the bank and the depositor and not necessarily conclusive of the status of the paper. The court held the bank was at least a pledgee-type security holder, in addition to being an agent, having to the extent of the debt secured, all the rights of an owner. The instant case is consonant with the provisions of the Bank Collection Code[14] and the holding of the case has been embodied in substance in the Uniform Commercial Code.[15]

When the withdrawal of credit amounts to only a partial portion of the checks deposited, it appears to be the preferable approach to follow the language of the instant case in labelling the bank a pledgee to the extent of the fund advanced, in addition to being an agent, rather than denoting it as an owner of the checks pro tanto. It would clarify the status of the parties and be more consonant with the juridical realities for a court to draw a decision founded on a single owner-pledgee relation encompassing the entire deposit, rather than to dissect the deposit into two entities, the credit retained in the bank and the fund advanced. The latter distinction would necessitate the court considering the same deposit as being held by two owners. A double title concept and a truncated agency relation, subsisting only to the extent of the credit retained, would lend vigor to the view that the law is replete with obscure conceptualisms and not at all concerned with rendering lucid concrete relations in their empiric context.

EDWARD F. HARRINGTON

Brokerage Commissions Under Clayton Act—Seller's Reduction of Prices Through Elimination of its Own Brokers.—*Robinson v. Stanley Home Products.*[1]—Plaintiff was the sales agent of a Pennsylvania firm which manufactured plastic cups. He had previously procured two orders from the defendant, a Massachusetts corporation, when the defendant sought to deal directly with the manufacturer. The manufacturer agreed and plaintiff was later discharged. He claimed that the commission he would have been paid as exclusive agent for the seller was in fact given to the defendant in the form of a reduction in price. It was his contention that this reduction was in violation of § 2(c) of the Clayton Act which forbids the ". . . commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered . . ."[2] Plaintiff alleged that by receiving a reduced price, the defendant was in fact accepting a discount in lieu of a commission, and that he was a person injured by such violation and entitled to recover treble damages under § 4 of the Clayton Act.[3] The plaintiff further alleged that the reduced price was not offered to other customers of the manufacturer and as such is a violation of § 2(a) of the Clayton Act.

[14] § 2.
[15] UCC §§ 4-208. 4-209.

[1] 272 F.2d 601 (1st Cir. 1959).
[2] 49 Stat. 1526 (1936), 15 U.S.C. § 13 (1958).
[3] 49 Stat. 1526 (1936), 15 U.S.C. § 15 (1958).

The question before the court was a novel one. To be decided was whether the reduction in price by a seller to one of its customers, with a contemporaneous dismissal by the seller of an agent who was receiving a commission, was a violation of § 2(c). The U. S. District Court for the District of Massachusetts[4] held that plaintiff did not allege a cause of action and further was not a "person" as contemplated by § 4.[5] The Court of Appeals, First Circuit, held that plaintiff had not shown that the reduction in price was in lieu of a commission. While such a reduction could be a violation of § 2(c), not every one is such. All that plaintiff had done was show that the seller would not have been able to make the reduction if it had paid plaintiff his commission. The court maintained that the purpose of the reduction is the controlling factor. To hold that every reduction in price made because there is a conversion to direct selling with resulting savings, constitutes a violation would be to interpret § 2(c) as forbidding that which it does not. It was further held that a showing of discrimination, even though a violation of § 2(a), will not necessarily result in a violation of § 2(c). The court pointed out that if there was discrimination between buyers after the elimination of the commission, § 2(a) would accomplish the purposes of the act. This may be true, but it should be noted that there are different defenses available under § 2(a).[6]

The U. S. District Court for the District of N. J.,[7] having the same parties before it and the same transaction, held that § 2(c) was not meant to include within its scope agents of the seller, and the seller could effect savings in his distribution cost by elimination of his agents and pass such savings on to his customers.[8] The First Circuit does not seem to aquiesce in this theory of interpretation. It is clear from the First Circuit opinion that a seller is not forbidden to effect savings in his organization and pass on such savings to his customers. What the court seems to be saying is that the reduction must be for a legitimate purpose, which a discount in lieu of brokerage is not, and upon the showing that such illegitimacy of purpose was the reason for lowering of the price, there will be a violation, regardless of whether plaintiff was an agent of the buyer or the seller. To the court it would seem that it is possible to have a violation even though it is the seller's agent who is being eliminated. At this point

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[4] 178 F. Supp. 230 (D. Mass. 1959).

[5] 49 Stat. 1426 (1936), 15 U.S.C. § 15 (1958).

[6] Under § 2(a) of the Clayton Act, it has been held that there must be a showing that such discrimination "may" have an effect on competition. Such is not necessary for a § 2(c) violation.

[7] 174 F. Supp. 414 (D.N.J. 1959).

[8] The reason may be that in the case relied upon by the N.J. District Court, Broch v. FTC, 261 F.2d 725 (7th Cir. 1958), the party against whom the Government was proceeding was the agent of the seller, who had agreed to accept a reduction in his commission in order that the price offered to the buyer would be lower. The Seventh Circuit was not dealing with the seller or buyer as parties but merely with a dispute between rival brokers, and the court felt there was not sufficient public interest. It well may be that the First Circuit did not feel that the facts of the instant case were capable of decision by the reasoning in the Broch case.

there may be difficulty. How are we to determine when a seller may legitimately eliminate a salesman and his commission and pass on the savings to the buyer or when a similar elimination with a resulting reduction is a violation of § 2(c)? § 2(c) has been generally given a strict interpretation, and though this particular situation has never arisen, a concession reflecting actual savings in the distribution cost of the seller given in the form of a commission to the buyer in any form is *per se* a violation.[9] The court, however, tells us that we must look to the purpose of the reduction. The court assumed that the seller no longer employed an agency system and so it is difficult to impute illegality to the reduction in price. It would seem that the court would have no difficulty in finding a discount in lieu of a commission had plaintiff been only relieved of this account and commission and he or other agents continued selling to other accounts, and seller then reduced the price to buyer by the amount of the commission. A situation which is not so clear may present itself. If we assume that buyer goes to seller after having been contacted by seller's agent and offers to deal direct if seller will let buyer have the benefit of the commission being paid the agent in the form of a discount, would there be a violation, for then the purpose of the reduction is to give a discount in lieu of a commission? Would not a showing that there was in fact discrimination by the seller in favor of the buyer who offers to deal direct be an indication that the purpose of the reduction was in fact in lieu of a commission? The court stated that the fact that there was discrimination between customers does not mean that the favored one received brokerage. This would seem to indicate a reluctance on the part of the court to look any further than § 2(c) in order to establish a violation. However, query whether one might look to price discrimination not as showing a violation of § 2(c), but to show the actual purpose of the reduction.

The court was able, because it assumed the fact of the elimination of all agency selling, to show that plaintiff had not shown the purpose of the reduction to be anything but legitimate. It is unfortunate that the facts were not such that the court could have given some answers to the problems raised in this note. In the light of the decision, the agent, if considered a person under § 4 of the act,[10] must equate the reduction in price to a commission, and may not do this by merely showing discrimination between buyers. The seller is still faced with the problem of eliminating agents and their commissions for he may not use the defense of cost justification. Though the case speaks of the purpose of the reduction, it does not resolve

[9] Report of Attorney General's Committee to Study the Anti-Trust Laws 189 (1955).

[10] The court did not take up the matter of whether plaintiff was a "person" under the act, but it did seem to agree with the district court which held that plaintiff had not been directly injured by the price differential and so was not within the scope of the act, § 4.

The court also found that the tort claim of plaintiff to the effect that that defendant had interfered with an advantageous continuous business relationship was doubtful, for defendant was acting for its economic benefit and would be privileged.

the problems surrounding the showing of such purpose by either the seller or his agent.

ANTHONY M. FREDELLA

Chattel Mortgages—Bill of Sale to Secure Debt—Effect of Granting Borrower Permission to Sell the Secured Chattel.—*Peoples Loan & Finance Corporation of Rome v. McBurnette.*[1]—An action of trover was brought in Georgia to recover possession of an automobile. The plaintiff granted a loan to an automobile dealer, taking a "bill of sale to secure the debt" to the car, such bill being duly recorded as required by statute.[2] The bill of sale stated that the dealer had the privilege of selling the car, the proceeds to be impressed in a trust for the benefit of the plaintiff, and to be used to retire the debt.[3] Subsequently, the dealer delivered the car to a third person in settlement of a personal gambling debt. Thereafter the car was sold to the defendant, a bona fide purchaser for value. The defendant's demurrer was sustained in the lower court. On the plaintiff's appeal to the Court of Appeals of Georgia, Division No. 2, affirmed. HELD: the bona fide purchaser took free of the lien of the security instrument.

Usually, one may not acquire title to a chattel from a person who himself has no title. However, in the present instance, the recorded bill of sale expressly granted the dealer-borrower the power to sell the chattel constituting the security with the proceeds to be held in trust for the lender. It is established in Georgia that one who lends money, receives and records a bill of sale to a chattel given as security, and by express provision or clear implication of the agreement authorizes the sale of the secured chattel, causes the borrower to become his agent for the sale and for the collection of the proceeds with the obligation to account for them. When the borrower disposes of the chattel in the due course of business, the lender's security title is extinguished and can not be asserted as against a bona fide purchaser for value.[4] By granting such permission to sell the lender places a strong reliance on the borrower's honesty in dealing with the chattel and in accounting

[1] 100 Ga. App. 4, 110 S.E.2d (2d Div. 1959).

[2] In Georgia, a bill of sale to secure a debt transfers title to the lender until the debt is paid. The instrument must be recorded. If it is not it remains valid only between the parties executing it, and as to others, is to be treated as an unrecorded deed of bargain and sale. See Manchester Motors Inc. v. Farmers & Merchants Bank, 91 Ga. App. 811, 87 S.E.2d 342 (2d Div. 1955); Commercial Credit Corp. v. Citizens & So. National Bank, 68 Ga. App. 393, 23 S.E.2d 198 (1st Div. 1942); Keel v. Attaway, 65 Ga. App. 172, 15 S.E.2d 562 (1st Div. 1941).

[3] The bill of sale recited: "Notwithstanding any other provision of this title, it is understood that the maker is a dealer in automobiles. He is hereby permitted to sell the above described property. In the event of such sale, the proceeds shall immediately become impressed in a trust for the use and benefit of the holder of this instrument. The said funds shall immediately be used to retire this instrument and for no other purpose."

[4] Automobile Financing Inc. v. Downing Motors Inc., 95 Ga. App. 711, 98 S.E.2d 643 (1st Div. 1957); Gernazian v. Harrison, 66 Ga. App. 689, 19 S.E.2d 165 (2d Div. 1942).