[HIGH COURT OF AUSTRALIA.]

NATIONAL DISCOUNTS LIMITED . . APPELLANT;
RESPONDENT,

AND

JAQUES AND OTHERS . . . . RESPONDENTS.
APPLICANT-RESPONDENTS,

RE DOYLE.

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SYDNEY, *Aug.* 24-26;

MELBOURNE, *Oct.* 20.

Williams, Fullagar and Taylor JJ.

Bankruptcy—"*Commencement of the bankruptcy*"—"*Property of the bankrupt*"—*Motorcar*—"*Possession*" *of the bankrupt—Order or disposition—Reputed ownership—Consent of the true owner—Bill of sale—Rights—Statutory protection—Bankruptcy Act* 1924-1950, *s.* 91 (*e*), (*iii*), (*iv*)—*Bills of Sale Act* 1898-1938 (*N.S.W.*).

Section 91 of the *Bankruptcy Act* 1924-1950 (Cth.), so far as material, is as follows:—"The property of the bankrupt divisible amongst his creditors . . . shall not include:—. . . (*e*) except as provided in paragraph (iv.) of this section . . . chattels in respect of which a valid bill of sale has been filed or registered and kept registered under any Act or State Act or law of a Territory . . . But, subject to this Act, it shall include—. . . (iii) all goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, with the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: . . . and (iv) the claim or right of the bankrupt to the property under any contract, bill of sale, hire purchase agreement, mortgage or lien made by or with the bankrupt or debtor on his trustee discharging or offering to discharge any legal liability with respect thereto."

Held: (1) Paragraph (*e*) operates only to protect the proprietary rights in the goods created by the instruments to which it refers. It permits the true owner of such rights to leave such goods in the possession, order or disposition of the debtor under such circumstances that he is the reputed owner thereof without incurring the penalty of the forfeiture of those rights if the debtor becomes bankrupt. The paragraph does not operate to protect the true owner of the goods if they are not in fact the property of the bill of sale holder. (2) Goods can never form part of the property of the bankrupt by reason of the operation of s. 91 (iii) unless the true owner has *consented* to their being,

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at the commencement of the bankruptcy, in the possession order and disposition of the bankrupt. There is no consent if the true owner believes that the bankrupt has disposed of the goods to another so that he is no longer the true owner thereof.

Requisites of consent discussed.

Decision of the Federal Court of Bankruptcy (*Clyne* J.), varied.

APPEAL from the Federal Court of Bankruptcy.

By motion on notice Stanley Theodore Jaques, Official Receiver and trustee of the estate of Reginald Aubrey Doyle, applied to *Clyne* J., Federal Judge in Bankruptcy, for declarations: (a) that the 1950 model Buick car registered AHB 405 formed part of the property of the bankrupt within the *Bankruptcy Act* 1924-1950, and (b) that the bill of sale dated 26th November 1952 registered number 22083/52 given by the bankrupt to the respondent National Discounts Ltd. was not enforceable; and for an order that the respondent Colin James Delaney, Commissioner of Police for New South Wales, deliver the said 1950 model Buick car registered number AHB 405 to the applicant within a time and place to be determined by the court.

The respondents to the motion were Delaney, Roscoe Imrie Conn and National Discounts Ltd. At the end of the hearing the motion was amended by adding thereto as a respondent the name of Mona Elizabeth Conn the wife of the said Roscoe Imrie Conn.

After the proceedings had been commenced, by agreement between the parties, the Buick car was sold and the contest between the parties related thereafter to the proceeds of the sale of the car.

The respondent Conn, in his notice of opposition, claimed that the car, the subject of the motion, did not form part of the property of the bankrupt within the *Bankruptcy Act* 1924-1950, but was then and was at all times material the property of Conn and his wife Mona Elizabeth Conn.

The respondent National Discounts Ltd. by its notice of opposition claimed that the bill of sale referred to in the motion was at all times valid as against the bankrupt.

Doyle's estate was sequestrated on 13th February 1953, on a creditor's petition and the act of bankruptcy upon which the sequestration order was founded was that Doyle on 30th January 1953 with intent to defeat or delay his creditors departed from his dwelling-house.

According to the affidavit of the applicant in support of the motion in or about June 1951, the bankrupt purchased a 1950 model Buick car, blue in colour, from the respondent Conn for

the sum of £2,500, and that sum was duly paid in cash to Conn. On 26th November 1952 the bankrupt purported to execute a bill of sale in favour of National Discounts Ltd., registered number 22083/52, to secure an advance of £3,500, and amongst the chattels listed in the schedule to the bill of sale was a 1950 Buick car registered number OF 355 and blue in colour. On 2nd February 1953 a warrant was issued for the arrest of the bankrupt in respect of certain criminal charges and shortly afterwards, on 12th February the bankrupt surrendered to the New South Wales police. When he surrendered the bankrupt had a 1950 model Buick car, registered AHB 405 and blue in colour. The car was impounded by the police and remained in the custody of the respondent Colin James Delaney until, as stated above, it was sold. The car the subject of the transaction mentioned was, so the applicant asserted, the car the subject of this motion.

The solicitors for the respondent Conn claimed that the Buick car was the property of their client then residing in America.

The bankrupt gave evidence for the applicant. He said that at the end of January 1953 he had possession of a 1950 Super Buick car and it was powder blue in colour. Its registered number at that time was AHB 405. It was at the time of his arrest impounded by the police. That car had been in his possession for approximately fifteen months prior to the time of his departure from his home. He had changed the number of the car but did not remember exactly when he did so. The previous number was AHB 405. During the fifteen months prior to January 1953 he had been using the car. The bankrupt said he had known Conn for about six months prior to getting possession of the car. Before Conn's departure for America in August 1951 the bankrupt and Conn had a conversation about the car at the Hotel Australia and there was some discussion about Conn getting £3,000 for the car. The bankrupt said if Conn left the car in his care he would do his best to contact a Mr. Tyler who was on the look-out for a Buick car. The bankrupt obtained delivery of the car after Conn had come back from America—at about Christmas 1951. The car had been returned for a short period to Conn after he had returned from America because the bankrupt had not found a suitable buyer. Subsequently the bankrupt told Conn that he was interested in purchasing the car himself so long as he could meet the figure he had in mind. Conn replied that he wanted to get rid of the car as early as possible as he was leaving for America. The bankrupt offered £2,500 for the car and Conn said he would have to consult his wife. The bankrupt said he met

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Conn a few days later and told him he had arranged for the money to be available but on that occasion nothing was said as to the consultation between Conn and his wife. The bankrupt suggested to Conn that they should go and see Mr. Cranney of the Automobile General & Finance Co. and thereupon the bankrupt and Conn saw Cranney. After some discussion about a customs clearance, the bankrupt said he told Cranney that he was purchasing the car from Conn for £2,500; that he would put down £1,000 and required £1,500 advance. Cranney would not finance the purchase, and as the bankrupt and Conn were leaving Cranney's office the bankrupt said he would pay for the car himself though he did not want to lay out all the money. The bankrupt said that he then paid Conn £2,500 in cash for the car and this took place very close to Christmas 1952. Conn signed a receipt for the money which the bankrupt had already written out. That receipt was, to the best of the bankrupt's knowledge, destroyed by his gardener at the time he departed from his home. The receipt according to the bankrupt's recollection was in substance as follows: "Received from Mr. R. A. Doyle the sum of £2,500 being full payment for 1950 Buick Sedan OF-355 engine number. . . . chassis number. . . . and this is my own and absolute property and has no encumbrances."

The bankrupt did not remember the engine number or the chassis number. Conn did not have the American certificate of title but he gave the bankrupt the Australian registration certificate with an indorsement on the back. The bankrupt was unable to say where he got the sum of £2,500 he had paid to Conn.

Since the beginning of 1952 the car had been in the bankrupt's possession until the sequestration of his estate and he had driven it exclusively except that on occasions it had been driven by his wife. The car was only registered once after he had acquired it and the bankrupt had paid for the registration and he had also paid for the insurance on the car if it had been insured and the car had been garaged at his home at Clontarf. Since the car had been in the bankrupt's possession the number plates had been changed. Conn had never asked for the return of the car and had never written asking for its return. The bankrupt, when asked by counsel who appeared for Conn if he would agree that the car remained registered in the name of Conn until the registration expired in November 1952 replied: "Yes, I deliberately left it in that name for a purpose", the purpose being, as he said, if the registration was left in Conn's name he, the bankrupt, could never get booked.

In December 1952 the car was registered in the name of Jack William Thompson and that was done because the Taxation Department was investigating the bankrupt's affairs.

The records of the Department of Motor Transport relating to the Buick car showed that its registration number was OF 355; that it was on 3rd November 1950 registered in the name of Roscoe I. Conn and that it was so registered in Conn's name on 3rd November 1952, the date of the expiration of the registration. The car was next registered on 11th December 1952 in the name of Jack W. Thompson of 68 Oxford Street Darlinghurst and its registered number was then AHB 405. Jack W. Thompson appeared to be a mythical owner of the car. The bankrupt admitted that one Rhind had called on him and wanted him to send the money for the car to Conn and also that he had told Rhind that there were certain difficulties about sending money out of Australia but he would send the money as soon as he could. The bankrupt said he had sent certain moneys to Conn—a couple of five-dollar bills—but he said he had done so for the purpose of testing out whether or not Conn's mail was subject to any supervision. He said he had been testing the mails so as to be able to send money to Conn for another Buick that was on its way out here. He could have told Rhind anything because whatever question Rhind asked the bankrupt he, the bankrupt, had no intention of giving him any information whatsoever. He had handed the purchase money over to Conn early in January 1952. Before he went into hiding he left the car at Parliament House. He would not deny what Conn said in pars. 11 and 12 of his affidavit (see below) but he had no recollection of it. In November 1952 the bankrupt gave a bill of sale to the respondent National Discounts Ltd. and in the bill there was listed a Buick Sedan 1950 model, registered number OF 355. In the early stages he was intending to sell the car on behalf of Conn but later decided to buy it himself. He admitted that the motor-haulage vehicles and the tipper trucks mentioned in the bill of sale were in fact fictitious assets. Mr. Cranney, the manager of the Automobile General & Finance Co., gave evidence for the applicant. Cranney was confused as to dates but he said that on a certain occasion the bankrupt and Conn came to his office when the bankrupt introduced Conn to him and that that was the only time he saw them together. At that meeting Cranney was informed that Conn wanted to sell to the bankrupt a Buick car for £3,500 and that the bankrupt had paid a deposit of £2,000 and wanted £1,500. Cranney asked Conn if he had a receipt from the bankrupt for the deposit and Conn said "No". Cranney did not lend any money

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to the bankrupt. A Mr. Stewart said he had known the bankrupt during the years 1951, 1952 and 1953. He first saw the bankrupt with the Buick car about Christmas 1951 and he saw the bankrupt frequently throughout 1952 probably once a week and the bankrupt always had the car and the bankrupt himself always drove the car. Detective-Sergeant Walton gave evidence as to the finding of the car and of having it removed to the police garage at Alexandria. The car had been sold for £1,800.

Mr. Lewin, an investigator in the Income Tax Department, saw Conn on 21st March 1952 and had a discussion relating to a Buick car. The registered number of the car was OF 355. Lewin had seen the car previously on at least two occasions with the bankrupt sitting at the wheel or driving. Conn told Lewin that the bankrupt had paid him £2,500 for the car—that the price was originally fixed at £4,000 and that the bankrupt was haggling over the price. The £2,500 had been paid in cash. Conn was at that time being examined as to his affairs generally.

According to the affidavit of Conn, Conn gave the bankrupt authority to find a purchaser of the Buick car, and the bankrupt informed Conn that he could get £3,300 for the car. In par. 11 of his affidavit Conn said that he was introduced to a man who he thought was called Sid White and who was the person interested in purchasing the car and on this occasion the bankrupt said he got £2,000 but he had not yet got the rest. In par. 12 of Conn's affidavit Conn said he again met the bankrupt and asked him to pay over the £2,000 that he said he had received. To that request the bankrupt replied: " I will get it all and give it to you and if necessary I will put in £800 which I owe to the Stud Farm to complete the deal ". The bankrupt also said to Conn " I will give you £300 of the £2,000 and I will get all the rest or give the £2,000 back ".

The respondent Conn in support of his case filed two affidavits, his own and that of his wife.

Kenneth McPherson, a witness for Conn, said he knew Conn and his wife and at or about the end of the year 1951 Conn was driving the car and at or about that time McPherson probably told the bankrupt that Conn was trying to dispose of the car and asked the bankrupt to assist him.

A Mr. Rhind, also a witness for Conn, said he knew Conn and his wife. During 1951 he saw a 1950 Buick car of light blue colour in Conn's possession and the latest time at which he saw it in Conn's possession was round about the Christmas and New Year period of 1951-1952. Conn went to America about August 1951 and

returned about November. He again went to America about Easter time 1952 and to Rhind's knowledge had not been back since. Rhind went to America in October 1952 and returned to Sydney towards the end of November 1952, and he then arranged to meet the bankrupt and did meet him. Rhind told the bankrupt that he had been asked by Conn to look him up because the bankrupt had sold the car to somebody and Conn had not received any money for it. Conn had asked Rhind to see what he could do about hastening things. The bankrupt in reply said to Rhind that he had difficulty in sending the money to Conn because Conn's mail was being tampered with. The bankrupt said he would get the whole thing fixed up. The bankrupt had later said he had sold the car. Rhind said that the bankrupt never said to him that he had bought the car himself or that he had paid out his own money for the car and the bankrupt never claimed that the car had been paid for.

Clyne J. said that the bankrupt's evidence was studded with false statements and contradictions and it was impossible to believe one word of his evidence. His Honour accepted the evidence of Messrs. Cranney, Stewart and Lewin but expressed the opinion that that evidence did not help the applicant. Rhind's evidence was accepted. His Honour said that although Conn and his wife could not be cross-examined on their respective affidavits the evidence he had heard convinced him that the evidence contained in those affidavits was substantially true.

His Honour came to the conclusion that, while he suspected that Doyle never intended to find a purchaser of the car, he himself did not purchase the car from Conn or from Conn and his wife.

The motion was dismissed.

From that decision National Discounts Ltd. appealed to the High Court.

D. S. Hicks, for the appellant. The question of possession, order or disposition was argued before the judge of first instance but his Honour's judgment shows that he had regard to one aspect only, namely: Was it established that Doyle paid for the car? He did not direct his attention to the possession, order or disposition. The appellant is a person aggrieved within the meaning of s. 26 of the *Bankruptcy Act* 1924-1950. The words "person aggrieved" were dealt with in *Ex parte Ellis*; *Re Ellis* (1), and *Ex parte Learoyd*; *Re Foulds* (2). The appellant is entitled to appeal on the question decided in those cases, that is so far as a sale is concerned.

(1) (1876) 2 Ch. D. 797.

(2) (1878) 10 Ch. D. 3.

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[WILLIAMS J. You may proceed on that basis.]

On his own evidence the highest Conn could put himself was as an unpaid vendor. It indicates an intention to transfer the property in the car to Doyle or some purchaser. The car was in the possession of Doyle for about fifteen months for the purpose of sale. The evidence of Rhind, an emissary from Conn, supports the view that Conn regarded himself only as an unpaid vendor; that the car had been sold and that Doyle was procrastinating in remitting the money therefor. Rhind said he " believed the car had been sold ". On the facts in evidence the car was not Conn's car at the material date; he believed that Doyle, his agent for the purpose, had sold it and he was seeking only the payment of the purchase money. In those circumstances he evinced an intention to pass the property in the car to Doyle for the purpose of a sale. The receipt given by Conn to Doyle is a most material matter upon possession, order or disposition. It enabled Doyle to represent to prospective purchasers that he was then the owner of the car. The authorities on possession, order or disposition are collected in *Re Fox* (1). As to whether or not the consent of the true owner was obtained by trick is immaterial.

[TAYLOR J. referred to the *Australian Bankruptcy Law and Practice*, 3rd ed. (1953), p. 302.]

There are a number of circumstances which bring the car within the possession, order or disposition of the bankrupt, including the return by Conn to America and leaving the car with Doyle for sale, and the fact or inference on the evidence that he, Conn, believed it to have been sold. The only thing obtained by fraud was the receipt. In New South Wales the obligation of the owner of a motor car selling it is to sign the registration and himself send it to the department. The appellant had a valid bill of sale and is excepted from the possession, order or disposition rule.

L. W. Street, for the respondent Jaques. The apparent possession, order or disposition is not a ground which would fall properly within the competence of a bill of sale holder or a creditor to argue; therefore in view of the procedural difficulties which have become apparent this respondent applies under r. 13 of O. 70 for leave to file a notice of cross-appeal. The notice of appeal proposed is precisely in the same form as the notice of appeal already lodged on behalf of the appellant. The application is made to regularize the position before the Court in the event of it being held that the appellant has no status to argue the apparent possession, order or

(1) (1948) Ch. 407, at pp. 413-415.

disposition. This respondent proposes to adopt the arguments already submitted to the Court on behalf of the appellant but did not and does not propose to support the assertion of the validity of the bill of sale. Even if the appellant is not competent to argue the possession, order or disposition the respondent has an interest. This respondent seeks a variation or discharge of the order of the Judge in Bankruptcy within the terms of r. 13, par. 1. His application is confined to one for special leave to appeal from so much of the judgment which holds that the car is not within the apparent order or disposition.

[WILLIAMS J. The Court refuses the application to file a notice of cross-appeal, and postpones until the end of the argument the application for special leave to appeal.]

D. S. Hicks. The appellant is a "person aggrieved" within the meaning of s. 26 of the *Bankruptcy Act* 1924-1950 because the Conns have the car. That being so all grounds are open to the appellant. The car was in Doyle's possession with the Conns' consent when it was believed that the car was sold. The reputed ownership in the car arose only if the property had not been in him on 26th November 1952. The bill of sale could be effective only if Doyle were the owner. It was not effective to transfer any property in the car. So long as the bill of sale continued, and so long as the Conns, and no one else, made any claim the appellant was entitled to the car as against Doyle.

[TAYLOR J. referred to *Re Miller*; *Ex parte The Trustee* (1).]

"Bill of sale" in s. 91 (*e*) of the *Bankruptcy Act* 1924-1950 means a bill of sale not merely sufficient to create an obligation to repay the money, but effective to pass the possession from the grantee of the bill. The whole purpose of that clause is to bring within the property of the bankrupt goods which appear to belong to him. Assuming that Doyle did not have any property, there never was a valid bill of sale. These were not chattels in respect of which a bill of sale had been filed. Reputed ownership can only arise if Doyle were not the owner on 26th November 1952. The bill of sale may have contractual force but it is not effective to transfer any property. There is evidence from which the inference could be drawn that Conn believed the car had been sold. There was nothing in the evidence which showed there was any other fact known to Conn which would justify him in believing that the car was sold but he may well have thought that in the absence of news it must have been sold. The giving of the receipt indicates

(1) (1937) 39 W.A.L.R. 77.

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consent. That consent continued up to the time of the bankruptcy. That giving and the leaving of the car in Doyle's possession was Conn's consent. That consent was not obtained wrongfully by Doyle; there was not any element of fraud, dishonesty or trickery in the obtaining of that consent. Subsequent conduct was not sufficient to show that the consent was withdrawn, and, therefore, it continued. The matter of registration does not afford any assistance. It is unimportant one way or the other. The car, being in the possession, order or disposition of the bankrupt, formed part of his estate.

L. W. Street. On the evidence and weight of evidence, bearing in mind that Doyle is to be entirely disregarded where he is uncorroborated, there is strong evidence to show that a sale of the car actually took place, and that Doyle did in fact pay Conn for the car. Rhind's disbelief of Doyle is not evidence. The former cannot make evidence for Conn. It having been established on the evidence that Doyle came into possession of the car with the consent of Conn, that consent continued and there is not any evidence of it having been determined at any stage. There was not any fraudulent representation or intention on the part of Doyle. Even if there had been, that does not necessarily cut against the presence of consent of the true owner (*Pearson* v. *Rose & Young (Ltd.)* (1)). The car was within the apparent order and disposition of the bankrupt at the commencement of the bankruptcy. On the evidence the bill of sale was not valid; the invalidity was not associated with Doyle's ownership or otherwise of the car, but with the requirements of the *Money-lenders and Infants Loans Act* 1941-1948, s. 22. In the absence of a valid bill of sale, registered, the car is within the operation of the *Bankruptcy Act* 1924-1950. The meaning to be attributed to "valid" in s. 91 (*e*) of that Act is, *inter alia*, "good or adequate in law, legally binding or efficacious": see *Shorter Oxford Dictionary*, 3rd ed. (1950). Paragraph (*e*) of s. 91 must be construed together with par. (iv) of that section. There not being any legally efficacious liability under the bill of sale, it is not a valid bill of sale within par. (*e*) because par. (*e*) specifically mentions the cases covered by par. (iv). For the application of the equitable doctrine "he who seeks equity must do equity" in cases where the borrower with fraudulent intent does not comply with the requirements of the *Money-lenders and Infants Loans Act* 1941-1948, see *Cohen* v. *Lester (J.) Ltd.* (2) and cases there referred to. Section 4 of the *Statute of Frauds* is purely evidentiary

(1) (1951) 1 K.B. 275, at pp. 285, 286. (2) (1939) 1 K.B. 504.

whereas the *Money-lenders and Infants Loans Act* 1941-1948 prevents the contract from ever coming into existence. It was unenforceable *ab initio* and never could have been enforced. Decisions under s. 4 of the *Statute of Frauds* are not safe guides, by virtue of differences in the statutes. Section 4 of the *Statute of Frauds* is a dangerous guide in construing s. 22 of the *Money-lenders and Infants Loans Act* 1941-1948. " Valid " means having " legal efficacy " sufficient to create a liability in the borrower. " Valid " used in s. 91 (iv) means valid not within the meaning of that word as found in the *Bills of Sale Act*, but under the application of the State Act. *Langman* v. *Handover* (1) and *Ex parte Automobile & General Finance Co. Ltd.*; *Re Pownall* (2) were decided under an Act different from the present *Money-lenders and Infants Loans Act* 1941-1948, and one which made the transaction illegal; the plaintiffs in those cases were seeking an indulgence in the form of equitable relief. The interaction of the *Money-lenders and Infants Loans Act* 1941-1948 and s. 91 of the *Bankruptcy Act* 1924-1950 is such as to make the contract, which is a contract which shall not be enforced under s. 22, one which is not a valid contract within s. 91 (*e*). The word " valid " in the *Bankruptcy Act* 1924-1950 is the operative word. The validity which is contemplated in s. 91 (*e*) has to be read in the light of par. (iv) of that section where it contemplates some enforceable legal liability. It is the effect of the *Money-lenders and Infants Loans Act* 1941-1948 which is the only matter before the Court in this case in the construction of " valid ". Doyle's possession at the time of his bankruptcy being some evidence of title, the onus rests on the Conns to refute the inference to be drawn from Doyle in fact having possession. In the circumstances something may turn on onus in the Court's assessment of all the facts.

W. B. Perrignon, for the respondents Roscoe Imrie Conn and Mona Elizabeth Conn. It is not denied that Doyle had the car, but he had it wrongly, in defraud of and deceiving Conn. Although it affects order and disposition to some extent Stewart's evidence does not touch in any respect the ownership point. Evidence supporting the Conns as to ownership is the registration—it remaining registered in Conn's name until 3rd November 1952—and then it was registered in a fictitious name. The certificate of registration was produced on behalf of the Conns at the hearing and, apparently, came out of Conn's possession. Registration has a peculiar significance in New South Wales by reason of s. 12 of the *Motor Traffic*

(1) (1929) 43 C.L.R. 334. (2) (1932) 49 W.N. 23.

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Act 1908-1941. Reference to the time of bankruptcy is contained in s. 90 of the *Bankruptcy Act* 1924-1950. In the circumstances the Court would be entitled to give consideration to portions of a day as to when the act of bankruptcy occurred, because it is obvious that the act of bankruptcy did not occur when Doyle drove away from his home, in the normal fashion, on the morning of 30th January 1953, and he had indeed left the car. The car was out of his immediate possession at the time when he tried to abscond. Doyle had the car wrongfully, and, having left it anywhere, he did not have actual physical possession of it and he had no right to possess it. He had no right of possession against Conn. He abandoned the car. If Doyle owned the car then his abandonment of it in circumstances where it was being used by his wife who drove the car occasionally is unexplainable, even if he owed money on it he would not have abandoned it. Such action is not consistent with ownership. Submissions on behalf of the Conns on the question of reputed ownership were made to the Judge in Bankruptcy, including a submission that there could not have been any consent by reason of fraud and other matters, and reference was made to *Re Fox* (1). The preponderance of evidence shows that at the relevant time, the commencement of the act of bankruptcy, there was not any consent at all, whether fraudulently induced or otherwise. Mere possession, and in fact frequent use of a motor car in these days is not sufficient to give rise to that assumption. The question of reputed ownership turns upon what appears to the public—the people at large. It does not depend in any respect upon what may privately be arranged or said between the parties. An inference of ownership *must* arise; see *Re Fox* (1), and *Maxwell* v. *Official Assignee* (2). Constant use of a motor vehicle is not sufficient to give rise to the necessary inference, and it must be a necessary inference. Probability is not a necessary inference within the meaning of the authorities. It is an inference which requires a greater foundation than a foundation which exists when one can reasonably infer a thing. There was not any consent by Conn to possession by Doyle. Unless there be knowledge at the time of bankruptcy it cannot be caught by the clause (*Lamb* v. *Wright & Co.* (3)). It is notorious that, in a large number of cases, vehicles used and possessed by people are not, in fact, owned by them. Even if there was consent it was consent induced by fraud (*Load* v. *Green* (4)). The fraud was that Doyle

(1) (1948) Ch. 407.
(2) (1909) 8 C.L.R. 553, particularly at pp. 568, 569, 579, 580.
(3) (1924) 1 K.B. 857, at p. 864.
(4) (1846) 15 M. & W. 216 [153 E.R. 828].

either had or was to find a purchaser and was not going to purchase it himself. Conn never consented to Doyle retaining possession of the car. If a person is quite wrongly in possession of a vehicle which never did belong to him, and if he chooses to register it and to include it in a bill of sale and the bill of sale is registered, that amounts to sufficient public notice to remove it from reputed ownership. The question is not one of probability but is one of necessary inference (*Re Fox* (1)): see also *Maxwell* v. *Official Assignee* (2).

D. S. Hicks, in reply. A motor car can be within the doctrine of reputed ownership (*Re Fox* (3)).

Cur. adv. vult.

Oct. 20.

The following written judgments were delivered :—

WILLIAMS AND TAYLOR JJ. This is an appeal from an order of the Federal Court of Bankruptcy (*Clyne* J.) made upon a notice of motion brought by the Official Receiver and Trustee of the estate of Reginald Aubrey Doyle under the provisions of the *Bankruptcy Act* 1924-1950 asking for declarations (1) that the 1950 model Buick car, registered number AHB 405, forms part of the property of the bankrupt within the *Bankruptcy Act* and (2) that the bill of sale dated 26th November 1952, registered number 22083/52, given by the bankrupt to the respondent, National Discounts Ltd., is not enforceable. One of the items comprised in the bill of sale as having been bargained, sold, assigned and transferred to the company is the car in question. The respondents to the motion were Colin James Delaney, Commissioner of Police for the State of New South Wales, Roscoe Imrie Conn (and later by amendment his wife Mona Elizabeth Conn) and National Discounts Ltd. The only order made by his Honour was to dismiss the motion. He did so because he found that the car was the property of Mr. and Mrs. Conn and, having done so, apparently considered that it was unnecessary to declare whether the bill of sale was or was not enforceable. The respondent company appealed from his Honour's order, making the Official Receiver, Mr. and Mrs. Conn and Mr. Delaney respondents to the appeal. But Mr. Delaney has no interest in the appeal because the car, which was in the possession of the police at the date of the notice of motion, was subsequently sold by arrangement between the parties and the proceeds of sale are at present held in a trust account to abide its outcome.

(1) (1948) Ch., at pp. 416-419.
(2) (1909) 8 C.L.R., at p. 580.
(3) (1948) Ch., at p. 419.

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One point argued before his Honour was whether the car, even if it was the property of the Conns, was nevertheless part of the estate of the bankrupt because within the meaning of s. 91 par. (iii) of the *Bankruptcy Act* it was, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, with the consent and permission of the true owner, under such circumstances that Doyle was the reputed owner thereof. On this point his Honour expressed no opinion, although it clearly arose on his findings of fact. When the appeal came on for hearing, counsel for the Official Receiver at first sought an extension of time under r. 13 of O. 70 of the rules of this Court to file in the registry a notice of cross-appeal so that he might argue this point should it not be open to the appellant to do so. But the only order made by his Honour was to dismiss the motion and such an order is not susceptible of being appealed from in part. Counsel then sought special leave to appeal from the whole of the order under r. 6 (2) of O. 70. This application is not opposed by the other parties. As the interest of the appellant company to argue this point, which is of considerable public importance, may be doubtful we have decided to grant the application, the grounds of appeal to be the same as those stated in the notice of appeal of the appellant company.

We can now approach the facts. The estate of the bankrupt was sequestrated on a creditor's petition on 13th February 1953. The act of bankruptcy proved was that on 30th January 1953 with intent to defeat or delay his creditors Doyle departed from his dwelling-house. No earlier act of bankruptcy has been proved so that the time of the commencement of the bankruptcy is 30th January 1953. To prove that the car is part of the bankrupt estate, the Official Receiver relied chiefly on the evidence of Doyle, but his Honour was not prepared to accept his evidence. He said that it was studded with false statements and that it was impossible to believe one word of it. This complete rejection of Doyle's evidence should not perhaps be read too literally for a good deal of it is corroborated by other facts and in parts it must be true. The evidence as a whole is in a very unsatisfactory condition because at the time of the hearing of the motion the Conns were in the United States of America and their evidence was given by affidavits on which they were not cross-examined and these affidavits do not deal with several material matters which could not be brought to their attention because they only arose on the subsequent hearing of the motion.

Some facts are common ground. They prove that the car was originally purchased in the United States by the Conns in 1950 and was duly imported by them into Australia. It was first registered in Australia in the name of Mr. Conn under the *Motor Traffic Act* 1909-1949 of New South Wales for a year commencing on 3rd November 1950, the registered number being OF 355. This registration was renewed by him for a further year on 3rd November 1951. Mr. Conn left for the United States in August 1951 in order to try and purchase a business there. He returned to Australia at the end of November 1951. He and his wife left Australia for the United States at the end of March 1952 and have not returned. It is apparent that they were anxious to sell the car before they left. They advertised it for sale and placed it in the hands of a seller of second-hand cars on several occasions but it was not sold. About Christmas 1951 they met Doyle who simulated interest in the car, either as a possible purchaser himself or as an agent for sale. According to Doyle, he agreed to purchase the car for £2,500, paid the purchase money, and obtained a receipt which was subsequently lost. His evidence is supported by Mr. R. G. Lewin, an investigator in the Income Tax Department, who had a conversation with Conn at the department on 21st March 1952 when Conn told him that Doyle had paid him £2,500 for the car. This conversation was objected to as being a communication made in breach of s. 16 of the *Income Tax and Social Services Contribution Assessment Act* 1936-1953 but it is clear from *Canadian Pacific Tobacco Co. Ltd.* v. *Stapleton* (1) that it was admissible. But it appears that at the time Lewin was in hot pursuit of both Doyle and Conn for alleged breaches of the *Income Tax Acts* so that, when his Honour said that, while he accepted Lewin's evidence, he did not think it helped the Official Receiver, he must have thought that Conn was deceiving Lewin.

The case for the Conns is that the car was placed in Doyle's hands for sale. It is clear that he was in possession of the car and driving it about, and even driving them about in it, between about Christmas 1951 and the date they left Australia. But according to them this was in order that he might complete the sale to a purchaser who was supposed to be willing to purchase the car, apparently for £3,300, but who was having difficulty in finding the money, or so that he could sell it to someone else. Admittedly Conn gave Doyle a receipt for £2,500 as purchase money for the car but Conn said that he did this at Doyle's request so that Doyle would be in a position, if necessary, to make a quick sale. The

(1) (1952) 86 C.L.R. 1.

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car was still in Doyle's possession when the Conns left for the United States and remained in his possession until 30th January 1953. He made full use of the car for his own purposes and paid for its maintenance and upkeep. Soon after Conn's registration expired on 3rd November 1952 he returned the traffic plates to the Traffic Department and on 11th December 1952 caused the car to be re-registered in the name of a fictitious owner, Jack W. Thompson, under a new number AHB 405. On the morning of 30th January 1953 Doyle left his home at Clontarf in the car after breakfast and drove it to behind Parliament House, his usual parking place. At Parliament House he received a message of such dread import that it caused him to go into immediate hiding. But he telephoned to Mrs. Doyle who at his request went to Parliament House and drove the car from there to the roadway in front of the Mitchell Library and rang the police. The police received the keys of the car from Mrs. Doyle at the Hotel Australia and went to the front of the Mitchell Library and took possession of the car on 2nd February 1953. Subsequently the car was sold by arrangement between the parties for £1,800.

In their affidavits the Conns state that before they left for the United States and after they arrived there they made several demands on Doyle to account for the purchase money but Doyle kept postponing settlement and that the only moneys they received from him were two five-dollar notes sent by post in separate letters. Otherwise they had received no payment from Doyle for the car which they both swore was their own property and that no other person had any interest therein. There is also the evidence of Mr. J. C. Rhind, which his Honour accepted. Rhind went to the United States in October 1952 and returned to Sydney at the end of November 1952. At Conn's request he interviewed Doyle and asked him about the unpaid purchase money for the car. Doyle told Rhind that he had sold the car, but had not fixed up with the Conns for the purchase money. Doyle said that he was endeavouring to send the money but was doubtful how to do it. He had sent the two five-dollar notes as a preliminary step to test whether Conn's mail was being tapped. Doyle never at any time told Rhind that he had bought the car himself or that he had paid any money of his own for the car or that the car had been paid for. Rhind appears to have had some form of power of attorney from Conn and it is possible to infer that he reported the conversations he had with Doyle to Conn but the questions he asked could hardly be described as precise or penetrating and it would not have been difficult to have asked him expressly if he had done so. His Honour

found that Doyle did not purchase the car from the Conns and he suspected that Doyle never intended to find a purchaser for the car. He was satisfied, having regard to the evidence which he accepted, that the evidence contained in the Conns' affidavits was substantially true. He must have inferred that they believed that Doyle had sold the car on their behalf and had not accounted for the purchase money. There are many difficulties in the way of reaching this result. If the car was entrusted to Doyle for sale one would have expected some evidence of the terms and conditions on which he was authorized to sell it and use it in the meantime. One would also have expected that the transfer form on the back of the renewal of the certificate of registration from 3rd November 1951 to 3rd November 1952 would have been signed by Conn in blank and given to Doyle so that the latter could take the necessary steps to transfer the registration to a purchaser. At the hearing of the motion this document was produced by counsel for the Conns. The lack of interest by the Conns in the subsequent fate of a valuable car after they left Australia, including its maintenance and safe custody, assuming they had not sold it to Doyle, is quite remarkable. And the Conns admittedly gave Doyle a receipt which represented that he had purchased the car for £2,500 and had paid for it in cash. Be all this as it may, the case does not appear to be one in which we can interfere with the findings of fact by his Honour. On the affidavits of the Conns supported by Rhind's evidence his Honour was justified in finding that the receipt for £2,500 was not a genuine document and that £2,500 was not in fact paid by Doyle to the Conns. At least it can be said that the onus would be on the Official Receiver to prove that Doyle purchased the car from the Conns and that, Doyle's evidence having been emphatically rejected, there is no sufficient evidence to sustain that onus. His Honour's finding that the car never became the property of Doyle is not one which, applying well understood principles, can be overruled.

It therefore becomes necessary to consider the application of the provisions of s. 91 par. (iii) to the facts as found by his Honour. The car was assigned by Doyle to the appellant company by the bill of sale dated 26th November 1952. That bill of sale was duly registered under the provisions of the *Bills of Sale Act* 1898-1938 (N.S.W.). It is a valid bill of sale under that Act. But the company is carrying on the business of a money-lender and it is admitted that its provisions are unenforceable because the requirements of s. 22 of the *Money-lenders and Infants Loans Act* 1941-1948 (N.S.W.) were not complied with. The company advanced £3,500 to Doyle

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on the security of the assets comprised in the bill of sale. But, apart from the car, the assets were non-existent, and the car was, on his Honour's findings, not the property of Doyle but of the Conns. Section 91 of the *Bankruptcy Act* provides that the property of the bankrupt divisible among his creditors, and in this Act referred to as "the property of the bankrupt" shall not include . . . par. (*e*) except as provided in par. (iv) of this section, *inter alia*, chattels in respect of which a valid bill of sale has been filed or registered and kept registered under any Act or State Act or law of a Territory. Section 91 also provides that, subject to this Act, the property of the bankrupt shall include (iv) the claim or right of the bankrupt to property under, *inter alia*, any bill of sale made by or with the bankrupt or debtor on his trustee discharging or offering to discharge any legal liability with respect thereto. The effect of par. (*e*) is to exclude from the property of the bankrupt, except to the extent provided for in par. (iv), chattels comprised in any of the instruments therein mentioned including a valid registered bill of sale. Such chattels, although they are at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt with the consent and permission of the holder of the bill of sale under such circumstances that he would otherwise be the reputed owner thereof, do not become the property of the bankrupt under the provisions of par. (iii). It was contended that par. (*e*) has this effect whether the holder of the bill of sale is the true owner of the goods or not and that the paragraph still operates although, as in the present case, the debtor had no property in the chattels, in this case the car, which he could assign by the bill of sale. Counsel for all parties were inclined to accept this construction, but it is not one which we should adopt. Paragraph (*e*), on its true construction, operates only to protect the proprietary rights in the goods created by the instruments to which it refers. In effect it permits the true owners of such rights to leave such goods in the possession, order or disposition of the debtor under such circumstances that he is the reputed owner thereof without incurring the penalty of the forfeiture of these rights if the debtor becomes bankrupt. The paragraph does not operate to protect the true owner of the goods if they are not in fact the property of the bill of sale holder. This is apparent from the requirement that the instrument must be a valid instrument. It must be efficacious to confer proprietary rights in the goods on the bill of sale holder of which he becomes the true owner: *Colonial Bank* v. *Whinney* (1). If the goods are the property of a

(1) (1886) 11 App. Cas. 426, at p. 434.

third person so that the instrument is quite inefficacious to confer any such proprietary rights, the true owner cannot invoke the protection of the paragraph for goods which would otherwise be caught by the provisions of par. (iii). The bill of sale of 26th November 1952 was quite inefficacious to confer any proprietary rights on the appellant company in the Buick car which was the property of the Conns and not of Doyle and the Conns cannot rely on the provisions of par. (*e*) to take the car out of the reputed ownership clause. It is therefore unnecessary finally to decide whether the bill of sale, being duly registered under the *Bills of Sale Act* 1898-1938, although unenforceable because of the provisions of the *Money-lenders and Infants Loans Act* 1941-1948, is nevertheless a valid bill of sale within the meaning of par. (*e*). But it would not appear to be so. A person cannot be under any legal liability in respect of an instrument which is unenforceable. But par. (iv) pre-supposes that the instruments mentioned in par. (*e*) would create enforceable legal liabilities which it would be the duty of the trustee to discharge or offer to discharge before any claim or right of the bankrupt to the goods could become part of his property divisible amongst his creditors. Accordingly the fact that Doyle purported to assign the car to the appellant company as his own property under the bill of sale does not affect the question whether the car was at the commencement of the bankruptcy in the possession, order or disposition of Doyle with the consent and permission of the Conns under such circumstances that he was the reputed owner thereof.

It was contended by counsel for the Conns that the car was not in Doyle's possession, order or disposition at the commencement of the bankruptcy because the time of such commencement was when he received the message at Parliament House which caused him to go into hiding and at that moment the car was parked behind Parliament House and was not in his possession, order or disposition. This was the exact time at which the bankruptcy commenced within the meaning of s. 90 of the *Bankruptcy Act*: *Ex parte Bignold*; *In the matter of Newton* (1); *Ex parte Villars*; *Re Rogers* (2); *Re Bumpus*; *Ex parte White* (3); *Re Hardman* (4); *Acts Interpretation Act* 1901-1950 s. 37. But the car remained in Doyle's possession, order and disposition at least until his wife drove it away from behind Parliament House to in front of the Mitchell Library, and that was at a later moment of time than the commencement of the bankruptcy. It was also contended that

(1) (1836) 3 Mont. & Ayr 9, at p. 13.
(2) (1874) L.R. 9 Ch. App. 432, at p. 445.
(3) (1908) 2 K.B. 330.
(4) (1932) 4 A.B.C. 207, at p. 213.

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in January 1953 the custom of persons purchasing cars on hire purchase, and the hirers allowing the purchasers to register the cars in their own names and to have possession of them, was so prevalent and notorious that no inference should be drawn that a person in possession of a car and using it openly and regularly for his own purposes owned the car. But such a custom, unless held to be established by some decision, cannot be assumed but must be proved and there is no such proof in the present case. Claims that similar customs existed were made but rejected in *Ex parte Brooks*; *Re Fowler* (1); in *Re Tabor*; *Ex parte Cork* (2) and in *Re Kaufman Segal and Domb*; *Ex parte The Trustee* (3). It has been said repeatedly that it is necessary that the circumstances should be such that the inference of ownership by the bankrupt must arise: *Re Fox*; *Ex parte Oundle and Thrapston R.D.C.* v. *The Trustee* (4). The meaning of this inference is explained by *P. O. Lawrence* J. in *Kaufman's Case* (3). He said: "The right view to take is, that, in the absence of any general custom as to hiring, the inference which a reasonable man would necessarily draw from the fact that the articles in question were in the possession of the bankrupts and were being used by them in their trade is that these articles belonged to the bankrupts, and that the inference so drawn is an inference which, within the meaning of *Vaughan Williams* L.J.'s statement of the law 'must' arise" (5). Later, on the same page, his Lordship said: "It will be observed that neither in *Ex parte Brooks* (6) nor in *In re Tabor* (2) were there any facts proved beyond the fact that the goods were in the possession of and were being used by the bankrupts" (5).

The crucial question is therefore whether on 30th January 1953 the car was in Doyle's possession, order or disposition with the consent and permission of the Conns. In the passage from the judgment of the Court of Appeal delivered by *Vaughan Williams* L.J. in *Re Watson & Co.*; *Ex parte Atkin Brothers* (7) cited in *Re Fox* (4) appears a citation from the statement of Lord *Redesdale* L.C. in *Joy* v. *Campbell* (8), that the true owner must have unconscientiously permitted the goods to remain in the order or disposition of the bankrupt and his Lordship then said: "This does not mean, as we understand it, that he (the true owner) must have intended that false credit should be obtained by the bankrupt's apparent possession of the goods, but it does

(1) (1883) 23 Ch. D. 261.
(2) (1920) 1 K.B. 808.
(3) (1923) 2 Ch. 89.
(4) (1948) Ch. 407, at pp. 415, 416.
(5) (1923) 2 Ch., at p. 94.
(6) (1883) 23 Ch. D. 261, at pp. 265, 266.
(7) (1904) 2 K.B. 753, at p. 757.
(8) (1804) 1 Sch. & Lef. 328, at p. 336.

at least mean that the true owner of the goods must have consented to a state of things from which he must have known, if he had considered the matter, that the inference of ownership by the bankrupt must (observe, not might or might not) arise " (1). Consent and permission imply knowledge and the Conns could not be held to have been consenting to or permitting Doyle holding himself out as the owner of the car at the commencement of his bankruptcy unless they knew that it was still in his possession, order or disposition on 30th January 1953. But on the facts as found by his Honour, and in particular on the evidence of Rhind, the Conns must have believed that the car had been sold and the purchase money paid to Doyle prior to November 1952 and their ownership and interest in the car thereby determined. The onus is on the Official Receiver to prove all the facts necessary to bring the case within s. 91, par. (iii), and, if they so believed, it is impossible to find affirmatively that the car was still in Doyle's possession, order or disposition with their consent and permission on 30th January 1953. Counsel for the Official Receiver urged that once the car was proved to be in the possession, order or disposition of Doyle with the consent and permission of the Conns, that consent and permission must be presumed to have continued until the Conns took the necessary steps to retake possession of the car. That would be so if the Conns knew that the car was still in Doyle's possession: *Rutter* v. *Everett* (2); *Times Furnishing Co.* v. *Hutchings* (3). But each case must depend on its own facts. The true owner must have unconscientiously permitted the goods to remain in the possession, order or disposition of the bankrupt. The material time is the moment of the commencement of the bankruptcy and, at that moment of time, the person who is in fact the true owner of the goods cannot be said to be unconscientiously permitting the goods to remain in the possession, order or disposition of the bankrupt if he then has reason to believe that the bankrupt has disposed of the goods to another so that he is no longer the true owner thereof. It is not inappropriate to quote some extracts from the passage in the Irish judgment relating to the order and disposition clause cited by Lord *Fitzgerald* in *Colonial Bank* v. *Whinney* (4): " Surveying the conditions with which the exercise of this exceptional and questionable power has been hedged round by this statute, it is impossible to avoid seeing that of all its requirements the most distinctive and central is 'the consent and permission of the true owner'. All the others may combine. The goods may be in the possession of the bankrupt,

(1) (1904) 2 K.B., at p. 757.
(2) (1895) 2 Ch. 872, at pp. 878-881.
(3) (1938) 1 K.B. 775, at pp. 784, 785.
(4) (1886) 11 App. Cas. 426.

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they may be in his order and disposition, he may be the reputed owner of them; but unless all this has been sanctioned by the consent and permission of the true owner, the clause rests as a dead letter. And it is this alone which redeems this law from the charge of naked confiscation. As the *mens rea* is essential for incurring the punishment of guilt, so the *mens volens* is essential for incurring the forfeiture imposed by this order and disposition clause " (1).

For these reasons both appeals fail in substance and should be dismissed, but the order made by his Honour requires variation. The application of the Official Receiver for special leave to appeal from that order should be granted and the order varied by substituting for the order dismissing the motion (1) a declaration that the proceeds of the sale of the 1950 model Buick car, registered number AHB 405, do not form part of the property of the bankrupt within the meaning of the *Bankruptcy Act* but are the property of the respondents, Roscoe Imrie Conn and Mona Elizabeth Conn; (2) a declaration that the bill of sale dated 26th November 1952, registered number 22083/52, given by the bankrupt to the respondent, National Discounts Ltd., is not enforceable; and (3) an order giving liberty to the respondents Roscoe Imrie Conn and Mona Elizabeth Conn to apply to the Federal Court of Bankruptcy for any directions that may be required so that the sum of £1,800 being the proceeds of the sale of the car may be paid to them. Subject to these variations the appeals of the Official Receiver and of National Discounts Ltd. should be dismissed with costs.

FULLAGAR J. In this case I have had the advantage of reading the judgment of my brothers *Williams* and *Taylor*, and, although I have felt the case to be one of some difficulty, I agree with that judgment.

So far as the question of the actual ownership of the car is concerned, my main difficulty has arisen from an inability to regard Mr. Conn (who regrettably escaped cross-examination) as in any degree more worthy of trust or credence than Mr. Doyle. As for Mr. Rhind, I will only say that it seems to me a very strange thing that the fact of his close friendship with Mr. Conn was elicited in re-examination and not in cross-examination. The most inherently probable view of the facts is, I think, that Doyle simply bought the car but never paid for it. However, I have felt in the end, as *Williams* J. and *Taylor* J. have felt, that we should be departing from established principles if we refused to accept the findings of *Clyne* J., which there is, I think, sufficient evidence to support.

(1) (1886) 11 App. Cas., at p. 444.

With regard to the question of reputed ownership, I agree that the crucial question is whether Doyle's possession of the car was " with the consent and permission " of Conn and his wife within the meaning of s. 91 (iii) of the *Bankruptcy Act*. I think that the passage from the judgment of *Christian* L.J. in *Re Hickey* (1) which is quoted by Lord *Fitzgerald* in *Colonial Bank* v. *Whinney* (2) is expressed in much too " vigorous " terms, but I agree that Doyle's possession could not be held to be with the consent and permission of Conn and his wife if they believed at the date of commencement of Doyle's bankruptcy that the car had been sold by Doyle. I cannot myself find any satisfactory evidence that they did so believe at any time, but the evidence accepted by *Clyne* J. is consistent with their having so believed, and, that being so, the Official Receiver has failed to sustain the burden of proof resting upon him.

Application of the Official Receiver for special leave to appeal from the order of the Federal Court of Bankruptcy dated 29th October 1954 *granted, the grounds of appeal to be the same as those stated in the notice of appeal of the appellant company. Both appeals from that order to be heard together and, subject to the following variations of that order, both appeals to be dismissed with costs. The order of 29th October* 1954, *to be varied by substituting for the order dismissing the motion* (1) *a declaration that the proceeds of the sale of the* 1950 *model Buick car, registered number* AHB405, *do not form part of the property of the bankrupt within the meaning of the Bankruptcy Act* 1924-1950 *but are the property of the respondents, Roscoe Imrie Conn and Mona Elizabeth Conn;* (2) *a declaration that the bill of sale dated 26th November* 1952, *registered number* 22083/52, *given by the bankrupt to the respondent, National Discounts Ltd., is not enforceable; and* (3) *an order that the respondents Roscoe Imrie Conn and Mona Elizabeth Conn be at liberty to apply to the Federal Court of Bankruptcy for any directions that may be required so that the sum of* £1,800 *being the proceeds of the sale of the car may be paid to them.*

Solicitors for the appellant, *Berne, Murray & Tout.*

Solicitors for the respondent Jaques, *Owen, Jones, McHutchison & Co.*

Solicitors for the respondents Roscoe Imrie Conn and Mona Elizabeth Conn, *John Corcoran & Co.*

J. B.

(1) (1875) 10 Ir. R. Eq. 117, at p. 129. (2) (1886) 11 App. Cas., at p. 444.