's assignor, the Newark Flint Company, made a written contract of conditional sale of an automobile to Frank Scagliola in July, 1925, and assigned its interest in that contract to the plaintiff; that in September, 1925, the automobile, by reason of the joint negligence of Scagliola and the defendant, came into collision with the defendant's car and was damaged to the amount of \$115; that in October, 1925, Scagliola defaulted in his payments. The case does not show that the plaintiff re-took the car after such default, but this seems immaterial. The trial court held, first, that the plaintiff at the time of the accident had no such interest in the automobile sold to Scagliola as entitled it to recover against the defendant; and, secondly, that if it did have such interest, it was barred of recovery by the contributory negligence of Scagliola, the conditional vendee.

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We think the first proposition is clearly erroneous. By the very language of Section 1 of the statute it is provided that, "In this act 'Conditional sale' means (1) any contract for the sale of goods under which possession is delivered

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Opinion of Supreme Court.

to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of the contract." From this language it seems clear that in any event the plaintiff had and retained the general property in the chattel subject to certain qualifications in the act not affecting this case; and that that general property would remain in the plaintiff until full payment had been made. It needs no argument that the owner of a general property in a chattel is entitled to recover for damage to that chattel, at least provided there has been no recovery on behalf of the owner of the special property for the same cause of action.

The second proposition we also consider to be erroneous, and upon the fundamental ground, presently to be discussed more at length, that if the plaintiff would not be liable in damages for any injury inflicted by the negligence of Scagliola while using the car, and we think it clear that plaintiff would not be so liable, then by the same token the plaintiff cannot be barred of its right of recovery by negligence of Scagliola which is contributory to a collision in which both Scagliola and Satterthwaite were negligent.

The very phrase "contributory negligence" necessarily involves the idea of primary negli-

Opinion of Supreme Court.

gence. *O'Brien v. Staiger*, 1 Misc. 607, 609; 45 C. J. 943. So in a collision between automobiles due to the negligence of both drivers, each would be guilty of both primary and contributory negligence, but neither could recover for the primary negligence of the other because of his own contributory negligence.

10

Often there are cases, however, in which one party who may be called "A" is not liable to "B" because of some legal exemption from the negligence rule. Thus if "A" be a municipal corporation in the performance of a public duty, the contributory negligence of "A's" servant will not defeat a recovery by "A" for the negligence of "B." A typical case of this kind is *Paterson v. Erie R. R. Co.*, 78 N. J. L. 592, in which the city recovered for damages to a fire engine which came in collision with the train of the defendant notwithstanding the negligence of the driver of the fire engine.

20

In line with this is the situation of a bailor, who is not liable for the negligence of a bailee in the operation of the chattel bailed in the absence of negligence in entrusting a property to the bailee, or the like. *Maurer v. Brown, et al.*, 8 Adv. Reports 245; 149 Atl. 336. As a corollary, the bailor's right of action for damages to the property bailed will not be defeated by the bailee's negligence in the management of the property. *N. Y., etc., R. R. Co. v. N. J. Electric Co.*, 60 N. J. L. 338, affirmed 61 *Id.* 287. In this case the reasoning of the Court on page 346 is as follows: "It cannot be contended that the plaintiff company would have been responsible to the defendant if the negligent use of the locomotive by the servants of the New York and Greenwood Lake railway had occasioned an in-

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Opinion of Supreme Court.

jury to the defendant's car at this crossing. This negligence, however much the occasion of the injury to the defendant, could have rendered the plaintiff company responsible so long as, in this case, no act or conduct of the plaintiff company was in question. It did not, in fact, advise, encourage or permit in the hands of its bailee the negligent use of this locomotive." So here it is quite clear that the plaintiff in a suit by Satterthwaite based upon negligence of Scagliola in operating the motor which was the subject of the conditional sale, and on the assumption that Satterthwaite was not himself negligent, would not be liable to him for the negligence of Scagliola. The spirit of the Conditional Sales Act seems to be in line with this reasoning for Section 25 provides, "after the delivery of the goods to the buyer and prior to the re-taking of them by the seller, the risk of injury and loss shall rest upon the buyer." P. L. 1919, page 470.

There seems to be some doubt in many of the cases as to whether a conditional sale is to be classed as a bailment. Under subdivision 2 of Section 1, quoted in full above, the statute expressly defines it as a bailment; and we see no reason why it should be a bailment in one portion of that section and not subject to the same rules and classification in the other portion. In both subdivisions the general property remains in the seller, and only a special property passes to the buyer until the chattel has been paid for. This is one of the fundamental ideas of the law of bailment and when to this is added the principle that the conditional vendor of a chattel cannot be held liable for its injurious mis-use by the conditional vendee in the absence of special negligence of the vendor in entrusting it to the

Opinion of Supreme Court.

vendee, the claim that contributory negligence of the vendee should be imputed to the conditional vendor seems to be without any basis upon which to rest.

These considerations lead to a reversal of the judgment.

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NOTICE AND GROUNDS OF APPEAL.

Filed July 19, 1930.

NEW JERSEY SUPREME COURT.

10 COMMERCIAL CREDIT CORPORA- TION, a corporation, <i>Plaintiff-Appellant,</i> <i>vs.</i> GEORGE SATTERTHWAITE, <i>Defendant-Respondent.</i>	}	<i>Action at Law.</i> <i>Notice of Appeal and Grounds.</i>
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To Green & Green, Esqs., attorneys for plaintiff,
or to Whom It May Concern:

20 SIRs:

PLEASE TAKE NOTICE that the defendant in the above-entitled cause appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following ground, to wit:

1. Because the Supreme Court erred in giving judgment to the plaintiff instead of the defendant, in that

30 (a) The plaintiff was not the owner of the motor vehicle such as would entitle him to bring an action for damages to the automobile prior to default.

(b) The negligence of the operator of the car, Scagliola, who was the conditional vendee, is sufficient to prevent a recovery arising out of said accident.

Respectfully yours,

40

CHAS. STOCKDELL GRAY,
Attorney for Defendant.

16 FEB.T.1931

New Jersey Court of Errors and Appeals

COMMERCIAL CREDIT CORPORATION,
a corporation,
Plaintiff-Respondent,

vs.

GEORGE SATTERTHWAITE,
Defendant-Appellant.

On Appeal from
Supreme Court.

Brief of Appellant.

This matter is before the court on appeal from the judgment of the Supreme Court reversing the judgment entered for the defendant-appellant in the District Court of the Second Judicial District of the County of Hudson.

Statement of Facts.

On July 14th, 1925, one Frank Scagliola purchased a Cleveland touring car from the Newark Flint Company under a conditional sale contract. At the time of the execution of this contract, Scagliola made a note to the said company in the amount of \$582.50, payable in ten equal monthly installments of \$58.25 each. This note represented the balance due on the purchase price of the car. Payment of the note was secured by a conditional sale contract which provided that the title

of the vehicle was to remain in the dealer until the full amount of the purchase price was paid.

The plaintiff bought the note from the Newark Flint Company for value and obtained an assignment of the conditional sale contract.

Under this contract the vendee, Scagliola, was entitled to the possession and unqualified and unrestricted use of the automobile as long as he complied with the conditions of the contract. In the event of a breach by him, the plaintiff acquired the right of repossession.

On September 13th, 1925, while the automobile was being driven by Scagliola, it was involved in a collision with that of the defendant Satterthwaite. At this time Scagliola was up to date in the payments on his note and was in no respect in default on any of the provisions of the conditional sale agreement.

Subsequently and on October 14th, 1925 a full month thereafter, Scagliola defaulted in the payment of the installment then due. The plaintiff thereupon became entitled to the possession of the automobile.

On December 31st, 1927 the plaintiff instituted suit in the Kearny District Court against Satterthwaite for the damage arising out of the accident which, coincidentally, was the same sum as the balance then due on the note, namely, \$115.

After trial, the court found both operators guilty of negligence and entered judgment for the defendant on the following grounds:

1. That the contributory negligence of the conditional vendee is imputable to the conditional vendor and recovery by such vendor for damages to the automobile is consequently barred.

2. That even if such negligence of the conditional vendee cannot be imputed to the conditional vendor, the plaintiff here has no such interest in the property which entitles it to maintain this action.

(Agreed State of Facts, C-11-13).

POINT ONE.

The conditional vendee of the automobile in this case should be considered the owner for purposes of operation on the public highways of this state and his method of operation should determine the conditional vendor's right to recover for damage thereto.

While the underlying idea of conditional sales contracts has existed in the substantive law for some years, it was the advent and rushing flow of automobiles and the engrafting upon our economic system of such innovations as the time payment plans for the sale and purchase of almost every known commodity, which brought them before the courts of the country for consideration and decision with such frequency that the Uniform Conditional Sales Act, which has been adopted in New Jersey, was devised.

The conditional sale as it is regulated and defined by this act partakes of many of the characteristics of several other legal relations which are primarily based upon contract. However, though analogy exists in these cases, in no one instance is there identity. The conditional sale is a contract sui generis; it creates a legal relation between the parties which is peculiar to itself. As such it has been set apart for individual legislative treatment,

as evidenced by the Conditional Sales Act, and for individual judicial treatment when the act does not specifically control the situation presented.

The contract is not a lease, although it has some attributes of the lease (*17 A. L. R. 1436*, and cases cited). It is not a mortgage although it bears some analogy to a mortgage (*Spitalny v. Superior Novelty Mfg. Co.*, 98 Eq. 523).

But most important of all, insofar as the determination of this case is concerned, it is not a bailment. Some jurisdictions have treated it as such but the great weight of authority is to the contrary. In *17 A. L. R. 1434*, where the decisions in this connection are collated, the following appears:

“The view has sometimes been taken that a contract of conditional sale is a species of bailment but this position must rest upon a much broader meaning of a bailment than is usually given that term. Ordinarily a bailment is regarded as a transfer of the possession of personalty under an express or implied agreement for the return of the property at some future time. The obligation to redeliver the property is an element which clearly distinguishes a bailment from a conditional sale, for in the latter class of contracts there rests upon the buyer the absolute obligation to retain and pay for the subject matter of the contract. In this regard, it has been asserted: ‘It is not infrequently a matter of difficulty to accurately distinguish between a conditional sale and a bailment of property. The border line is somewhat obscure, at times. The difficulty must be solved by the ascertainment of the real intent of the contracting parties, as found in their agreement. There are however, certain discriminating earmarks, so to speak, by which the two may be distinguished. It is an indelible incident to a bailment that the bailor may require

restoration of the thing bailed. * * * In a contract of sale there is this distinguishing test, common to an absolute and to a conditional sale; that there must be an agreement, expressed or implied, to pay the purchase price. In a bailment, if a bailment for hire, there must be payment for use of the thing let or bailed.' "

Union Stock-Yards & Transit Co. v. Western Land, etc. Co., 59 Fed. 49.

In *Re Galt*, 120 Fed. 64, the court said:

"The distinction between a bailment and a sale is not difficult of ascertainment if due regard be had to the elements peculiar to each. In bailment the identical thing delivered is to be restored. In a sale there is an agreement, express or implied, to pay money or its equivalent for the thing delivered and there is no obligation to return."

In the case under consideration when the conditional sale contract was executed, Scagliola acquired (1) the possession of the automobile which was the subject of the sale, (2) the right to retain possession against the whole world, including the conditional vendor, so long as he complied with the conditions of the contract, (3) the absolute, unrestricted and unqualified use of the said automobile, (4) the sole and unqualified right to determine the method of operation of the said automobile, (5) the right to register it in his own name as owner (P. L. 1928, Chap. 281, sec. 15), (6) the right to unqualified title upon completion of the installment payments.

Under this sale the only element lacking to complete ownership in Scagliola was the bare legal title. His status is rather unique in the law and the courts throughout the country seem to have some difficulty in accurately defining it and the

rights and duties arising therefrom as between conditional vendor, conditional vendee and third persons.

In some jurisdictions the conditional vendee is designated the equitable owner (*Henderson v. General Acc. Corp.*, 280 Pac. 1013; *Huddy on Automobiles*, sec. 1215); in others his legal position is likened to that of a mortgagor with an equity of redemption (*Perkins v. Skates*, 124 So. 514, (Ala.)).

The Court of Appeals in New York, discussing this question in *Arter v. Jacobs*, 234 N. Y. Supp. 357, said:

“On the other hand, the conditional vendee by her purchase acquired a certain special property at times denominated, without entire accuracy, as an incomplete or defective title, (*Goetschins v. Brightinan*, 156 N. E. 660, 664, 245 N. Y. 186), and had an interest which was transferable and insurable, and under which she could bring action in case of wrongful taking, destruction or injury.”

In New Jersey from the reported decisions it appears that our courts have been somewhat troubled in determining the nature of the vendor's title, the status of the vendee and the status of both insofar as third persons are concerned.

In *Spitalny v. Superior Novelty Mfg. Co.*, 98 Eq. 523, the court said:

“Whatever title Vogel and Company have in the property in question is by virtue of the conditional sale contract and the provisions of the Uniform Conditional Sales Act (P. L. 1919, Chap. 210, p. 461). Under the terms of the contract Vogel and Company retained ‘title’ to the sprinkler system and equipment until fully paid for, with the right to enter and remove the same, in case of default, and sell it to obtain moneys to pay the balance

due; or it had the privilege at any time to change the conditional sale to an absolute sale, 'and to pursue any statutory or other remedies in such case made and provided.'

The 'title' retained by the claimant (if it was retained and we will assume that it was) was a title by way of, or for the purpose of security for the contract price. This is apparent from the provisions of the statute.

"The precise nature of the 'title' need not be determined or considered. Essentially it would seem to be similar or analogous to the title of a mortgagee, in which case the claimant would have had the title or interest of a mortgagee for security, and the insolvent company the title or interest of the mortgagor—the equity of redemption—* * *

* * *

* * *. The claimant's claim of 'title' is not now, and was not at the time of its filing, a claim against the insolvent company, but against Spitalny. It is determinable or enforceable only by a retaking of the goods (or an attempt to do so) under the contract or the sixteenth section of the Conditional Sales Act, or by legal process which might perhaps be a replevin suit or a foreclosure suit * * *."

In *General Motors etc. Corp. v. Smith*, 101 L. 154, one Dietzel bought an automobile from the Foley Chevrolet Company under a conditional sale contract. This contract was assigned to plaintiff. Dietzel attempted to sell the car to defendant in violation of the terms of the contract. Plaintiff instituted a suit in replevin.

Justice Katzenbach said:

"* * * There is nothing in the Conditional Sales Act which prohibits the assignment of the interest of the seller. In fact, a transfer of the interest of the seller in the subject matter of the conditional sale is sanctioned by

the first section of the act which contains the definition of seller. The act says, 'seller means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.' The assignment by the Foley Company to the plaintiff gave to the plaintiff every right the Foley Company had. It was an absolute transfer of the seller's property and interest in the conditional sale agreement, and the motor vehicle mentioned therein, *without the right of redemption*. By this assignment the acceptance corporation became the 'legal successor in interest' of the Foley Company. It was entitled to every right the Foley Company would have had if it had not made the assignment. One of those rights was the right to retake the motor vehicle in the event of a breach of the conditional sale agreement.

An absolute legal title to a chattel is not required to maintain an action in replevin, as held by the trial judge in the present case. A special property in the chattel is all that is required to maintain an action in replevin * * *. This special property the plaintiff had in the present case."

Huddy in his work on Automobiles says the purchaser under a conditional sales contract may be an owner within the meaning of the registration statutes so that the vehicle may properly be registered in his name and asserts that the legislature has the power to classify such purchaser as the owner (sec. 1211).

The legislature of New Jersey has done just this thing. Under the Traffic Act (L. 1928, Ch. 281) which regulates the registration of automobiles by owners thereof and their operation on the highways of the state, conditional vendees are declared owners within the meaning of the act.

It provides:

“A person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagee shall be deemed the owner for the purpose of this act.”

Reference is made to these decisions and our own statute, not so much for the purpose of glean- ing therefrom some definite principle of law, but rather to establish that the law relating to the conditional sale agreement (especially where the automobile is concerned) and the rights and ob- ligations created thereby both between vendor and vendee as well as third persons is, because of the somewhat recent prevalence of such sales, still in the stage of development. We are seeking to per- suade the court to the view that the conditional sale contract has created a legal status peculiar to itself and is, therefore, entitled to receive individ- ual consideration and individual treatment, which will do justice to all those whose rights are ef- fected either because of the contract itself or be- cause of the use of the subject of the sale—in this instance the automobile.

In the case at bar, the trial court found that both Scagliola, the conditional vendee, and the ap- pellant, Satterthwaite, were guilty of negligence which proximately concurred in causing the col- lision and consequent damage to the automobile, which was the subject of the appellee's conditional sale. Following this finding of fact, he held that

the negligence of the conditional vendee should be imputed to the conditional vendor and consequently ordered judgment for the defendant. We agree with the learned judge that the vendee's negligence should bar the vendor's recovery, but we respectfully believe that the legal reason should be phrased differently. However, assuming this to be so, it would not necessitate a reversal of his judgment since the law seems to be well settled that where a trial court's conclusion is correct, and his legal reason therefor incorrect, the judgment will not be disturbed if it can be supported upon another and entirely proper legal ground.

In any event, the legal principle as set forth in this point, namely, that the *conditional vendee of the automobile in this case should be considered the owner for the purpose of operation on the public highways of this state and his method of operation should determine the conditional vendor's right to recover for damages thereto*—it is urged, conforms with the dictates of justice for both the vendor and third persons. The word "imputed" in its legal connotation immediately calls to mind the existence of a relationship such as master and servant, or principal and agent. It is apparent that no such relation exists here. For this reason, we respectfully say that the expression of the court was inept but his underlying thought that the vendee's method of operation should determine *the vendor's right of recovery against third persons, was legally justified* and worthy of perpetuation through adoption by this court.

An examination of the circumstances of this conditional sale and of those surrounding conditional sales generally will demonstrate that such a rule as appellant seeks to establish here is

worthy of this court's approval. When the conditional sale contract was executed here, the vendee, Scagliola, acquired the immediate possession of the automobile and the absolute right to retain possession so long as his installment payments continued. The vendor placed no restrictions on his method of operation on the highways of the state. The manner of operation, control and use was left entirely to the discretion of the vendee.

It is reasonable to suppose that at least sixty per cent of the millions of automobiles which are in use today are the subjects of conditional sales, and it is the vendees who are operating them, not the vendors. The legislatures of the various states have recognized this fact and declared such vendees the owners of such vehicles within the meaning of their regulatory traffic acts. We have no doubt that even though not specifically stated, the courts in construing the recently enacted Financial Responsibility Act would declare conditional vendees the owners of the automobiles they operate, for its purposes.

The conditional sale contract has therefore created a situation whereby mass operation of automobiles exists. It has helped congest the highways and make travel more hazardous than it would normally be. It has placed no qualification on the method of operation. It does not declare a forfeiture for negligent operation by the vendee. Why then should the law grant it the special consideration of recovering for damage to the automobile despite the negligence of the vendee? Isn't it more reasonable and more just to say that since the conditional vendor has made operation on a large scale possible, that as far as *his own* recovery for damage to the motor vehicle sold, he should stand in the shoes of the vendee.

The fundamental motive force which seems to determine all judicial decisions, especially when the case presented is one of novel impression, is the desire to propound a rule which will justly control the exigencies which give rise to the need for appeal to the courts. The present case is one of novel impression in our courts and the exigencies of the situation, we urge, justly require a determination that a conditional vendor cannot recover for the damage to the subject of the sale when the conditional vendee is himself guilty of negligence.

Adoption of this principle would not in anywise change the conditional vendor's liability to third persons so as to render it responsible where injury is occasioned to them through the sole negligence of the vendee. This matter should remain controlled by the rules regulating derivative liability where the legal relations of master and servant and principal and agent exist.

It appears by the agreed state of facts in this case that the accident occurred while the vendee was in full possession of the vehicle and prior to any default. It does appear, however, that a default occurred subsequently. It may be that a stronger case is presented for the third person, such as appellant, where no default has occurred up to the time of the accident. However, insofar as the theory advanced here, as to the vendor's right of recovery, is concerned, we believe possession in the vendee is the criterion for determining that right. If a default has occurred and the vendor has not reduced the vehicle to his possession at the time of the accident, then he should be bound by the vendee's method of operation.

This thought is somewhat sanctioned by the following excerpt from the case of *Lacey v. Great Northern Ry. Co.*, 70 Montana, 346, 225 Pac. 808:

“Whether Massi had made all the payments required of him, a subject somewhat doubtful upon the record, it is clear that plaintiff had not declared a forfeiture. *The mere failure of a conditional vendee to make his payments on time does not change the status of the parties* in the absence of an exercise of the option to declare a forfeiture by the vendor. The clause in the contract allowing the vendor to retake the property is not operative in the absence of affirmative action on his part.” (Cited in 38 A. L. R. 1319).

The brief of the appellee and the opinion of the Supreme Court reversing the trial court, proceed essentially on the theory that the legal status of conditional vendor and vendee is analogous to that of bailor and bailee and, therefore, should be controlled by the same principles.

Some of the distinction between the two contractual relations have already been pointed out. They are primarily (1) the requirement that the vendee must pay the full purchase price for the chattel, while the bailee has no such obligation, (2) the vendee will one day acquire full title to the chattel, the bailee never will, (3) the vendor has neither the expectation nor the right of expectation that the chattel will be returned, the bailor has such expectancy. Another distinction of the utmost importance to this discussion is that when a chattel is bailed, the bailor, either expressly or impliedly, requires the bailee to use reasonable care for its preservation beyond the deterioration caused by reasonable wear and tear. If it is returned in a damaged condition, the law raises a presumption of negligence on the part of the bailee. The conditional vendor here placed no restrictions on the vendee's manner of use but expressly provided that he should be responsible for

all damage to the automobile, regardless of negligence. This provision has also been incorporated in the Uniform Conditional Sales Act so that in any event and regardless of negligence, the vendee must pay for the damage. The bailor has no such protection; if the bailee can explain away the presumption of negligence, the bailor must bear the loss.

There exists, therefore, ample reason why the bailor should have special consideration, while the conditional vendor should not. And in addition, we do not believe that the number of bailments of automobiles do now or ever will reach the magnitudinous proportions of those thrown on the highways by conditional sales, which at bottom is the reason for the contention of appellant.

We have made a somewhat exhaustive search for decisions in this and other jurisdictions covering the specific contention raised here and have been unable to find any in point. Appellee in his brief cites two cases holding that the contributory negligence of the conditional vendee is not imputable to the conditional vendor. One is a Pennsylvania decision, *General Motors Acceptance Corp. v. Baltimore and Ohio R. R. Co.*, April Term, 1929 (not yet officially reported). There, however, the contract was specifically designated a bailment and the question raised was simply whether the negligence of a bailee is imputable to the bailor. In the other, a Montana case, *Lacey v. Great Northern Ry. Co.*, 70 Montana, 346, the court simply states the proposition that the negligence of the buyer is not chargeable to the seller and cites the note in 6 A. L. R. 307, to the effect that the negligence of the bailee is not imputable to the bailor. In neither case was the contention of the appellant here advanced.

It is, therefore, urged that the rules of negligence governing the right of recovery of a bailor against third persons should not control that of the conditional vendor and that in this case as far as its own recovery is concerned, the conditional vendor stands in the shoes of the conditional vendee.

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Attorneys for Defendant-Appellant.

CHARLES STOCKDELL GRAY,
JOHN J. FRANCIS (On the Brief),
Of Counsel.

New Jersey Court of Errors and Appeals

COMMERCIAL CREDIT CORPORATION,
a corporation,
Plaintiff-Respondent,

vs.

GEORGE SATTERTHWAITE,
Defendant-Appellant.

On Appeal
from Supreme
Court.

BRIEF OF PLAINTIFF-RESPONDENT.

This matter is before the court on appeal from the judgment of the Supreme Court reversing the judgment entered for the defendant-appellant in the District Court of the Second Judicial District of the County of Hudson.

Facts.

The uncontroverted facts appear by agreed state of facts (Case pp. 11-13) and may be briefly stated as follows:

Commercial Credit Corporation, (hereinafter referred to as "plaintiff") is the owner of one (1) Cleveland touring car, Serial No. 50089, Motor No. 45120, and equipment, by virtue of conditional sales contract made between Newark Flint Company, (hereinafter referred to as "dealer") and Frank Scagliola (hereinafter referred to as "conditional vendee"), which conditional sales contract is dated July 14th, 1925. Said contract and all right, title and interest of dealer was subsequently

assigned to plaintiff herein by said dealer (Case, p. 11, ll. 1-7).

On October 14th, 1925, an installment of \$58.25 became due on said contract, which installment conditional vendee failed to pay as a result of which the terms of said contract were breached, the entire unpaid balance became due and payable, and plaintiff became entitled to immediate possession of motor vehicle covered by said contract (Case, p. 12, ll. 14-18).

On September 13th, 1925, said motor vehicle, while being driven by said conditional vendee, was in a collision with motor vehicle owned and operated by defendant, George Satterthwaite, as a result of which plaintiff's motor vehicle was wrecked and permanently damaged. Damage to plaintiff's motor vehicle was the sum of \$115.00, representing the unpaid balance on the conditional sales agreement.

Defendant was negligent in the operation of his motor vehicle, which negligence was the proximate cause of the collision aforesaid.

Conditional vendee, while operating said motor vehicle, covered by conditional sale contract, was negligent in the operation of said motor vehicle, which negligence contributed to the happening of the aforesaid accident.

The trial court found:

1. That the contributory negligence of the conditional vendee is imputed to the conditional vendor and therefore barred recovery by conditional vendor for damages sustained to motor vehicle.

2. That even if such negligence of conditional vendee cannot be imputed to conditional vendor, plaintiff has no such interest in property which entitles it to maintain this action,

and thereupon rendered judgment in favor of the defendant, George Satterthwaite, and against the plaintiff, Commercial Credit Corporation.

Exceptions to the trial court's rulings were prayed for and granted.

On appeal to the Supreme Court, the judgment rendered in favor of the defendant, George Satterthwaite, and against the plaintiff, Commercial Credit Corporation, was reversed in 150 Atl. 235.

POINT I.

The Supreme Court correctly decided that the plaintiff was entitled to maintain this action, by reason of its ownership of a general property interest in the motor vehicle concerned.

Under the Uniform Conditional Sales Act, (Chapter 210, P. L. 1919), a conditional vendor possesses a general property interest in the chattel that is the subject of conditional sale. Section 1 of the Uniform Conditional Sales Act provides:

"In this Act 'conditional sale' means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of the contract."

It is to be noted that the Uniform Conditional Sales Act definitely states that, "the property in the goods is to vest in the buyer at a subsequent time * * *." This clearly indicates that until the subsequent time occurs, that "the property in the goods" remains in the conditional seller. The assignee of a conditional vendor obtains the same "property in the goods" as was possessed by the conditional vendor. *General Motors Acceptance Corporation v. Smith*, 101 N. J. L. 154; *Commercial Credit Corporation v. Coover*, 101 N. J. L. 530.

In the case at bar, at the time that the injury to the motor vehicle concerned occurred, the general property in the motor vehicle was vested in the plaintiff because the conditional vendee had not performed the condition upon which the general property interest was to pass, in that he had not made full payment of the purchase price.

The decision of the Supreme Court is in perfect accord with the foregoing principles, as is shown in its interpretation of Section 1 of the Uniform Conditional Sales Act, which is as follows:

✓ "From this language it seems clear that in any event the plaintiff had and remained the general property in the chattel subject to certain qualifications in the act not affecting this case; and that that general property would remain in the plaintiff until full payment had been made. It needs no argument that the owner of a general property in a chattel is entitled to recover for damage to that chattel, at least provided there has been no recovery on behalf of the owner of the special property for the same cause of action." (Page 24, State of the Case.)

The courts of New Jersey have constantly recognized the principle where two persons have proper-

ty interests in a chattel, either may maintain an action against a stranger for damages for injuries caused to that chattel by the negligence of the stranger; even though the chattel be in the possession of a holder of a property interest in the title.

The Court of Errors and Appeals in an opinion by Mr. Justice Dixon, in the case of *Luse v. Jones*, 39 N. J. L. 707, held that both mortgagor and mortgagee could maintain an action for trespass to chattels in the possession of the mortgagor.

The opinion in part, at page 712, is as follows:

“Under these circumstances, the mortgagee is said to be regarded at law as the general owner of the property. *Hall v. Snowhill*, 2 Green 8; *Miller ads. Pancoast*, 5 Dutcher 250.

The mortgagor, however, has a special property in the goods, both because he has a right to make them wholly his own, by payment of the debt, and because, holding them for his own benefit, he is answerable to the mortgagee for them. *Bac. Abr.*, ‘Trespass’, C. 19.

The principles which regulate the action of trespass for an injury to chattels so owned, are stated with precision by Sergeant Sayer, under the title just quoted (‘Trespass’, C. 33, 34), as follows: *‘It is, upon the whole, clear that both the person in whom the general property is, and the person in whom the special property is, may maintain an action of trespass for the taking or injury of a personal chattel by a stranger, while it was in the actual possession of the latter; but if either of these persons have recovered in such action, this shall oust the other of his right of action. Otherwise, the trespasser would be liable to make a second*

satisfaction for the same injury'. These principles are well settled. Sedg. on Dam., 506; 1 Add. on Torts, ch. 7, Art. 3, para. 524; *Browning v. Skillman*, 4 Zab. 351; *Outcalt v. Durling*, 1 Dutcher 443; *Adams v. O'Connor*, 100 Mass. 515; *Faulkner v. Brown*, 13 Wend. 63; *White v. Webb*, 15 Conn. 302." (Italics ours.)

In the case at bar, the conditional vendor, like the mortgagee, has a general property interest in the chattel, hence in the case at bar the Supreme Court has correctly decided, in accordance with the New Jersey authorities, that the conditional vendor, like the mortgagee, is entitled to maintain an action for damages for injuries to the chattel that is the subject of the conditional sale.

Mr. Justice Lippincott announced the same principle in the case of *New York Lake Erie and Western R. R. v. New Jersey Electric Rwy. Co.*, 60 N. J. L. 338, 341, affirmed by the Court of Errors and Appeals, 61 N. J. L. 287, as follows:

"One who has a fixed reversionary interest in property has a right to sue one who is not in possession thereof for an injury to such property which will depreciate its value when it comes to his hands, and is entitled to recover damages to the extent of such depreciation. The owner of a reversionary interest in personal property has the same right of action for an injury thereto as in the case of real property. Sherm. & R. Negl., para. 119." (Italics ours.)

The authorities and jurisdictions other than New Jersey uniformly accord with the decision of the Supreme Court in the case at bar.

The case of *First National Bank v. Union Railway Co.*, 284 S. W. 363, (Tenn. 1926), presented the question of whether a conditional vendor could

maintain an action against a third person for injury to the property covered by the conditional sale. The Court set forth the law on this point on page 364 as follows:

“What are the rights of the parties?”

(1) It is well settled that either the conditional vendor or vendee can prosecute an action for injury to the property by a third party. *Railway Co. v. Lumber Co.*, 130 Tenn. 354, 170 S. W. 591; *Harris v. Seaboard Air Line Ry. Co.*, 190 N. C. 480, 130 S. E. 319; cases cited in annotation 38 A. L. R. 1337.

The same rule applies where the relationship is that of mortgagor and mortgagee. 27 Cyc. 1272; *Harris v. Seaboard Air Line Ry. Co.* supra; *Wilkes v. Southern Ry.*, 85 S. S. 346, 67 S. E. 292, 137 Am. St. Rep. 890, 21 Ann. Cas. 79.

Also where the relationship is that of bailor and bailee. 6 Corpus Juris, 1166.”

The Supreme Court of Montana, in *Lacey v. Great Northern Rwy. Co.*, 70 Montana 346; 225 Pac. 808, (1924) 38 A. L. R. 1331, at page 1335, which involved the same question as that presented by the Union Railway case, said as follows:

“ * * * * Consequently the seller is allowed to recover from the buyer the full price due, less installments paid. *The conditional vendor has a right of action for damages upon the object of the sale whether the tortfeasor be the conditional vendee or a third person.*” (Italics ours.)

In 38 American Law Reports, which annotates authorities from a number of jurisdictions, the following appears on page 1340:

"It has been held that a conditional vendor, as owner of the legal title, may sue and recover from a third person who damages or destroys the subject-matter of the sale. Smith v. Louisville & N. R. Co. (1922), 208 Ala. 440, 94 So. 489; Smith v. Gufford (1895), 36 Fla. 481, 51 Am. St. Rep. 37, 18 So. 717; Ryals v. Seaboard Air Line R. Co. (1924), 158 Ga. 303, 123 S. E. 12; Carolina C. & O. R. Co. v. Unaka Springs Lumber Co. (1914), 130 Tenn. 354, 170 S. W. 591; United Iron works v. Hurley Mason Co. (1912), 71 Wash. 275, 128 Pac. 209. And see the reported case (Lacey v. Great Northern R. Co. Ange, 1331). Compare Louisville & N. R. Co. v. Miller (1923), 209 Ala. 378, 96 So. 322." (Italics ours.)

Thus, in *Ryals v. Seaboard Air-Line R. Co.* (1924), 158 Ga. 303, 123 S. E. 12, wherein it appeared that one of the defendant's trains negligently struck and destroyed an automobile which had been conditionally sold by the plaintiff, *it was held that the vendor, as owner of the legal title, had a right to bring action for damage sustained, not exceeding the purchase price.*" (Italics ours.)

From the foregoing analyses, it can thus be seen that the decision of the Supreme Court in the case at bar is supported by the Uniform Conditional Sales Act in New Jersey, by the authorities in New Jersey, and by the authorities in other jurisdictions.

POINT II.

The Supreme Court properly decided that the plaintiff, as conditional vendor, was not barred from maintaining the action in this case by the contributory negligence of the conditional vendee.

The Supreme Court decided that the contributory negligence of the conditional vendee in the instant case was not a bar to the action by the plaintiff for damage to the motor vehicle, because the plaintiff has not been negligent, and because, further, the plaintiff had no control over the conduct and actions of the conditional vendee. In 45 C. J. 943, which is cited in the decision of the Supreme Court, the principle of law was clearly pointed out in the following language:

“The term ‘contributory negligence’ necessarily presupposes negligence *for which defendant is responsible*, which would of itself sustain an action but for the concurrence of the contributory negligence.”

Obviously, in the case at bar, the plaintiff is not responsible for the negligence of the conditional vendee because the conditional vendee acted independently and was not in any manner subject to the control of the plaintiff. It is also clear that in the case at bar if the contributory negligence of the conditional vendee is held to be a bar to the action by the conditional vendor, that there is an implication that the conditional vendor has acted wrongfully and is therefore subject to an action for damages.

The authorities in New Jersey uniformly support the principle that where two persons have property interests in a chattel, the contributory

negligence of one, unless he is subject to the control of the other, will not bar an action by the other for damages to the chattel, caused by a third person.

In the case of New York Lake Erie and Western R. R. Co. v. N. J. Electric Rwy. Co., 60 N. J. L. 338, affirmed by the Court of Errors and Appeals, 61 N. J. L. 287, the court applied the foregoing principle in an action by a bailor for damages to a chattel, where there was contributory negligence of the bailee. In deciding this question, Mr. Justice Lippincott, speaking for the Supreme Court, stated on pages 345 to 350:

"Therefore, there is nothing in the relation of the bailor and bailee which of itself can prevent the bailor from seeking out the third party as the wrongdoer, and imposing upon him the liability for the results of his conduct to the subject of the bailment. It would seem, upon reason, that there could exist no objection to the joint liability of the wrongdoer and the bailee, when the joint negligent act of both caused the injury.

But the defendant distinctly contends that the negligence of the bailee or its servants in the operation of this locomotive and train of cars by reason of this bailment, contributing to the injury, is imputable to the bailor and prevents a recovery on the part of the bailor against the defendant as a third party, who is a joint wrongdoer with the bailee. *This joint negligence by the special verdict is found to have been the cause of the collision and injury, and, therefore, the case must be considered with the fact of the contributing negligence of the bailee established.*

In a contract of bailment of things for hire, the bailor is not responsible to a third party for injuries occurring to such third

party by reason of the negligent use of the thing hired by the bailee, nor for the negligence of the servants of the bailee in respect thereto. *The bailee does not stand in the place of the bailor nor represent him in such relation as to render the bailor liable for such injuries*, nor are the servants of the bailee the servants of the bailor or in any sense acting for him, and the contract of bailment is so far entirely an independent one, and *the liabilities of the bailor and bailee to third parties are essentially independent of each other.*

The contributory negligence of a third person can only be set up in a defense when it is legally imputable to the plaintiff, and its existence must depend upon some connection or relation between the plaintiff and the third person from which such legal responsibility may arise. It is a general rule that it is no justification of the misconduct of the defendant that some third person, a stranger, was also in the wrong.

It may be deemed to be settled in this state that the employees or servants of a bailee are not the servants of the bailor in any such relation as to make the bailor liable to third parties for their negligence or misconduct in relation to the thing bailed.

* * * * In an action by A against the railroad company for damages it was held that the relation of master and servant did not exist between the plaintiff and the driver, and that the negligence of the driver, cooperating with that of the persons in charge of the train which caused the accident, was not imputable to the plaintiff as contributory negligence to bar his action. It was further held that for whatever purpose the negligence was invoked, whether as an action for injury done by the driver, or as contributory negligence to bar the action by the passen-

ger, against the third person for an injury sustained, the negligence to be imputed to the passenger must be such as arises in some manner from his own conduct.

**** There is no perceivable distinction between the case in hand and the cases last cited. Both rest upon a contract of bailment for the hire of a thing for use, and although a contract mutually beneficial to each of the parties, they are so independent of each other that the negligence of one cannot be imputable to the other.

**** The bailee was bound to use reasonable care and diligence in the preservation of the property from injury. The defendant, in the operation of the electric car, was bound to exercise reasonable care in avoiding injury to the property of which the plaintiff was the owner.

It would seem that the intervention of the negligence of the bailee could not shield the defendant from the injury caused by its own negligence. Both might have been selected as joint tort-feasors, or the action could be maintained against either.

The conclusion reached is that the plaintiff had the right to sue either or both these companies for the injuries arising from their negligence, to the locomotive and cars of the plaintiff, and it is not a defense to the action that the accident was contributed to by the negligence of the other. Each is liable upon its own negligence, and the negligence of the bailee is not imputable to the plaintiff as a shield to the defendant against recovery." (Italics ours.)

The New Jersey Electric Railway Co. case has been followed and cited with approval in a number of cases which are annotated and reported in

30 A. L. R. 1243 to 1248, and also in the case of *Gibson v. Bessemer and Lake Erie R. R. Co.*, 226 Penn. 198, 27 L. R. A., N. S. 289.

The same principle should be and is applied to the conditional sale relationship as a conditional sale insofar as the question involved under this point is the same as a bailment. This is very clearly stated in the case of *Stotts v. Puget Sound Traction Light & Power Co.*, 94 Washington 339, L. R. A. 1717 D, 214; 38 A. L. R. 1339.

In this case the court said:

"The right of the vendee, as against third parties, may well be likened to that of bailee, and we see no reason why the same rules should not apply, especially when we consider the several statutes relied on by defendant. 'The law seems to be well settled that the bailee of personal property may recover compensation for any conversion of or any injury to the article bailed while in his possession'. The theory of the law being that, the bailee being bound to restore the property or to answer for its value, the action is maintained for the benefit of the bailor, and bars a subsequent action by him. We think the analogy is complete. While having no element of title, the conditional sales vendee is bound to keep the property secure and to pay its value to the vendor. The quantum of title is the same in the vendor as in the bailor, and the want of title is the same in the vendee as in the bailee. The liability of the trespasser is the same, his only concern being that he shall not be put to the hazard of two recoveries."

And see *French v. Osmer*, 67 Vermont 427, 32 Atl. 254.

In *General Motors Acceptance Corporation v.*

Baltimore & Ohio Railroad, Case No. 89, April Term, 1929, not yet officially reported, a bailment lease transaction, which, under the Uniform Conditional Sales Act, would be considered a conditional sale contract, was involved; and the question was presented as to whether the contributory negligence of the bailee would bar recovery by the bailor for damages caused to the chattel by a third person. The facts in the case were:

One, Howard A. Betz, obtained possession of an automobile from Schads Bros., automobile dealers, under a contract in writing designated by the laws of Pennsylvania where the Uniform Conditional Sales Act has not been enacted, as a bailment lease. By the terms of this contract Betz paid a specified monthly rental in 12 monthly installments but was given an option to "Purchase" at the end of the term provided he had performed his part of the agreement. Under the Uniform Conditional Act (Sec. 1, Sub. [2]) said contract would be construed to be a contract of conditional sale (*Rapaport v. Rapaport Express Co.*, 90 N. J. E. 519, 107 Atl. 822). He made all payments up to October 27, 1926, at which time said automobile while being operated by him was involved in a collision with a train of the defendant railway company.

Two actions were instituted simultaneously in the County Court, one by Betz and another by General Motors Acceptance Corp., the assignees of the so-called lease agreement, against the railway company. A verdict was directed in favor of the defendant in the action in which Betz was the plaintiff upon the ground that the evidence showed that he had been guilty of contributory negligence as a matter of law. The case of General

Motors Acceptance Corporation resulted in a verdict in its favor for \$725.

The court decided that the contributory negligence of the bailee did not bar recovery by the bailor, and stated that:

*"The relation between the parties was that of bailor and bailee and the first question arising under the instructions is whether the ascertained contributory negligence of the bailee is imputable to the bailor and bars its right to recover any damages * * *."*

* * * Appellant by its negligence has destroyed the car and should not be allowed to set up as a defense against the claim of appellee the concurrent negligence of the third party; in fact they are joint tortfeasors; *Sea Insurance Co. v. Vicksburg S. & P. Rwy. Co.*, 159 Fed. 676; *N. Y. L. E. W. Rwy. Co. v. N. J. Electric Rwy. Co.*, 60 N. J. L. 338, 38 Atl. 828. As an automobile is not in itself a dangerous instrumentality, there is no reason founded in public policy for holding the bailor responsible for the acts of one to whom he entrusts it, without proof that he should have reasonably known that the bailee was incompetent or proof that the status of the bailee brought the bailor within some recognized sphere of vicarious liability. There must be a relationship of master and servant, or of principal and agent, or such a reservation of direction and control, with respect to the use of the thing bailed, at the time and place of the injury, as would in legal contemplation, make the negligent act of bailee also the negligent act of the bailor; *Morgan Co. v. Payne*, 207 Ala. 674, 93 So. 628; 1 Thompson, Negligence, Sec. 499" * * *.

The Montana Supreme Court, in the case of *Lacey v. Great Northern Railway Co.*, 70 Montana

346, 38 A. L. R. 1331, 1337, clearly decided that the negligence of the a conditional vendee did not bar an action by the conditional vendor against a third person for damages to the chattel. In the opinion the court stated:

“* * * * It is now pretty well settled that the negligence of a buyer under a conditional sales agreement is not chargeable to the seller. In the note to Lloyd v. Northern P. R. Co., 6 A. L. R. 307, it is said: ‘But at this time the weight of authority is decidedly in favor of the rule that in bailments other than for carriage the contributory negligence of the bailee is not imputable to the bailor where the subject of the bailment is damaged by a third person.’”

Other jurisdictions have consistently followed the principle of law that the contributory negligence of a conditional vendee, or a person holding a property interest similar to that of a conditional vendee, will not bar an action by a conditional vendor for damages caused by a third person to the property that is subject to the conditional sale.

See also:

1 Thomp., Neg., para. 512;

Morgan County v. Payne, 207 Ala. 674,

30 A. L. R. 1243, 93 So. 628;

Norton v. Hines, 211 Mo. App. 438, 245 S. W. 346;

Virginia R. & Power Co. v. Gorsuch, 120 Va. 655, 91 S. E. 632, Ann. Cas. 1918B, 838;

Spelman v. Delano, 177 Mo. App. 29, 163 S. W. 300;

Gibson v. Bessemer & L. E. R. Co., 226 Pa. 198, 27 L. R. A. (N. S.) 690, 75 Atl. 194, 18 Ann. Cas. 535.

To hold that the contributory negligence of the conditional vendee in this case is a bar to the action by the plaintiff would be to establish a principle of law which is contrary to the fundamental principles of the law of negligence and to justice. Such a decision would make the plaintiff answerable for the conduct of the conditional vendee, over whose conduct it has no control whatsoever, and from whose occupation the plaintiff takes no profit. Obviously, the New Jersey courts have refused to establish a principle of law which would produce such results. See *Maurer v. Brown, et al*, 8 Adv. Reps. 245; 149 Atl. 336.

CONCLUSION.

Respondent, therefore, respectfully submits that the decision of the Supreme Court reversing the District Court should be affirmed with costs.

Respectfully submitted,

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