

title, and the latter transfers the document of title to the third party on the re-sale, the third party's purchase being *bona fide*, the vendor's right as against him will be gone. But the document of title may be countermanded by the vendor at any time before the bailee of the goods attorns to the buyer.

CHAPTER III.

REMEDIES AGAINST THE GOODS—RE-SALE.

The property in the goods having passed, but the goods being still in the vendor's possession, and the buyer being in default, a re-sale by the vendor rescinds the original sale if such right of re-sale was reserved in the original sale; not otherwise. If on such re-sale the goods bring more than the former price, the vendor gets the benefit; if less the vendor may make the difference a part of his claim in his action for damages for the buyer's breach of contract. If the vendor resells without an express condition allowing it, he may sue on the original contract (which he cannot *rescind*) either for the whole price, leaving the buyer to counter-claim for damages for the re-sale, or for the loss in price and expenses, and the same rule is observed where the vendor has tortiously retaken and resold the goods after their delivery to the purchaser.

In case of a re-sale, a buyer *in default* cannot bring an action of trover against the vendor, since he has no right of possession, and he cannot, even if not in default, treat the contract as *rescinded* by the vendor's tortious re-sale, but must pay the price, his remedy being an action for damages for the wrongful re-sale. But a buyer not in default, may maintain trover upon a wrongful re-sale.

It is a breach of contract for an unpaid vendor to resell, even on the buyer's default, and the buyer may recover from him the difference, if any, between the contract price and the market price on the re-sale, or if none, then nominal damages. The title of the purchaser on the re-sale depends on whether the first buyer was in default, if not, he may maintain trover against the second purchaser.