

Usury Statutes—Their Effect on Deferred Payments of Installment Sales Contracts.—*Langille v. Central-Penn Nat'l Bank of Philadelphia*.¹—Plaintiffs, conditional vendees, sought to discharge a bond and mortgage given as security for a conditional sales contract covering materials used in the erection of a pre-fabricated home. Pursuant to an agreement between the vendor and a finance company, the plaintiffs executed the bond and mortgage to the company and the latter subsequently assigned them to the defendant as security for a loan. The plaintiffs argued that the transaction involving the bond and mortgage was an usurious loan made by the finance company to the plaintiffs and was in violation of the usury statutes of Pennsylvania.² In resolving the question as to whether the time price differential (difference between cash and credit prices) was to be considered interest or an addition to the seller's margin of profit, the Chancellor sustained defendant's motion for summary judgment, holding that the time price differentials of credit sales do not come within the purview of the usury statutes because the legislature never intended that they should.

In rendering judgment for the defendant the Chancellor approved the historical reasons for excepting credit transactions from the prohibition against usury.³ His decision is in accord with the majority view prevalent in the United States today and with the traditional view on the subject that a time price differential in a conditional sale is not interest as that term is used in most usury statutes.⁴ Under this view, if a man needs an automobile for his business, borrows the money from a loan agency and then pays cash to the dealer he is protected by the interest limitations of the usury statutes; but if he chooses to finance through the dealer and buys the car on time, his note may be subsequently discounted by the same loan agency with which he preferred not to deal but he would not be protected by the statutory interest limitations. Considering the large number of credit transactions and the pressures exerted on unwary buyers to finance directly with the conditional vendor any view giving such a result must be narrowly construed.⁵ In the last decade a strong minority has become discernible. The leading case representative of this view is *Hare v. General Contract*

¹ 153 A.2d 211 (Del. Ch. 1959).

² Act of May 28, 1858, P.L. 622 sec. 1; Purdon's Pa. Stat. Ann. tit. 41, § 3 (1954) ". . . the lawful rate of interest for the loan or use of money in all cases where no express contract shall have been made for a less rate, shall be 6% per annum . . ."

³ 153 A.2d 211, 213 (Del. Ch. 1959).

⁴ *Newkirk v. Universal C.I.T. Credit Corp.*, 93 Ga. App. 1, 90 S.E.2d 618 (1955); *General Contract Purchase Corp. v. Propst*, 239 S.W.2d 563 (Mo. Ct. App. 1951); *Thomas v. Knickerbocker Operating Co.*, 202 Misc. 286, 108 N.Y.S.2d 234 (Sup. Ct. 1951); *Equitable Credit & Discount Co. v. Geier*, 342 Pa. 445, 21 A.2d 53; *Luchesi v. Capitol Loan and Finance Co.*, 83 R.I. 151, 113 A.2d 725 (1955); *Brown v. Crandall*, 218 S.C. 124, 61 S.E.2d 761 (1950).

⁵ For a discussion on the similarity between a conditional sale and a loan see "The Installment Contract and the Usury Laws—A Plea for a More Realistic Judicial Approach," 18 U. Pitt. L. Rev. 648; Berger, *Usury in Installment Sales*, 2 Law & Contemp. Prob. 148 (1935).

CASE NOTES

*Purchase Corp.*⁶ wherein the court in finding for the defendant finance company issued a caveat that it was overruling its past decisions and now takes the position that where the vendor has increased the cash price in anticipation of discounting the note to a finance company, the transaction is to be regarded as a loan and usurious if the time price differential exceeds the lawful rate of interest. A recent decision⁷ finding a violation of the usury laws did so on the so called bona-fide time price doctrine which distinguishes between a credit price unrelated to a cash price and one arrived at by adding excessive interest rates to a basic cash price, the former being regarded as nonusurious, whereas the latter is violative of the usury statutes. The court also gave emphasis to the fact that the financing bank furnished the sales forms, made the computations for the final price and had direct dealings with the vendee.

In light of the above two cases it is difficult to sustain the position taken by the court in the present case. Not only did the vendor make the sale with reasonable assurance that he could discount the note to the finance company, but also the vendee in executing the instruments⁸ dealt directly with the finance company, consummation of the sale depending on its acceptance of the vendee's application for deferred payment purchase. In all the cases cited by the Chancellor in the opinion the original transaction involved a conditional sale between vendor and purchaser with the paper subsequently being discounted by a finance company.⁹ In the few cases in which there have been direct dealings between the purchaser and the finance company the courts have disregarded form, and even though the transaction has been in the nature of a conditional sales contract these courts have held it to be usurious where the charges have been excessive.¹⁰ Decisions have also pointed out the distinction between credit and loan transactions holding the statutes applicable when the latter were present.¹¹

If the result in the instant case is followed to its logical conclusion the indirect approach previously required of finance companies seeking to avoid the usury statutes may be done away with and usurious interest rates may in effect be obtained even in direct purchaser-finance company dealings provided the form of a conditional sales contract is used. Furthermore even if the facts demonstrate that a loan is involved the applicability of the usury statutes is no longer assured. Thus the two most relied upon

⁶ 220 Ark. 601, 249 S.W.2d 973 (1952).

⁷ *Daniel v. First Nat'l Bank*, 227 F.2d 353 (5th Cir. 1955); rehearing denied 228 F.2d 803 (5th Cir. 1956).

⁸ The court mentions a mortgage but does not specify the type of mortgage it was, nor does it characterize the property on which the mortgage was given.

⁹ *Commercial Credit Co. v. Tarwater*, 215 Ala. 123, 110 So. 39 (1926); *Dunn v. Midland Loan Finance Corp.*, 206 Minn. 550, 289 N.W. 411 (1939).

¹⁰ *Daniel v. First Nat'l Bank*, supra note 7; *Jackson v. Commercial Credit Corp.*, 90 Ga. App. 352, 83 S.E.2d 76 (1954); *Nazarian v. Lincoln Finance Corp.*, 77 R.I. 497, 78 A.2d 7 (1951).

¹¹ *General Contract Purchase Corp. v. Propst*, supra note 4; *G.M.A.C. v. Weinrich*, 218 Mo. App. 68, 262 S.W. 425 (1924).

defenses of the conditional vendee have been destroyed. The result leaves unprotected the consumer, who in light of present day commercial transactions requires credit to survive. Considering the magnitude of credit sales in automobile purchasing alone,¹² this result is both naive and impractical, and is an unwarranted broadening of a judicial policy formulated when installment buying was practically unheard of.¹³

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¹² In 1956, 63% of all new cars and 58% of all used cars were sold on credit. 43 Fed. Reserve Bull. 643 (1957).

¹³ The earliest case on the problem held a sale of a plantation at a greater price for credit than for cash was not usury even though the difference in price was more than the rate of interest allowed by the usury statute. *Beete v. Bidgood*, 7 B. & C. 453, 108 Eng. Rep. 792 (K.B. 1827).