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Commercial Law (1961)

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SMALL SCHOOL.
BIG VALUE.

COMMERCIAL LAW

FREDERICK M. HART

EVEN a quick glance at the 1961 cases indicates that this has been a provocative year for the lawyer interested in commercial law. However, although seven states¹ adopted the Uniform Commercial Code during the past year, and it appears likely that another² will be added to the list before the end of this year, there has been no legislative action on the Code in New York since the last Survey. A new study³ of its projected effect on New York law has been completed, and it seems likely that the Code will be introduced in the legislature during the coming session. If acceptance of the Code continues elsewhere the desirability of its adoption in New York will no longer center on its intrinsic value, but rather on the question of whether this state can afford to forego the benefits of having uniform legislation in this area.

I

SALES

*Vendors' Liability—Warranty—Privity.—Greenberg v. Lorenz*⁴ is clearly the most significant sales case to be decided during the past year. This litigation, first noted in the 1958 Survey,⁵ was reported in three separate opinions while in the lower courts.⁶ It exemplifies the current controversy⁷ over whether privity of contract is essential to recovery in a warranty action.

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1. Arkansas, Illinois, New Mexico, Ohio, Oklahoma, Oregon and Wyoming. See 30 U.S.L. Week 2076 (Aug. 8, 1961).

2. The Code has passed one house of the legislature in New Jersey, and indications are that it will be passed by the other house before the end of 1961. The State of New Jersey Study of the Uniform Commercial Code (1960) under the direction of Professor William D. Hawkland is excellent.

3. Hogan, Annotations of the Statutory and Decisional Law of New York State (1961).

4. 9 N.Y.2d 195, 173 N.E.2d 773, 213 N.Y.S.2d 39 (1961).

5. Hart, Commercial Law, 1958 Survey of N.Y. Law, 33 N.Y.U.L. Rev. 1146, 1157.

6. 14 Misc. 2d 279, 178 N.Y.S.2d 404 (N.Y. City Ct. 1957), aff'd, 12 Misc. 2d 883, 178 N.Y.S.2d 407 (Sup. Ct., App. T., 1st Dep't 1958), modified mem., 7 App. Div. 2d 968, 183 N.Y.S.2d 46 (1st Dep't 1959). The lower court opinions were noted in 23 Albany L. Rev. 451 (1959) and 44 Cornell L.Q. 608 (1959). For an excellent Note on the Court of Appeals decision, see 25 Albany L. Rev. 332 (1961).

7. See Hart, supra note 5; Hart, Commercial Law, 1959 Survey of N.Y. Law, 34 N.Y.U.L. Rev. 1442. For additional cases reported during the current Survey period on the privity question, see *General Aniline & Film Corp. v. A. Schrader & Son*, 13

The facts of *Greenberg* are simple: plaintiff, a minor, was injured when she ate canned salmon purchased by her father from the defendant retailer. The issue is not obscure: may the plaintiff recover in warranty though she is not in privity with the defendant? Equally obvious is the answer if the court were to follow past precedent: recovery must be denied.⁸ The court clearly recognized this: "Our difficulty is not in finding the applicable rule but in deciding whether or not to change it."⁹ Nor did the court doubt the desirability of a change: "The injustice of denying damages to a child because of non-privity seems too plain for argument."¹⁰ The one aspect of the problem which did cause the court momentary hesitation was whether abandonment of the privity requirement in the *Greenberg*-type case should come by judicial decision rather than legislative enactment.

The reasons given by the court for discarding the rule previously adopted in New York are neither novel nor surprising. "[T]he present rule," the court said, "is itself of judicial making since our statutes say nothing at all about privity."¹¹ Text writers were cited for the proposition that in early times warranty liability was thought to be in tort, and the court indicated that "alteration of the law in such matters has been the business of the New York courts for many years."¹²

Thus, the citadel of privity has suffered further undermining in this state. The court, however, made no pretense of handling the entire privity question, for it cautiously remarked that other factual situations may exist where the privity requirement will be found to be advantageous.¹³ The decision effects no more of a change than is contained in the Uniform Commercial Code.¹⁴ Furthermore, relaxation of the rule where a consumer who is a member of the purchaser's household sues the immediate vendor had been accomplished to a large extent in New York prior to *Greenberg* by the use of agency princi-

App. Div. 2d 359, 215 N.Y.S.2d 861 (3d Dep't 1961); *Canter v. American Cyanimid Co.*, 12 App. Div. 2d 691, 207 N.Y.S.2d 745 (3d Dep't 1960) (mem.); *Deeves v. Fabric Fire Hose Co.*, 29 Misc. 2d 136, 210 N.Y.S.2d 903 (Sup. Ct., Westch. Co. 1961); *Bolle v. Seligman & Latz, Inc.*, 25 Misc. 2d 475, 205 N.Y.S.2d 638 (Sup. Ct., Queens Co. 1960).

8. See, e.g., *Redmond v. Borden Farm Prods. Co.*, 245 N.Y. 512, 157 N.E. 838 (1927) (mem.); *Chysky v. Drake Bros.*, 235 N.Y. 468, 139 N.E. 576 (1923).

9. *Greenberg v. Lorenz*, 9 N.Y.2d 195, 198, 173 N.E.2d 773, 774, 213 N.Y.S.2d 39, 41 (1961).

10. *Id.* at 199, 173 N.E.2d at 775, 213 N.Y.S.2d at 42.

11. *Ibid.*

12. *Id.* at 200, 173 N.E.2d at 775, 213 N.Y.S.2d at 42.

13. *Id.* at 200, 173 N.E.2d at 775-76, 213 N.Y.S.2d at 42.

14. Uniform Commercial Code § 2-318.

ples.¹⁵ The more subtle problems that exist where the plaintiff is attempting to skip over his immediate vendor to sue a wholesaler, distributor or manufacturer were not present either to trouble the court, or to temper its sympathy for the plaintiff.

The nucleus of the court's opinion is contained in one short paragraph which is worthy of close inspection:

So convincing a showing of injustice and impracticality calls upon us to move but we should be cautious and take one step at a time. To decide the case before us, we should hold that the infant's cause of action should not have been dismissed solely on the ground that the food was purchased not by the child but by the child's father. Today when so much of our food is bought in packages it is not just or sensible to confine the warranty's protection to the individual buyer. At least as to food and household goods, the presumption should be that the purchase was made for all members of the household.¹⁶

Two important conclusions may be drawn from the court's treatment of the case: (1) all the judges except Judge Froessel, who concurred in a separate opinion,¹⁷ agreed that alteration of the privity requirement was within the domain of the courts and need not be left for the legislature; and (2) the court refused to anticipate its decision on privity questions where the factual situation differs from the *Greenberg* case.

Vendors' Liability—Warranty—Existence of Warranty and Breach.—*Napoli v. St. Peter's Hospital*,¹⁸ a defective blood case, presents a variation from *Perlmutter v. Beth David Hospital*.¹⁹ In *Perlmutter*, the Court of Appeals held that no implied warranty accompanied a transfusion of blood by a hospital since the contract between a hospital and its patient was one for services and not of sale. Subsequently, the appellate division of the third department held that a hospital patient injured by defective blood could not sue the processor who had sold the blood to the hospital in warranty because of the lack of privity.²⁰ In the *Napoli* case plaintiff sued the hospital, alleg-

15. See *Mouren v. Great Atl. & Pac. Tea Co.*, 1 N.Y.2d 884, 136 N.E.2d 715, 154 N.Y.S.2d 642 (1956) (mem.); *Bowman v. Great Atl. & Pac. Tea Co.*, 284 App. Div. 663, 133 N.Y.S.2d 904 (4th Dep't 1954), aff'd, 308 N.Y. 780, 125 N.E.2d 165 (1955). See also N.Y. State Law Rev. Comm'n Rep., Legis. Doc. No. 65(B) (1959); N.Y. State Law Rev. Comm'n Rep., Legis. Doc. No. 65(J) (1943).

16. *Greenberg v. Lorenz*, 9 N.Y.2d 195, 200, 173 N.E.2d 773, 775, 213 N.Y.S.2d 39, 42 (1961).

17. Judge Froessel would have allowed recovery on the ground that the father had acted as the agent of his daughter. 9 N.Y.2d at 200, 173 N.E.2d at 776, 213 N.Y.S.2d at 43.

18. 213 N.Y.S.2d 6 (Sup. Ct., Kings Co. 1961).

19. 308 N.Y. 100, 123 N.E.2d 792 (1954).

20. *Krom v. Sharp & Dohme, Inc.*, 7 App. Div. 2d 761, 180 N.Y.S.2d 99 (3d Dep't 1958) (mem.).

ing not an implied but an express warranty that the blood was fit. On a motion to dismiss the complaint, the court held that a good cause of action was alleged. Distinguishing the *Perlmutter* case on the ground that it decided only that no implied warranty accompanied a transfusion of blood, the court stated that "parties can contract with respect to any valid subject matter and bind each other thereto."²¹

The language, if not the result, in the *Napoli* opinion is questionable. The Uniform Sales Act defines an express warranty as "any affirmation of fact or any promise by the seller relating to the goods . . . if the buyer purchases the goods relying thereon."²² Hence, a warranty under the sales act, and in the law of sales generally, may be either a promise or a representation. Where it is the latter, the necessary intent to give rise to a separate contract of warranty does not exist.²³ Nor is there anything in the statutory language to indicate that a sale is less necessary to support an express warranty than to support an implied warranty.²⁴

Whether a warranty was to be implied was also determinative in *Sanchez-Lopez v. Fedco Food Corp.*²⁵ This case involved the classic supermarket situation of a plaintiff selecting a bottled item which exploded prior to his paying the purchase price. The court held that an implied warranty existed in this case, distinguishing it from *Day v. Grand Union Co.*²⁶ on the facts. In the *Day* case the explosion had occurred immediately after the customer had removed the bottle from the shelf; in *Sanchez* it did not explode until the plaintiff had reached the checkout counter and the clerk was preparing to register the item on the sales tape.

The factual difference between the two cases is hardly sufficient to support contrary results. If the *Sanchez* case is correct, the reason must be found in broader principles,²⁷ and the *Day* case eventually

21. 213 N.Y.S.2d at 10.

22. N.Y. Pers. Prop. Law § 93.

23. 4 Williston, Contracts §§ 970-71 (rev. ed. 1936). Cf. *Hawkins v. McGee*, 84 N.H. 114, 146 Atl. 641 (1929).

24. For a strong argument that a warranty should be found in service contracts, see Farnsworth, Implied Warranties of Quality in Non-Sales Cases, 57 Colum. L. Rev. 653, 660-66 (1957). However, Farnsworth does not favor stretching the concept of a sale to fit such situations. Instead he would impose a warranty which is analogous to the warranties which accompany sales of goods. *Id.* at 667-74.

25. 27 Misc. 2d 131, 211 N.Y.S.2d 953 (N.Y. City Ct. 1961).

26. 280 App. Div. 253, 113 N.Y.S.2d 436 (3d Dep't), *aff'd*, 304 N.Y. 821, 109 N.E.2d 609 (1952).

27. The court also supported its holding with the statement that "by presenting himself to the cashier with his merchandise cart for the purpose of registering his purchases and paying for them, plaintiff evinced a definite intention to accept the offer of the seller. A bilateral contract of sale was thereupon effectively entered into . . ." 27 Misc. 2d at 134, 211 N.Y.S.2d at 956-57.

must be overturned. It would appear that the court was struggling to place upon the retailer the same liability that a seller of goods has in warranty. It may be socially desirable to afford such protection to one who has carried his product to a supermarket checkout counter, or has the bottle in his cart at the time of the explosion, or perhaps to a party who has handled it, or even to one injured as he walks by an exploding bottle. However, to say that a warranty existed in the *Sanchez* case because there was something more like a sale than there was in the *Day* case is to distort the concept of the warranty cause of action and to invite confusion.²⁸

Another point in the *Sanchez* case is worth noting. Plaintiff failed to submit any fragments of the bottle. Apparently because of this failure the defendant disputed the sufficiency of the evidence to show a breach of the warranty. The court, however, considered such evidence irrelevant, evidently assuming that once a warranty is found, an explosion of the bottle which results in injury automatically constitutes an actionable breach. The court's summary treatment of this argument is dangerous for it may be taken to equate the warranty of merchantability with a guarantee that the bottle is accident-proof.²⁹

Passage of Title—Payment by Dishonored Check.—A simple issue that is not covered by the Uniform Sales Act and which has never been resolved definitively by the New York Court of Appeals is whether title to goods passes where the vendee pays for them with a check that is subsequently dishonored because the drawer's bank account was insufficient.³⁰ In *Stanton Motor Corp. v. Rosetti*³¹ a used car dealer authorized an employee to purchase cars up to the value of \$150. This agent was supplied with a check which was blank except for the signature of the dealer. He offered the owner of an automobile \$2,650 for his car, and this offer was accepted. The agent then completed the check in the amount of the purchase price and gave it to the owner who in turn completed the necessary papers to effectuate a transfer of the vehicle to the dealer. Subsequently, the car was sold by the agent to a bona fide purchaser.

An action was brought to determine whether the original owner or the bona fide purchaser had better title to the automobile. In deciding that the purchaser took good title, the court held that a void-

28. See Farnsworth, *supra* note 24, at 667.

29. See *Natale v. Pepsi-Cola Co.*, 7 App. Div. 2d 282, 182 N.Y.S.2d 404 (1st Dep't 1959) (burden on plaintiff to account for bottle from time of purchase to accident).

30. See Comment, 24 Albany L. Rev. 195, 200 (1960).

31. 11 App. Div. 2d 296, 203 N.Y.S.2d 273 (3d Dep't 1960).

able title had passed to the dealer upon payment of the purchase price with the subsequently dishonored check. In following what is known as the "Nebraska Rule,"³² the court cited *Phelps v. McQuade*³³ as supporting authority for its holding. Noted, however, were two appellate division cases,³⁴ both subsequent to the *Phelps* case, which may be construed as contrary to this holding.

II

BILLS AND NOTES

Although it appears that more than the usual number of cases involving negotiable instruments were decided during the past year, only two have been selected for inclusion herein. The others either followed accepted rules of long standing or were decided primarily on factual issues.

Payment of Check Over Stop-Payment Order—Right of Bank vis-à-vis Payee.—*Rosenbaum v. First Nat'l City Bank*³⁵ presents an interesting example of how an agreement designed to shield a party from liability may become a sword in the hands of an antagonist. In this case a depositor of the defendant-bank requested that payment be stopped on a check. The bank, in accepting the stop-payment order, apparently obtained from its depositor the usual agreement not to hold the bank liable if the instrument were nevertheless paid. Subsequently, the check was presented by the plaintiff who asked for a cashier's check instead of cash for the instrument. The bank complied with the request, but upon discovering the stop-payment order, refused to pay the cashier's check when the plaintiff later presented it. This action was commenced to recover the amount of the cashier's check from the bank.

Recovery might have been allowed by a simple extension of the *Price v. Neal* rule.³⁶ This approach, adopted by a majority of jurisdictions³⁷ which have considered cases similar to *Rosenbaum*, is neither unreasonable nor unrealistic. If a bank is bound as a matter of law to know the signatures of its depositors, it is difficult to see why it should not also be conclusively presumed to know the status of their accounts. Actually, with the advent of automation in the banking

32. See *Sullivan Co. v. Larson*, 149 Neb. 97, 30 N.W.2d 460 (1948).

33. 220 N.Y. 232, 115 N.E. 441 (1917), affirming 158 App. Div. 528, 143 N.Y. Supp. 822 (1st Dep't 1913).

34. *Damis v. Barcia*, 266 App. Div. 698, 40 N.Y.S.2d 107 (3d Dep't 1943) (mem.), and *Amols v. Bernstein*, 214 App. Div. 469, 212 N.Y. Supp. 518 (1st Dep't 1925).

35. 13 App. Div. 2d 100, 213 N.Y.S.2d 513 (1st Dep't 1961).

36. 3 Burr. 1354, 97 Eng. Rep. 871 (K.B. 1762).

37. Britton, *Bills and Notes* § 137 (2d ed. 1961).

business, it appears that there is more validity in holding a financial institution to a knowledge of the accounts it keeps than to assume that it has an opportunity to check against forged signatures.

The court, however, construed earlier Court of Appeals decisions³⁸ as holding that where a check is paid over a stop-payment order the payor-bank may recover from the payee, or, as in this case, resist payment of an instrument given in exchange for the check, so long as the payee has not changed his position. If the *Rosenbaum* case merely reiterated this doctrine, it would be important only as a reaffirmation of an ill-considered rule, but the opinion attempts to amplify the previous New York cases and to limit their applicability.

The right of the drawee-bank was held dependent upon a showing that the bank suffered a loss as a result of honoring the check. The court in the *Rosenbaum* case held that no damage could be shown by the defendant-bank. The exculpatory clause in the stop-payment order permitted the bank to debit the drawer's account even though it had wrongfully paid over the stop-payment order.

The result reached by the court unquestionably furthers "the policy of maintaining confidence in the security of negotiable paper by making the time and place of acceptance or payment the time and place for the final settlement, as between drawee and holder . . ." ³⁹ It is also a desirable result from the standpoint of uniformity.⁴⁰ The rationale of the court is less satisfactory. Apparently the result would have been different had the bank not "protected" itself by procuring a release of liability from its depositor. Thus, the decision hinges upon the proposition that the payee, a third party to the release, may use it to establish that the bank did not suffer a detriment. This appears akin to denying a plaintiff recovery because he has insured against the risk. In addition, although New York courts have held exculpatory clauses valid,⁴¹ the litigation that they continue to

38. *Metropolitan Life Ins. Co. v. Bank of United States*, 259 N.Y. 365, 182 N.E. 18 (1932); *Mount Morris Bank v. Twenty-third Ward Bank*, 172 N.Y. 244, 64 N.E. 810 (1902); *Irving Bank v. Wetherald*, 36 N.Y. 335 (1867). For a case decided during the Survey period on this question, see *International Press Clipping Bureau, Inc. v. American Trust Co.*, 28 Misc. 2d 638, 208 N.Y.S.2d 146 (Sup. Ct., App. T., 1st Dep't 1960).

39. *Woodward*, *Quasi Contracts* 137 (1913).

40. See note 37 *supra*. The Uniform Commercial Code §§ 3-417, 4-207, adopt the doctrine of *Price v. Neal*, but apparently restricts its operation to cases in which payment has been made over the forged signature of the drawer. See *Hawkland*, *Commercial Paper* 4 (1959). Uniform Commercial Code § 4-407 permits a bank which has paid out over a stop-payment order to use subrogation as a means of preventing unjust enrichment.

41. See, e.g., *Gaita v. Windsor Bank*, 251 N.Y. 152, 167 N.E. 203 (1929); *Seldowitz v. Manufacturers Trust Co.*, 202 N.Y.S.2d 129 (Sup. Ct., App. T., 1st Dep't

breed⁴² casts doubt upon the court's assumption that they fully protect the drawee-bank.

Holder in Due Course—Forgotten Notice.—The Uniform Negotiable Instruments Law defines a holder in due course as one who, among other things, takes an instrument with no notice of any infirmity in it or defect in the title of the party negotiating it.⁴³ One of the problems raised by this requirement is whether a person can hold in due course if he was once given notice but had forgotten it at the time he took the instrument. *First Nat'l Bank v. Fazzari*⁴⁴ held that he cannot. The defendant in this case orally informed a teller at the plaintiff-bank that he had been tricked into making a note payable to a specified third party. Some three months later the bank, having forgotten the notice, purchased the instrument. In the suit to recover on the note, the bank failed to prevail on the ground that it was not a holder in due course and the maker's personal defense was thus effective.

It is arguable that the holding has merit,⁴⁵ but the opinion fails to meet the fundamental questions raised by resorting to technical arguments which are, in themselves, open to criticism. Apparently, the court believed the statute should be literally interpreted, and that a clear reading of it required that recovery be denied. Emphasis was placed on that part of the section which states that one is prevented from being a holder in due course if he had notice, but a clause which provides that such notice must exist at the time the instrument is taken apparently received little weight.⁴⁶ In addition, the opinion fails to consider the effect of a later section which, in defining notice, indicates that it is generally equivalent to actual knowledge.⁴⁷ When these aspects of the statutory language are considered, and the interrelation between good faith and notice is recognized,⁴⁸ considerable doubt is cast on the court's interpretation of the section.

1960). It appears that the Uniform Commercial Code [§ 4-103(1)] holds such clauses unenforceable. See *Thomas v. First Nat'l Bank*, 376 Pa. 181, 101 A.2d 910 (1954).

42. E.g., *Seldowitz v. Manufacturers Trust Co.*, supra note 41; *Capritta v. National Commercial Bank & Trust Co.*, 26 Misc. 2d 71, 206 N.Y.S.2d 726 (Albany City Ct. 1960).

43. Uniform Negotiable Instruments Law § 52(4).

44. 13 App. Div. 2d 582, 212 N.Y.S.2d 380 (3d Dep't 1961) (mem.).

45. See Britton, *Bills and Notes* § 107 (2d ed. 1961).

46. The section, in part, reads: "That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect . . ." N.Y. Negotiable Instr. Law § 91.

47. N.Y. Negotiable Instr. Law § 95. See Uniform Commercial Code § 3-304, comment 2 (May 1949 Draft).

48. See Fagan, *Notice and Good Faith in Article 3 of the U.C.C.*, 17 U. Pitt. L. Rev. 176 (1956).

The court also resorted to a convenient but unsatisfactory argument to dispose of a contrary supreme court case, *Lord v. Wilkinson*.⁴⁹ That case was quickly dismissed as not controlling on the ground that it was decided prior to the enactment of the applicable statute. If there existed some manifestation of legislative intent to overrule the *Lord* case, this might be sufficient to require a perfunctory rejection of its rule and reasoning, but there is no such indication. In fact, the case has been quoted, the rationale approved and the holding followed in the leading case⁵⁰ on this question decided under the uniform act.

III

SECURED TRANSACTIONS

The legislature passed the usual number of technical amendments to both the statutory provisions controlling security devices⁵¹ and to retail sales contract legislation.⁵² The most important judicial action was a case⁵³ decided by the Court of Appeals which helps clarify the effect of Sections 5 and 9 of the Uniform Conditional Sales Act.

Double Financing—Conditional Sales for Resale.—Last year's Survey⁵⁴ discussed at some length the appellate division opinion in *Rand's Discount Co. v. Universal C.I.T. Credit Corp.*⁵⁵ This case has now been affirmed by the Court of Appeals in an opinion which accepted the rationale of the appellate division based on common law estoppel. However, the court went on to consider the interrelationship

49. 56 Barb. 593 (N.Y., Sup. Ct., Broome Co. 1870).

50. *Graham v. White-Phillips Co.*, 296 U.S. 27, 32 (1935).

51. Trust Receipts: (1) Period within which entruster may perfect his security decreased from 30 to 21 days, N.Y. Pers. Prop. Law §§ 57(1)(a), 58(1)-(2), 58-a(2), 58-e(4) (McKinney Supp. 1961). (2) Provision for demand of information regarding trustee's interest added, N.Y. Pers. Prop. Law § 58-e(6) (McKinney Supp. 1961).

Chattel Mortgages: (1) Recording in Nassau County, N.Y. Lien Law § 232 (McKinney Supp. 1961). (2) Refiling, N.Y. Lien Law § 235 (McKinney Supp. 1961).

Conditional Sales: (1) Deficiency judgment, N.Y. Pers. Prop. Law § 80-b (McKinney Supp. 1961). (2) Refiling, N.Y. Pers. Prop. Law § 71 (McKinney Supp. 1961).

52. Assignment of wages prohibition, N.Y. Pers. Prop. Law § 413(10) (McKinney Supp. 1961); application to financing agents, N.Y. Pers. Prop. Law § 401(8); definition of financing agents amended, N.Y. Pers. Prop. Law § 401(18) (McKinney Supp. 1961); effect of voluntary return of goods, N.Y. Pers. Prop. Law § 302(10) (McKinney Supp. 1961). For one of the first cases on these acts, see *Bankers Commercial Corp. v. Murphy*, 28 Misc. 2d 609, 207 N.Y.S.2d 779 (Sup. Ct., App. T., 1st Dep't 1960) (interest rate determined by face amount, not balance after each installment paid).

53. *Rand's Discount Co. v. Universal C.I.T. Credit Corp.*, 9 N.Y.2d 454, 174 N.E.2d 599, 214 N.Y.S.2d 721 (1961).

54. Hart, *Commercial Law*, 1960 Survey of N.Y. Law, 35 N.Y.U.L. Rev. 1477, 1481.

55. 10 App. Div. 2d 240, 198 N.Y.S.2d 341 (1st Dep't 1960), aff'd, 9 N.Y.2d 454, 174 N.E.2d 599, 214 N.Y.S.2d 721 (1961).

of the filing requirements for ordinary conditional sales contracts⁵⁶ with those that govern conditional sales contracts for resale.⁵⁷ New York courts had never before reconciled these sections of the Personal Property Law.

Section 65 of the Personal Property Law establishes the filing requirements for conditional sales contracts, but exempts from its operation conditional sales for resale. Such resale contracts are governed by section 69 which provides, in part, that no filing is effective as against "purchasers . . . for value in the ordinary course of business." Two important determinations were made by the Court of Appeals: (1) purchasers for value in the ordinary course of business, as used in section 69, does not include subsequent chattel mortgagees; and (2) the exclusion contained in section 65 applies only to those cases where the purchasers (here the term includes subsequent chattel mortgagees) are protected by section 69.

56. N.Y. Pers. Prop. Law § 65 (almost identical with § 5 of the Uniform Conditional Sales Act).

57. N.Y. Pers. Prop. Law § 69 (almost identical with § 9 of the Uniform Conditional Sales Act).