Case No: B2/2008/2836

Neutral Citation Number: [2010] EWCA Civ 58
IN THE HIGH COURT OF JUSTICE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM CENTRAL LONDON COUNTY COURT
Mr RECODER DE LA PIQUERIE
8CL02643

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10 February 2010

Before :

LORD JUSTICE WARD
LADY JUSTICE SMITH
and
LORD JUSTICE RIMER

- -

Between:

Online Catering Limited	**Appellant**
- and -	
(1) Mr Frank Acton	
(2) Drakeglen Limited (t/a Metropolitan Fleet Services)	**Respondents**

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- -

Mr Ali Reza Sinai (instructed by Harper & Odell) for the appellant
Mr Neil Mendoza (instructed by Barlow Lyde & Gilbert) for the respondents

Hearing date: 7th October 2009

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Judgment

Lord Justice Ward:

1. The issues which have grown exponentially from this simple claim for damages for wrongful interference with goods is not the stuff that happens in an ordinary day in the county court. The Recorder, Mr Paul de la Piquerie, sitting at the Central London County Court on 4th November 2008, dismissed the claim but gave the claimant permission to appeal "on the sole issue whether the contract by the Defendant to repair the Claimant's vehicles entered into between the parties was a bill of sale and unenforceable for non-registration as such".

2. The claim was straightforward enough. The claimant, Online Catering Limited, which is a catering company which operates a fleet of vehicles for the delivery of its food and drink, claimed that it was the owner of and entitled to possession of a Ford Transit van allegedly worth £22,000 and a Renault Master van said to be worth £15,000. Metropolitan Fleet Services is the trading name of Drakeglen Ltd which carries on business repairing and servicing motor vehicles. Mr Frank Acton is its managing director. Both Mr Acton and his company were joined as defendants. Metropolitan Fleet Services entered into an agreement with Online Catering Ltd to service and repair its vehicles and did so from time to time. At about 10.00 in the evening of 4th April 2008 Mr Acton and others entered the claimant's premises and deliberately and falsely represented to the claimant's employees that the two vehicles were being taken away for the purpose of carrying out repairs to them. They took possession of the vans and refused to return them. This claim was then brought for their return or payment of £37,000, their value, for consequential damages being the cost of hiring replacements at £900 a week, and also for exemplary damages. The defendants, who acted in person throughout the proceedings in the County Court, put in a "home made" Defence which alleged that the claimants were in default of the terms and conditions of the contract as some £11,772.62 had been outstanding since August 2007 for work done and that consequently they were entitled to seize the vehicles pursuant to clause 28 of the terms of business. There was no formal reply from the claimant but in his witness statement Mr Habib Namini, the claimant's managing director, denied that the claimant was in default; denied that the contract was subject to the second defendant's terms of business which had not been provided to the claimant when the agreement was made and finally submitted that the provision permitting the seizure of the vehicles was "manifestly unfair because it attempts to give the second defendant an unfettered right to seize another party's assets without the parties first having recourse to an independent third party or a Court of Law to establish that there has in fact been a default of agreement". The claimant's case was expanded in the skeleton argument submitted by Mr Ali Reza Sinai at the trial to assert that the seizure contravened section 7 of the Law of Distress Amendment Act 1888 and the Distress for Rent Rules 1988.

3. The Recorder was distinctly unimpressed with the evidence led by the claimant. He found that "Mr Namini gave evidence which in some respects was clearly untrue". He had denied that any money was owing yet eventually counsel made the formal concession that "without prejudice to the existence of default in the 'Terms of Business' and in particular clause 6 thereof, the claimant concedes that unpaid sums were due for the purposes of clause 28(b) provided the clause was incorporated into the agreement between the Claimant and the Defendants". By contrast, the first defendant, Mr Acton, and his wife, "gave their evidence well". They did not deny

"that they had removed the vehicles as a result of a misrepresentation that they required to be repaired, when they did not". Nor did they deny "that the object of the removal of the vehicles was to put pressure on the Claimant to pay the outstanding bills". The Recorder's conclusion was that having listened to and heard all the evidence, he accepted the evidence of the defendant where it differed from the claimant.

4. As for the terms of the contract, he found that when the initial account was opened the Terms of Business of Mr Acton's company were handed to a Mr Pirooze, the claimant's transport manager, who was dealing with the matter on the claimant's behalf. Mr Pirooze was not called and no reason was given for his absence. There was no direct evidence to contradict that which was given by the defendants. The Recorder found that "the terms of business were therefore brought to the attention of the claimant at the outset, were agreed to by the claimant and formed part of the contract".

5. The terms of business included these provisions:

> "6. Payment for all repairs and all spare parts supplied is due on completion of work …
>
> 7. The company shall have a general lien on a vehicle and all its contents for all monies owing to the company by the customer on any account whatsoever. …
>
> 8. If the customer's indebtedness to the company is not satisfied within 3 months from the first account rendered to the customer, the company may without notice sell the vehicle and/or the contents thereof by public auction or private treaty. The net proceeds of sale shall be applied towards satisfying monies due from the customer to the company, and any balance shall be paid by the company to the customer on demand.
>
> …
>
> 27. Default [which I venture to think might be better expressed as "you will be in default"] If you breach this agreement in any way; …
>
> 28. Our rights on your default
>
> If, any of the events in clause 27 or any default of any part of this agreement occurs
>
> (a) we may terminate this agreement …
>
> (b) you permit us and we may obtain goods at any time of the value of unpaid sums that is due. You are however responsible for the insurance of the seized goods and you must inform your insurers that we have your goods."

6. The Recorder accepted that money was owing for repairs. The defendants had written on 26th September 2007 requesting payment of "the overdue invoices". On 26th March 2008 there was a reminder in respect of the "outstanding amount of £11,772.62" in which Mr Acton wrote:

> "I am surprised to have received no reply to our previous letters asking for immediate settlement of the attached statement which is long overdue. May I remind you are in breach of our terms and conditions. Unfortunately I cannot allow this account to remain unpaid any longer and I regret that we will exercise our rights to recover the amounts outstanding within seven days. I am still hopeful that you will render this action unnecessary by sending your remittance in full to arrive here within 7 days."

As the Recorder said: "Needless to say no money was paid." After the vehicles had been removed the defendants wrote to say they would gladly release the vehicles on receipt of payment "by banker's draft only". Thus the Recorder found as facts that

> "repair works were carried out to various vehicles which the claimant owned or leased, that various sums of money had been outstanding for a not inconsiderable period of time, that despite the fact that the claimant maintained in the witness box under oath that he owed no money and that all monies which were due and payable had been paid, that is not the case."

7. The issue, as the Recorder correctly identified it, was whether the seizure of the vehicles was wrongful. He held that clause 8 gave the defendants no more right than their common law lien but he found:

> "There was however a default within the meaning of clause 27 of the terms of the business and therefore contractually by clause 28(b) there was the following right "You permit us and we may obtain goods at any time of the value of the unpaid sums that is due"."

8. He rejected the defendant's defences as argued. He found as a fact that the terms of business were incorporated. He held that all submissions based on the law relating to Distress for Rent had no bearing in this case because there was no relationship of landlord and tenant and no rent was due and owing. Indeed he believed the point had been abandoned. Although that might be thought to be the end of the case, the Recorder then introduced a new point of his own making. He said:

> "During the course however of the authorities referred to by counsel it emerged that one of the matters I wished to be addressed upon is the question as to whether the powers contained under the terms of business fell within the Bills of Sale Act 1887 (sic) as amended and if so whether and to what extent it affected the right to seize as was done in this case."

He held that the contract was technically a bill of sale because clause 28 was a licence to take possession of personal chattels as security for any debt and that consequently the agreement, as a bill of sale, should have been registered pursuant to section 8 of the Act but was not. Section 8 provides that if the bill is not registered,

> "such bill of sale, as against all trustees or assignees of the estate of the person whose chattels …are comprised in such bill of sale under the law relating to bankruptcy or liquidation, or under any assignment for the benefit of the creditors of such person, and also against all sheriffs officers and other persons seizing any chattels comprised in such bill of sale, in the execution of any process of any court … shall be deemed to be fraudulent and void …"

The Recorder held that,

> "whilst the bill may be void for want of registration, and there was no registration of the contract containing the terms of business in this case, the sole consequence of the arrangement is that the bill is rendered void against the very limited class of third parties. It follows that the grantee of an absolute bill is entitled, as against grantor, to exercise the right of seizure or sale conferred by the bill, even if it is not registered or otherwise fails to comply with the Bills of Sale Act 1878."

Consequently he concluded that the defendants were entitled to seize and retain the vehicles until the outstanding monies had been paid.

9. He added that if he were wrong he would not have accepted that there was evidence that justifying the conclusion that the vehicles were worth £22,000 and £15,000 nor did he accept the evidence tendered that the cost of hiring alternative vehicles was £900 per week. There was no justification for exemplary damages even if the vehicles had been wrongfully retained because at all times the defendants acted in good faith in the belief they were entitled as a result of the terms of the business to do exactly what they did. Accordingly the claim was dismissed.

The grounds of appeal

10. As I have already set out, the Recorder himself gave permission to appeal on a single ground, namely, whether the parties' contract was a bill of sale and if so whether it was unenforceable for non-registration as such. That is all that is strictly before us. The appellant nonetheless seeks permission from us to support its appeal on three other grounds and it is convenient to deal with them here and now.

11. The first is that if the contractual power to distrain was valid, the manner in which distress was levied was nevertheless subject to certain minimum requirements such as the rules which govern distress for rent. I regard this argument as utterly hopeless. As I have already observed, the Recorder treated these arguments at the trial as having been abandoned. They were rightly abandoned. The law relating to distress for rent can have absolutely no bearing in a case between a repairer and his customer; there is no question of the relationship of landlord arising and no rent was due and owing.

12. The second additional ground seeks to argue that the judge's rejection of the claimant's evidence of loss and damage was perverse and lacked reason. That ground is also hopeless. The Recorder rejected the claimant's evidence for the obvious reason that he did not believe anything the claimant said. He was fully justified in coming to that conclusion and his findings cannot be upset on appeal.

13. The appellant then seeks finally to introduce the third new ground, submitting that the Recorder was wrong to conclude that clause 28(b) of the terms of business was properly incorporated in the agreement between the parties. The Recorder found as a fact that the terms and conditions were drawn to the attention of Mr Pirooze and agreed. He was fully entitled to believe Mr Acton and reject the claimant's witnesses' evidence. I do not see any real prospect of persuading this Court that those findings of fact were wrong.

14. In my judgment, none of these additional grounds has any real prospect of success and I would refuse permission to appeal. Turning then to the ground for which permission was given, two questions arise, first, was the contract a bill of sale and, secondly, was it unenforceable for non-registration?

Was this a bill of sale?

15. Section 4 of the Bills of Sale Act 1878 defines a bill of sale as follows:

> "The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trusts without transfer, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or *licenses(sic)to take possession of personal chattels as security for any debt*, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred …" emphasis added by me.

16. Inasmuch as clause 27 of the agreement gives the garage permission to take possession of personal chattels, which will include motor vehicles, the question arises as to whether they were seized "as security for any debt". The Recorder was satisfied about the indebtedness and there is no challenge to that finding. The correspondence made plain what can in any event be inferred from the terms of the agreement, namely, that if the debt were to be repaid, the goods would be released. The seizure was unquestionably as security for the debt. So the agreement falls within the ambit of section 4 of the 1878 Act but the much more interesting question is whether the Acts apply at all to companies, this being an agreement made by the claimant, Online Catering Ltd.

17. There are a number of valuable dicta on the topic going back over a hundred years. In *Read v Joannon* (1890) 25 Q.B.D. 300 Lord Coleridge C.J. said at p. 303:

> "The question is, whether a debenture of an incorporated company requires registration as a bill of sale. I am of the

> opinion – and I think it right to say that my opinion does not stand alone, but is supported by that of a judge of much greater authority than myself, whom I have had the opportunity of consulting – that such debentures are not bills of sale, and are not struck at by either of these Acts of Parliament – that they were never within the Act of 1878 and are expressly exempted from the operation of the Act of 1882."

Wills J. said at p. 304:

> "I am of the same opinion; and I agree with my Lord, on consideration, that debentures of an incorporated company are not, and were never intended to be within the operation of the Act of 1878."

18. A similar question came before the Court of Appeal in *In Re: Standard Manufacturing Company* [1891] 1 Ch. 627. The court held that the debentures were expressly excepted from the operation of the Bills of Sales Act (1878) Amendment Act 1882 by section 17 of that Act because they were debentures "issued by any mortgage, loan, or other incorporated company". The court then went on to consider whether the debentures were bills of sale to which the Act of 1878 applied and held that company debentures were not within that Act either. Three reasons were given. First, it was observed that the avowed design of the legislature had been to strike at frauds perpetrated upon creditors by secret bills of sale as the preamble to the Bills of Sale Act 1854 made plain:

> "Whereas frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of their creditors …"

Such corporate bodies as were at that time in existence were not bodies in the habit of committing frauds of that sort. By the time the 1878 Act was passed, the Companies Act of 1862 provided for the registration by companies of the mortgages and charges specifically affecting their property. Accordingly company debentures could hardly be described as "secret documents". The second reason was that the language employed was "certainly not felicitous language to be applied in the case of corporations" and thus warranted the observation that "debentures of companies were not actively present in the mind of the draughtsmen of the Act." Thirdly, the court accepted the correctness of the judgments in earlier cases including *Read v Jaonnon*. So the conclusion was that:

> "… mortgages or charges of any incorporated company for the registration of which a statutory provision had already been made by the Companies Clauses Act 1845 or the Companies Act 1862 are not bills of sale within the Bills of Sale Act 1878."

19. That case was distinguished by Vaughan Williams J. in *Great Northern Railway Company v Cole Co-operative Society* [1896] 1 Ch. 187 on the basis that the Court of Appeal was not excluding companies generally from these Acts of Parliament, but excluding only companies for whom provision had been made for the registration of the mortgages. It seemed to him, therefore, that the question whether the Bills of Sale Acts applied to other companies, that is, companies in the case of which no provision has been made for registration, was deliberately left open. He was dealing with a society registered under the Industrial and Provident Societies Acts and he held it was not caught by the Bills of Sale Acts.

20. In *Clark v Balm, Hill & Co* [1908] 1 K.B. 667 the case concerned a series of debentures issued by a company incorporated in Guernsey which created a charge on floating real and personal property in England. The question was whether the debentures ought to be deemed to be within the Bills of Sales Acts and so ought to have been registered as bills of sale in circumstances where the company was not obliged by the law of Guernsey to keep a register of charges. Phillimore J. held that *Read v Joannon* and *Standard Manufacturing* had decided that all debentures of incorporated bodies were exempt from the Act of 1878. He expressed the view that "there was a little error in the judgment of Vaughan Williams J." in *Great Northern Ry. Co.* and he added, "I must say that the reasoning of Wills J. in [*Read v Joannon*] commends itself to my mind."

21. These cases were considered by Lloyd J. in *N.V. Slavenburg's Bank v Intercontinental Natural Resources Ltd* [1980] 1 W.L.R. 1076. This case concerned an assignment of stocks as security by a Bermudan company which was not registered since it was not the practice of the Registrar of Companies to accept particulars of charges for registration from an overseas company with a place of business in England. He said of *Clark v Balm, Hill & Co* that it was for all practical purposes the latest decision in the field:

> "It has stood now for 70 years. Even if I thought it wrong (which I do not) I would be most reluctant not to follow it. So far as I know it has never been criticised in any of the standard text books. … I would prefer to put my decision on the broad ground indicated by Phillimore J. namely, that bills of exchange Acts apply to individuals only and not to corporations at all."

22. These authorities, as Mr Sinai fully recognised, are powerful support for the conclusion that the Bills of Sale Acts do not apply to companies. Nonetheless he sought to escape that conclusion by this well-presented, ingenious, argument. But for the fact the claimant company, the agreement would be a bill of sale. Registration is necessary to cure the evil of secret bills. The Companies Act provides its own answer by registration of charges. The agreement does not, however, constitute a charge. Therefore there is no need for registration. That creates a lacuna which the legislature could not have intended and so in a case like this, registration under the Bills of Sale Acts is required. That led to interesting arguments about whether or not this agreement did constitute a charge. Mr Mendoza, who now appears for the respondents, submits that it is a floating charge not far from removed from the one considered by the House of Lords in *Smith (Administrator of Coslett Contractors) Ltd v Bridgend County Borough Council* [2002] 1 A.C. 336 which concerned a standard

condition in an engineering contract which allowed the employer in various situations in default by the contractor to sell his plant and equipment and apply the proceeds in discharge of his obligation. That was held to be a floating charge. On the other hand, a contractual possessory lien, coupled with a right to sell and use the proceeds to discharge the customer's outstanding indebtedness was not a floating charge because the company did not purport to have any right to exercise any right to take possession as distinct from the right to detain possession: see *Trident International Ltd v Barlow* [2000] B.C.C. 602. Clause 28(a) did not reserve a right to sell which may be said to be a hallmark of a true charge.

23. I do not feel inclined to resolve this dispute because, if the contract did create a charge which ought to have been registered, the failure to register may be void under section 395 of the Companies Act 1985 but it is void only against the liquidator or administrator or any creditor of the company. It is not void as between the parties to the contract so the argument gets the appellant nowhere. Even if the agreement does not create a charge and there is a lacuna, I am nonetheless satisfied that the lacuna cannot be filled by treating the agreement as one which is covered by the Bills of Sale Acts because I am satisfied those Acts do not apply to companies.

24. The three reasons which most impress me and incline me to that conclusion are these. First, the mischief argument: set in Victorian times, the aim is to protect the creditors of individuals and separate provisions were made for companies as they increasingly became a feature of society. Secondly, the language of the Act: although there is a reference in section 7 of the 1878 Act both to "bankruptcy" and "liquidation", "liquidation" being, at least as the word is today understood, more appropriate to companies than individuals for whom "bankruptcy" is more usual, all other references in the Act suggest that the Act is concerned with individuals. Thus personal chattels are deemed to be in the apparent possession of the person making the bill of sale so long as they remain in premises occupied by *him* or are used and enjoyed by *him*. In section 10(2) the mode of registering bills of sales requires a description "of the residence and occupation of the person making or giving the bill of sale". The form of register specified in section 12 is to like effect. In the 1882 Act an affidavit is required when presenting the bill for registration and that must describe "the residence of the person making" the bill. The schedule to the Act describes the form of a bill of sale under which "he" the grantor of the bill assigns the chattels to the grantee. Thirdly this construction seems to have been acknowledged by the legislature elsewhere. Section 396(1) of the Companies Act 1985 prescribes the charges which have to be registered and include:

> "(c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale."

That seems to me to be an acknowledgement that bills of sale are confined to individuals and companies are bound by the regime of the Companies Act.

25. In the court below the possible application of the Bills of Sale Acts took Mr Sinai somewhat by surprise and I can readily understand that he had not the time to research the matter as he has been able to do in presenting his arguments to this Court. His written skeleton was prepared in the belief that the respondent would still be in person and, in the best traditions of the Bar, he set out the law with conspicuous fairness even

though that was against the interests of his client. Although he made an attempt to repeat and rely on the arguments that had failed in *Slavenburg's Bank,* to which he drew the court's attention, it was an understandably half-hearted attempt to salvage his client's case. Upon examination, it is clear to me that the recorder was in error in raising this question. This was not a bill of sale to which the Acts applied and it is therefore, strictly speaking, unnecessary to consider the second question raised in this ground of appeal, that is to say, if this is a bill of sale, does the want of registration make it void as against the appellant? On this hypothetical question, I would agree with the recorder that section 8 of the 1878 Act renders an unregistered bill "fraudulent and void", but only against the limited category of persons there identified, namely, trustees or assignees of the estate, and sheriffs in their offices. An unregistered bill would not be void as against the grantee. The more difficult question is, however, whether the bill is void pursuant to section 8 of the 1882 Act which provides that:

> "Every bill of sale shall be duly attested, and shall be registered under the principal Act … otherwise such bill of sale shall be void in respect of the personal chattels comprised therein."

That would appear to mean that such a bill would be void as against the whole world, including the grantor. So the question is, does the 1882 Act apply? The answer is probably given by the Court of Appeal in *Ex parte Parsons, In re: Townsend* (1886) 16 QBD 532. There Parsons was to advance money to Townsend and as security for his advance he was to have the right to take immediate possession of the goods and sell them. That was held to be a licence to take possession of goods as between two private individuals and it therefore fell within sections 3 and 4 of the 1878 Act. In answer to the question whether it was a bill of sale within the 1882 Act Lord Esher, M.R., held at p. 544:

> "Section 3 [of the 1882 Act] says that the two Acts are to be construed as one, and that the expression "bill of sale" is to have the same meaning in the Act of 1882 as in the Act of 1878, except as to bills of sale given otherwise and by way of security for the payment of money, to which the Act is not to apply. This document, therefore, is a bill of sale within the Act of 1882 because it is a bill of sale within the Act of 1878."

It was not made in the form required and it was, therefore, void.

26. Both counsel seem to agree that this would be a security bill within the 1882 Act, if the agreement falls within the purview of the Acts and that the defendants could not rely upon it because it would void. Interesting as these speculations are, they simply do not apply in this case because the Bills of Sale Acts do not apply to companies. That is an end of it.

27. Since those questions were the only ones for which permission to appeal has been given, that should be the end of the appeal. I would therefore dismiss it. I cannot, however, end without commenting as I began that in a case where so many points have been taken, good, bad or indifferent, with the result that the arguments have ranged so widely in arcane fields outside the expected ken of a County Court judge, no point was ever taken on the merits, or lack of them, that the removal and retention

of these vehicles was wrongful because possession was obtained by a trick. The deceit was admitted and although the defendants had a right to take possession, it might be said that they had no right to take the vehicles in the way in which they did. That would have given rise to another interesting argument but I am not going there.

Lady Justice Smith:

28. I agree with both judgments.

Lord Justice Rimer:

29. I too would refuse permission to appeal on the additional grounds to which Ward LJ has referred in paragraphs [11] to [13] of his judgment and have nothing to add to his reasons for assessing them to be without substance. I would also dismiss the appeal on the one ground for which the Recorder gave permission. I add short reasons of my own for that conclusion.

30. The right conferred on Drakeglen Ltd by clause 28(b) of the terms of business is to take possession of goods to the value of sums unpaid by Online Catering Ltd and, I infer, to retain them until payment but no longer. Neither clause 28(b) nor anything else in the terms of business entitles it to sell any goods so taken and counsel did not identify any right under the general law under which it could sell them, or seek an order for sale, so as to enable the proceeds to be applied to the discharge of Online's debt.

31. The right is therefore in the nature of a contractual possessory lien. Despite its limited nature, I consider that it can properly be regarded as conferring a right in the nature of a 'security'. It would, in the language of section 4 of the Bills of Sale Act 1878, have amounted to a licence 'to take possession of personal chattels as security for any debt', and would fall within the definition of a bill of sale (cf *Ex parte Parsons, in re Townsend* (1886) 16 QBD 532). I shall assume, without deciding, that if Online had been an individual, the right would have been void against him for want of compliance with the formalities and registration requirements of the Bills of Sales 1878 and 1882 (see sections 8 and 9 of the 1882 Act).

32. Online is not, however, an individual but a limited company formed and registered under the Companies Act 1985. Part XII of that Act (the legislation in force at the material time) provided for the registration of 'charges' created by companies. If the registration requirements were not complied with, section 395 provided that any security conferred by the charge on the company's property or undertaking would be void against the liquidator, administrator or any creditor of the company. If the effect of clause 28(b) was to create a 'charge' of the sort listed in section 396(1)(a) to (j), then it had to be registered but was not. It is, however, agreed that nothing has happened to render such charge void against Online and so it avails Online nothing to point to the lack of registration under Part XII.

33. The requirements of Part XII apply, however, only to 'charges' created by the company of the types so listed. Since clause 28(b) gives Drakeglen no right to sell, or seek a judicial sale of, the seized goods so as to enable it to apply the proceeds in or towards satisfaction of the unpaid debt, I doubt whether it created a 'charge': it is a usual feature of a charge that it appropriates specific property to the discharge of a

debt or other obligation (cf *Carreras Rothmans v. Freeman Matthews Treasure* [1985] Ch 207, at 227C, per Peter Gibson J, as he then was), whereas clause 28(b) did not do that: the retained goods cannot be realised so as to enable the discharge of the debt. Mr Mendoza, for the respondents, submitted that the decision of the House of Lords in *Smith (Administrator of Cosslett (Contractors)Ltd) v. Bridgen County Borough Council* [2002] 1 AC 336 provided conclusive authority that a 'charge' *was* here created, but I disagree. In that case the relevant provision expressly empowered the council to *sell* the relevant plant, goods and material and apply the proceeds in or towards satisfaction of the contractor's debt (see paragraph [10]). Clause 28(b) includes no like right.

34. Assuming, without deciding, that clause 28(b) did not create a charge, I have said that I consider that it at least created a 'security' interest that - if created by an individual - required compliance with the formalities of the Bills of Sales Acts. Whilst Mr Sinai, for Online, did not submit that anything that a company must register under Part XII must also be registered as a bill of sale under the Bills of Sale Acts, he did submit that a company must register as a bill of sale under those Acts those security interests created by it that are *not* required to be registered under Part XII.

35. My intuitive response to that submission is unsympathetic, since it would seem to me improbable that Part XII would go to the express lengths it did in relation to the registration by companies of particular types of security whilst leaving the registration requirements of other security interests to be covered by the Bills of Sales Acts. But the submission raised the more general question as to whether the Bills of Sales Acts apply to companies at all. That question has been considered in authorities decided over 100 years ago, but also more recently by Lloyd J (as he then was) in *N.V. Slavenburg's Bank v. Intercontinental Natural Resources Ltd and Others* [1980] 1076, at 1093H to 1098H. After a full review of the authorities, he concluded that the Bills of Sales Acts do not apply to companies, thus following the decision of Phillimore J in *Clark v. Balm, Hill & Co* [1908] 1 KB 667.

36. The arguments before us did not include an in-depth revisiting of the issues argued before Lloyd J, Mr Sinai's argument amounting to little more than a re-assertion of the submissions that failed before him. I propose to say no more than that I find Lloyd J's reasoning and conclusion in *Slavensburg* wholly convincing and respectfully agree with it. In my judgment the answer to this appeal is that the Bills of Sale Acts apply only to individuals, not to companies.

37. It follows that I agree that the appeal fails and should be dismissed. I add only that the respondents' success is not something I view with satisfaction. Drakeglen achieved the recovery of the two vehicles by making a false representation to Online that it was taking them away for repair works. I regard it as unsatisfactory that it should then be entitled to assert its clause 28(b) rights in respect of the vehicles. No point on that was taken before the judge, and I know not whether a good point was there to be taken. But the facts paint Drakeglen in a poor light. Nor, however, does Online emerge from the litigation covered in merit, its managing director having given evidence that in part the Recorder found to be 'clearly untrue'. Perhaps the parties deserved each other.