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LEGISLATIVE NOTE

By

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A number of bills were introduced into the current session of the legislature at the suggestion of the Legal Aid Society of Philadelphia. Their purpose is to solve some of the procedural and substantive problems which the staff of the society and other lawyers had been meeting frequently in their day to day practice.

A. *Motor Vehicle Sales Finance Act*

One of these, Senate Bill 255, proposed to revise the deficiency judgment provisions of the Motor Vehicle Sales Finance Act of June 28, 1947.¹ This act treats comprehensively the subject of installment sales of motor vehicles and makes provision for the resulting rights and duties of the parties after a motor vehicle has been repossessed by the seller.

Section 25 of the Motor Vehicle Sales Finance Act set up a fifteen day period after the buyer's motor vehicle has been repossessed, during which period he may redeem his vehicle and terminate the installment contract. If the buyer fails to do so, then he is barred by Section 26A from any further claim to the motor vehicle and collateral security. Paragraph B of the same section provides that even though the buyer fails to redeem, the seller does not have the right to proceed against him for a deficiency unless the seller first held a public or private sale of the repossessed motor vehicle and collateral security.

Section 27 of the act then provides that if the proceeds of the resale are not sufficient to defray the expenses of the sale and of retaking and storing the motor vehicle and the net balance due upon the contract plus default charges, the seller may recover the deficiency from the buyer. There is the proviso, however, that the buyer may have the reasonable value of the motor vehicle at the time of resale determined in any proceeding brought by the seller to recover the deficiency, the resale price being prima facie, but not conclusive, evidence of such reasonable value. The section further provides that it does not apply to a deficiency on resale made prior to the effective date of the act.

It will be seen that these provisions of the Motor Vehicle Financing Act bear some resemblance to the Deficiency Judgment act of 1941,² whose primary purpose was to regulate deficiency judgments arising out of mortgage foreclosures where the real estate was acquired by the mortgagee at the foreclosure

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¹ PA. STAT. ANN. tit. 69, § 601 (Purdon 1955).

² PA. STAT. ANN. tit. 12, § 2621.1 (Purdon 1951).

sale. Although previous acts of the legislature on that subject had been held unconstitutional, the 1941 act was sustained by the Pennsylvania Supreme Court in the case of *Fidelity Philadelphia Trust Co. v. Allen*.³ The court in a per curiam decision cited the decision of the United States Supreme Court in the case of *Gelfert v. National City Bank*,⁴ which sustained the New York deficiency judgment act. The latter case denied the claim that the act violated the contracts clause of the federal constitution, reasoning that the mortgagee is entitled to no more than payment and that the statute in question did no more than restrict the mortgagee to recovery of that for which he had contracted. Subsequently, in the case of *Pennsylvania Company v. Scott*,⁵ the court held that the 1941 act was constitutional even though applied to execution sales which had occurred before the act was passed.

Although the 1941 act has worked very well in practice, the deficiency judgment procedure under the Motor Vehicle Sales Finance Act was not quite so successful.

During the year 1954, a flood of deficiency judgments on ancient bailment leases of automobiles were entered in Philadelphia County, and the Legal Aid Society was overwhelmed by the requests of harassed debtors seeking relief. In most of the cases involved, the parties had purchased an automobile under bailment lease ten or fifteen years before and because of depressed financial conditions had been unable to complete payment. As a result the cars had either been repossessed or voluntarily returned to the agencies. In practically all cases the debtors had no information as to the disposition of the automobiles by the agencies; and the law existing at the time the sales were entered into offered no protection whatsoever to the debtors against the collection of deficiencies which seemed to be grossly exorbitant and unreasonable under the circumstances.

Since the resales in practically all of these cases had been made prior to the effective date of the 1947 act, the latter act did not apply to them. However, in many cases relief was obtained for the debtors on the ground that the assessments of damages were fictitious since the sellers had no information at all as to resale prices of the repossessed automobiles. Likewise, the assessments of damages had included rentals to the end of the contracts instead of being limited to the time of repossession which was not permitted under existing law.

Senate Bill 255 was introduced to correct the weaknesses of the Motor Vehicle Sales Finance Act as applied to deficiency judgments. Sections 26 and 27 of the old act are repealed and new sections are added. Section 26 reenacts most of the provisions of the former section but adds the important requirement that resale of the repossessed motor vehicle must be made within ninety

³ 343 Pa. 428, 22 A.2d 896 (1941).

⁴ 313 U. S. 221 (1941).

⁵ 346 Pa. 13, 29 A.2d 328 (1942).

days after the fifteen day redemption period has passed. Section 27 is substantially reenacted but adds a new provision that the holder must proceed within thirty days of the resale to file a petition with the Common Pleas Court to fix a fair and reasonable value of the motor vehicle at the time of the resale and to determine if any deficiency exists. This petition is to be filed with the Common Pleas Court of the county where the motor vehicle was originally sold in the case where repossession occurs other than by legal process, and in the case where possession was obtained by legal process in the same court which issued the process. Where resales take place prior to the effective date of this section petitions to fix fair value to determine the deficiency, if any, shall be filed by the holder within sixty days after the act takes effect. The failure to file petitions to fix fair value terminates the installment sales contract and discharges the buyer from his obligations.

Section 28 of the act is also amended to provide that within one year after termination of the contract by surrender or repossession of the motor vehicle, the seller shall, even though not requested therefor, furnish the buyer with a complete and detailed statement of his account. Under the existing section it is the duty of the seller to furnish such a statement only when requested to do so by the buyer.

The above bill has been endorsed in principle not only by lawyers representing defaulting buyers but by the Pennsylvania Industrial Bankers Association which represents the great majority of finance companies in this state. It is felt that the bill will cure demonstrated weaknesses in the existing act and foster equity and fair dealing among both installment sellers and buyers.

B. *Correcting Birth Records*

Another problem which proved particularly vexing to the attorneys of the Legal Aid Society concerned the correction of birth records in those cases where the Division of Vital Statistics of the State Department of Health indicated that it had no authority under existing law to make the requested corrections. In these cases the department usually indicated that it would be pleased to make the correction if some court order directing the same was obtained. Accordingly, the practice arose of filing in the Common Pleas Courts of Philadelphia County either a petition for declaratory judgment or a petition and rule on the Department of Public Health for an order directing correction of the birth record involved. When such order was obtained the department promptly made the correction.

However, in 1951 the Orphans' Court Act was passed setting forth the jurisdiction of the Orphans' Court, inter alia, as follows:

"Section 301. Exclusive Jurisdiction. — The Orphans' Court shall have exclusive jurisdiction of: . . . (15) *Birth Records*. Matters relating to birth records, as provided by law."

Following the passage of this act petitions were filed with the Orphans' Court seeking correction of birth records. However, the Orphans' Court held that it had no jurisdiction to amend or correct birth records since there was no statute specifically granting such power to the court. Accordingly, petitions again began to be filed in the Common Pleas Courts. However, in the case of *In re Halohan Petition*⁶ decided May 23, 1952, Judge Mawhinney of Common Pleas Court No. 3 of Philadelphia County ruled that in view of the Orphans' Court Act of 1950 and all past legislation dealing with the subject of recording births and deaths, the jurisdiction, if any had been granted, to correct birth records was in the Orphans' Court. He also suggested that if the Common Pleas Courts had any jurisdiction at all in the matter, it would have to be sought in the Common Pleas Court of Dauphin County, since the Administrative Agency Law of June 4, 1945,⁷ specifically limited appeals from such agencies as the Division of Vital Statistics to the Dauphin County courts. Thereafter, some efforts were made to have the Dauphin County Court grant orders directing correction of birth records. However, since most of the parties in such cases are of limited means this procedure was not readily available because of the expense involved. Accordingly, a bill was introduced and passed by the legislature as Act No. 116, approved by the governor on August 4th, 1955, amending section 301, clause 15 of the Orphans' Court Act so that it reads as follows:

"(15) Birth Records. All proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same. Whenever a person is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records the appeal shall be taken to the orphans' court of the county in which the person is a resident. In all other matters in which a petition is addressed to a court in connection with matters of birth records the filing of which petition is not in the nature of an appeal, but is an original proceeding, shall be filed and determined by the orphans' court of the county in which the petitioner resides."

Since the above bill gives plenary authority to the orphans' court on the subject, it is felt that this act will answer the problem involved and permit the obtaining of the necessary corrective orders without undue expense and litigation to the applicants.

⁶ 80 D. & C. 582 (1952).

⁷ PA. STAT. ANN. tit. 71, § 61 (Purdon 1955).

CORRECTION NOTE

Attention of readers is called to the following errors which were made in the printing of Professor Reed T. Phalan's Legislative Note on "Interests of Remote Parties in Goods Under the Uniform Commercial Code", 59 Dick. L. Rev. 332:

At page 336, line 24, the sentence should read, "Many merchants have been tempted to go through the motions of disposing of their businesses, while secretly retaining interests upon which they realize after creditors give up trying to collect."

On page 339, an additional footnote, No. 21½, should be keyed to the text at the end of line 30, and footnotes 20, 21 and 21½ should read as follows:

20 Uniform Commercial Code, Sections 6-106, 6-111.

21 Miller v. T.I.C. Consumer Discount Co., 69 Pa. D & C. 585 (1949).

21½ Kadair v. Serack, 63 Pa. D. & C. 27 (1947).

The editors regret the occurrence of these errors.