

JAMAICA**IN THE COURT OF APPEAL****SUPREME COURT CIVIL APPEAL NO. 72/97**

**BEFORE: THE HON. MR. JUSTICE BINGHAM J.A.
THE HON. MR. JUSTICE WALKER, J.A.
THE HON. MR. JUSTICE PANTON, J.A. (Ag.)**

BETWEEN WORKERS SAVINGS & LOAN BANK APPELLANT
AND E. P. MIGNOTT
AND PAUL C. MIGNOTT RESPONDENTS

**Dennis Goffe, Q.C., instructed by Myers, Fletcher & Gordon,
for the appellant**

Raphael Codlin for the respondents

July 21 and October 4, 1999

BINGHAM, J.A.:

I have taken the advantage of reading in draft the judgment prepared in this matter by Walker, J.A. I am entirely in agreement with the reasoning and the conclusion therein. There is nothing further that I could usefully add.

WALKER, J.A.:

The determination of this short appeal turns on a true construction of section 3 of the Bills of Sale Act ("the Act").

The facts are uncomplicated and not in dispute. In 1995 the respondents purchased a motor truck from the registered owner of the vehicle, Millicent Clarke, at a price of \$500,000. Unknown to the respondents at the time of purchase, the truck was subject to a bill of sale held by the appellant to secure a loan of \$170,000 to Millicent Clarke. This bill of sale was executed on May 12, 1993, and should have been recorded in the Island Record Office within 30 days of that date in conformity with the provisions of section 3 of the Act. In fact, the document was not recorded until July 1, 1993, due, it would seem, to inadvertence on the part of the appellant. On June 16, 1995, the Bailiff for the parish of Clarendon, acting on the instructions of the appellant, seized the motor truck. Having been dispossessed of the vehicle in this way, the respondents (as plaintiffs) commenced civil proceedings by way of originating summons against the appellant claiming for a declaration that, as against the respondents, the bill of sale made between the appellant and Millicent Clarke was null and void by reason of its late registration. On June 6, 1996, this summons was heard by Ellis, J. who found in favour of the respondents and ordered as follows:

"(i) The Bill of Sale executed on the 12th day of May, 1993 and registered in the Island Records Office on the 1st day of July, 1993 is null and void and of no effect.

(ii) The said Effie Mignott is entitled to possession of the said truck.

(iii) The Bailiff is to deliver the said truck the subject of this matter to the Plaintiffs.

(iv) Costs to the Plaintiffs to be taxed if not agreed.

(v) Liberty to apply to either party."

It is, therefore, necessary to examine the provisions of section 3 of the Act.

Section 3 provides that:

"3. Every bill of sale, of personal chattels, made either absolutely or conditionally, or subject, or not subject to any trusts, and whereby the grantee or holder shall have power, either with or without notice, and either immediately after the making of the said bill of sale or at any future time, to take possession of any property and effects comprised in, or made subject to such bill of sale, and every schedule or inventory which shall be thereto annexed, or therein referred to, and every attestation of the execution thereof, together with an affidavit of the time of such bill of sale being made or given, and a description of the residence and occupation of the person giving the same, and of every attesting witness thereto, or in case the same shall be made or given by any person under, or in execution of any process, then a description of the residence and occupation of the person against whom such process shall have issued, and of every attesting witness, shall be recorded at length in the Record Office within thirty days after the making or giving of such bill of sale (in like manner as deeds relating to real property in this Island are recorded), otherwise such bill of sale, as against all assignees of the estate and effects of the person whose goods, or any of them, are comprised in such bill of sale, under the laws relating to bankruptcy or insolvency, or under any assignment for the benefit of the creditors of such person, and as against the Bailiff of the Court and his deputies, and assistants and other persons seizing any property or effects comprised in such bill of sale, in the execution of any process of any Court of law or equity, authorizing the seizure of the goods of the person by whom, or of whose goods such bill of sale shall have been made, and against every person on whose behalf such process shall have been issued, shall be null and void to all intents and purposes whatsoever, so far as regards the property in, or right to the possession of any personal chattels comprised in such bill of sale, which, at or after the time of such bankruptcy or declaration of insolvency, or of the execution by the

debtor of such assignment for the benefit of his creditors, or of executing such process (as the case may be), and after the expiration of the said period of thirty days shall be in the possession, or apparent possession of the person making such bill of sale, or of any person against whom the process shall have issued under, or in the execution of which such bill of sale shall have been made or given, as the case may be."

On appeal, the simple argument of Mr. Goffe, Q.C. for the appellant was that section 3 prescribes exhaustively the categories of persons against whom an unregistered bill of sale is legally null and void, and the respondents did not fall within any of such categories of persons. Accordingly, the lateness of the registration of the appellant's bill of sale did not affect the validity of the bill of sale, viz-a-viz, the respondents. Mr. Codlin for the respondents argued to the contrary on the basis that the sale of the truck by Millicent Clarke to the respondents was to be regarded in law as an assignment to the respondents for their benefit as creditors of Millicent Clarke. Mr. Codlin's argument is fallacious and, for that reason, untenable. It is so because the respondents cannot from any standpoint be classified as creditors within the scope of section 3. The true construction of section 3 I take to be that an unregistered bill of sale is null and void to all intents and purposes whatsoever:

- (a) against assignees of the estate and effects of the grantor under the laws relating to bankruptcy or insolvency;
- (b) under any assignment for the benefit of the creditors of such a grantor;
- (c) against the Bailiff of a Court and his deputies and assistants and other persons seizing any property or

effects comprised in such bill of sale in the execution of any process of a Court of law or equity;

(d) against every person on whose behalf such process as described in (c) above shall have been issued.

The case of *Small Businesses Loan Board v. Reid* (1964) 7 W.L.R. 287 upon which Mr. Codlin placed such great reliance is, in my view, inapposite to the facts and circumstances of these proceedings. In the present context, it really is of no assistance whatever.

This appeal is well taken. The learned trial judge obviously fell into error in his interpretation of section 3 and, as a consequence, his judgment cannot stand. I would set aside that judgment in allowing this appeal with costs.

PANTON, J.A. (Ag.):

I agree.

BINGHAM, J.A.:

Appeal allowed. Judgment of the court below set aside. Costs to the appellant both here and in the court below. Such costs to be taxed if not agreed.