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Sales

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SALES

By OLIVER A. RICE*

Although this field has not been prolific of cases this year, and although few developments of law have been attained through the presentation of points novel to Georgia, yet it is thought that an indication of them here may form some sort of ready reference for the practicing attorney.

First to be considered are the Georgia cases dealing with the problem of when title to chattels can be passed to a bona fide purchaser by one other than the owner of the chattels.

In *Berger v. Noble*[1] the plaintiff went to New York to buy automobiles. Since he did not have trade connections there, he took one Williams along to make the purchases for him. Williams bought three cars with money furnished by the plaintiff, and received with the cars a title certificate which, as required by New York law, showed that the vendor rightfully had the cars, but did not bear the name of any person as owner of the cars. Plaintiff authorized Williams to sell the cars. When Williams returned to Atlanta, he delivered them and the certificate to one Hamby to sell. Hamby sold one of the cars to the defendant, Berger, for cash. Plaintiff sued Hamby and Berger in trover, and the question became one of the liability of Berger in trover.

The Court of Appeals based its opinion on Code Sections 96-111, 4-202 and 4-103, and held that as Williams had no title he could convey none save by the strict exercise of his authority to sell for the plaintiff, and that that authority was not properly exercised by an attempted delegation of it to another. Although, the court admitted, a true owner may be estopped as against a bona fide purchaser from the owner's agent, the mere possession of the chattle by the agent will not create such estoppel. The court indicated that this was not a case of a principal entrusting goods to an agent with an appearance of authority to sell, for the plaintiff entrusted no goods to Hamby. Nor was there a deliberate concealment of agency which would enable Berger to set up against the plaintiff any defense he had against Williams.[2] Nor, finally, did the certificate of the New York dealer, which certificate the plaintiff turned over to Williams, serve to cloth Williams with indicia of authority to sell. It was made out to no one, and created an appearance of authority in no one; Bergre never saw or knew of the certificate, and so could not have been mislead by it.

The case of *Wolf v. Smith Company*[3] involved a somewhat similar situation, but is distinguishable on the point that the plaintiff was an unpaid vendor who gave his vendee a document amounting to indicia of ownership, upon which the defendant relied in purchasing. Plaintiff sold an automobile to A in Alabama, accepted therefor A's check for $2,725 and gave A an

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1. 81 Ga. App. 34, 57 S.E.2d 844 (1950).
2. GA. CODE § 4-313 (1933).
3. 80 Ga. App. 136, 55 S.E.2d 675 (1949).

unconditional bill of sale on the car. The bill of sale bore the words, "paid by check." The next day A exhibited the bill of sale to the defendant and sold the car to him for $1,200 and a "trade in." A's check failed to clear, whereupon the plaintiff sued the defendant in trover. The Court of Appeals held that under Alabama law (the lex loci contractus of the transaction), where personal property is sold for cash, title does not pass to the buyer until the price is actually paid unless payment be waived or unless the seller has entrusted the buyer with possession, indicia of ownership and apparent authority to sell, in which case an innocent purchaser will be protected against the original owner. It follows here, the court thought, that the unconditional bill of sale which the plaintiff gave A constituted indicia of ownership in A, and that (the defendant relying on the same) the defendant's title prevailed over that of the plaintiff. The notation on the bill of sale, "paid by check," was not such notice as would raise an issue of the defendant's bona fides, but on the contrary, indicated that the seller accepted the check as full and final payment. Nor was the discrepancy between the sales prices of the car in the sale to A and in the subsequent sale to the defendant sufficient to put the latter on notice, when the "trade in" is taken into consideration.[4]

In *Hall v. LeCroy*[5] the plaintiff sold a truck to one Smith, for which Smith paid by check. The check was returned unpaid because of insufficient funds. Defendant subsequently bought the truck from one Gilstrap, in the presence of Smith, and received from Gilstrap a copy of the purported bill of sale. Plaintiff demanded the return of the truck and, upon the defendant's refusal to surrender the same, sued him in trover. The Court of Appeals rulled that despite the fact that a cash sale would ordinarily be implied from the transaction,[6] and as between the plaintiff and Smith the plaintiff could have maintained trover when the check failed to clear, yet the effect of Code Section 96-207 ("Where an owner has given to another such evidence of the right of selling his goods as, according to the custom of trade or the common understanding of the world, usually accompanies the authority of disposal, or has given the external indicia of the right of disposing of his property, a sale to an innocent purchaser divests the true owner's title,") was to pass the property in the truck to the defendant. He was a bona fide purchaser, the plaintiff's bill of sale to Smith was indicia of ownership.

Two cases involving the rights and remedies of the parties to a title retention contract or conditional sale are *Hall v. Southern Sales Co.*[7] and *Burge v. Crown Finance Co.*[8]

In the *Hall* case the plaintiff brought bail trover to retake property covered by the description in a retention of title contract after the defendant's failure and refusal to pay for it. Defendant answered with a plea of partial failure of consideration, in that a refrigerator (part of the property covered by the contract) was defective in operation. The Court of Appeals ap-

4. *See* Russell Willis, Inc. v. Page, 213 S.C. 156, 48 S.E.2d 627 (1948).
5. 79 Ga. App. 676, 54 S.E.2d 468 (1949).
6. *See* Capital Automobile Co. v. Ward, 54 Ga. App. 873, 189 S.E. 713 (1936).
7. 81 Ga. App. 392, 58 S.E.2d 925 (1950).
8. 81 Ga. App. 582, 59 S.E.2d 541 (1950).

plied Code Section 107-102, to the effect that when personal property is sold under a conditional sales contract and suit is brought thereunder to recover possession of the property from the defaulting vendee, the defendant may plead as set-off any demand or claim he may have against the plaintiff, or may recoup any damages he may have sustained by any failure of consideration or any defects in such personal property, or any breach of contract by the plaintiff whereby the defendant has in any way been injured or damaged; and if the amount of the set-off or damage allowed the defendant exceeds the value of the property or its hire, the defendant is entitled to judgment for such excess. However, an action of bail trover brought to recover property or its value for breach of condition of a conditional sales contract "is of the same nature as if the plaintiff's action were ex contractu, and the same principles of law are applicable to the defense."[9] A plea of partial or total failure of consideration is an affirmative defense; and the defendant under such plea must establish not only such failure, but also the extent of the failure, so that the jury may intelligently determine the amount allowable to him. Defendant admitted the refrigerator had some value, but he offered no evidence from which the jury could determine the extent of the failure of consideration.

In the *Burge* case the defendant sold the plaintiff a car under a conditional sales contract. Plaintiff failed to make the installment payments; whereupon the defendant asked him for possession of the car, promising to return it on August 20, when the plaintiff paid up. Plaintiff surrendered possession of the car to the defendant, who then sold it to a third person before August 20, thereby, according to the plaintiff's contentions, perpetrating a fraud on the plaintiff. Plaintiff further alleged that in reliance on the defendant's agreement to hold the car, he had left therein certain property now lost to him because of the defendant's fraud.

The Court of Appeals was of the opinion that, as far as the car was concerned, the plaintiffs' petition stated no cause of action: first, in that it contained no allegation of any consideration for the alleged extention of time in which to make the defaulted payments; and second, in that it failed to set out "fraud" with sufficient particularity. However, a cause of action was stated as to the personal property left in the car by the plaintiff.

The writer suggests that if, in a case of this nature, the factual situation showed that the plaintiff had given up his right to defend a repossessory action on the faith of the defendant's promise to hold the property until a certain date, a contrary result would be justified. Also, in states where the lien theory of conditional sales contracts prevails, a contrary result could be worked out on the ground that the defendant's promise to hold the automobile amounted to a waiver of the condition of prompt payment.

Problems arising under the recording statutes are in their very nature complex and technical. Consequently, it is no cause for wonder that during any set period for the examination of cases having to do with security transactions, the greater number of cases will concern the proper interpretation of the statutes of recordation. This year, for instance, it is calculated that

9. Hall v. Southern Sales Co., *supra* note 7.

approximately one-fifth of the decisions of Georgia's appellate courts in the field of sales concern recordation.

We turn first to the case of *Altman v. Crown Finance Co., Inc.*[10] The Court of Appeals there declared that a recorded retention of title contract stating no further details than that the purchaser owes the seller for a balance due " 'as evidenced by agreement and note executed contemporaneously herewith' " is sufficient to put the public on notice; and if the vendee sells the property covered thereby to a third party, the assignee of the unpaid vendor may recover in trover against the third party, even though the transfer of the vendor's interest to the plaintiff was not on record, unless the failure to record the transfer in some way induced one not a party to the transfer to act to his injury. In such a case the burden is on the defendant to prove, if he can, that the contract was not recorded in the county of the purchaser's residence.

General Motors Acceptance Corporation v. Monday[11] reveals that when one Singletary was stationed at Turner Air Base in Daugherty County, he bought a used car from Sommerville-Bales Oldsmobile, Inc. under a conditional bill of sale. He kept the car at the base with him, occasionally making trips in it to his legal residence in Grady County. Subsequently, he sold the car to one Monday at the Air Base, then still owing a balance on the purchase price under the conditional bill of sale recorded in Grady County. General Motors Acceptance Corporation proceeded to foreclose the conditional bill of sale; whereupon Monday intervened, claiming the car.

The Court of Appeals pointed out that the registration of conditional bills of sale is controlled by the laws relating to the registration of personalty mortgages.[12] In general, the county of the vendee's legal residence is the proper county for recordation, except as Code Section 67-108 provides, in part: "All chattel mortgages of stocks of goods, wares, and merchandise, or other personal property, shall be recorded, in case the same is upon property or goods located in some other county than that of the mortgagor's residence, in the county where said personal property is located at the time of the execution of said mortgage, in addition to the record of said mortgage in the county of the mortgagor's residence."

The court remarked that this section must be construed in accordance with the doctrine of ejusdem generis. The quoted portion of the statute was devised to cover the situation where a merchant or tradesman lives in one county and has his place of business in another. The car, here the subject of the suit, was not a stock in trade and thus was not within the terms of the statute; consequently, the conditional bill of sale needed only to be recorded in Grady County (mortgagor's residence) to constitute notice of its existence. The property was subject to the mortgage.

Scoggins v. General Finance and Thrift Corporation[13] presents a facet of an interesting problem of the law of recordation of conditional bills of sale. In this case, Dillon Motor Company conditionally sold a car to

10. 81 Ga. App. 117, 58 S.E.2d 196 (1950).
11. 79 Ga. App. 609, 54 S.E.2d 479 (1949).
12. GA. CODE §§ 67-1403, 67-108 (1933).
13. 80 Ga. App. 847, 57 S.E.2d 686 (1950).

Brooks and assigned the note and contract to the plaintiff. The contract was recorded in the county of the buyer's residence within the thirty days allowed by statute. Before the contract was recorded, however, Brooks delivered to the Citizens Bank of Warrenton a bill of sale to secure debt on the car which bill of sale to secure debt was recorded prior to the conditional sales contract. Thereafter, the defendant bought the automobile and paid the debt due the bank, the bank surrendering to him the bill of sale to secure debt. Defendant sold the automobile. Plaintiff finance company made demand on the defendant for the car, and upon his failure to deliver, sued him in trover.

The Court of Appeals pointed out the distinction between the recording provisions governing conditional sales contracts and those relating to mortgages and bills of sale to secure debt. The latter instruments are valid against innocent purchasers only from the date they are filed for record.[14] However, when a conditional bill of sale is recorded within the thirty day period allowed, the lien dates back to the time of the execution of the contract of sale,[15] giving the conditional vendor a superior claim to the property over any subsequent encumberance, even though the latter may be the first to be recorded. It follows that the lower court did not err in directing a verdict for the plaintiff.

In illustration of the complexity of this problem of recording, *Evans Motors of Georgia, Inc. v. Gump Finance Corporation*[16] involved just such a sufficient variation of the facts as to bring a different statutory rule into play. Auto Market, Inc., of Tennessee, sold one Jones, of Virginia, an automobile under a conditional sales contract. Plaintiff finance company bought the contract from the vendor on the date of its execution. With a balance still owing under the contract, and without the knowledge of the plaintiff, Jones removed the car to Georgia and sold it to the defendant. Plaintiff learned these facts early in January, 1949, and had the contract filed in Fulton County where the defendant resided. On January 4, 1949, it demanded the car or its value from the defendant, only to be told that the defendant had sold the car to a third party and would not pay its value. Plaintiff sued the defendant in trover. The Georgia Code requires that "Mortgages" on personalty [shall be recorded] in the county where the mortgagor resided at the time of its execution, if a resident of this State, and if a nonresident, in the county where the mortgaged property is. If a mortgage shall be executed on personalty not within the limits of this State, and such property shall afterward be brought within the State, the mortgage shall be recorded according to the above rules within six months after such property is so brought in."[17]

The Court of Appeals found that the non-resident conditional vendee, Jones, brought the property into Georgia July 29, 1948, which gave the

14. GA. CODE §§ 67-109, 67-1305, 29-401 (1933).
15. GA. CODE § 67-1403 (1933): "The registration and record of conditional bills of sale shall be governed in all respects by the laws relating to the registration of mortgages on personal property, except that they must be recorded within 30 days from their date."
16. 80 Ga. App. 836, 57 S.E.2d 506 (1950).
17. GA. CODE § 67-108 (1933). This section applies to conditional sales under § 67-1403, *supra* note 15.

plaintiff until January 29, 1949, to record in Georgia. Before the latter date, the defendant sold the car. Plaintiff recorded the conditional sales contract in Fulton County, where the defendant resided, on January 8, 1949, *i.e.*, within the six months period allowed by statute. However, by that time the car was in DeKalb County. The purpose of the statute, said the court, is to give notice of lien. If the words, "in the county where the property is," mean any county where the property was or had been during the six months period, the notice given would amount to nothing. True, Fulton County is the residence of two buyers of the car during the six months period, but they did not own it, and it was not in the county, at the time the conditional sales contract was recorded. The statute means the record must be filed in the county in which the property is located on that date, if an action is brought against it in transitu, or in the county of its situs if it has come to rest.

The case of *Mize v. Paschal*[18] affords an opportunity to consider the penalties which may devolve upon a conditional vendor who neglects to file his title retention or conditional sales contract for recordation. As the facts go, one Johnson sold a car to the plaintiff under a title retention contract which was never recorded. The plaintiff was given power to sell the car, it being understood that he would pay Johnson the agreed purchase price as soon as it was sold. Plaintiff sold and delivered the car to one Sneed, took his check for the purchase price and gave him a bill of sale which reserved title until the check was paid. The bill of sale to Sneed was never recorded. Sneed's check failed to clear. Sneed immediately sold the car to a third party for cash, who in turn sold it to the defendant. Neither the defendant nor his immediate vendor had notice of the unrecorded title retention contract. Plaintiff brought bail trover to recover the car and its hire. The court held that when personal property is sold under a title retention contract, the reservation of title is invalid as against third parties unless it is recorded as required by the Code.[19] In the absence of such record, the plaintiff vendor is not entitled to prevail as against a good faith purchaser for value.

What is the result when a conditional sales contract or chattel mortgage, filed for record, is copied incorrectly into the record in such a way that the recorded description varies from that in the original instrument, and is not descriptive of the chattel covered? The answer to this question varies among the American jurisdictions, apparently on the issue of whether or not the recording officer is the agent of the security title holder. As the recent case of *McEntyre v. Burns*[20] goes to show, each rule has "had its day in the sun" in Georgia. Both rules are of statutory origin, and the earlier section of the Code has not been expressly abolished. The earlier statute provides that a mortgage recorded in an improper office, or without due attestation or probate, or so defectively recorded as not to give notice to a prudent inquirer, is not notice to subsequent bona fide purchasers or holders of junior liens. However, "a mere formal mistake in the record shall not vitiate it."[21]

18. 206 Ga. 189, 56 S.E.2d 266 (1949).
19. GA. CODE §§ 67-1401, 67-1402 (1933).
20. 81 Ga. App. 239, 58 S.E.2d 442 (1950).
21. GA. CODE § 67-111 (1933).

The later section provides: "Deed, mortgages, and liens of all kinds, which are required by law to be recorded in the office of the clerk of the superior court, shall, as against the interests of third parties acting in good faith and without notice, who may have acquired a transfer or lien binding the same property, take effect only from the time they are *filed* in the clerk's office. The said clerk shall keep a docket for such filing, showing the date and hour thereof, which docket shall be open for examination and inspection as other records of his office."[22] [Emphasis supplied.]

The court, in *McEntyre v. Burns*,[23] cited *Buchanan v. Georgia Acceptance Co.*[24] to show that the latter section of the Code now controls, and that recording is effective from the time and date of filing, whether or not the instrument is properly copied into the record, or even whether or not the clerk records the instruments at all.

The federal government, by virtue of its powers over interstate commerce, has assumed exclusive control over aircraft. The recordation of liens on aircraft is controlled by the Civil Aeronautics Act,[25] and such liens are not protected against subsequent purchasers and junior lienees unless they are recorded in the office of the administrator.[26] Similarly under the act, title to an aircraft, to be valid against a subsequent purchaser or lienee, must be on record in the office of the administrator. In *Bishop v. R. S. Evans East Point, Inc.*[27] the defendants tried to use the recordation sections of the act to novel effect. Plaintiffs sold an airplane to the defendants under a title retention contract. When the vendors undertook to foreclose the title retention contract against the vendees, the later filed an affidavit of illegality alleging that at the time of the sale to the defendants the airplane was not registered in the name of the vendors in the office of the Civil Aeronautics Administrator; that under the rules and regulations of the Civil Aeronautics Administration, the defendants could not use the plane because they could not have it registered in their names or have their chain of title perfected, as required by law; and that, as a consequence, there was a total failure of consideration for the purchase price of the craft.

The Court of Appeals pointed out that the Civil Aeronautics Act provides, in general effect, that no conveyance or incumbrance to or on an aircraft shall be valid against anyone but the party by whom the conveyance or incumbrance was made, or one having actual notice of it, until such conveyance or incumbrance is filed for record in the office of the administrator.[28] Said the court, the federal act does not mean that the title retention contract is void between the parties thereto, for it specifically states that an unrecorded conveyance is not void between the parties. Also, the defendants could very easily have got their title recorded by following the provisions of Section 523(h),[29] providing that one applying for issuance or

22. GA. CODE § 67-2501 (1933).
23. See note 20 *supra*.
24. 61 Ga. App. 476, 6 S.E.2d 162 (1939).
25. 62 STAT. 494, 49 U.S.C.A. § 523 (Supp. 1949).
26. See 1 MERCER L. REV. 128 (1949).
27. 80 Ga. App. 324, 56 S.E.2d 134 (1949).
28. 62 STAT. 494, 49 U.S.C.A. § 523(c) (Supp. 1949).
29. 62 STAT. 494, 49 U.S.C.A. § 523(h) (Supp. 1949).

renewal of an airworthiness certificate on an aircraft, the ownership of which has not been recorded as required, can get one in his own name by applying for it and presenting to the administrator such information as is available in regard to the history of the title.

The cases involving breach of warranty will now engage our attention. In *Landers v. Davis*[30] an automobile was transferred from Mrs. Green to Black, from Black to the defendant, from the defendant to the plaintiff, from the plaintiff to Beam, and from Beam to Bannister. F. H. Green, the husband of Mrs. Green, claimed title to the automobile. He brought trover against Bannister and secured a judgment, which Bannister paid. Bannister collected this amount from Beam, and Beam from the plaintiff. Whereupon the plaintiff brought this action for a breach of implied warranty of title against his immediate vendor. Defendant demurred to the petition; and the plaintiff amended so as to set forth the details of the action brought by Green against Bannister, and attached a part of the record in that case to show that Bannister had given notice to Beam to come in and defend, and that Beam had given similar notice to the plaintiff in the present action. Defendant demurred to the amended petition so as to have all reference therein to the trover action of *Green v. Bannister* eliminated, on the ground that he was not bound by that action as he was not vouched in, the idea apparently being that if reference to that action were struck there would be no facts in the declaration to show a breach of warranty of title on the part of the defendant other than the conclusions of the pleader.

The Court of Appeals held that the judgment in the trover action was not conclusive on the defendant so as to show a defect in his title, since he was not vouched in and did not defend the action; but that the record of the *Green* case was relevant in so far as it showed facts demonstrating the plaintiff's right to maintain the present action, as such facts showed that the plaintiff suffered damage—a necessary element of his cause of action under Code Sections 96-301 (1) and 96-306.

Judge MacIntyre concurred specially, saying that the plaintiff had a right to plead the trover action as inducement to show that he did not voluntarily surrender the car or its value as a mere interloper.

Judge Felton dissented, contending that the judgment in the trover suit was irrelevant as it was not necessary to show that the plaintiff was ousted of possession and ownership by law. It was prejudical to the defendant, Judge Felton thought, for the jury to know that in another case it was decided that the wife, Mrs. Green, did not have the right to trade in the car .

The case of *Findley v. Downing Motors, Inc.*[31] presents, as a point of novel impression in Georgia, the effect of an "as is" clause in a contract on a claim of breach of implied warranty. The facts were that when the plaintiff was negotiating the purchase of an automobile from the defendant, the defendant's agent stated that the engine was newly reconditioned and was in the very best of condition. The bill of sale contained the words: "Sold 'as is'." In a subsequent action for breach of implied warranty, the court held that the term "as is" implies that the buyer purchases at his own

30. 80 Ga. App. 766, 57 S.E.2d 457 (1950).
31. 79 Ga. App. 682, 54 S.E.2d 716 (1949).

risk, and negatives any implied warranty. The representations of the defendant's agent were inadmissible because of the parol evidence rule.

In *Rome Brick Company v. Dixie Machinery Manufacturing Co.*[32] the plaintiff sold the defendant a "Non Clog Swing Hammermill" under a title retention contract which contained a warranty of capacity, or output, of fifteen tons per hour of such brick materials (shale) as were shown to the vendor by sample, and a warranty that the machine would grind them to a specified fineness. The contract also stipulated that the vendee could reject and return the machine if it failed to grind to the specified fineness. The vendor foreclosed the title retention contract; whereupon the defendant filed an affidavit of illegality, alleging a breach of the express warranties contained in the contract.

The Court of Appeals opined that the specification in the contract of the remedy of recission for breach of warranty of the fineness with which the machine would grind did not apply to the express warranty of capacity, so that the plaintiff could recover damages for the breach of the latter warranty.

Fechel v. Chastain[33] merely exemplifies the rule that a right to damages for a breach of warranty may be asserted by the buyer as a plaintiff, or as a defendant by way of counterclaim. Thus, a buyer may accept goods and subsequently plead a breach of warranty against the seller by way of recoupment in diminution or extinction of the selling price.

In *General Elevator Company v. Rotary Lift Company*[34] the factual situation is slightly out of the ordinary. Plaintiff made power lifts for elevators. Defendant was its sales outlet. A customer applied to the defendant for a lift with certain speed and weight capacities, to be used upon the "jack" of an old installation. Defendant relayed this order to the plaintiff who rejected it, explaining that experience showed that a great deal of trouble could develop from using its power units with old elevator equipment, and stating that "the only way we could possibly furnish it is with the understanding that we accept no responsibility whatever in connection with the operation of the unit." Later on, the plaintiff wrote the defendant: "We are now agreeable to furnishing the power unit only for the set up, inasmuch as we undrestand you people are going to make a nice elevator out of this job." It turned out that the "jack" was not of the size that the defendant's customer had said it was. Consequently, the power lift finally supplied by the plaintiff did not work properly on the "jack." Plaintiff subsequently sued its sales agent for the price of the lift, whereupon the defendant counterclaimed for a breach of warranty.

The Court of Appeals held that the evidence demanded a verdict for the plaintiff, for the unit was not made to operate on a four inch "jack" and there was no warranty, either express or implied, that it would do so. Indeed, the correspondence of the plaintiff negatived warranty. The fact that the plaintiff later agreed to build the lift, after some initial hesitation, did not revoke its former statement that it would make the lift only on the basis that it not be responsible for its operation under the circumstances.

32. 80 Ga. App. 7, 55 S.E.2d 158 (1949).
33. 79 Ga. App. 517, 54 S.E.2d 459 (1949).
34. 81 Ga. App. 481, 59 S.E.2d 272 (1950).

It seems that the decision is correct. Certainly where a buyer furnishes specifications, he relies upon his own judgment to obtain that which he needs. True, here, the manufacturer supplied a chattel made for a particular use of which he knew, but his expressed doubts about the project tend strongly to show that he was not exercising a judgment meant to be relied upon, or which fairly could be relied upon by the buyer.

There remain to be noted the cases of *Wild v. Krenke*[35] and *Rome Electric, Inc. v. Railway Express Agency*.[36] In *Wild v. Krenke*[37] the plaintiff bought one-half interest in a dry cleaning business from the defendant. Plaintiff later sued to have the contract cancelled (rescinded), alleging that the defendant had misrepresented the net profits of the business and had turned aside the plaintiff's request to have a look at the books of the business before the sale by saying that they were not then readily available. Planitiff further alleged that, as a matter of fact, the business was barely making expenses. It was the opinion of the court that the plaintiff voluntarily took the risk of what the business records would show, and that it is not the province of equity to grant relief for an injury brought about by a plaintiff's own negligence.

In *Rome Electric, Inc. v. Railway Express*[38] the plaintiff bought a radio-phonograph from Crawford & Thompson. Crawford & Thompson sent the instrument to the plaintiff by the defendant express company in the original unbroken carton in which Crawford & Thompson had received it from the manufacturer. The radio-phonograph was delivered to the plaintiff in a damaged condition. Plaintiff sued the defendant express company for the value of the insrtument.

The Court of Appeals cited the Code[39] to the effect that where goods are routed by the shipper so as to involve the use of connecting carriers, the last carrier to have received the goods in good condition shall be responsible to the consignee for any damage to the goods, and the question of ultimate liability is to be settled between the connecting carriers themselves. This Code section, the court found, is limited in its application to shipments utilizing connecting carriers, and is based on the premises that where goods have been transported by several carriers, it is a matter of the utmost difficulty (if not impossible, for the shipper or consignee to determine which of the carriers is responsible for the damage. The Court added: "However, where the facts involve but one carrier who receives the goods from the consignor and delivers them to the consignee, no sound reason can logically be shown why the plaintiff should not be required to show that the goods were in fact in good order when received by the carrier or that the carried receipted for them 'as in good order'."

35. 206 Ga. 83, 55 S.E.2d 544 (1949).
36. 81 Ga. App. 368, 59 S.E.2d 19 (1950).
37. See note 35 *supra*.
38. See note 36 *supra*.
39. GA. CODE § 18-505 (1933).