

and a conviction for manslaughter substituted. The appellant is sentenced to 12 years' imprisonment with hard labour.

*Appeal allowed; conviction for manslaughter substituted.*

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MUSTAPHA HASSAN v. GIDWANI

SUPREME COURT (Beoku-Betts, J.): January 1st, 1952  
(Civil Case No. 104/51)

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[1] **Hire-Purchase—hirer's rights—right to assign—assignee bound by hire-purchase agreement:** In a hire-purchase agreement, the ownership of the chattel hired remains in the owner and the owner has no right to sell it in the absence of a contrary provision in the agreement; but if the hirer has such a right under the agreement and exercises it, or if he exercises his right to assign the chattel, the seller or assignee becomes liable to observe the conditions of the agreement (page 161, lines 9-13). 15

[2] **Hire-Purchase—hirer's rights—right to sell—hirer has no right to sell in absence of contrary provision—if agreement permits sale, buyer bound by its conditions:** See [1] above. 20

[3] **Hire Purchase—owner's rights—rights against third parties—disposal by hirer of chattel inconsistent with agreement—actions in trover and detinue lie against purchaser from hirer:** Where a hirer deals with the hired chattel in a way which is entirely inconsistent with the bailment, as by selling, assigning, or otherwise disposing of it, when the terms of the hire-purchase agreement prohibit such dealing, the owner of the chattel may maintain against any third party to whom the hirer has sold, assigned or otherwise disposed of the chattel, an action in trover or detinue, or such other action as may be appropriate, unless the third party is protected by the law relating to sales in market overt, or by the Factors Act, 1889 or the Sale of Goods Act, 1893 (page 161, lines 13-35). 25 30

The plaintiff brought an action against the defendant for the recovery of a car, or its value, and damages for its wrongful detention. 35

The plaintiff hired a car to a third party under a hire-purchase agreement. By the terms of the agreement the hirer undertook, *inter alia*, not to sell, charge, pledge, assign or part with possession of the car during the period of hire without the permission of the owner. He also undertook to affix metal plates bearing the plaintiff's 40

name on the car. The hirer paid all the instalments due except one, and then sold the car, with metal plates bearing his own name, to the defendant without the plaintiff's permission. The plaintiff instituted the present proceedings against the defendant for the recovery of the car, or its value, and damages.

The plaintiff contended that under the hire-purchase agreement ownership of the car remained in him, and that he was entitled to bring an action for it against the defendant.

The defendant maintained that he was a purchaser for value without notice of the plaintiff's prior claim, and that ownership passed to him when he bought the car from the hirer, whom he had taken to be the rightful owner.

**Case referred to:**

(1) *North Gen. Wagon & Fin. Co. Ltd. v. Graham*, [1950] 2 K.B. 7; [1950] 1 All E.R. 780, considered.

*Dobbs* for the plaintiff;  
*Wilson* for the defendant.

**BEOKU-BETTS, J.:**

This is an action in which the plaintiff states that the defendant detained and still detains from the plaintiff the plaintiff's goods and chattels, that is to say, one motor car registration No. F 3881. The plaintiff claims the return of the said motor car or its value and damages for its detention.

The facts are simple. By agreement between the plaintiff and one J.S. Davies, dated June 14th, 1950, the motor vehicle was let to Davies as hirer on condition that he pay the sum of £100 and a monthly rent of £35. It was provided that the hirer should not, during the hiring, sell, charge, pledge, assign or part with possession of the motor vehicle, or assume ownership thereof, or cause or permit the vehicle to be removed from No. 4, Goderich Street, without the permission of the owner. It was also provided that, during the hiring, if so required by the owner, the hirer should affix to the motor vehicle metal plates bearing the name and address of the owner. In this case the hirer affixed metal plates bearing his own name. The hirer paid the instalments due but failed to pay the sum of £21. 10s. 0d., and without the consent of the owner sold the vehicle to the defendant. The action is against the defendant for detinue.

The whole question I have to decide is whether on a hire-purchase, if the hirer sells the car without paying the full amount due, the purchaser can be sued for detinue on refusing to deliver the car to the owner. The defendant's contention is that he is a purchaser for value without notice, that when he bought the car he saw the name of the person he bought from as owner, and that the ownership passed to the defendant when the hirer sold it to him. 35

In my opinion, in a hire-purchase agreement the ownership of the chattel remains in the owner and the hirer has no right to sell it. The hirer has the right to assign the chattel to a third person, but the third person becomes liable to observe all the conditions which affect the hiring. Where the agreement prohibits assignment, as this does, the hirer has no right to assign or otherwise dispose of the chattel. The plaintiff as owner of the motor vehicle has the right to maintain an action against the defendant, a third party, in respect of any act which is a dealing with or parting with the chattel in breach of the terms of the hire-purchase agreement, as it would be a determination of the bailment: see 16 *Halsbury's Laws of England*, 2nd ed., at 532-534 and 540. The law is very clearly stated in *Halsbury* thus (*ibid.*, at 540-541): 15 20

"[I]f the hirer, by dealing with the chattel in a way which is entirely inconsistent with the bailment, as by selling it where the terms of the agreement give him no right to assign or deal with the chattel, has repudiated the bailment, all persons, however innocent, who purport in any way to deal with the chattel, are guilty of conversion, unless protected by the law relating to sales in market overt, or by the Factors Act, 1889 or the Sale of Goods Act, 1893, and may be sued by the owner in an action of trover, or detinue, or in such other action as may be appropriate." 25 30

See also note (k) at 541. The latest case is that of *North Gen. Wagon & Fin. Co. Ltd. v. Graham* (1), where an auctioneer who had sold a car under a hire-purchase agreement was held liable in conversion. 35

In this case the defendant has not pleaded that there was any market overt to protect him, nor has he pleaded the Factors Act 1889 or the Sale of Goods Act, 1893. In the circumstances, therefore, the defendant is liable on the claim for detinue and I make an order that judgment be for the plaintiff for the return of the motor vehicle or its value. The value to the plaintiff should 40

however be the balance due from the hirer, that is, the sum of £21. 10s. 0d., and damages which I assess at £15.

5 In the result judgment will be for the return of the motor vehicle or the payment of the sum of £36. 10s. 0d. Strictly speaking, the defendant should pay the whole present value of the car, but in view of the fact that only £21. 10s. 0d. remained to be paid it would be inequitable to make the defendant pay the whole value of the car. The defendant is to pay the costs on the Supreme Court scale.

10 *Judgment for the plaintiff.*

15 **MACAULEY v. MACAULEY**

SUPREME COURT (Smith, C.J.): January 21st, 1952  
(Divorce Case No. 3/51)

20 [1] Family Law—divorce—desertion—constructive desertion—conduct justifying other spouse's leaving amounts to constructive desertion—offer of reconciliation makes other party deserter only if genuine, reasonable and unaccepted: Where the conduct of one spouse is such as to justify the other spouse's leaving the matrimonial home, it is the former and not the latter who is deemed to be in desertion; and an offer of reconciliation on the part of the spouse in desertion will only be effective to turn the other spouse into the deserter if it is genuine, reasonable and not accepted (page 164, lines 35–40).

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The petitioner sought a decree of divorce from the respondent on the grounds of his cruelty and desertion.

30 The petitioner alleged that the respondent had habitually used coarse and violent language towards her for some six years before their separation, and that he had failed to give her adequate financial support. The petitioner finally left the matrimonial home following a violent quarrel between them when it was alleged that the respondent had struck the petitioner and someone who had tried to intervene. The parties had remained apart ever since despite various attempts to reconcile them.

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40 The respondent denied all the petitioner's allegations, and although he admitted quarrelling with her, he denied that they came to blows. He maintained that he was always willing and anxious to have his wife back, but that she had refused all attempts