

1956  
 \*May 23  
 \*Jun. 27

TRADERS FINANCE CORPORATION }  
 LIMITED (*Claimant*) ..... } APPELLANT;

AND

WILLIAM H. WILLIAMS (*Applicant*);

AND

WILFRED LANGE (*Claimant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

*Conditional sale—Automobile—Agreement of sale not registered—Vendor's name affixed to cowl under engine hood—Whether "plainly attached" within s. 12 of the Conditional Sales Act, R.S.S. 1953, c. 358.*

S. 12 of *The Conditional Sales Act* (R.S.S. 1953, c. 358) is sufficiently complied with if, at the time of the conditional sale of an automobile, there is affixed to the automobile, on the cowl under the engine hood, a decal or sticker, oval in shape, about four inches long by one and one-half inches wide, bearing the words "Sold by Canadian Motors Limited, Ford and Monarch Dealers, Regina". The name of the vendor is thus "plainly attached" to the automobile within the meaning of the section.

APPEAL from the judgment of the Court of Appeal for Saskatchewan (1), dismissing, Gordon and McNiven JJ.A. dissenting, an appeal from a judgment affirming an order dismissing a claim made in interpleader proceedings. Appeal allowed.

*J. L. McDougall, Q.C.*, for the appellant.

*J. C. Osborne, Q.C.*, for the respondent.

THE CHIEF JUSTICE:—This is an appeal by Traders Finance Corporation, Limited, against the judgment of the Court of Appeal for Saskatchewan (1) dismissing an appeal from the judgment of Graham J., which in turn had dismissed an appeal from the order of Judge Hogarth of the Judicial District of Regina. That order was made upon the application of the Sheriff of the District by way of interpleader. At the instance of the respondent Wilfred Lange, who had secured judgment against Gus Kruger, the Sheriff had seized a 1952 Ford Coach. This automobile had been sold to Kruger by Canadian Motors, Limited, under

\*PRESENT: Kerwin C.J., Rand, Cartwright, Abbott and Nolan JJ.

(1) (1955), 16 W.W.R. 506.

a conditional sale agreement, dated November 3, 1953, and on the same day the latter assigned the agreement to the present appellant. At the time of the seizure by the Sheriff a substantial sum remained unpaid.

At the argument reference was made to *The Conditional Sales Act*, R.S.S. 1940, c. 291 and also R.S.S. 1953, c. 358 and I will refer to the latter. The right of the execution creditor to seize and sell the automobile was disputed by the appellant on the ground that although a copy of the conditional sale agreement had not been filed as specified in s. 4(1) of R.S.S. 1953, c. 358, the provisions of s. 12 of that Act had been complied with. That section reads as follows:—

12. Registration shall not be required in the case of a sale or bailment of manufactured goods, of the value of \$15 or over, which, at the time of the actual delivery thereof to the buyer or bailee, have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that the manufacturer or vendor, being the seller or bailor of the goods, keeps an office in Saskatchewan where inquiry may be made and information procured concerning the sale or bailment of the goods; and provided further that the manufacturer or vendor or his agent does, within five days after receiving a request to do so made to him either in person or by registered letter, furnish to any applicant therefor a statement of the amounts, if any, paid thereon and the balance remaining unpaid. The person so inquiring shall if such inquiry is by letter give a name and post office address to which a reply may be sent; and it shall be sufficient if the required information is given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address, or where a name and address is given, addressed to such person by the name and at the post office so given.

It is not disputed that Canadian Motors, Limited, kept an office in Regina where inquiry might be made and information procured concerning the sale or bailment by it of automobiles, and the only problem is whether the name of Canadian Motors, Limited, was painted, printed or stamped on the automobile or plainly attached thereto by a plate or similar device.

At the hearing the Court suggested that if there was any question as to the facts a statement could be agreed upon by counsel and filed. No such statement has been sent but having had an opportunity of considering the evidence we are all satisfied that there is really no difficulty. At the time of the sale by Canadian Motors, Limited, to Kruger

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there was affixed to the automobile, on the cowl under the engine hood, a decal or sticker, oval in shape, about four inches long by one and one-half inches wide, bearing the following words "Sold by Canadian Motors, Limited, Ford and Monarch Dealers, Regina". The decal would be in full view of anyone lifting the hood and, therefore, the name of the vendor was plainly attached to the automobile whether as against a subsequent purchaser or an execution creditor. Clearly it does not have to be affixed to the outside of the car and, on the other hand, this is not to say that it would be sufficient to put it in the trunk or glove compartment of the car.

The appeal should be allowed and, in view of the fact that the automobile has been sold and the proceeds deposited in Court, or with the Sheriff, there should be a declaration that the appellant is entitled thereto. Leave was given by the Court of Appeal for Saskatchewan to appeal to this Court on terms that the appellant would not ask for or be entitled to its costs of that appeal and the allowance is, therefore, without costs. At the argument it was agreed by counsel for the appellant that if the appeal succeeded any costs ordered to be paid in any of the Courts below by the appellant to the respondent would be paid and any costs already paid should be retained by the respondent.

RAND J.:—The question in this appeal is the narrow one whether an automobile seized on behalf of the respondent Lange as execution creditor and claimed to be subject to a conditional sale agreement held by the appellant as assignee is within s. 12 of *The Conditional Sales Act*, R.S.S. 1940, c. 291:—

12. Registration shall not be required in the case of a sale or bailment of manufactured goods, of the value of \$15 or over, which, at the time of the actual delivery thereof to the buyer or bailee, have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that the manufacturer or vendor, being the seller or bailor of such goods, keeps an office in Saskatchewan where inquiry may be made and information procured concerning the sale or bailment of such goods; and provided further that the manufacturer or vendor or his agent does, within five days after receiving a request so to do made to him either in person or by registered letter, furnish to any applicant therefor a statement of the amounts, if any, paid thereon and the balance remaining unpaid. The person so inquiring shall if such inquiry is by letter give a name and post office

address to which a reply may be sent; and it shall be sufficient if the required information is given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address, or where a name and address is given, addressed to such person by the name and at the post office so given.

On what has been called the "cowl", the vertical sheet metal partition between the seating portion of the automobile and the front containing the cylinder block, etc., the name of the vendor and its address in Saskatchewan, printed on a sticker or what is called a "decal" was affixed in such a position as to be readily seen on lifting the hood. Was that a compliance with the section as having been "plainly attached" to the automobile?

I must confess to a difficulty in appreciating how it could be taken otherwise. The car, in the possession of the buyer or bailee, is, towards a purchaser, mortgagee or execution creditor, mentioned in s. 2(1) of the statute, open to the fullest inspection for any relevant information. The object of the provision is not to enable the public on an outside view to obtain the information intended to be given by the plate or device. This is a requirement that appertains only to persons interested to ascertain whether there is a title to ownership or security of a certain character outstanding. Even when the name of the seller is ascertained, further particulars would be required to describe the property such as the licence plate number, the serial number, the make, year and model of the car. In possession of these data, the items of which may call for inquiry from the possessor or the examination of the engine block, the sheriff or proposing purchaser or mortgagee is then in a position to seek out the particular interests protected by the section by making the request for information which the section authorizes.

I should say that the attachment here was in a most suitable place to serve that purpose. Since it is to safeguard the conditional sale security, it should be in a spot permitting as much permanence as possible. On the outside of the car it would run the risk of being knocked or deliberately taken off. Whether or not the seller assumes the risk of its removal by the purchaser from him, there is no reason why further and unnecessary risks should be added.

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To sum this up, I should say that the object is to furnish the interested third person with the means of searching the title to see whether a specific form of property interest in another than the possessor exists. But just as he must write to the seller for that information so must he make a reasonable examination to discover who the seller is. For that purpose the "plate or similar device" here was "plainly attached".

I would allow the appeal, set aside the judgments below, and declare the appellant to possess a valid title under the conditional sale agreement in the case mentioned. There will be no order as to costs in any court.

The judgment of Cartwright, Abbott and Nolan JJ. was delivered by

NOLAN J.:—This is an appeal, by special leave of the Court of Appeal for Saskatchewan, from a judgment of that Court (1), dismissing an appeal (Gordon and McNiven JJ.A. dissenting) from a judgment of Graham J., which, in turn, affirmed the judgment of Hogarth D.C.J., in which it was held that the claim of the appellant Traders Finance Corporation, Limited, made in interpleader proceedings, should be dismissed.

On November 3, 1953, Canadian Motors, Limited sold a 1952 Ford coach to one Kruger under a conditional sale agreement. On the same day Canadian Motors, Limited assigned its interest in the conditional sale agreement to the appellant Traders Finance Corporation, Limited. On February 9, 1954, the Sheriff of the Judicial District of Regina seized the car under a writ of execution obtained in an action brought against Kruger by the respondent Lange.

On September 14, 1954, the appellant, by letter, advised the sheriff that it had a lien on the vehicle under the conditional sale agreement dated November 3, 1953, and on October 6, 1954, the solicitors for the appellant wrote to the sheriff claiming ownership of the vehicle on behalf of their client. On October 20, 1954, the solicitor for the respondent Lange notified the sheriff that the claim of the appellant was disputed.

The issue was tried summarily by Hogarth D.C.J. on affidavit evidence and the following facts were agreed upon by counsel for the appellant and for the respondent:—

- (1) Neither Canadian Motors Limited nor Traders Finance Corporation Limited registered at any time, the Conditional Sale Agreement dated November 3rd, 1953 between Canadian Motors Limited and Gus Kruger, and covering the sale of one used 1952 Ford Coach, Model 0570 bearing serial No. 0570H52-50828.
- (2) At the time of actual delivery of the said automobile by Canadian Motors Limited to the said Gus Kruger the name of Canadian Motors Limited was attached or stamped to said automobile by a plate or similar device.

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Neither Canadian Motors, Limited nor the appellant registered the conditional sale agreement, but relied on s. 12 of *The Conditional Sales Act*, R.S.S. 1953, c. 358, which, in part, provides:—

12. Registration shall not be required in the case of a sale or bailment of manufactured goods, of the value of \$15 or over, which, at the time of the actual delivery thereof to the buyer or bailee, have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; provided that the manufacturer or vendor, being the seller or bailor of the goods, keeps an office in Saskatchewan where inquiry may be made and information procured concerning the sale or bailment of the goods; . . .

The point for determination is whether the vendor's name was "plainly attached" to the vehicle, within the meaning of s. 12.

On the hearing before Hogarth D.C.J. it was stated, in the affidavit of James F. Betteridge, that he was employed by the appellant as used car shop foreman and that as soon as a used vehicle was acquired by Canadian Motors, Limited it was turned over to him for service and repair prior to resale; that before being removed to the sale lot it was customary for him, or someone under his direction, to affix to the vehicle, in one or more places, a decal, or sticker, which was usually placed on the engine cowl under the hood, or under the dash, or on the steering column, or on the outside of the trunk of each vehicle. The affidavit of Arthur R. Nichols stated that he had had twenty years' experience in the garage and automotive sales business and that all motor vehicles manufactured during the past twenty years, which had come to his premises for repair, or sale, have had placed upon them, or in them, normally under the hood of the vehicle, a plate upon which the name of the manufacturer clearly appears.

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Hogarth D.C.J. held that the Legislature, in employing the word "plainly", intended that the name of the vendor should be attached to some part of the exterior surface of the vehicle where it could be readily found and plainly seen, and not in some concealed part, or hidden recess, such as the under-side, or glove compartment of the vehicle.

Graham J., in dismissing the appeal, pointed out that the purpose of the plate, or decal, is to give notice of the name of the vendor to the world, so that inquiry may be made, and consequently reasonable visibility is required.

In the Court of Appeal the majority judgment construed the words "plainly attached" as meaning "attached so as to be plainly visible". Gordon and McNiven JJ.A., dissenting, were of the opinion that the decal was "plainly attached" within the meaning of s. 12, *supra*, and that it should be attached near the serial number of the vehicle.

In the Court of Appeal the decisions of Meredith C.J. in *Mason v. Lindsay* (1), and of Lamont J. in *Cockshutt Plow Co. v. Cowan* (2), were relied upon as indicating the strictness with which similar legislation has been construed.

In *Mason v. Lindsay*, *supra*; the words "Mason & Risch, Toronto", painted upon a piano by a company whose corporate name was "The Mason & Risch Piano Company, Limited", were held not to be a compliance with the provisions of s. 1 of *An Act respecting Conditional Sales of Chattels* (R.S.O. 1897, c. 149), which required that the name and address of the manufacturer or vendor of the article be painted, printed, stamped or engraved thereon, or otherwise plainly attached thereto.

In *Cockshutt Plow Co. v. Cowan*, *supra*, the company stamped on a plough manufactured and sold by it the word "Cockshutt", while the corporate name of the company was "The Cockshutt Plow Co. Ltd.", and it was held that this was not a sufficient compliance with s. 11 of the *Saskatchewan Ordinance respecting Hire, Receipts and Conditional Sale of Goods* (1907, c. 17), which required that the name of the manufacturer, or vendor's name, be painted, printed, or stamped thereon, or plainly attached thereto by a plate or similar device.

(1) (1902) 4 O.L.R. 365 at 369.

(2) (1910) 3 Sask. L.R. 47.

Neither of these cases is of assistance. They are authority only for the proposition that, where a statute requires that the name of a manufacturer be painted, printed, stamped, engraved or plainly attached to an article, and a name is used that is not the corporate name of the manufacturer, there has not been a compliance with the statute. In the present case, there is no dispute as to the correctness of the name of the vendor. The complaint is that the name has been put in a place where it is not plainly visible, which was not the question in issue in *Mason v. Lindsay*, *supra*, or *Cockshutt Plow Co. v. Cowan*, *supra*.

In the judgment of the Court of Appeal it is said that, if the requirement of s. 12 can be satisfied by placing the decal on the cowl under the hood of a motor vehicle, then the provision of the section can be satisfied by attaching it in other places so hidden from view that intending purchasers would be required, in order to find the plate, to perform more complicated operations than merely lifting an engine hood, and such a placing would be in compliance with the requirements of this section. I am, with respect, unable to agree, because, if the place where the decal is attached is a place of concealment, then, in my view, it would follow that it was not plainly attached and the statute was not satisfied.

It is common ground that there was, at the time of the sale, attached to the cowl of the vehicle, underneath the hood, a decal, or sticker, of oval shape, approximately four inches long and one and one-half inches wide, with the words "Sold by Canadian Motors, Limited, Ford and Monarch Dealers, Regina" printed thereon. Also there is no dispute as to the sufficiency of the wording on the decal, but only as to the visibility of the place of attachment. This decal cannot, of course, be seen unless the hood cover over the engine is raised so as to make the cowl visible.

Attaching the name is intended to serve the same purpose as registration under the Act; that is, to give to subsequent purchasers, mortgagees, execution creditors and attachment creditors notice of the prior interest claimed by vendors in articles in the possession of others having a limited interest therein. Vendors must keep an office in Saskatchewan, where, upon inquiry, information concerning the sale may be obtained.

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It should be pointed out that the requirements of s. 12, *supra*, are not confined to motor vehicles, but apply to all kinds of manufactured goods of the value of \$15. It follows that no rule of general application can be laid down for the attachment of the names of manufacturers to their articles of manufacture, because of their great variety. We are here dealing only with a motor vehicle and what might be suitable in the case under discussion might be unsuitable in the case of other manufactured articles.

With respect, I am unable to agree with the view of the majority of the Court of Appeal that it is not a compliance with the requirement of the statute to attach the decal on the cowl of the engine, where it cannot be seen until the hood is raised, or removed. There is nothing in the statute to suggest that it must be attached to the exterior of the vehicle, where it would be exposed to the hazards of traffic and weather. In my view there was, in this case, a sufficient compliance with the statute.

I would allow the appeal and would make no order as to costs.

*Appeal allowed; no costs.*

Solicitors for the appellant: *Thom, Bastedo, McDougall & Ready.*

Solicitor for the respondent: *J. Glass.*

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