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LAW NOTE

USE OF FORCE TO RECAPTURE CHATTELS IN SOUTH CAROLINA

This discussion is limited to the liability of a party for the forceful recapture of chattels in South Carolina in reliance upon the default of a conditional sales agreement.

It has been uniformly held in this state that upon default by a vendee to a conditional sales agreement, legal title to the chattel vests in the vendor.¹ The right of seizure then arises in the vendor as a license coupled with an interest which cannot be revoked by the purchaser as it arises by operation of law as a part of the consideration of the sales agreement, and which carries with it the right by implication to resort to whatever means are reasonably necessary to effect a seizure of the property,² including a peaceable entry upon the premises of the vendee.³ However, in attempting this seizure the vendor must stay his hand short of committing a breach of the peace and resort to the law for his relief by the institution of a claim and delivery action against the buyer or assume the liability therefor,⁴ for the continued preservation of the public peace is of more importance than the right of an individual to gain possession of his property.⁵

By "peace" as used by the courts in this connection it is meant the tranquility which is enjoyed by the citizens of a community where good order reigns among its members, which is the right of all persons who are privileged to be living in a political society.⁶

Exactly what constitutes a breach of the peace is, in South Carolina, a question for the jury, and it is reversible error if the trial judge fails to submit this question to the jury for their consideration.⁷

1. Childers v. Judson Mills Store Co., 189 S.C. 224, 200 S.E. 770 (1938); Harris v. Marco, 16 S.C. 575 (1881); Willis v. Whittle, 82 S.C. 500, 64 S.E. 410 (1909); Lyda v. Cooper, 169 S.C. 451, 169 S.E. 236 (1932); Soulios v. Mills Novelty Co., 198 S.C. 355, 17 S.E. 2d 869 (1941); Rucker v. Smoke, 37 S.C. 377, 16 S.E. 40 (1891); Williams v. Tolbert, 76 S.C. 211, 56 S.E. 908 (1906); Lee v. National Furniture Stores, 163 S.C. 204, 161 S.E. 450 (1931); Hamilton v. Blanton, 107 S.C. 142, 92 S.E. 275 (1916).

2. See note 1 *supra*.

3. Willis v. Whittle, 82 S.C. 500, 64 S.E. 410 (1909); Childers v. Judson Mills Store Co., 189 S.C. 224, 200 S.E. 770 (1938).

4. See note 1 *supra*.

5. Soulios v. Mills Novelty Co., 198 S.C. 355, 17 S.E. 2d 869 (1941); Harris v. Marco, 16 S.C. 575 (1881).

6. Childers v. Judson Mills Store Co., 189 S.C. 224, 200 S.E. 770 (1938); Webster's New International Dictionary (2d Ed. 1950); *e. g.*, State v. Brooks, 146 La. 325, 83 So. 637, 639 (1919).

7. Lyda v. Cooper, 169 S.C. 451, 169 S.E. 236 (1932).

However, our courts, in an effort to guide the jury in its decision have defined a "breach of the peace" as an unwarranted disturbance of the tranquility, and public order enjoyed by the citizens of a community.⁸ It does not seem necessary that the breach of the peace actually be accompanied by some act of violence in order to lay the foundation for this offense.⁹ An act, committed without right, through the manifestation of force, and thereby inciting violence, seems sufficient to create liability.¹⁰ In *Lark v. Cooper Furniture Company*,¹¹ the plaintiff's tenant, whose rent was in arrears, abandoned the premises and left furniture which had been purchased from the defendant under a conditional sales agreement, and on which an unpaid balance remained. It appears that the defendant through the manifestation of force and over the repeated verbal protest of the plaintiff entered upon the plaintiff's premises and proceeded to remove the furniture. Although no actual violence was involved, the Supreme Court reversed the Circuit Court and affirmed a Magistrate's judgment against the defendant for the commission of an unlawful entry.

An entry upon the general premises of the vendee is not considered a breach of the peace merely because the vendee raises a verbal objection to the entry.¹² For instance, in the case of *Willis v. Whittle*¹³ the agent of the defendant, over the verbal objection of the plaintiff's mother but in an orderly manner and without any manifestation of force, entered the plaintiff's stable and removed therefrom a horse upon which the defendant held a chattel mortgage as security for a sum of money owed him by the plaintiff. On appeal the Supreme Court affirmed the defendant's innocence of having provoked a breach of the peace. However, such entry must be under right and in an orderly manner under penalty of exposing the intruding party to liability for trespass.¹⁴ The dwelling house of the vendee presents a different situation. It is concluded from the cases that

8. *Childers v. Judson Mills Store Co.*, 189 S.C. 224, 200 S.E. 770 (1938); *Lyda v. Cooper*, *supra* note 7; *Soulios v. Mills Novelty Co.*, 198 S.C. 355, 17 S.E. 2d 869 (1941); *Annot.*, 48 A.L.R. 85 (1927).

9. *Miles v. Oklahoma*, 236 Pac. 57, 44 A.L.R. 129 (1925); *e. g.*, *State v. Brooks*, 146 La. 325, 83 So. 637, 639 (1919); *Childers v. Judson Mills Store Co.*, *supra* note 8.

10. *Lark v. Cooper Furniture Co.*, 114 S.C. 37, 102 S.E. 786 (1919); *Childers v. Judson Mills Store Co.*, *supra* note 8; *e. g.*, *State v. Brooks*, 146 La. 325, 83 So. 637, 639 (1919).

11. See note 10 *supra*.

12. *Soulios v. Mills Novelty Co.*, 198 S.C. 355, 17 S.E. 2d 869 (1941); *Willis v. Whittle*, 82 S.C. 500, 64 S.E. 410 (1919).

13. See note 12 *supra*.

14. See note 12 *supra*.

a man's home is his castle and if an outsider intrudes therein in the absence of the occupants and without their consent, he thereby becomes a trespasser.¹⁵

CONVERSION

It is the well settled law of this state that upon any breach by the vendee to a conditional sales agreement, title and the right to possession of the property reunite in the vendor.¹⁶ Even where the seller commits a breach of the peace by attempting an illegal seizure upon the vendee's premises through the manifestation of force, he only assumes thereby liability for an action in trespass.¹⁷

The only time in such a case that the vendor becomes liable for conversion is where he effects a seizure prior to any breach on the part of the vendee.¹⁸

In South Carolina if the buyer of property upon a conditional sales agreement defaults in his payments, he thereby places in the seller the power to repossess the property if he can do so peaceably and without provoking a breach of the peace. But if the buyer objects and protests against the seller's recapture, and obstructs him in so doing, it is not only the right of the seller but more important his duty, to resort to legal process in order that he may peaceably enforce his right to repossession. He is not entitled to use force and may be found guilty of assault and battery or trespass, as the case may be, if he does so.

It may be noted in conclusion that the rule as followed by our South Carolina Supreme Court is in accord with the general rule as followed by the great weight of authority throughout this country.¹⁹

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15. *Lark v. Cooper Furniture Co.*, 114 S.C. 37, 102 S.E. 786 (1919); *Lee v. National Furniture Stores Inc.*, 163 S.C. 204, 161 S.E. 450 (1931); *Lyda v. Cooper*, 169 S.C. 451, 169 S.E. 236 (1932); *Childers v. Judson Mills Store Co.*, 189 S.C. 224, 200 S.E. 770 (1938); Annot., 48 A.L.R. 85 (1927).

16. *Commercial Credit Co. v. Cook*, 165 S.C. 387, 164 S.E. 17 (1932).

17. *Young v. Corbitt Motor Truck Co.*, 148 S.C. 511, 146 S.E. 534 (1928).

18. *Commercial Credit Co. v. Cook*, 165 S.C. 387, 164 S.E. 17 (1932); *Young v. Corbitt Motor Truck Co.*, *supra* note 17; *Lee v. National Furniture Stores Inc.*, 163 S.C. 204, 161 S.E. 450 (1931).

19. *Galloway v. General Motor's Acceptance Corporation*, 106 F. 2d 469, (1939); *Shepard S. C. Co. v. United States*, 111 F. 2d 110 (1940); *Plate v. Southern Bell Telephone & Telegraph Co.*, 98 F. Supp. 358 (E.D. S.C. 1951); *Freeman v. General Motors Acceptance Corporation*, 205 N.C. 257, 171 S.E. 63 (1933); *Orr v. Russel*, 231 S.W. 274 (1921); *Sanders v. Washington Fidelity National Insurance Co.*, 99 S.W. 2d 120 (1936); *Bear v. Colonial Finance Co.*, 42 Ohio App. 482, 182 N.E. 523 (1932); *Keesecker v. General Motor's McMelvey Co.*, 141 Ohio St. 162, 47 N.E. 2d 214 (1943); *Westerman v. Oregon Automobile Credit Corporation*, 122 P. 2d 440 (1942); Annot., 57 A.L.R. 27 (1928); Annot., 105 A.L.R. 928 (1936).