

# Legal Aspect of Consignment Goods

Matter Discussed Before Credit Men's Association by Vancouver Attorney From Standpoint of Consignor, Consignee and Third Party.

At a recent meeting of the Vancouver branch of the Canadian Credit Men's Trust Association, Mr. George E. Housser, of the Vancouver bar, delivered an address on "Consignment Goods," which cleared up many doubtful points of law in the minds of credit men and was an interesting and valuable presentation of a subject which has severely tried commercial interests.

Mr. Housser said in part: "Discussion of this question naturally falls under three heads, and I propose to deal with the same in that manner. These three heads are as follows:

1. Consignment of goods, from the standpoint of the consignor.
2. Consignment of goods, from the standpoint of the consignee.
3. Consignment of goods, from the standpoint of a third party.

Naturally you are much more interested in the problems and questions which arise under heading 3 than of the first two, and I think I may dismiss the latter after dealing with them briefly.

The basic proposition underlying consignment of goods is that neither the property nor the constructive possession of the goods changes when the same are forwarded by the consignor to the consignee. In all cases it is most desirable, in fact necessary, from the standpoint of the consignor, that a proper consignment agreement be entered into, which should provide, among other things, that the property in the goods does not in any way pass when they are delivered to the consignee, and that the consignee holds the same on behalf of the consignor; in fact, without such a specific agreement, the consignor, in a great majority of cases, could doubtless prove, if necessary, that this was the relation which obtained between him and the consignee, but as I will endeavor to point out later, it is very dangerous indeed for the consignor to leave these matters to chance, or to proof by word of mouth. Under a proper form of consignment agreement, therefore, the consignee simply has a physical possession of the goods, but he has no property or interest in them, and his possession is simply the possession of the consignor. It follows from this that the consignor is entitled to hold the goods as against the creditors of the consignee, and as against the trustee for the benefit of creditors, and even against the Sheriff going into possession under a Writ of Execution. The consignor's position with the landlord, however, is different. Under our Distress Act and Amendments, all goods found on the premises are liable to distress, the only exception being in favor of goods which are held by the tenant under a duly filed agreement for hire, contract or conditional sale, and the goods of lodgers. In a case which came to the writer's attention, certain consignors having goods stored on the premises of a certain storage company of Vancouver were compelled to pay to the landlord between \$600 and \$700 accrued rent owing by the tenant, in order to prevent a sale by the Bailiff under Distress Warrant. Therefore, if the consignee is occupying rented premises the consignor should endeavor to obtain a letter or agreement from the landlord agreeing to waive his rights of distress against any goods of the consignor which may be on the premises at any time; or if he cannot obtain this, to arrange with the landlord to be notified if any rent is in arrears for more than ten or fifteen days. If arrangements of this nature cannot be procured, the consignor should for his own protection keep a very close watch over the affairs of the consignee, in order that he may not find his goods seized by the landlord in the event of rent not being paid.

The question of insurance of consigned goods may also be considered briefly. I have always advised consignors to insist on goods held on consignment being separately in-

sured, with the loss made payable to the consignor direct. The consignor takes a great risk if he allows a consignment of goods to be covered by a general policy including goods and chattels the actual property of the consignee, and even possibly consignments of goods of other parties. I know of at least two cases where by reason of the insurance being effected by a general policy the consignor was unable to recover anything from the insurance company, the insurance moneys being obtained by the trustee for the benefit of the creditors. It might also be remarked that in neither of these cases was the consignor able to rank as a creditor of the estate, as his claim was simply one for damages against the consignee for failure to insure according to agreement.

The question from the standpoint of the consignee is not, I think, of great interest to you. The consignee, of course, has no property in the goods, and is only entitled to a commission on such goods as he may sell. He should keep careful and accurate account of all goods in stock on consignment, and of all sales made, and remit promptly in accordance with his arrangements with the consignor. Unfortunately there have been many cases in the last few years where consignees have, either by accident or design, mixed the stock held on consignment with their own so hopelessly that it was absolutely impossible to tell accurately what did and what did not belong to the consignor. Many consignees are also very lax in remitting payments which they collect, and in too many cases such laxness amounts to downright dishonesty. Unfortunately the Criminal Code offers many loopholes of escape to a dishonest consignee, and it is very difficult for a consignor to successfully prosecute a consignee in respect of moneys collected and not remitted. It can, of course, be done, but it has been my experience that a very clear case is needed to be made out before conviction can be secured. A consignor commencing a prosecution which turns out unsuccessfully is also in grave danger of an action for malicious prosecution, even if a consignee is convicted it is rather poor satisfaction. Unless the consignee is a party of undoubted integrity and financial standing, the very closest possible check should be kept on the consigned stock and sales thereof, and even a monthly accounting is not sufficient in many instances to prevent either carelessness or dishonesty on the part of the consignee. In this connection it may be noted that the relation between consignor and consignee with respect to agricultural products have been dealt with in the 1916 amendment to the Sale of Goods Act. This is undoubtedly a step in the right direction.

The phase of the matter which I have no doubt is of interest to you arises under the third heading, namely, the question of consignment of goods with relation to third parties, and in particular with relation to creditors of the consignee. I mentioned previously that under a proper consignment agreement the property and constructive possession of the consignment of goods remains unchanged, and therefore the creditors have no rights whatsoever against them. This very often works, if not actual fraud, a great hardship against creditors. Credit is often given and goods are often supplied on the strength of the stock which appears on the shelves and in the warehouse of the party seeking the same. There is, unfortunately, no way by which the party giving the credit or supplying the goods can ascertain whether or not these goods or any part of them are actually the property of the person seeking the credit. He may be completely misled by a dishonest or inaccurate statement, and may in many cases give credit to a man on the strength of stock which he supposes him to hold in his own right and which is in reality the property of another. Of course if the Sheriff goes into possession under an execution or an assignment for the benefit of creditors is made, prima facie the Sheriff or the Assignee for the benefit of creditors, as the case may be, may seize all stock in the