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property was held results in the payor's receiving—as in the above illustrations—the benefit of his payment. Therefore, it would seem that equity would require that the nature of the security ownership, rather than the nature of the obligation, be the controlling factor and that contribution should not be allowed.

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Sales—Implied Warranty of Title—When Cause of Action for Breach Accrues after Purchase of Precarious Title

In the recent case of *Henry Vann Co. v. Barefoot*,[1] plaintiff and defendants traded motor vehicles. Defendants' automobile had previously been used for illegal transportation of whiskey, and after the trade it was confiscated by federal agents. Plaintiff sued for the reasonable value of the vehicle it had traded to the defendants on the ground of total failure of consideration. *Held*, plaintiff had stated a cause of action for breach of an implied warranty of title, but that in order to recover it must prove that by legal proceedings the defendants' title to the vehicle was divested as of a time prior to the trade.

The Supreme Court, reversing the court below, held, inter alia, that plaintiff need not prove the offense which made the car subject to confiscation. Accordingly, there is left open the question whether if the offense prior to the trade had been proved, but not that the title of defendants had been divested by legal proceedings, plaintiff could have recovered. This necessarily depends on the answer to the following question: If the vendor has committed some act or knows of circumstances which make his title precarious,[2] and he fails to inform his purchaser of this fact, may the purchaser immediately sue him for breach of an implied warranty of title, or must he wait until he has been dispossessed?[3] In attempting to answer the hypothetical question posed, it is necessary to consider the scope of an implied warranty of title, and what constitutes a breach thereof.

Implied warranty of title is a well established doctrine in the United States. The seller of personal property is held to warrant impliedly

[1] 249 N.C. 22, 105 S.E.2d 104 (1958).

[2] The principle of transfer of a precarious title may be illustrated by this anecdote: John owes Robert ten dollars. John and Robert are riding together on a train. It is held up. The robbers are coming down the aisle of the car relieving the passengers of their purses. Just before the robbers get to them John hands Robert a bill and says, "Here is the ten dollars I owe you."

[3] It should be noted at this point that fraud of the seller inducing the sale of personal property may entitle the purchaser to rescind the contract and recover the consideration he has paid, even though the paramount title holder has not recovered the property nor the vendee suffered any actual damages. Case v. Hall, 24 Wend. 102 (N.Y. Sup. Ct. 1840). However, the difficulties of proof presented by this remedy would make it highly desirable from the buyer's point of view to be able to sue for breach of the implied warranty of title.

the title unless a contrary intention appears.[4] An implied warranty of title is, in substance, a warranty that the seller's title is perfect and free from all liens and incumbrances or partial defects.[5] Thus, where at the time of the sale the chattels were subject to forfeiture to the federal government for the illegal acts of the seller in violation of the revenue laws, the subsequent enforcement of such forfeiture has been held a breach of the seller's warranty of title.[6] This holding makes it apparent that the scope accorded the implied warranty of title covers the situation where the vendor knowingly and without disclosure has passed to the purchaser a precarious title later divested.

The question still remains as to when the cause of action arises for the breach of the implied warranty. A majority of the jurisdictions, including North Carolina, which have not adopted the Uniform Sales Act treat the warranty of title implied in every sale as similar to a covenant for quiet enjoyment, which goes to the possession rather than the title. It is not deemed broken for the purpose of an action on the breach until there has been an actual or constructive eviction of the purchaser by the paramount title holder.[7] "The seller is bound to protect the buyer from all evictions arising from circumstances anterior to the sale."[8] Thus in North Carolina an eviction is a condition precedent to the bringing of an action for breach of an implied warranty of title.[9] Under this rule it is manifest that the purchaser of a precarious title cannot maintain such action until his possession has been disturbed in some way by the paramount title holder.

A minority of the courts have held that there is an immediate breach of the implied warranty of title arising at the time of the sale, reasoning that the implied warranty of title to chattels is analogous to a covenant of seisin in a deed which is broken, if at all, immediately upon the delivery of the deed.[10] Thus, courts using this analogy have held that the breach occurred at the time of the sale. The result was that sometimes a purchaser lost both the purchase price and the goods because the statute of limitations had run before claim was made by the paramount title holder.[11] Fear of this possibility is apparently responsible for

[4] 1 WILLISTON, SALES § 218 (rev. ed. 1948).
[5] Martin v. McDonald, 168 N.C. 232, 84 S.E. 258 (1915); see also 1 WILLISTON, SALES § 218 (rev. ed. 1948).
[6] McKnight v. Devlin, 52 N.Y. 399 (1873); Henry Vann Co. v. Barefoot, 249 N.C. 22, 105 S.E.2d 104 (1958).
[7] Roberts v. Hill, 78 Ga. App. 264, 50 S.E.2d 706 (1948); Hodges v. Wilkinson, 111 N.C. 56, 15 S.E. 941 (1892); Wilson v. Tihcheff, 196 Okl. 243, 164 P.2d 396 (1945); see also 1 WILLISTON, SALES § 221 (rev. ed. 1948).
[8] Myers v. Smith, 27 Md. 91, 110 (1867).
[9] Hodges v. Wilkinson, 111 N.C. 56, 15 S.E. 941 (1892).
[10] Chancellor v. Wiggins, 4 Ky. (B. Mon.) 202, 39 Am. Dec. 499 (1843); Spillane v. Corey, 323 Mass. 673, 84 N.E.2d 5 (1949); Perkins v. Whelan, 116 Mass. 542 (1874); see also 1 WILLISTON, SALES § 221 (rev. ed. 1948).
[11] Chancellor v. Wiggins, *supra* note 9; Perkins v. Whelan, *supra* note 9.

insistence by the majority, including North Carolina, on eviction as a prerequisite to recovery.[12] Actually, neither rule adequately protects the purchaser. Under the majority rule he is denied any recourse against his vendor until he has been evicted, and under the minority rule he runs the risk of having his rights barred by the statute of limitations.

Under the Uniform Sales Act there is an implied warranty on the part of the seller that he has the right to *sell* the goods, and there is a further implied warranty that the buyer should have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale.[13] The first warranty has been held to be separate and independent from the operation of the second one.[14] Thus, where the vendor at the time of the sale had in fact no title to the goods and therefore no right to sell them, the purchaser was given the right to proceed immediately against him even though there had been no eviction.[15] It would appear that the same result should follow in the case where the vendor had a precarious title to the goods. Apparently the Sales Act contemplates an implied warranty that the seller has the right to sell a good, clean title which is certainly something more than a precarious title. Thus under the Sales Act it could be argued that a purchaser of a precarious title without notice could sue his vendor immediately for breach of his implied warranty that he had the right to sell the goods notwithstanding the fact that there had been no eviction. If there is a breach of warranty by the seller, the Uniform Sales Act authorizes the buyer at his election to rescind the sale, offer to return the goods to the seller, and recover any part of the purchase price which has been paid.[16] Thus, apparently the purchaser of a precarious title would be able to recover the purchase price even though there had been no eviction. However, since the breach necessarily arises at the time of the sale, the statute of limitations may have run before the purchaser discovers the defect in his title. In such case, the purchaser would have to rely upon the implied warranty of quiet enjoyment, and would encounter the same obstacle under the Uniform Sales Act that he would under the North Carolina rule—namely, the requirement of an eviction before he may sue for the breach.

It is submitted that the purchaser of a precarious title should be allowed to sue on his warranty as soon as he discovers the nature of his title regardless of whether a claim has been asserted by a superior title holder. A purchaser is placed in a most undesirable position when he is denied the right to sue before eviction. The effect of such denial is to

[12] Gross v. Kierski, 41 Cal. 111 (1871); see also 1 WILLISTON, SALES § 221 (rev. ed. 1948).
[13] Uniform Sales Act § 13.
[14] Martin v. Coffman, 87 Ohio App. 398, 95 N.E.2d 286 (1949).
[15] *Ibid.*
[16] Uniform Sales Act § 69.

allow a vendor, who knows that he is going to lose or runs great risk of losing his goods, to pass this risk on to an innocent purchaser who must bear it until claim is asserted by the paramount title holder. To allow a vendor to pass on to an unknowing purchaser goods which he deems "too hot to handle" is unconscionable, and a remedy should be available at once. If plaintiff's right to recover the purchase price is delayed,[17] the dangers of the defendant disappearing or becoming judgment proof in the interim are imminent. Justice demands that he be given a remedy to recover the purchase price immediately upon discovering such fact.[18] The effect of allowing the purchaser to sue on his warranty at this time would be to afford him the adequate protection he needs against such bargains and in so doing would not subject him to the danger of having his action barred by the statute of limitations before he discovers the defect. The vendor would not be prejudiced by such action as he is protected against any false assertions made by the purchaser by the requirement that the purchaser must prove in his action the actual existence of a superior claim to the goods.[19]

The North Carolina Legislature might well consider abolishing the doctrine that an implied warranty of title is the equivalent of a covenant of quiet enjoyment. Disturbance of possession should not be the exclusive way in which breach of the warranty can be established. This appears to be the view adopted in the Uniform Commercial Code.[20] A comment on the applicable subsection states that it

> makes provision for a buyer's basic needs in respect to a title which he in good faith expects to acquire by his purchase, namely, that he receive a good, clean title transferred to him also in a rightful manner so that he will not be exposed to a lawsuit in order to protect it.
>
> . . . .

[17] The plaintiff in suing for breach of warranty would more than likely seek rescission as his remedy rather than damages. "Logically his recovery, if his action is tried before he has been evicted, should be based on the chance of his being subsequently deprived of the benefit of what he has bought. Such a measure of damage is, however, so speculative as to be difficult of practical application." 1 WILLISTON, SALES § 221 (rev. ed. 1948).

[18] A buyer has been held entitled to rescind on the ground of mutual mistake when ties sold were, without the knowledge of either party, in danger of destruction by forest fire at the time of the sale. Richardson Lumber Co. v. Hoey, 219 Mich. 643, 189 N.W. 923 (1922). If mutual mistake is a ground for rescission when the existence of the goods is precarious, breach of warranty of title should be a ground when the title is precarious.

[19] Jordan v. Van Duzee, 139 Minn. 103, 165 N.W. 877 (1917); Martin v. Coffman, 87 Ohio App. 398, 95 N.E.2d 286 (1949).

[20] UNIFORM COMMERCIAL CODE § 2-312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

(1) Subject to subsection (2) there is in a contract for sale a warranty that
  (a) The title conveyed shall be good, and its transfer rightful; and
  (b) the goods shall be delivered free from any security interest or other lien or incumbrance of which the buyer at the time of contracting has no knowledge.

> The warranty of quiet possession is abolished. Disturbance of quiet possession, although not mentioned specifically, is one way, among many, in which the breach of the warranty of title may be established.

The view advocated in this note, that the warranty of title is violated when the title conveyed is unsound although the buyer is not yet disturbed by adverse claimants, is adopted in the Code in connection with a particular situation. The Code specifies that "a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like. . . ."[21] A comment states that "this section rejects the cases which recognize the principle that infringements violate the warranty of title, but deny the buyer a remedy unless he has been expressly prevented from using the goods. Under this Article 'eviction' is not a necessary condition to the buyer's remedy since the buyer's remedy arises immediately upon receipt of notice of infringement; it is merely one way of establishing the fact of breach." If this be sound law as to merchants when a title is invalid by reason of infringements, it would appear to be sound law generally where the title is invalid by reason of other infirmities.

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Taxation—Depreciation—Useful Life, Salvage Value and Capital Gains Under the Declining Amount Depreciation Methods of the 1954 Code

The Internal Revenue Code of 1954 authorizes taxpayers in business to compute a reasonable allowance for depreciation by means of liberalized, declining amount methods in addition to the ordinary straight line method.[1] However, section 167(c) expressly provides that these liberalized methods "shall apply only in the case of property (other than intangible property) . . . with a *useful life* of 3 years or more . . . ." (Emphasis added.)[2]

[21] UNIFORM COMMERCIAL CODE § 2-312 (3).

[1] INT. REV. CODE OF 1954, § 167. Section 167(b) provides:

> For taxable years ending after December 31, 1953, the term "reasonable allowance" as used in subsection (a) shall include (but shall not be limited to) an allowance computed in accordance with regulations prescribed by the Secretary or his delegate, under any of the following methods:
>
> (1) the straight line method,
>
> (2) the declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (1),
>
> (3) the sum of the years-digits method, and
>
> (4) any other consistent method productive of an annual allowance. . . .

[2] Section 167(c) has other limitations on the use of the liberalized methods of depreciation, not pertinent to this Note, which in effect require that such